

Standard Operating Procedure (SOP) for Arrest and Detention of Autists by Royal Malaysia Police (PDRM)

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ABSTRACT

An autist refers to a person who suffers from Autism Spectrum Disorder (ASD), a complex disorder of mental development, causing the person to be adversely affected, especially in social and behavioral aspects of life. Prior to the introduction of a specific Standard Operating Procedure (SOP) for the arrest and detention of autists, the Royal Malaysia Police applied the same standard operating procedure in the Criminal Procedure Code for typical individuals, to autists suspected of criminal offences. However, the issue arising is the legal rights of people with disabilities whereby this SOP is seen as inappropriate and unsuitable to be applied to cases involving autists. As a result, the authorities and parties involved in handling autists came up with the idea of the need for a specific SOP applicable for their arrest and detention. Finally, in the year 2019, the Royal Malaysia Police, in cooperation with NGOs directly involved with autist, successfully launched a specific SOP for autists. The objectives of this article are to study the significance of the specific SOP for autists, and analyse and compare it with the usual SOP for typical people. The methodology of this research is qualitative. Collection of research data used document analysis. Data obtained was thematically and comparatively analysed. Research results

find that there are differences between the specific SOP for autists and standard SOP for typical suspects. The differences lie in the legal rights of the autists in Malaysia, namely, in the aspects of arrest and detention of autistic suspects.

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INTRODUCTION

Autism or Autism Spectrum Disorder is included in the group of developmental disorders that influence a person's abilities, especially the ability to communicate and socially interact (Archer & Hurley, 2013). It extensively affects a person's psychological functions and behaviour. This situation causes some autists to have the tendency to commit legal offences due to their autistic nature and behaviour (Lerner et al., 2012). The distinct behaviour of autists such as difficulty in adapting to a new environment or place, inability to bear excessive mental stress and emotions, or to understand others' emotions, and a deep curiosity about something may lead them to breach laws and violate criminal laws (Kusrin et al., 2019). Their condition renders them not culpable for offences committed, as they are incapable of understanding the implications of their actions toward others (Barry-Walsh & Mullen, 2004).

According to Cashin and Newman (2009), autists usually face difficulty to accept and adapt themselves to the detention system, namely a situation governed by laws and regulations (Cashin & Newman, 2009). In fact, there are constraints to effectively interview autistic suspects in order to obtain accurate information as they are unable to communicate adequately with investigation officers during interrogation (Maras et al., 2014). It is important and critical for law enforcement bodies to recognize the need to know how to interact with these suspects, especially in criminal cases (Modell & Davis, 2016). Some among the police have neither

the exposure to suitable training or skills to effectively handle this group. (Archer & Hurley, 2013; Chown, 2010; Mayes, 2003). Thus, the problem of interaction with autists at some point constitutes a big challenge to law enforcement bodies (Modell & Davis, 2016).

As a result, there is a need for a specific Standard Operating Procedure (SOP) for the arrest and detention of autistic suspects in criminal cases. This awareness of relevant authorities to create a specific SOP for autists, was first introduced in other countries. For example, in Wisconsin, United States, police must abide by guidelines provided, namely to use specific verbal and non-verbal strategies when interacting with autists (Lashley, 2009). The guidelines entitled '*Autism Spectrum Disorders: A Special Needs Subject Response Guide for Police Officers*' have been created for use throughout the police department in Wisconsin that can be applied to autistic individuals who are in crisis situations with enforcement.

While in 2019, Illinois took the initiative to form an SOP for police enforcement officers to handle autism entitled '*Law Enforcement Guide to Interacting with people with autism*' (Illinois Attorney General, 2019). This guideline is provided for police officers to ensure that they are better prepared to deal with cases involving autistic individuals. While this guideline is a simple list of easy-to-understand instructions for enforcers to comply with, however, there are no details about the processes at each stage causing the enforcement and

knowledge of the enforcement of this to be seen as limited and inadequate.

In fact, in East Asia, the Equal Opportunities Commission, a statutory body responsible for implementing an ordinance involving disabled people and discrimination in Hong Kong, drafted and provided a guideline named '*Autism: A guide for law enforcement officers communicating with persons with autism spectrum disorders*', specifically for law enforcement officers to facilitate their workflow in managing cases involving autists. This guideline outlines the detailed steps in each procedure, including the procedure during the arrest, detention, and interview process carried out by describing the matters to be considered before and during the procedure.

Malaysia is a third-world Asian country that provides guidelines for the investigation of cases involving autists. This study found that specific SOPs for autist in Malaysia is completed and detailed rather than other countries. This is because, the specific SOPs stated all-important enforcement procedures involving arrest, detention, and even the interview process. In fact, the description of the procedure at each level is clear, not too concise, and easy to follow by police, compared to other countries such as Illinois. While in Wisconsin and Hong Kong, the scope of enforcement procedures stated is not comprehensive. These SOPs only focus in detail on work procedures involving communication such as interviews only, while the other procedures are not clearly stated.

