



LAWS OF MALAYSIA

REPRINT

Act 365

KIDNAPPING ACT 1961

Incorporating all amendments up to 1 January 2006

PUBLISHED BY
THE COMMISSIONER OF LAW REVISION, MALAYSIA
UNDER THE AUTHORITY OF THE REVISION OF LAWS ACT 1968
IN COLLABORATION WITH
PERCETAKAN NASIONAL MALAYSIA BHD
2006

KIDNAPPING ACT 1961

First enacted 1961 (Act No. 41 of 1961)
& 1963 (Act No. 5 of 1963)

Revised 1989 (Act 365 w.e.f.
13 April 1989)

PREVIOUS REPRINT

First Reprint 2001

LAWS OF MALAYSIA**Act 365****KIDNAPPING ACT 1961**

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LAWS OF MALAYSIA**Act 365****KIDNAPPING ACT 1961**

An Act to provide for the detection and punishment of the offences of abduction, wrongful restraint and wrongful confinement for ransom and other related offences and for matters incidental thereto.

*[Peninsular Malaysia—21 September 1961;
Sabah and Sarawak—24 February 1989, P.U. (A) 56/1989;
Federal Territory of Labuan—24 February 1989, P.U. (A) 55/1989.]*

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Short title and application

1. (1) This Act may be cited as the Kidnapping Act 1961.
(2) This Act shall apply throughout Malaysia.

Interpretation

2. In this Act—

“bank” means any company carrying on the business of bankers in Malaysia incorporated by or under any written law or licensed under any written law and includes the Bank Simpanan Nasional;

“book” includes ledgers, day books, cash books, account books and all other books and documents used in the ordinary course of the business of a bank or other person or body of persons, whether corporate or unincorporate;

“ransom” means any money, price or consideration paid or demanded for the release of a person abducted or wrongfully confined or wrongfully restrained;

“wrongful restraint”, “wrongful confinement” and “abduction” shall have the meanings assigned to them in sections 339, 340 and 362 respectively of the Penal Code [*Act 574*].

Abduction, wrongful restraint or wrongful confinement for ransom

3. (1) Whoever, with intent to hold any person for ransom, abducts or wrongfully confines or wrongfully restrains such person shall be guilty of an offence and shall be punished on conviction with death or imprisonment for life and shall, if he is not sentenced to death, also be liable to whipping.

(2) (*Deleted by Act A910*).

(3) (*Deleted by Act A910*).

(4) (*Deleted by Act A910*).

Seizure and forfeiture of conveyance

4. (1) When any person is abducted or wrongfully confined or wrongfully restrained in any conveyance with intent to hold such person for ransom, such conveyance may be seized by any police officer and, subject to subsection (2) shall be forfeited unless it is proved to the satisfaction of the Court that the offence of abduction, wrongful confinement or wrongful restraint for ransom had been or was being committed without the knowledge, consent or connivance of the owner.

(2) No conveyance shall be forfeited under subsection (1) unless the Court shall have given the owner thereof or his agent an opportunity of showing cause why such conveyance should not be forfeited.

Knowingly receiving ransom

5. (1) Whoever receives, has possession of or disposes of any money or property or any proceeds thereof, which has at any time been delivered as ransom in connection with any offence punishable under section 6, knowing that such money or other property has at any time been delivered as such ransom, shall be guilty of an offence and shall be punished on conviction with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

(2) For the purpose of subsection (1), a person found to be in possession of any money or property or any proceeds thereof which has at any time been delivered as ransom shall, unless the contrary is proved, be deemed to have knowledge that such money or other property was delivered as such ransom.

Knowingly negotiating to obtain, or for payment of, ransom

6. (1) Whoever knowingly negotiates or assists in any negotiation to obtain any ransom shall be guilty of an offence and shall be punished on conviction with imprisonment for a term not exceeding ten years and shall also be liable to whipping.

(2) Whoever knowingly negotiates or assists in any negotiation to pay or pays or provides funds for the payment of any ransom shall be guilty of an offence and shall be punished on conviction with imprisonment for a term not exceeding seven years and shall also be liable to a fine.

