



REPUBLIC OF SINGAPORE

GOVERNMENT GAZETTE

BILLS SUPPLEMENT

Published by Authority

NO. 20]

MONDAY, AUGUST 2

[2021

First published in the *Government Gazette*, Electronic Edition, on 2 August 2021 at 5 pm.

Notification No. B 20 — The Criminal Law (Miscellaneous Amendments) Bill is published for general information. It was introduced in Parliament on 2 August 2021.

Criminal Law (Miscellaneous Amendments) Bill

Bill No. 20/2021.

Read the first time on 2 August 2021.

A BILL

intituled

An Act to amend the Penal Code to update the criminal offences, enhance the punishment for sexual offences and clarify the application of certain provisions, and to make amendments to certain other Acts.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Criminal Law (Miscellaneous Amendments) Act 2021 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

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PART 1

AMENDMENT OF PENAL CODE

Amendment of section 73

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2. Section 73(4) of the Penal Code is amended by inserting, immediately after the words “section 304B” in paragraph (a) of the definition of “excluded offence”, “, 304C”.

Amendment of section 74

3. Section 74 of the Penal Code is amended by deleting subsection (3) and substituting the following subsection:

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“(3) Despite anything to the contrary in the Criminal Procedure Code —

(a) a Magistrate’s Court —

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(i) has jurisdiction to try any offence specified in subsection (2), where no imprisonment is prescribed or where twice the maximum term of imprisonment prescribed for the offence does not exceed 5 years; and

(ii) has power to impose the full punishment provided under subsection (1) in respect of the offence; and

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(b) a District Court —

(i) has jurisdiction to try any offence specified in subsection (2); and

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(ii) has power to impose the full punishment provided under subsection (1) in respect of the offence.”.

Amendment of section 74A

4. Section 74A(1) of the Penal Code is amended by deleting the words “on or after the date of commencement of the Vulnerable Adults Act 2018”.

Amendment of section 79

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5. Section 79 of the Penal Code is amended —

(a) by deleting subsection (2) and substituting the following subsection:

“(2) To avoid doubt, where a person alleges a mistake of fact or ignorance of a fact that may negate the fault element of the offence that the person is charged with, the prosecution must prove the fault element in order to establish liability under the offence.”;

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(b) by renumbering the *Explanation* as *Explanation 1*, and by inserting immediately thereafter the following *Explanation*:

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“*Explanation 2.*—Where an alleged mistake of fact or ignorance of a fact may negate the fault element of an offence, the accused person does not need to rely on the defence of mistake. The accused person may allege the mistake of fact or ignorance of the fact for the purpose of raising a reasonable doubt that the accused person had the requisite fault element as a result of labouring under the mistake of fact or ignorance of fact. The prosecution must prove the fault element in order to establish liability under the offence.”; and

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(c) by deleting the words “as he did not intend to dishonestly take the watch out of *Z*’s possession” in *illustration (f)* and substituting the words “as *A* did not possess the requisite fault element of dishonesty when *A* took the watch out of *Z*’s possession. There is no need for *A* to rely on a defence under this section”.

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Amendment of section 79A

6. Section 79A of the Penal Code is amended —

(a) by deleting subsection (2) and substituting the following subsection:

5 “(2) To avoid doubt, where a person alleges a
mistake of law or ignorance of the law that may
negate the fault element of the offence that the person
is charged with, the prosecution must prove the fault
element in order to establish liability under the
10 offence.”; and

(b) by deleting the *Illustration*.

Amendment of section 80

7. Section 80 of the Penal Code is amended by deleting
subsection (2) (excluding the *Explanation*) and substituting the
15 following subsection:

“(2) To avoid doubt, where —

(a) a person alleges any act is done by accident or
misfortune in the doing of a lawful act in a lawful
manner, by lawful means, and with proper care and
20 caution; and

(b) the doing of the act allegedly by accident or
misfortune may negate the fault element of the
offence that the person is charged with,

25 the prosecution must prove the fault element in order to establish
liability under the offence.”.

Amendment of section 84

8. Section 84 of the Penal Code is amended —

(a) by deleting the words “(whether wrong by the ordinary
standards of reasonable and honest persons or wrong as
contrary to law)” in paragraph (b); and
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(b) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection (before the *Illustration*):

“(2) Subsection (1)(b) applies only if the person is incapable of knowing that his act —

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(a) is wrong by the ordinary standards of reasonable and honest persons; and

(b) is wrong as contrary to law.”.