SOP in the form of a handbook entitled 'Autisme: Garis Panduan Polis Diraja Malaysia' was formed, drafted, and launched in 2019, following the case of an autistic man, Ahmad Ziqri who was arrested in connection with a case of sexual misconduct in Subang Jaya, Selangor on 11 September 2018 (Razali, 2019). The specific SOP introduced by the Royal Malaysia Police (PDRM) in the year 2019 provides new manual guidelines in handling the arrest and detention of autist suspects in criminal cases (Kamaruddin, 2019). According to Hannah Yeoh, former Deputy Minister of Development of Women, Family, and Society, the objective of this specific SOP is to ensure that individual rights of autists are protected in view of their need for a different treatment, appropriate to their level of autism spectrum disorder, in comparison to typical individuals, although they appear physically normal (Kasnoon, 2019). Hence, the purpose of this article is to study the need for a specific SOP for handling autist suspects by the police, and to analyse and compare it to the usual SOP for typical individuals, in the areas of handling arrest and detention, and to reach conclusions based on the differences.

LITERATURE REVIEW

Autism and Individual Criminal Behaviour

The existence of autism was first empirically studied in 1943 by Leo Kanner, an Austrian-American psychiatrist who was called the 'father of child psychiatry' in the United States (Volkmar & Klin, 2005). He has

conceptualized autism as a syndrome that causes confusion in social communication, for example frequently exhibiting repetitive behaviors and stereotypes that can be detected in early childhood (Kanner, 1943). This syndrome was included in the Diagnostic and Statistical Manual of Mental Disorder (DSM) that was first introduced by a professional and scientific organization in the United States, the American Psychiatric Association, in 1952 as an authoritative guidebook containing explanations, symptoms, and other criteria according to the classification of types of mental disorders certain. This manual also aims to provide standard criteria to help better understanding to determine the diagnosis level of autism (American Psychiatric Association, 2013).

There is little evidence that people with disabilities face various challenges in their lives and surrounding. According to Mahyut (2017), in Malaysia, the government has enacted a law for disabled persons but it seems insufficient, and reformation is needed as they are often being denied their right, for example, to get equal employment opportunity like a typical individual. They tend to be surrounded by prejudices and discrimination towards them because most of the people who may deal with them do not have a proper understanding of disabilities. Nisar (2017) explored the collorates of 30 disabled children as respondents from District Charsadda, Pakistan, and the effects on their families. The findings identified that they greatly affected their families as

poverty was the major impact to most of the respondents, which further created other problems. The same situation is also faced by the family with autistic's children that need special intervention to manage their behaviour.

Past research identified that autists show challenging behaviour that increases the risk of involvement in criminal behaviour. Difficulty to communicate, anxiety, intolerance for uncertainty, and the tendency for routine matters cause them to face difficulty in the criminal justice system (George et al., 2018). Helverschou et al. (2015) studied the relationship between the diagnosis of autism and criminal offence of 48 autists, the majority of whom suffered from Asperger's Syndrome. Research results find no clear evidence that links Autism Spectrum Disorder with criminal acts, but in most cases, autism characteristics such as abnormal understanding and obsession are perceived as related to motives for crimes committed.

This matter was acknowledged by Kumar et al. (2017), whose study showed that characteristics such as poor control over urges or impulse, a tendency toward obsession over their own desires, and failure to understand the implications of their behaviors, among others, were the main factors for committing criminal acts. This risk is shown to be partially due to the neuro-psychological developmental problem as well as the influence of autistic nature such as difficulty in social interaction and lack of empathy (Långström et al., 2009; Mouridsen, 2012; Murrie et al., 2002).

Further, according to Fitzpatrick et al. (2016), Autism Spectrum Disorder has a negative impact on individual conduct. For example, autists like to show aggressive and dangerous behaviour to others. Autistic aggression can lead to other criminal behaviour such as infringement or violation, physical or verbal, harmful to others. Berryessa (2016) described their actions as due to distinct behaviour or symptom of stereotyped behaviour, limited to or obsessive about something. Failure to understand the consequences of their actions causes some of the criminal acts committed to appear very dangerous and terrifying, but perhaps they fail to fully understand the seriousness of their crimes (Berryessa, 2016).

Woodbury-Smith et al. (2010) in their study examined the relevant possibility that autism characteristics such as circumscribed interest caused the autistic's tendency to commit a crime or have 'violent interest'. As expected, in a comparison between 21 criminal offenders with autism syndrome and 23 people without a criminal history, the former group with a criminal history, have more tendency to commit a crime.

Rava et al. (2017) found that autists who showed external behaviour were more easily involved with the criminal justice system. This is acknowledged by J. Brown et al. (2016) who attributed negative behaviour and maladaptive autism such as aggressive conduct, obsessiveness, and lack of empathy as the driving factors for their involvement in the criminal justice system. The autistic disabled form the majority of criminal cases

compared to other developmentally disabled groups and the cases increase each year at the rate of 10-17 percent (J. Brown et al., 2016).

Autists in criminal cases are likely to be arrested in the criminal justice system. In the law enforcement practice in South Carolina, such cases are managed differently from cases involving typical individuals (Cheely et al., 2012). The reason is that handling autists' cases requires a high degree of knowledge and sharpness to recognize and identify autistic symptoms of individuals during the interaction, avoid the risk of misinterpreting misconduct and handle autistic offenders when they get out of control, throw tantrums, or experience meltdown (Chown, 2010).

A research was conducted based on a questionnaire distributed to law professionals in England and Wales, to study their experience in handling the autistic community involved in the criminal justice system (Maras et al., 2017). Based on their experience, the law professionals stated their opinion that the most effective among the changes and adaptation in legal procedure in handling suspects were the provisions on time out for suspects, modification in communication and language used as well as providing additional time for autistic suspects to process questions submitted to them (Maras et al., 2017).