Power to freeze bank account

7. (1) The Public Prosecutor may, if he is satisfied that it is likely that money for the payment of ransom may be paid out of any bank account, by order direct any bank in Malaysia not to pay any money out of nor to pay cheques drawn on such bank account for a specified period not exceeding one month.

(2) Any officer of a bank who complies with an order of the Public Prosecutor under subsection (1) shall be relieved of any liability to any other person in respect of the payment prohibited by such order.

(3) A bank which fails to comply with an order of the Public Prosecutor under subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit.

Public Prosecutor's power to order inspection of books, accounts, receipts, vouchers or other documents

8. (1) Notwithstanding anything to the contrary in any other written law contained, the Public Prosecutor, if he considers that any evidence of the commission of an offence under this Act or of a

conspiracy to commit, or an attempt to commit or an abetment of such offence by any person is likely to be found in any book, account, receipt, voucher or other document in respect of the payment of money or the delivery of property relating to such person, the spouse or child of such person or to a person reasonably believed by the Public Prosecutor to be a trustee or agent for such person or the spouse or child of such person, may by order authorize any police officer of or above the rank of Assistant Superintendent named in such order to inspect any such book, account, receipt, voucher or other document and a police officer so authorized may, at all reasonable times, enter any premises specified in such order and inspect any such book, account, receipt, voucher or other document and may take copies thereof or of any relevant part thereof.

(2) Any person who wilfully neglects or fails to produce any such book, account, receipt, voucher or other document which is in his possession or control shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or both.

Public Prosecutor's powers to obtain information

9. (1) In the course of any investigation or proceedings relating to an offence by any person under this Act or to a conspiracy to commit, or an attempt to commit, or an abetment of any such offence, the Public Prosecutor may by order—

- (a) require any such person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by such person and by the spouse and children of such person and specifying the date on which each of the properties enumerated was acquired and whether it was acquired by way of purchase, gift, bequest, inheritance or otherwise;
- (b) require any such person to furnish a sworn statement in writing of any money or other property paid or disposed of by him during such period as may be specified in the order;
- (c) require any other person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by such person where the Public Prosecutor has reasonable grounds to believe that such information may be relevant to the investigation or proceedings;

- (d) require the Director General of Income Tax to furnish all information available to the Director General relating to the affairs of such person or of the spouse or child of such person and to produce or furnish any document or a certified copy of any document specified in the notice relating to such person or the spouse or child of such person which is in the possession or under the control of the Director General;
- (e) require the person in charge of any department, office or establishment of the Government, or the president, chairman, manager or chief executive officer of any public body to produce or furnish any book or document or a certified copy of any book or document specified in the notice which is in his possession or under his control.

(2) Every person to whom an order is given by the Public Prosecutor under subsection (1) shall, notwithstanding any written law to the contrary, comply with the terms of that order within such time as may be specified therein and any person who wilfully neglects or fails so to comply shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

Duty to give information to police

10. (1) Notwithstanding any written law any person who is aware of the commission of or the intention of any other person to commit any offence under this Act shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to a police officer of such commission or intention, as the case may be.

(2) Any person bound to give any information under subsection (1) who fails to do so shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years.

Power to intercept communication

11. (1) Notwithstanding any other written law, the Public Prosecutor, if he considers that it is likely to contain any information relating to the payment of any ransom for the release of a person who has been wrongfully confined or wrongfully restrained, may authorize any police officer—

- (a) to intercept, detain and open any postal article in course of transmission by post;

- (b) to intercept any message transmitted or received by any telecommunication; or
- (c) to intercept or listen to any conversation by telecommunication.

(2) Where any person is charged with an offence under this Act, any information obtained by a police officer in pursuance of subsection (1), whether before or after such person is charged, shall be admissible at his trial in evidence.

(3) For the purpose of this section—

“postal article” shall have the same meaning as in the *Post Office Act 1947 [*Act 211*]; and

“telecommunication” shall have the same meaning as in the **Telecommunications Act 1950 [*Act 20*].