Amendment of section 85

9. Section 85 of the Penal Code is amended —

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(a) by deleting the words “(whether wrong by the ordinary standards of reasonable and honest persons or wrong as contrary to law)” in subsection (2)(b); and

(b) by inserting, immediately after subsection (2), the following subsection:

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“(2A) Subsection (2)(b) only applies if the person charged, at the time of the act or omission complained of, did not know that the act or omission —

(a) was wrong by the ordinary standards of reasonable and honest persons; and

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(b) was wrong as contrary to law.”.

Repeal and re-enactment of section 115

10. Section 115 of the Penal Code is repealed and the following section and *Illustration* substituted therefor:

“Abetment of offence punishable with death or imprisonment for life

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115. Whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence is not committed in consequence of the abetment, and no express provision is made by this Code or by any other written law for the punishment of such abetment, be punished with

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imprisonment for a term that may extend to 20 years, and shall also be liable to fine or to caning.

Illustration

5 *A* instigates *B* to murder *Z*. The offence is not committed. If *B* had murdered *Z*, *B* would have been subject to the punishment of death. Therefore, *A* shall be punished with imprisonment for a term that may extend to 20 years, and shall also be liable to fine or to caning.”.

Amendment of section 153

11. Section 153 of the Penal Code is amended —

- 10 (a) by deleting the words “malignantly or wantonly” and substituting the words “intentionally or rashly”; and
- (b) by deleting the word “Wantonly” in the section heading and substituting the words “Intentionally or rashly”.

Amendment of section 182

15 12. Section 182 of the Penal Code is amended —

- (a) by inserting, immediately after the words “ought not to”, the words “, or would not,”; and
- (b) by inserting, immediately after *illustration* (c), the following *illustration*:

20 “(d) *A* informs a policeman that *A* does not know the identity of the suspect of a criminal offence, knowing such information to be false, and knowing it to be likely that in consequence of this information, the policeman will expend additional time and resources to identify the suspect which will not be so expended

25 if *A* had informed the policeman that *A* knew the identity of the suspect. *A* has committed an offence under this section.”.

Amendment of section 186

13. Section 186 of the Penal Code is amended —

- 30 (a) by deleting the words “3 months” in paragraph (a) and substituting the words “6 months”; and
- (b) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection and *Illustration*:

“(2) For the purposes of this section, an obstruction may be caused other than by the use of physical means or threatening language by a person against a public servant.

Illustration

A group of paramedics from the Singapore Civil Defence Force intends to take the lift to the 30th storey of a block of flats to reach a person suffering from a heart attack. *A* decides to play a prank on the paramedics by telling them that the lift has broken down, knowing this to be false. The paramedics took the stairs because of what *A* told them and reached the person 15 minutes later than if they had taken the lift. *A* has voluntarily obstructed the paramedics in the discharge of their public function.”.

Amendment of section 219

14. Section 219 of the Penal Code is amended by deleting the word “maliciously” and substituting the words “with intent to cause injury to any person,”.

Repeal and re-enactment of section 220

15. Section 220 of the Penal Code is repealed and the following section substituted therefor:

“Commitment for trial or confinement by person having authority who knows he is acting contrary to law

220.—(1) Whoever, being in an office that gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement —

(a) corruptly or with intent to cause injury to any person, commits the person or any other person for trial or to confinement, or keeps the person or any other person in confinement, in the exercise of that authority; and

(b) knowing that in doing so he is acting contrary to law, shall be guilty of an offence.

(2) Any person convicted of an offence under subsection (1) shall be punished with imprisonment for a term that may extend to 7 years, or with fine, or with both.”.

Amendment of section 270

16. Section 270 of the Penal Code is amended —

(a) by deleting the word “malignantly” and substituting the words “intentionally or rashly”; and

5 (b) by deleting the word “Malignant” in the section heading and substituting the words “Intentional or rash”.