This situation was acknowledged by George et al. (2018), who stated that effective communication, sensory effects of environmental factors, and any possible unpredictability were important matters

law professionals should stress upon during interaction with autists. In fact, in some cases, an initial step is taken to help autistic suspects adapt to circumstances during proceedings. For example, lawyers are encouraged to bring their clients for a preliminary tour to familiarize them with inside the courthouse before court proceedings begin (George et al., 2018). Theoretically, at least, specific steps in handling autistic suspects are followed in foreign criminal justice systems, and this indirectly becomes evidence that Western laws are applied to autists.

In determining the autism and criminal responsibilities based on the Western's conduct of convicting and punishing an accused with autism, an analysis of their behaviours and characteristics such as the social deficit, communication, interaction as well as behaviours that are repeated and limited, yielded the result by Sharif (2018), revealed that accused with autism were not excluded from criminal responsibilities. In other words, autism is accepted as a mitigating factor, with the support of expert evidence and it is not required as one of the reasons that can exclude this group from criminal responsibility (Sharif, 2018).

A study conducted by Kusrin (2020) on the character of autism that tended to commit criminal behavior, suggested the need to create a specific SOP for detention and interrogation of an individual with autism. The findings showed that the legal right for autistic individuals needed to be distinguished from the typical group, such as creating specific arrest, detention, and

interrogation SOPs for autistic individuals, due to their incapability of mental health. It is just only the diversity of the spectrum they experience that causes some of them to look like typical individuals.

METHODS

Qualitative research was conducted using a case study design, for the purpose of examining in-depth phenomena relating to the procedure and work process of enforcement on autists. The document analysis method was applied to various materials and literature by experts in related fields, as important instruments to obtain research findings concerning the criminal behaviour of autists and their involvement in the criminal justice system. Data obtained was then thematically analysed by providing relevant themes for the aspects of arrest and detention contained in the specific SOP for autists. Finally, a comparative analysis was done to distinguish the differences in procedural content for arrest and detention between the specific SOP for autists and the usual SOP for typical people.

RESULTS AND DISCUSSION

The requirement of Specific SOP for Autists

Autists frequently fail to show appropriate social interaction and communication causing some of them to exhibit age-inappropriate behaviour (American Psychiatric Association, 2013). This deficit in social interaction and communication comes together with limited, stereotyped, and repetitive behaviour toward an activity

or interest. In addition, limited and very routine patterns of behaviour cause them to refuse to change and face difficulty in adapting to new matters or changes (American Psychiatric Association, 2013). As a result, they find difficult to process and react to social-emotional response and interact with others.

This situation has direct implications on how the law enforcement authority should respond to the physical and mental needs of autists. A number of researchers found that most autists face difficulty within the criminal justice system (Archer & Hurley, 2013; Chown, 2010; Gardner et al., 2019; Maras et al., 2017; Robertson & McGillivray, 2015; Talbot & Riley, 2007). According to Syriopoulou-Delli et al. (2019), a person's level of IQ intelligence influences the level of anxiety in dealing with an emergency situation. His study showed that 46.8% of children with ASD showed higher levels of anxiety compared to typical children with 15.3%. In line with the study of Chown (2010), described that autistic people often showed unusual anxiety when confronted with police and in some cases could invite trauma.

Besides, Archer and Hurley (2013) in their study of 44 police officers serving in the Autism West Midlands (AWM), West Midlands found that individuals with autism often entered the criminal justice system due to misunderstanding of enforcement officers, especially during detention. In addition, many of the enforcement officers were not exposed to appropriate procedures and there were still many who have not

received proper training. Crane et al. (2016) found that adaptation and modification to work processes were important in order to function fairly with autistic individuals.

The disability of autists is frequently a factor that weakens their self-defense when they are incriminated, compared to typical individuals, because police lack understanding and sensitivity about autism (Chown, 2010). Some of the autists do not understand oral instructions due to difficulty with language and cognitive disorders (Maras et al., 2014). This causes many misunderstandings when they are confronted by law enforcement officers and during the investigation.

For example, a 15-year old autistic male adolescent was shot dead by a police officer in Denver, Colorado. The officer believed that his action was necessary because he felt endangered as the boy was adamant in not letting go of a knife he used to threaten his mother when ordered to do so several times (Reynold, 2004). As a result, the officer was legally charged for the inappropriate procedure and breach of departmental policy not to use force when confronting minors. This tragic incident led to compulsory training of Denver police officers in the technique of crisis intervention, provision of suitable weapons such as taser (electrical gun) to patrol police, and appointment of mental health workers to train police how to handle individuals with mental disorders in certain situations (Reynold, 2004).

A study by Talbot and Riley (2007) found that a frequently arising problem in law enforcement is that police do not make

an inquiry and thorough check-up to find out if the suspect is autistic. In North Miami, Florida, a police officer caused controversy when he was convicted of negligence in discharging his duty because he had hastily shot an autistic to death (Vassolo, 2019). Failure to verify before arrival at the alleged crime scene led him to shoot the autistic in the belief that the weapon held was a pistol, when in fact it was only a toy truck. This incident is said to be caused by an error in receiving information about the actual incident through a phone call from a member of the public (Chokshi, 2016).

The difficulty faced by autists in the criminal justice system was acknowledged. Maras et al. (2017) found constraints in efforts to form an appropriate policy due to a lack of understanding of law enforcement officers within the criminal justice system. Training, creating awareness and understanding about autism, and coordination of suitable provisions to implement procedures are the main issues frequently raised.