Remand in custody of police

12. Notwithstanding any provisions of the Criminal Procedure Codes [*Act 593*] to the contrary, whenever a person is arrested and detained in custody of a charge under section 3, 5, 6 or 10 and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 of the Criminal Procedure Code and that there are grounds for believing that the accusation or information is well founded, the Magistrate before whom such person is produced shall, on application on behalf of the Public Prosecutor, remand the accused person in the custody of the police for a period not exceeding fifteen days.

Evidence of accomplice

13. Notwithstanding any rule of law or written law to the contrary, no witness shall in any trial of any offence under this Act be presumed to be unworthy of credit by reason only that he has paid or negotiated to pay any ransom or has provided funds for the payment of any ransom to procure the release of any person who has been wrongfully confined or wrongfully restrained.

*NOTE—The Post Office Act 1947 [*Act 211*] has since been repealed by the Postal Services Act 1991 [*Act 465*]—see section 50 of Act 465.

**NOTE—The Telecommunications Act 1950 [*Act 20*] has since been repealed by the Communications and Multimedia Act 1998 [*Act 588*]—see section 273 of Act 588.

Evidence of pecuniary resources or property

14. (1) In any trial or inquiry by a court into an offence under this Act or into a conspiracy to commit, or attempt to commit, or an abetment of any such offence the fact that an accused person is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in such trial or inquiry that such accused person has received a ransom for the release of a person who has been wrongfully confined or wrongfully restrained.

(2) An accused person shall, for the purposes of subsection (1), be deemed to be in possession of resources or property or to have obtained an accretion thereto where such resources or property are held or such accretion is obtained by any other person whom, having regard to his relationship to the accused person or to any other circumstances, there is reason to believe to be holding such resources or property or to have obtained such accretion in trust for or on behalf of such accused person or as a gift from such accused person.

Protection of informers

15. (1) Except as hereinafter provided, no complaint as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceedings is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If on a trial for any offence under this Act, the court, after full inquiry into the case, is of opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

Admission of statements in evidence

16. (1) Where any person is charged with an offence under this Act any statement, whether such statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after such person is charged and whether in the course of a police investigation or not and whether or not wholly or partly in answer to questions, by such person to or in the hearing or any police officer not below the rank of Inspector, whether or not interpreted to him by any police officer or any other person concerned or not in the arrest, shall be admissible at his trial in evidence and, if such person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit:

Provided that no such statement shall be admissible or used as aforesaid—

- (a) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against such person, proceeding from a person in authority and sufficient in the opinion of the court, to give such person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him; or
- (b) in the case of a statement made by such person after his arrest unless the court is satisfied that a caution was administered to him in the following words or words to the like effect:

“Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.”:

Provided that a statement made by any person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of no such caution having been given if it has been given as soon as possible.

(2) Notwithstanding anything to the contrary contained in any written law a person accused of an offence under this Act shall not be bound to answer any questions relating to such offence after any such caution as aforesaid has been administered to him.

(3) Whenever a police officer has made up his mind to charge a person with an offence under this Act he shall first caution such person, in the manner prescribed in subsections (1) and (2) before asking him any questions or any further questions as the case may be.

(4) For the purposes of this section “offence under this Act” means—

- (i) an offence punishable under subsection 3(1) or under section 5, 6 or 10;
 - (ii) any of the offences referred to in subsection 3(2);
 - (iii) any conspiracy to commit, or an attempt to commit, or an abetment of, any of the offences specified in paragraphs (i) and (ii).
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LIST OF AMENDMENTS

Amending law	Short title	In force from
Act 33/1967	Kidnapping (Amendment) Act 1967	03-08-1967
P.U. (B) 324/1970	Titles of Office Ordinance 1949	02-09-1970
Act 146	Bank Simpanan Nasional Act 1974	01-12-1974
P.U. (A) 56/1989	Modification of Laws (Kidnapping Act) (Extension to the States of Sabah and Sarawak) Order 1989	24-02-1989
Act A910	Kidnapping (Amendment) Act 1995	17-02-1995

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Section	Amending authority	In force from
2	Act 146	01-12-1974
3	Act A910	17-02-1995
4	Act 33/1967	03-08-1967
5	Act 33/1967	03-08-1967
9	P.U. (B) 324/1970	02-09-1970
11	Act 33/1967	03-08-1967