Amendment of section 300

17. Section 300 of the Penal Code is amended —

10 (a) by deleting the words “(whether wrong by the ordinary standards of reasonable and honest persons or wrong as contrary to law)” in paragraph (a)(ii) of *Exception 7*; and

(b) by inserting, at the end of *Exception 7*, the following paragraph:

15 “Paragraph (a)(ii) of the above exception applies only if, at the time of the acts or omissions causing the death concerned, there was a substantial impairment of the offender’s capacity to know that the acts or omissions —

(a) are wrong by the ordinary standards of reasonable and honest persons; and

20 (b) are wrong as contrary to law.”.

Amendment of section 311

18. Section 311 of the Penal Code is amended by deleting the words “he is” and substituting the words “she is”.

Amendment of section 335

25 19. Section 335 of the Penal Code is amended by inserting, immediately after the words “Sections 334” in the *Explanation*, “, 334A”.

Amendment of section 352

30 20. Section 352 of the Penal Code is amended by deleting the words “if the provocation is given by anything done in obedience to the law” in the *Explanation* and substituting the words “if the offender knows

or has reason to believe that the provocation is given by anything done in obedience to the law”.

Amendment of section 354

21. Section 354(1) of the Penal Code is amended by deleting the words “2 years” and substituting the words “3 years”.

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Amendment of section 355

22. Section 355 of the Penal Code is amended by inserting, at the end of the section, the following *Explanation*:

“Explanation.—This section is subject to the same explanation as section 352.”.

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Amendment of section 376

23. Section 376 of the Penal Code is amended —

- (a) by deleting subsection (1);
- (b) by deleting the words “(1) or” wherever they appear in subsections (4) and (5);
- (c) by deleting the word “man” in subsection (6) and substituting the word “person”; and
- (d) by deleting the word “he” wherever it appears in subsection (6) and substituting in each case the words “the person”.

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Amendment of section 376E

24. Section 376E(2) of the Penal Code is amended —

- (a) by deleting the words “section 355,” in paragraph (a) and substituting the words “section 354, 354A, 355,”; and
- (b) by deleting “377(3),” in paragraph (a) and substituting the words “377(1)(e), (f), (g) or (h),”.

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Amendment of section 376EA

25. Section 376EA(2) of the Penal Code is amended —

(a) by deleting “377(3),” in paragraph (a) and substituting the words “377(1)(e), (f), (g) or (h),”;

5 (b) by deleting the word “or” at the end of paragraph (a); and

(c) by deleting the full-stop at the end of paragraph (b) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph:

10 “(c) section 7 of the Children and Young Persons Act.”.

Amendment of section 376ED

26. Section 376ED(3) of the Penal Code is amended by deleting the words “one year” in paragraph (b) and substituting the words “2 years”.

15 **Amendment of section 376EE**

27. Section 376EE(3) of the Penal Code is amended by deleting the words “one year” and substituting the words “2 years”.

Amendment of section 376H

28. Section 376H(1) of the Penal Code is amended —

20 (a) by deleting paragraph (a) and substituting the following paragraph:

“(a) *A* intentionally touches another person (*B*) or intentionally incites *B* to —

(i) touch *A* or the bodily fluids of *A*;

25 (ii) touch *B*;

(iii) touch another person (*C*) or the bodily fluids of *C*; or

(iv) be touched by *C*.”; and

30 (b) by deleting sub-paragraph (ii) of paragraph (d) and substituting the following sub-paragraph:

“(ii) the risk of *B* contracting a sexually transmitted disease from the touching; and”.

Repeal and re-enactment of section 377

29. Section 377 of the Penal Code is repealed and the following section substituted therefor:

“Sexual penetration, etc., of a corpse

377.—(1) A person (*A*) who —

- (a) penetrates, with *A*’s penis, the vagina, anus or mouth of a human corpse;
- (b) sexually penetrates, with a part of *A*’s body (other than *A*’s penis, if *A* is a man) or anything else, the vagina or anus of a human corpse;
- (c) causes *A*’s vagina, anus or mouth to be penetrated by the penis of a human corpse;
- (d) causes *A*’s vagina or anus to be sexually penetrated by a part of a human corpse (other than the penis, if the human corpse is that of a deceased man);
- (e) causes a person (*B*) to penetrate, with *B*’s penis (if *B* is a man), the vagina, anus or mouth of a human corpse, without *B*’s consent;
- (f) causes *B* to sexually penetrate, with a part of *B*’s body (other than *B*’s penis, if *B* is a man) or anything else, the vagina or anus of a human corpse, without *B*’s consent;
- (g) causes *B*’s vagina, anus or mouth to be penetrated by the penis of a human corpse, without *B*’s consent; or
- (h) causes *B*’s vagina or anus to be sexually penetrated by a part of a human corpse (other than the penis, if the human corpse is that of a deceased man), without *B*’s consent,

shall be guilty of an offence.