In Malaysia, an adolescent autistic in his 20s, Ahmad Ziqri Morsidi, was arrested by police and charged for touching a woman's chest in a Subang Jaya restaurant (Mokhtar, 2018). As a result of the report lodged by the victim, the autistic was arrested by police according to SOP (Mokhtar, 2018). He was remanded in lockup for a night to help in the investigation (Airunnisa, 2018). The case of his arrest drew various reactions from the public which disputed the ground for the arrest of the young man as he was autistic.

But the police asserted that the arrest was done following usual police procedure for the purpose of investigation and for the sake of justice to both parties. It was stated by Police Chief of Subang Jaya District, Assistant Commissioner Mohammad Azlin Sadari, that even though the accused was an autistic, police action in arresting him was in abidance of the existing SOP to aid in the investigation (Mokhtar, 2018). In the legal context, the relevant authority should use specific and appropriate guidelines for handling autists. This is so because autists need an alternative and specific management of work operations when interacting with them (Maras et al., 2014). The purpose is to avoid unfair treatment for the disabled (Talbot & Riley, 2007).

The usual or typical SOP for arrest, detention, and investigation, when applied to autistic crime suspects, is seen as inappropriate because it does not correspond with the level of mental deficit of autists. It is feared that inappropriate legal procedure will adversely affect the autistic's situation as the autistic may not fully understand or be aware of what is happening to himself, as had happened to Ahmad Ziqri (Adnan, 2018). Usually, autists tend toward his routine or habits, and can therefore face problems when in new environments such as in lockup on remand. It is feared that the lockup environment and inappropriate police treatment during investigation might traumatise them (Airunnisa, 2018).

Therefore, the legal right to justice of autists needs to be differentiated from that of the typical people at every legal level,

beginning from drafting a specific SOP for the arrest and detention of autists. Past cases clearly show that distinct symptoms and behaviour of autists make them difficult to understand when confronted by police. This situation has caused the Royal Malaysia Police to take the initiative in establishing an appropriate SOP when handling the disabled, including autists (Bandi, 2019). This specific SOP requires police officers to abide by its provisions when handling autists to avoid any untoward incidents from happening. However, it is still too early to assess its implementation as there are no reported cases yet since the introduction of the specific SOP.

DIFFERENCES BETWEEN SPECIFIC SOP FOR AUTISTS AND USUAL SOP

An Autist Shall be Accompanied by His Parents or Guardian or Friend of Autists during the Interrogation Period

On examining the enforcement procedure in the specific SOP, it is found that this SOP emphasises the role of parties more discerning of the autist involved in the criminal justice system. For example, the guideline requires parents or guardians to be present and actively help in communication with the suspect. Paragraph 4.4.2 (vi) SOP mentioned: *'If necessary, seek the help of family, guardians, heirs or Friends of Autist to assist you and communicate.'* Parents or guardians must be contacted immediately and informed as soon as an arrest is made so that interrogating the autist suspect can be more effectively conducted in addition

to avoiding the suspect from feeling afraid and anxious. If the suspect's parents or guardian cannot be contacted, the police shall seek the help of Friends of Autists, a volunteer group, to manage the case due to their better knowledge and experience in handling autists, whether they are from the government or private sector or from a non-governmental organisation (NGO).

This procedure differs slightly from the usual SOP, whereby a typical suspect is allowed to contact his relative or friend to inform them of his whereabouts. Section 28A of the Criminal Procedure Act (1999), Act 593 provides that: *'...communicate or attempt to communicate, with a relative or friend to inform of his whereabouts; and ... communicate or attempt to communicate and consult with a legal practitioner of his choice...'* The usual SOP does not necessarily require parents or guardians to be informed that the suspect is under investigation or detention.

Police Shall Avoid Any Form of Force on the Autist during Arrest, Detention, and Interrogation

Paragraph 4.3.1 specific SOP provides that: *'Minimize physical contact, avoid the use of handcuffs or other obstacles or restriction.'* The important procedure emphasized in the specific SOP is that police are required to minimise physical contact (Polis Diraja Malaysia [PDRM], 2019). Police are required to take necessary and reasonable steps during the arrest and detention procedure of an autistic suspect. As mentioned in Section 15(1) of the

Criminal Procedure Act (1999) (Act 593): *'In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there is a submission to the custody by word or action...'*, stipulates that an arrest is deemed to happen when the suspect is physically touched or confined.

However, if the suspect surrenders himself and is willing to submit to police custody, an arrest is deemed to have taken place. According to Section 15(2) Criminal Procedure Act (1999): *'If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest such officer or another person may use all means necessary to effect the arrest'*. It means that if the suspect resists with force or tries to escape, the police may use any reasonable means to apprehend him (Section 15(2) Criminal Procedure Act (1999), Act 593). For example, using physical attacks, which must not cause death. However, such action is not applicable during the arrest of an autistic. The specific SOP stipulates that the police shall be cautious with the action taken and language used. They are prohibited from using physical force such as striking or acting violently or using verbal violence such as raising the voice when interacting with an autistic suspect.

In addition, using handcuffs is to be avoided. According to the Head of Secretariat for the Inspector-General of Police at Bukit Aman, Datuk Ramli Din, using handcuffs is only allowed as a last resort after all other means such as persuasion and so on have been exhausted, and if the autistic suspect

seems too aggressive as to pose a threat to the police and the public (Bernama, 2019). The purpose of following the right steps in the procedure during an arrest is to reduce the risk of challenging behaviour such as tantrums or meltdowns that may happen in such situations.

