

**A CRITICAL STUDY ON THE PRE TRIAL PROCESS IN THE JUVENILE JUSTICE SYSTEM IN  
MALAYSIA UNDER THE CHILD ACT 2001**



**JAWATANKUASA PEMBAHARUAN UNDANG-UNDANG MALAYSIA  
JABATAN PERDANA MENTERI**

**AND**

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**KELULUSAN GERAN PENYELIDIKAN JAWATANKUASA PEMBAHARUAN UNDANG – UNDANG MALAYSIA (JPUUM)**

Tajuk Projek : A Critical Study On The Pre Trial Process in the Administration of Juvenile Justice System in Malaysia Under the Child Act 2001  
Kod Projek : 100-RMI/GOV 16/6/2 (10/2011)  
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Dengan hormatnya perkara di atas adalah dirujuk.

2. Sukacita dimaklumkan Bahagian Hal Ehwal Undang-Undang melalui surat (1)BHEUU/06/005/25 bertarikh 25 Mei 2011 telah meluluskan geran penyelidikan Y. Brs. Profesor/Dr/Tuan/Puan untuk di biayai di bawah Jawatankuasa Pembaharuan Undang-Undang Malaysia (JPUUM).

3. Bagi pihak Universiti kami mengucapkan tahniah kepada Y. Brs. Profesor/Dr/tuan/puan kerana kejayaan ini dan seterusnya diharapkan berjaya menyiapkan projek ini dengan cemerlang.

4. Pihak Y. Brs. Profesor/Dr/tuan/puan adalah diminta untuk mengisi borang setuju terima projek penyelidikan dan menyusun perancangan semula bajet yang baru berdasarkan Garis Panduan yang ditetapkan oleh JPUUM. Sila lihat Lampiran C bagi syarat-syarat lantikan Geran Penyelidikan JPUUM.

Sekian, harap maklum.

**“SELAMAT MENJALANKAN PENYELIDIKAN DENGAN JAYANYA”**

Yang benar

**MUSTAFAR KAMAL HAMZAH**  
Ketua Penyelidikan (Sains dan Teknologi)

**11.0 FINDINGS AND RECOMMENDATIONS**

**A. PRE TRIAL PROCESS IN THE JUVENILE JUSTICE SYSTEM**

**11.1 ARREST**

- 11.1.1 Grounds of Arrest
- 11.1.2 Brought before the Court For Children within 24 hours from the time of arrest
- 11.1.3 Non employment of force by enforcement officers upon arrest
- 11.1.4 The use of handcuffs by enforcement officers upon arrest

**11.2 COMMUNICATION WITH A RELATIVE OR FRIEND AND CONSULTATION WITH A LEGAL PRACTITIONER**

- 11.2.1 Communication with a relative or friend and consultation with a legal practitioner upon arrest
- 11.2.2 Communication with a relative or friend and consultation with a legal practitioner before investigation
- 11.2.3 Information on free legal assistance from the Legal Aid Department and Legal Aid Centre

**11.3 HELD UNDER REMAND**

- 11.3.1 Held under remand with adult offenders

**11.4 BAIL**

**11.4.1 Bail by Police**

- 11.4.1.1 Police grant bail upon arrest
- 11.4.1.2 Police grant bail within 24 hours upon the completion of investigation

**11.4.2 Bail by Court**

- 11.4.2.1 Court grants bail after 24 hours to conduct further investigation
- 11.4.2.2 The bail amount imposed is appropriate with the offence committed
- 11.4.2.3 Parents/Relative can afford to pay the bail amount

**11.5 Segregation with adult offenders**

- 11.5.1 Mixing with adult offenders while waiting to be transported to the Court
- 11.5.2 Mixing with adult offenders in the same vehicle while being transported to the Court
- 11.5.3 Mixing with adult offenders while waiting for the case to be called, before the case is called and after the case is called by the Court

**B. The Effect of Pre Trial Process on Respondents**

**11.6 The effect of pre trial process on respondents**

- 11.6.1 The arrest process
- 11.6.2 The detention process
- 11.6.3 The investigation process

**11.7 Treatment received by Respondents during the Pre Trial Process**

- 11.7.1 Treatment received during the arrest process
- 11.7.2 Treatment received during the detention process
- 11.7.3 Treatment received during the investigation process

**12. CONCLUSION**

# **A CRITICAL STUDY ON THE PRE TRIAL PROCESS IN THE JUVENILE JUSTICE SYSTEM IN MALAYSIA UNDER THE CHILD ACT 2001**

## **1.0 INTRODUCTION**

This research proposal will first discuss the background of the research by highlighting the problems faced by the child offenders at the pre trial process in the juvenile justice system in Malaysia under the Child Act 2001 [hereinafter referred to as the “Child Act”].<sup>1</sup> The proposal will then describe the research questions and research objectives which seek to critically examine the issues surrounding the pre trial process in the juvenile justice system under the Child Act in Malaysia and to propose recommendations. The proposal will then highlight the scope of the research and research methodology which will be employed in undertaking the research. It follows that the proposal will outline the foreseeable limitations of the research and describes the contributions that this research will make to the existing body of knowledge on juvenile justice system in Malaysia. Finally, this research will discuss critically the need for a revision of the Child Act.

## **2.0 BACKGROUND**

The juvenile justice system in Malaysia is governed by the Child Act, in particular in Part X and XIII of the Child Act. According to the Child Act, a child is defined as a person under the age of eighteen and in relation to criminal proceedings, a child means a person who has attained the age of criminal responsibility, set at ten years of age.<sup>2</sup> Part X of the Child Act outlines the criminal procedure in Court for Children and Part XIII of the Child Act elucidate the process of investigation, arrest, search and seizure of commission of any offence under the Child Act. This research will also examine whether the provisions in the Child Act are in line with the requirements of the Convention on the Rights of the Child (1989) [hereinafter referred to as the “CRC”] which Malaysia has acceded to on 17 February 1985 in order to uphold and protect rights granted to children.<sup>3</sup> The provisions governing the juvenile justice system in the CRC are encapsulated in Article 37 and Article 40 of the CRC. While the former safeguards the legal protection vested in child offenders who are deprived of liberty,

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<sup>1</sup> Child Act 2001 (Act 611). Date of publication in the Gazette is on the 1<sup>st</sup> March 2001.

<sup>2</sup> Section 2 of the Child Act and Section 82 of the Penal Code respectively.

<sup>3</sup> Convention on the Rights of the Child, adopted on 20.11.1989, G.A. Res. 44/25 (1989). The Convention came into force on 2 September 1990 in accordance with Article 49 of the Convention.