(2) A person who is guilty of an offence under subsection (1)(a), (b), (c) or (d) shall be punished with imprisonment for a term that may extend to 5 years, or with fine, or with both.

5 (3) A person who is guilty of an offence under subsection (1)(e), (f), (g) or (h) shall be punished with imprisonment for a term that may extend to 20 years, and shall also be liable to fine or to caning.”.

Amendment of section 377BB

10 **30.** Section 377BB of the Penal Code is amended by deleting the word “genitals” wherever it appears in subsections (4)(a), (5)(a) and (9) and substituting in each case the words “genital region”.

Amendment of section 377BL

31. Section 377BL(6) of the Penal Code is amended —

15 (a) by deleting the words “the genital or anal region of *B*” in paragraph (b) and substituting the words “the genital region or buttocks (whether exposed or covered) of *B*, where the depiction is sexual and”; and

20 (b) by deleting the words “the breasts of *B* if *B* is female,” in paragraph (c) and substituting the words “the breasts (whether exposed or covered) of *B* if *B* is female, where the depiction is sexual and”.

Amendment of section 377BM

25 **32.** Section 377BM(2) of the Penal Code is amended by deleting the words “without malice” in paragraph (a) and substituting the words “without intent to cause injury to the person (*B*) mentioned in section 377BB(1), (2), (3), (4) or (5), 377BC(1) or (2) or 377BE(1) or the person depicted in the intimate image or recording mentioned in section 377BD(1)(b).”.

30 **Amendment of section 377BN**

33. Section 377BN(2) of the Penal Code is amended by deleting the words “without malice” in paragraph (a) and substituting the words

“without intent to cause injury to the person depicted in the child abuse material”.

Amendment of section 377C

34. Section 377C of the Penal Code is amended —

- (a) by inserting, immediately after the word “In” in subsection (1), the words “this section and in”; 5
- (b) by inserting, immediately before the definition of “child abuse material” in subsection (1), the following definition:
 - ““buttocks”, in relation to a person, includes the anal region of the person;”;
- (c) by deleting the words “the genital or anal region” in paragraph (b) of the definition of “child abuse material” in subsection (1) and substituting the words “the genital region or buttocks (whether exposed or covered)”;
- (d) by inserting, immediately after the words “16 years of age” in paragraphs (b) and (c) of the definition of “child abuse material” in subsection (1), the words “, where the depiction is sexual and”; 15
- (e) by inserting, immediately after the words “the breasts” in paragraph (c) of the definition of “child abuse material” in subsection (1), the words “(whether exposed or covered)”; and 20
- (f) by deleting the word “genitals” in subsection (3)(f)(i) and substituting the words “genital region”.

Amendment of section 378

35. Section 378 of the Penal Code is amended by deleting the words “the keeper of a warehouse” in *illustration (e)* and substituting the words “the owner or operator of a warehouse”.

Amendment of section 405

36. Section 405 of the Penal Code is amended by deleting the word “warehouse-keeper” in *illustration (b)* and substituting the words “warehouse owner or warehouse operator”. 30

Amendment of section 477A

37. Section 477A of the Penal Code is amended by deleting the word “account” in *Explanation 2* and substituting the word “accounts”.

5 **Miscellaneous amendments**

38. The Penal Code is amended —

(a) by deleting the words “section 376(1) or (2)” in section 102(d) and substituting the words “section 376(2)”;

10 (b) by deleting the words “376(1)(a), 376(1)(b) read with section 376(4),” in section 376A(1A);

(c) by deleting the words “376(1)(a) or (2)” in section 376G(4) and substituting “376(2)”;

15 (d) by inserting, immediately after “376(1)” in section 377D(3)(a), the words “as in force before its deletion by section 23(a) of the Criminal Law (Miscellaneous Amendments) Act 2021”.

PART 2

AMENDMENTS TO OTHER ACTS

Amendment of Animals and Birds Act

20 39. Section 42(1) of the Animals and Birds Act is amended by deleting the word “wantonly” in paragraph (d) and substituting the word “rashly”.