Communicate Clearly with Autist Suspect

The procedure of the specific SOP mentioned in paragraph 4.4.2 (b) (ii): *'Use clear language, short sentences and easy-to-understand explanations.'*, which requires the police to communicate clearly, tersely, and using simple words to understand the language when giving orders to an autistic suspect. Indirect language and non-literal language such as coarse words, mixed with sarcasm or words with hidden meaning need to be avoided. For example, when giving orders to an autistic suspect, the officer is required to communicate plainly and clearly so as to avoid confusion and misunderstanding. Autists usually face difficulty interpreting orders and gestures effectively (Haskins & Silva, 2006). They are different from typical people in communicating as most of them are unable to forge a two-way relationship when interacting (Yaakob & Kusrin, 2019). The usual SOP, however, does not explain in detail the correct language or communication when interacting with a suspect. Thus, the specific SOP is more relative and appropriate for the disabilities faced by autists.

Provision of Special Detention Cells for Autists

Detention of suspects is usually for the purpose of interrogation and it may not exceed 24 hours from the time of the arrest. Section 117 (1) Criminal Procedure Act (1999), Act 593 provides that: *‘Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well-founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate’*. It means that if the police cannot complete the investigation within 24 hours, then the suspect will be detained longer if a magistrate allows for his extended detention on remand. However, specific SOP in paragraph 4.3 (Detention and Arrest), mentions that: *‘Autistic individuals suspected of being involved in criminal acts should be released on police bail unless in cases of serious crimes such as murder or unbailable crimes.’* It stipulates that the autistic suspect shall be released on bail, except in certain cases of serious crimes as mention above, whereby detention is really necessary to complete the investigation.

Autistic suspects are granted leniency by the law to be released temporarily without waiting in long detention on remand which sometimes can last for days. This is important for autists as they have sensory

sensitivity and need a routine environment. If they were detained for a long period, various negative implications such as restlessness and fear would arise.

Nevertheless, for certain cases which require detention of autists in cells or lockup at the police station, the specific SOP stipulates steps to facilitate compliance by police. For example, autistic suspects must be in cells segregated from typical offenders as mentioned in paragraph 4.3.3(ii) of specific SOP, provides that: *‘autistic prisoners are necessary to put in separate and safe cell’*. This guideline, already stipulated in Regulation 8 of Prison Regulations 2000, is more detailed in the specific SOP. If an autistic suspect is detained for further investigation, the specific SOP stipulates that the Head of Lockup must provide a separate, suitable and safe cell apart from other prisoners, in order to maintain a good situation and discipline in detention according to paragraph 4.3.1(v), specific SOP (PDRM, 2019).

Further, paragraph 4.3.1(v) of specific SOP stated that autistic suspect shall be allowed to bring comfort items to avoid feeling anxious and stressed in detention (PDRM, 2019). Comfort items may include objects such as toys or things that can soothe him to feel secure in a new situation (A. Brown, 2018). In addition, the suspect is also given the same rights and guarantees as for typical detainees in line with the basic human rights of prisoners as provided for in the Prison Regulations 2000. Basic rights such as food, medicine, and clothing will be provided according to the needs of detainees

as mentioned in para 4.3.2 of specific SOP. It is also stated if the suspect shows suicidal signs such as intention, plan, or attempt, he will be immediately referred to a medical officer (PDRM, 2019). Upon referral, the medical officer shall perform whatever is necessary and appropriate to help the autistic detainee.

Special Investigation Process during Detention

Basically, an arrest and detention of a crime suspect shall comply with the provision in Article 5 of the Federal Constitution and several other provisions in the Criminal Procedure Code. When a suspect is legally arrested, the arresting officer must without delay bring him to a nearby police station followed by an investigation. Detention, for the purpose of interrogation, must not exceed 24 hours from the time of the arrest. As with typical individuals, the arresting police officer is also obliged under Article 5(3) of the Federal Constitution, provides that: *'Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice'*. This provision required the officer to inform the suspect of the ground of his arrest and his right to legal counsel.

During detention, an autistic suspect is interviewed for the purpose of investigation using a different technique or method from that applicable to a typical detainee. The usual SOP under Section 112 Criminal Procedure Act (1999), Act 593 only provides a general procedure regarding the interview

without elaborating on the steps to be taken during the interview or interrogation. Hence, the specific SOP provides in detail the interview procedure for the victim, witness, and autistic suspect by explaining the steps before and after the interview (PDRM, 2019).

Before the interview is conducted, paragraph 4.4.1 of specific SOP, mentioned that police shall first obtain the background profile of the suspect from his parents or guardian. Information about his specific interests and sensorial sensitivity is important to facilitate police in determining the appropriate technique and suitable environment for the interview. While refers to paragraph 4.4.2 (d) of specific SOP, the police must also explain the procedures necessary to be done during the interview. This is provided in Section 112 (3) Criminal Procedure Act (1999), Act 593 stated that *'A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions'*, which requires the police officer to explain to the suspect before the interview that he must answer all questions honestly and speak the truth.

Nevertheless, this might be difficult to implement if the suspect is autistic. Thus, the specific SOP stipulates the following guidelines, namely: using a simple structured interview or audio-visual technique as an effective method for interviewing an autistic. Using visual aid as communication tool is suitable and effective to ensure the procedure works well for the case (George

et al., 2018). In addition, using appropriate language such as simple, clear, and direct language helps the autistic suspect respond better to questions submitted. These steps are important as unsuitable methods of the interview are risky for the autistic, he might mistakenly confess or even be easily manipulated (Kumar et al., 2017; Lerner et al., 2012; Mogavero, 2016).

CONCLUSION

Legal provisions for pre-trial procedures such as arrest and detention are already contained in existing laws such as the Criminal Procedure Act (1999) (Act 593) and the Prison Regulations 2000. But these are general guidelines that do not elaborate in detail the steps to be taken as most of the procedures are intended and suitable for typical people in comparison to autistic suspects. For example, detention on remand for the purpose of further investigation which may take many days is not practical to be applied to autistic suspects. Likewise, the use of handcuffs or excessive physical contact during arrest needs to be avoided. The reason for this is that autists are usually more sensorily sensitive than typical people. The initiative taken by the authority, the Royal Malaysia Police, to create a specific SOP for autistic suspects, is to protect their legal rights and interests. Problems faced by autists such as having difficulty communicating, feeling anxiety, intolerance for uncertainty, and tendency towards routine matters complicate their situation in the criminal justice system. With their condition, it is not appropriate to handle

them by the same methods as for non-autists.

After examining in-depth, the specific SOP, it is found to be more practical and autistic-friendly, compared to the usual SOP available in legal provisions that are more general and difficult to understand. Police must comply with the procedure stipulated in the specific SOP to ensure the legal rights of autists are guaranteed during arrest and detention. The guidelines in the specific SOP serve as the foundation and principle to be upheld by the law enforcement authority, namely the police. It serves to keep them from acting excessively when handling autistic suspects. The purpose of their endeavour is to set the same standards in enforcing criminal law on autists.

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REFERENCES

- Adnan, A. S. (2018, September 19). Ibu pemuda autisme rayu laporan polis ditarik balik [The mother of the autistic youth appealed for a police report to be withdrawn]. *Berita Harian*. <https://www.bharian.com.my/berita/kes/2018/09/475769/ibu-pemuda-autisme-rayu-laporan-polis-ditarik-balik>

- Airunnisa. (2018, September 20). Autisme didakwa: Adil atau selayaknya? [Autism charged: Fair or appropriate]. *Utusan Online*. <http://www.utusan.com.my/mega/rona/autisme-didakwa-%0Aadil-atau-selayaknya-1.751171>
- American Psychiatric Association. (2013). *Diagnostic and statistical manual of mental disorder fifth edition (DSM-V)*. <https://doi.org/10.1176/appi.books.9780890425596>
- Archer, N., & Hurley, E. A. (2013). A justice system failing the autistic community. *Journal of Intellectual Disabilities and Offending Behaviour*, 4(1-2), 53-59. <https://doi.org/10.1108/JIDOB-02-2013-0003>
- Bandi, N. A. (2019, March 25). PDRM lancar SOP kendali tahanan autisme [PDRM runs SOP to handle autistic detainee]. *Sinar Harian Online*. <https://www.sinarharian.com.my/article/20077/BERITA/Nasional/PDRM-lancar-SOP-kendali-tahanan-autisme>
- Barry-Walsh, J. B., & Mullen, P. E. (2004). Forensic aspects of Asperger's syndrome. *Journal of Forensic Psychiatry and Psychology*, 15(1), 96-107. <https://doi.org/10.1080/1478994031001638628>
- Bernama. (2019, October 15). Suspek autistik boleh digari jika agresif [Autistic suspects can be handcuffed if they act aggressive]. *Astro Awani*. <http://www.astroawani.com/berita-malaysia/suspek-autistik-boleh-digari-jika-agresif-polis-220141>
- Berryessa, C. M. (2016). Brief report: Judicial attitudes regarding the sentencing of offenders with high functioning autism. *Journal of Autism and Developmental Disorders*, 46(8), 2770-2773. <https://doi.org/10.1007/s10803-016-2798-1>
- Brown, A. (2018, February 15). *When should you worry about your child's attachment to comfort items?* Medicalxpress. <https://medicalxpress.com/news/2018-02-child-comfort-items.html>
- Brown, J., Hastings, B., Cooney-koss, L., Psy, D., Huntley, D., Brasch, D., Anderson, G., Chukuske, R., Arndt, C., Trnka, A., Burger, P., & Martindale, J. (2016). Autism spectrum disorder in the criminal justice system : A review for caregivers and professionals. *Journal of Law Enforcement*, 5(5), 1-13.
- Cashin, A., & Newman, C. (2009). Autism in the criminal justice detention system: A review of the literature. *Journal of Forensic Nursing*, 5(2), 70-75. <https://doi.org/10.1111/j.1939-3938.2009.01037.x>
- Cheely, C. A., Carpenter, L. A., Letourneau, E. J., Nicholas, J. S., Charles, J., & King, L. B. (2012). The prevalence of youth with Autism spectrum disorders in the criminal justice system. *Journal of Autism and Developmental Disorders*, 42(9), 1856-1862. <https://doi.org/10.1007/s10803-011-1427-2>
- Chokshi, N. (2016, July 21). North Miami police officers shoot man aiding patient with autism. *The New York Times*. <https://www.nytimes.com/2016/07/22/us/north-miami-police-officers-shoot-man-aiding-patient-with-autism.html>
- Chown, N. (2010). 'Do you have any difficulties that I may not be aware of?' A study of autism awareness and understanding in the UK police service. *International Journal of Police Science & Management*, 12(2), 256-273. <https://doi.org/10.1350/ijps.2010.12.2.174>
- Crane, L., Maras, K. L., Hawken, T., Mulcahy, S., & Memon, A. (2016). Experiences of autism spectrum disorder and policing in England and Wales: Surveying police and the autism community. *Journal of Autism and Developmental Disorders*, 46, 2028-2041. <https://doi.org/10.1007/s10803-016-2729-1>
- Criminal Procedure Act (Act 593, Rev. Ed. Msia) (1999).
- Fitzpatrick, S. E., Srivorakiat, L., Wink, L. K., Pedapati, E. V., & Erickson, C. A. (2016). Aggression in