Amendment of Children and Young Persons Act

25 40. Section 7 (Sexual exploitation of child or young person) of the Children and Young Persons Act is amended —

(a) by deleting the word “or” at the end of subsection (12)(a); and

(b) by deleting paragraph (b) of subsection (12) and substituting the following paragraphs:

- “(b) an offence under the repealed section 7 of the Children and Young Persons Act (Cap. 38, 2001 Ed.) as in force between 20 July 2011 and 30 June 2020 (both dates inclusive); 5
- (c) an offence under the repealed section 7 of the Children and Young Persons Act (Cap. 38, 2001 Ed.) as in force between 1 February 2008 and 19 July 2011 (both dates inclusive); 10
- (d) an offence under the repealed section 7 of the Children and Young Persons Act (Cap. 38, 2001 Ed.) as in force between 31 December 2001 and 31 January 2008 (both dates inclusive); 15
- (e) an offence under the repealed section 6 of the Children and Young Persons Act (Cap. 38, 1994 Ed.) as in force between 15 March 1994 and 30 December 2001 (both dates inclusive); or 20
- (f) an offence under the repealed section 6 of the Children and Young Persons Act 1993 (Act 1 of 1993) as in force between 21 March 1993 and 14 March 1994 (both dates inclusive),” 25

Amendment of Criminal Procedure Code

41. The First Schedule to the Criminal Procedure Code is amended —

- (a) by deleting the words “15 years” under the sixth column in the first item relating to section 115 and substituting the words “20 years”; 30
- (b) by deleting the second item relating to section 115;

- (c) by deleting the word “Wantonly” under the second column in the item relating to section 153 and substituting the words “Intentionally or rashly”;
- (d) by deleting the words “3 months” under the sixth column in the item relating to section 186 and substituting the words “6 months”;
- (e) by deleting the word “Malignantly” under the second column in the item relating to section 270 and substituting the words “Intentionally or rashly”;
- (f) by deleting the words “2 years” under the sixth column in the item relating to section 354(1) and substituting the words “3 years”;
- (g) by deleting the words “one year” under the sixth column in the items relating to sections 376ED(1), 376ED(2), 376EE(1) and 376EE(2) and substituting in each case the words “2 years”; and
- (h) by deleting the items relating to sections 377(2) and 377(4) and substituting the following items:

“

377(2)	Penile or sexual penetration of a corpse, etc.	May arrest without warrant	Warrant	Bailable	Imprisonment for 5 years, or fine, or both	Magistrate’s Court or District Court
377(3)	Causing another person to carry out penile or sexual penetration of a corpse without the person’s consent, etc.	May arrest without warrant	Warrant	Not bailable	Imprisonment for 20 years, and fine or caning	

”.

Amendment of Registration of Criminals Act

42. Part 1A of the First Schedule to the Registration of Criminals Act is amended by deleting the words “Sexual penetration of corpse.” in the second column of the item relating to “Section 377” and substituting the words “Sexual penetration, etc., of a corpse.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Penal Code to update the criminal offences, enhance the punishment for sexual offences and clarify the application of certain provisions.

The Bill also amends the Animals and Birds Act, the Children and Young Persons Act, the Criminal Procedure Code and the Registration of Criminals Act.

Clause 1 relates to the short title and commencement.

PART 1

AMENDMENT OF PENAL CODE

Part 1 (clauses 2 to 38) amends the Penal Code.

Clause 2 amends section 73(4) by inserting section 304C as an excluded offence, as section 304C already prescribes an enhanced penalty for the offence of causing or allowing the death of a domestic worker.

Clause 3 amends section 74(3) to expand the jurisdiction of a Magistrate's Court and District Court relating to the offences specified in section 74(2), as amended by section 17 of the Maintenance of Religious Harmony (Amendment) Act 2019. Section 17 of the Maintenance of Religious Harmony (Amendment) Act 2019 amends section 74 —

- (a) by enhancing the punishment under section 74(1) for racially or religiously aggravated offences, from one and a half times to 2 times the amount of punishment to which an accused would otherwise have been liable for those offences; and
- (b) by replacing the existing closed list of offences in section 74(2) that may attract the enhanced punishment with any offence under the Penal Code except for sections 298 and 298A, and an offence which is punishable with death or imprisonment for life.