- autism spectrum disorder: Presentation and treatment options. *Neuropsychiatric Disease and Treatment*, 2016(12), 1525-1538. <https://doi.org/10.2147/NDT.S84585>
- Gardner, L., Campbell, J. M., & Westdal, J. (2019). Brief report: Descriptive analysis of law enforcement officers' experiences with and knowledge of autism. *Journal of Autism and Developmental Disorders*, 49(3), 1278-1283. <https://doi.org/10.1007/s10803-018-3794-4>
- George, R., Crane, L., Bingham, A., Pophale, C., & Remington, A. (2018). Legal professionals' knowledge and experience of autistic adults in the family justice system. *Journal of Social Welfare and Family Law*, 40(1), 78-97. <https://doi.org/10.1080/09649069.2018.1414381>
- Haskins, B. G., & Silva, J. A. (2006). Asperger's disorder and criminal behavior: Forensic-psychiatric considerations. *Journal of the American Academy of Psychiatry and the Law*, 34(3), 374-384.
- Helverschou, S. B., Rasmussen, K., Steindal, K., Søndanaa, E., Nilsson, B., & Nøttestad, J. A. (2015). Offending profiles of individuals with autism spectrum disorder: A study of all individuals with autism spectrum disorder examined by the forensic psychiatric service in Norway between 2000 and 2010. *Autism: The International Journal of Research and Practice*, 19(7), 850-858. <https://doi.org/10.1177/1362361315584571>
- Kamaruddin, F. (2019, March 25). SOP khas kendali tahanan autisme [Specific SOP to handle detained autistic individuals]. *Berita Harian*. <https://www.bharian.com.my/berita/nasional/2019/03/545263/sop-khas-kendali-tahanan-autisme>
- Kanner, L. (1943). Autistic disturbances of affective contact. *Nervous Child*, 2(3), 217-250.
- Kasnoon, K. (2019, February 27). Demi anak-anak Autisme, SOP baharu akan diperkenalkan [For the sake of autistic children, a new SOP will be introduced]. *Astro Awani*. <http://www.astroawani.com/gaya-hidup/demi-anak-anak-autisme-sop-baharu-akan-diperkenalkan-199664>
- Kumar, S., Devendran, Y., Radhakrishna, A., Karanth, V., & Hongally, C. (2017). A case series of five individuals with Asperger syndrome and sexual criminality. *Journal of Mental Health and Human Behaviour*, 22(1), 63-68. <https://doi.org/10.4103/0971-8990.210703>
- Kusrin, Z. M., Samuri, A.-A., Ali, M., Yusof, W., & Syakir, M. (2019). Individu autisme dan perlakuan melanggar undang-undang [Individuals with autism and lawlessness] (Security issues in the computerized land registration system in Malaysia: An overview). *Jurnal Undang-Undang Malaysia*, 31(2), 219-237.
- Kusrin, Z. M., Yusof, W., & Yaakub, Z. (2020). Keperluan SOP khusus untuk tahanan dan penyiasatan individu autisme [Necessity of standard operation procedure for detention and interrogation of individual with autism], *Al-Irsyad: Journal Of Islamic and Contemporary Issues*, 5(1), 179-187.
- Illinois Attorney General. (2019). *Law enforcement guide to interacting with people with autism*. <https://ag.state.il.us/rights/disabilityrights.html>
- Långström, N., Grann, M., Ruchkin, V., Sjöstedt, G., & Fazel, S. (2009). Risk factors for violent offending in autism spectrum disorder. *Journal of Interpersonal Violence*, 24(8), 1358-1370. <https://doi.org/10.1177/0886260508322195>
- Lashley, J. (2009). *Autism spectrum disorders: A special needs subject response guide for police officers*. Children's Hospital and Health System. https://www.researchgate.net/profile/Joel-Lashley/publication/235996329_Autism_Spectrum_Disorders_A_Special_Needs_Subject_Response_Guide_for_Police