After the amendment, a Magistrate's Court will have jurisdiction to try any offence specified in the amended section 74(2), where no imprisonment is prescribed or where twice the maximum term of imprisonment prescribed for the offence does not exceed 5 years, and will have power to impose the full punishment provided for the offence. A District Court will have jurisdiction to try any offence specified in the amended section 74(2) and will have power to impose the full punishment provided for the offence.

Clause 4 amends section 74A(1) to delete the words “on or after the date of commencement of the Vulnerable Adults Act 2018” as they are redundant. The Vulnerable Adults Act 2018 came into force on 19 December 2018, before the date on which section 74A came into force (i.e., 1 January 2020).

Clause 5 amends section 79 which provides the defence of “mistake of fact” in respect of any offence (other than one excluded by written law). The amendment makes clear that where an accused alleges a mistake of fact or ignorance of a fact which may negate the fault element of the offence that the accused is charged with, the onus remains on the prosecution to prove that the fault element exists in order to establish liability under the offence. The amendment also inserts a new *Explanation* and amends *illustration (f)* to make this clear. The amendment does not change the common law principles on burden of proof.

Clauses 6 and 7 amend sections 79A (which preserves the general rule that a mistake of law or ignorance of the law does not provide a defence to a criminal charge) and 80 (which provides the defence of accident), respectively, for the same reasons as the amendments to section 79 under clause 5.

Clause 8 amends section 84 which provides the defence of “unsoundness of mind”. The amendment clarifies that the phrase “incapable of knowing that what he is doing is wrong” refers to the incapacity of a person to know that the person’s act is wrong by the ordinary standards of reasonable and honest persons, and wrong as contrary to law. To avoid doubt, “act” includes illegal omission.

Clause 9 amends section 85 which provides the defence of intoxication, to similarly clarify that the phrase “did not know that such act or omission was wrong” requires that the accused must, at the time of the act or omission complained of, not know that the act or omission —

- (a) was wrong by the ordinary standards of reasonable and honest persons;
and
- (b) was wrong as contrary to law.

Clause 10 repeals and re-enacts section 115, which prescribes the punishment for the abetment of the commission of an offence punishable with death or imprisonment for life, where the offence is not committed as a result of the abetment. The re-enacted section 115 provides that the abettor shall be punished with imprisonment for a term that may extend to 20 years, and shall also be liable to fine or to caning.

Clause 11 amends section 153 which provides the offence for giving provocation with the intent or knowledge to cause riot, to replace the words “malignantly or wantonly” with “intentionally or rashly”. The amendment clarifies the fault element of the offence.

Clause 12 amends section 182 which provides the offence for the giving of false information to a public servant with the intent of causing, or knowledge that this is likely to cause, the public servant to improperly use his or her lawful powers, or to improperly omit to use such powers. The clause expands the scope of the section so that an offence is constituted where the false information is given to a public servant with the intent of causing, or knowledge that this is likely to cause, the public servant to do or omit to do what the public servant would not have done or omitted if the false information had not been given. This amendment is made due to the decision in *Public Prosecutor v Chua Wen Hao* [2021] SGHC 70. The General Division of the High Court held that a charge under section 182 was not made out in a case where the accused lied to the police that he did not know the identity of the suspect of an offence, which resulted in the police expending additional time and resources in their investigation to determine the suspect's identity. The amendment will mean that such acts would constitute an offence under section 182.

Clause 13 amends section 186 which provides the offence for voluntarily obstructing a public servant in the discharge of the public servant's public functions, to increase the maximum term of imprisonment for an offence under the section to 6 months. The amendment also makes clear that an obstruction may be caused by a person without the use of physical means or threatening language against a public servant.

Clause 14 amends section 219 which provides the offence for the making or pronouncement by a public servant of any report, order, verdict or decision in a judicial proceeding, knowing that it is contrary to law. The amendment replaces the word "maliciously" with the words "with intent to cause injury to any person", to clarify the fault element of the offence.

Clause 15 repeals and re-enacts section 220 which provides the offence for the commitment for trial or to confinement of a person, by a person having legal authority to do so and who did so with the knowledge that the person was acting contrary to law. The amendment replaces the word "maliciously" with the words "with intent to cause injury to any person", to clarify the fault element of the offence.

Clause 16 amends section 270 which provides the offence for the doing of any act by a person which the person knows or has reason to believe is likely to spread the infection of any disease dangerous to life. The amendment replaces the word "malignantly" with the words "intentionally or rashly", to clarify the fault element of the offence.

Clause 17 amends section 300 in relation to the partial defence of diminished responsibility to murder in *Exception 7*. The amendment clarifies that for the partial defence to apply, the offender must, at the time of the acts or omissions causing the death concerned, suffer from such abnormality of mind as substantially impaired the offender's capacity to know that the acts or

omissions are both wrong by the ordinary standards of reasonable and honest persons, and wrong as contrary to law.

Clause 18 amends section 311 which prescribes the punishment for the offence of infanticide under section 310. The amendment corrects a typographical error in section 311 (which uses the pronoun “he” in referring to the offender). The offence under section 310 may only be committed by a woman (and not by a man).

Clause 19 amends the *Explanation* to section 335, so that the provisos in *Exception 1* to section 300 for what amounts to grave and sudden provocation also apply to section 334A, which prescribes the punishment for voluntarily causing hurt on grave and sudden provocation, where the hurt that is actually caused is grievous.

Clause 20 amends section 352 which provides the offence for using criminal force to any person otherwise than on grave and sudden provocation given by the person. Presently, grave and sudden provocation does not mitigate the punishment for an offence under that section if the provocation is given by anything done in obedience to the law or by a public servant in the lawful exercise of the public servant’s power. After the amendment, grave and sudden provocation does not mitigate the punishment for an offence only if the offender knows or has reason to believe that the provocation is given by anything done in obedience to the law or by a public servant lawfully exercising his or her power.

Clause 21 amends section 354 which prescribes the punishment for the use of criminal force to any person to outrage the modesty of the person, to increase the maximum term of imprisonment for an offence under that section from 2 years to 3 years.

Clause 22 inserts a new *Explanation* to section 355 so that the same *Explanation* to section 352 similarly applies to section 355.

Clause 23 amends section 376 which provides the offence of sexual assault involving penetration, for the following purposes:

- (a) to delete section 376(1) as the offence provided under that provision is already covered by section 376(2)(b);
- (b) to make clear that both male and female offenders may rely on section 376(6) to avoid the enhanced punishment provided in section 376(4)(b) for an offence committed against a person below 14 years of age without the person’s consent.

Clause 24 amends section 376E which provides the offence of sexual grooming of a minor under 16 years of age. The amendment rectifies the omission of sections 354 and 354A as offences falling under the scope of application of section 376E.

Clause 25 amends section 376EA which provides the offence of exploitative sexual grooming of a minor who is at least 16 but below 18 years of age. The amendment rectifies the omission of section 7 of the Children and Young Persons Act as an offence falling under the scope of application of section 376EA.

Clause 26 amends section 376ED which provides the offence of engaging in sexual activity before a minor below 16 years of age, or causing a minor below 16 years of age to observe a sexual image. The amendment increases the maximum term of imprisonment for an offence under that section which is committed against a victim who is at least 14 years of age from one year to 2 years.

Clause 27 amends section 376EE which provides the offence of engaging in sexual activity before a minor who is at least 16 but below 18 years of age, or causing a minor who is at least 16 but below 18 years of age to observe a sexual image. The amendment increases the maximum term of imprisonment for an offence under that section from one year to 2 years.

Clause 28 amends section 376H which provides the offence of procurement of sexual activity by deception or false representation relating to the use of any sexually protective measure or to the presence of a sexually transmitted disease. The amendment criminalises the fraudulent deception or false representation by the offender to obtain the victim's consent to be sexually touched by another person, other than the offender. The amendment also provides that it is sufficient for an offence to be constituted if the victim touches the bodily fluids of the offender or another person in consequence of the fraudulent deception or false representation by the offender.