- Officers_C/links/00b7d5155dd685d7c1000000/Autism-Spectrum-Disorders-A-Special-Needs-Subject-Response-Guide-for-Police-Officers-C.pdf
- Lerner, M. D., Haque, O. S., Northrup, E. C., Lawer, L., & Bursztajn, H. J. (2012). Emerging perspectives on adolescents and young adults with high-functioning autism spectrum disorders, violence, and criminal law. *Journal of the American Academy of Psychiatry and the Law*, 40(2), 177-190.
- Mahyut, S. M. (2017). Inclusion of people with disabilities in Malaysia. *Journal of Asian and African Social Science and Humanities*, 3(1), 1-17.
- Maras, K. L., Crane, L., Mulcahy, S., Hawken, T., Cooper, P., Wurtzel, D., & Memon, A. (2017). Brief report: Autism in the courtroom: Experiences of legal professionals and the autism community. *Journal of Autism and Developmental Disorders*, 47(8), 2610-2620. <https://doi.org/10.1007/s10803-017-3162-9>
- Maras, K. L., Mulcahy, S., Memon, A., Picariello, F., & Bowler, D. M. (2014). Evaluating the effectiveness of the self-administered interview© for witnesses with autism spectrum disorder. *Applied Cognitive Psychology*, 28(5), 693-701. <https://doi.org/10.1002/acp.3055>
- Mayes, T. A. (2003). Persons with autism and criminal justice: Core concepts and leading cases. *Journal of Positive Behavior Interventions*, 5(2), 92-100. <https://doi.org/10.1177/10983007030050020401>
- Modell, S. J., & Davis, M. (2016). *A law enforcement guide for working with children with autism, intellectual and communication disabilities*. New Mexico Coalition of Sexual Assault Programs Inc. <https://doi.org/10.13140/RG.2.1.3729.6884>
- Mogavero, M. C. (2016). Autism, sexual offending, and the criminal justice system. *Journal of Intellectual Disabilities and Offending Behaviour Article Information*, 7(3), 116-126. <https://doi.org/10.1108/JIDOB-02-2016-0004>
- Mokhtar, N. A. (2018, September 16). Penahanan pemuda autisme cabul gadis ikut SOP - Polis [Detention of autistic youth who sexually assault girl according to SOP - Police]. *Berita Harian*. <https://www.bharian.com.my/berita/kes/2018/09/474483/penahanan-pemuda-autisme-%0Acabul-gadis-ikut-sop-polis>
- Mouridsen, S. E. (2012). Current status of research on autism spectrum disorders and offending. *Research in autism spectrum disorders*, 6(1), 79-86. <https://doi.org/10.1016/j.rasd.2011.09.003>
- Murrie, D. C., Warren, J. I., Kristiansson, M., & Dietz, P. E. (2002). Asperger's syndrome in forensic settings. *International Journal of Forensic Mental Health*, 1(1), 59-70. <https://doi.org/10.1080/14999013.2002.10471161>
- Nisar, M. (2017). Effects of disabled children on their families (A case study of District Charsadda). *Journal of Asian and African Social Science and Humanities*, 3(2), 29-37.
- Polis Diraja Malaysia. (2019). *Autisme: Garis panduan Polis Diraja Malaysia* [Autism: The Royal Malaysian Police guidelines]. Urus Setia KPN (Penyelidikan dan Pembangunan).
- Rava, J., Shattuck, P., Rast, J., & Roux, A. (2017). The prevalence and correlates of involvement in the criminal justice system among youth on the autism spectrum. *Journal of Autism and Developmental Disorders*, 47(2), 340-346. <https://doi.org/10.1007/s10803-016-2958-3>
- Razali, S. A. (2019, July 29). Siasatan terhadap autisme, sindrom down ikut SOP [Investigation into autism, down syndrome according to SOP]. *Berita Harian*. <https://www.bharian.com.my/berita/nasional/2019/07/590405/siasatan-terhadap-autisme-sindrom-down-ikut-sop-kpn>

- Reynold, D. (2004, September 9). Community-police crisis team grows in shadow of Paul child's shooting death. *Inclusion Daily Express*. <https://mn.gov/mnddc/news/inclusion-daily/2004/09/090904coadv.htm>
- Robertson, C. E., & McGillivray, J. A. (2015). Autism behind bars: A review of the research literature and discussion of key issues. *Journal of Forensic Psychiatry and Psychology*, 26(6), 719-736.
- Sharif, M. M. (2018). *Kedudukan tertuduh dengan kecelaruan spektrum autisme menurut perundangan jenayah Barat dan Islam* [Position of the accused with autism spectrum according to the western criminal legislation and Islam]. Universiti Kebangsaan Malaysia.
- Syriopoulou-Delli, C. K., Polychronopoulou, S. A., Kolaitis, G. A., & Antoniou, A. S. G. (2019). Views of teachers on anxiety symptoms in students with autism spectrum disorder. *Journal of Autism and Developmental Disorders*, 49(2), 704-720. <https://doi.org/10.1007/s10803-018-3752-1>
- Talbot, J., & Riley, C. (2007). No one knows: Offenders with learning difficulties and learning disabilities. *British Journal of Learning Disabilities*, 35(3), 154-161. <https://doi.org/10.1111/j.1468-3156.2007.00456.x>
- Vassolo, M. (2019, July 3). No prison, 1-year probation for North Miami cop who shot at autistic man with toy. *Miami Herald*. <https://www.miamiherald.com/news/local/community/miami-dade/article232237527.html>
- Volkmar, F. R., & Klin, A. (2005). Issues in the classification of autism and related conditions. In F. R. Volkmar, R. Paul, A. Klin, & D. Cohen (Eds.), *Handbook of autism and pervasive developmental disorders*. John Wiley & Sons Inc.
- Woodbury-Smith, M., Clare, I., Holland, A. J., Watson, P. C., Bambrick, M., Kearns, A., & Staufenberg, E. (2010). Circumscribed interests and "offenders" with autism spectrum disorders: A case-control study. *Journal of Forensic Psychiatry and Psychology*, 21(3), 366-377. <https://doi.org/10.1080/14789940903426877>
- Yaakob, Z., & Kusrin, Z. (2019). *Remaja Autisme dan perilaku seksual* [Adolescent autism and sexual behavior]. Universiti Kebangsaan Malaysia.