Clause 29 repeals and re-enacts section 377. Presently, the section criminalises the penile penetration by a man against the vagina, anus or mouth of a human corpse, and the causing of a man to penetrate with the man's penis, the vagina, anus or mouth of a human corpse, without the man's consent. The re-enacted section 377 will also criminalise the following acts:

- (a) the sexual penetration, with a part of the offender's body (other than the offender's penis, if the offender is a man) or anything else, of the vagina or anus of a human corpse;
- (b) the causing of the penile penetration by a human corpse of the offender's vagina, anus or mouth;
- (c) the causing of the sexual penetration by a part of a human corpse (other than the penis, if the human corpse is that of a deceased man) of the offender's vagina or anus;
- (d) the causing of a person to sexually penetrate, with a part of the person's body (other than the person's penis, if the person is a man) or anything else, the vagina or anus of a human corpse, without the person's consent;

- (e) the causing of the penile penetration by a human corpse of a person's vagina, anus or mouth, without the person's consent;
- (f) the causing of the sexual penetration by a part of a human corpse (other than the penis, if the human corpse is that of a deceased man) of a person's vagina or anus, without the person's consent.

Clause 30 amends section 377BB which provides the offence of voyeurism to broaden the scope of its application by replacing the word "genitals" with the words "genital region". A person commits an offence under that section if the person operates equipment to observe another person's genital region, or records an image of another person's genital region, without that other person's consent.

Clause 31 amends section 377BL which provides the offence of exploitation by abusive material of a minor who is at least 16 but below 18 years of age, where the offender and the minor are in an exploitative relationship. The definition of "abusive material" is amended to mean any material that depicts the genital region or buttocks (whether exposed or covered) of another person, or any material that depicts the breasts (whether exposed or covered) of a female person, where the depiction is sexual.

Clause 32 amends section 377BM which sets out certain defences to certain offences relating to intimate images or recordings and voyeurism. The amendment replaces the words "without malice" with the words "without intent to cause injury to the person (B) mentioned in section 377BB(1), (2), (3), (4) or (5), 377BC(1) or (2) or 377BE(1) or the person depicted in the intimate image or recording mentioned in section 377BD(1)(b)". The amendment is to clarify the requirements of the defence.

Clause 33 amends section 377BN which sets out certain defences to certain child abuse material offences. The amendment replaces the words "without malice" with the words "without intent to cause injury to the person depicted in the child abuse material", to clarify the requirements of the defence.

Clause 34 amends section 377C which provides the definitions for the purposes of sections 375 to 377BO. The definition of "child abuse material" is amended to mean any material that depicts the genital region or buttocks of a person, or the breasts (whether exposed or covered) of a female person, who is below 16 years of age and where the depiction is sexual. A new definition for the word "buttocks" is also inserted to clarify that it includes the anal region of a person. The amendment also replaces the word "genitals" with the words "genital region" to broaden the definition of what would constitute the doing of a private act by a person.

Clause 35 amends section 378 which provides the offence of theft, to replace the reference to "the keeper of a warehouse" in *illustration (e)* with "the owner or operator of a warehouse". The amendment is to achieve consistency with the language used in the *Illustration* of section 407.

Clause 36 amends section 405 which provides the offence of criminal breach of trust, to replace the reference to “warehouse-keeper” in *illustration (b)* with “warehouse owner or warehouse operator”. The amendment is to achieve consistency with the language used in the *Illustration* of section 407.

Clause 37 amends section 477A to correct a typographical error in *Explanation 2*.

Clause 38 makes miscellaneous amendments to sections 102(d), 376A(1A), 376G(4) and 377D(3)(a) which are consequential to the deletion of section 376(1) by clause 23.

PART 2

AMENDMENTS TO OTHER ACTS

Part 2 (clauses 39 to 42) makes amendments to other Acts.

Clause 39 amends the Animals and Birds Act by replacing the word “wantonly” in section 42 (Cruelty to animals) with the word “rashly”.

Clause 40 amends section 7 of the Children and Young Persons Act to expand the definition of “repeat offender”. Currently, a person is a repeat offender only if he or she was convicted or found guilty of an offence under the repealed section 7 of the Children and Young Persons Act that was in force immediately before the date of commencement of section 7 of the Children and Young Persons (Amendment) Act 2019. The amendment provides that “repeat offender” includes a person that was convicted or found guilty of an offence under the predecessor provisions of section 7 of the Children and Young Persons Act.

Clause 41 amends the First Schedule to the Criminal Procedure Code consequent to the amendments to sections 115, 153, 186, 270, 354, 376ED, 376EE and 377 of the Penal Code.

Clause 42 amends the First Schedule to the Registration of Criminals Act consequent to the repeal and re-enactment of section 377 of the Penal Code.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
