



## **Standard Operating Procedure for the Arrests and Detentions of Individuals with Autism in Four Countries**

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**Abstract:** Autism spectrum disorder (ASD) is categorised under neuro-developmental disorders. Individuals with this disorder experience deficits in social interaction and communication skills as well as repetitive patterns of thoughts and behaviours. The purpose of this study was to comparatively analyses the similarities and differences in Malaysian PDRM Autism SOPs with other countries, namely Malaysia, Hong Kong, United Kingdom and four countries in the United States, namely, Wisconsin, New Mexico, Illinois and Virginia. This research focuses on discussing the important elements emphasized in SOPs and some aspects of similarities and differences between them. The research design is based on document analysis. The data were analysed descriptively and thematically. Research results that autistic people put them at risk of committing violations of the law without realizing or intending to do so. Since they are also categorized as persons with disabilities, they are thus entitled to legal guarantees appropriate to their status. Therefore, their rights to equality and non-discrimination as persons with disabilities attracted worldwide attention holistically, resulting in specific Standard Operating Procedures (SOPs) in several countries, including Malaysia, namely, the Royal Malaysian Police Autism SOP (PDRM). Likewise, there are several important elements outlined in all SOPs, in aspects of their application, legal references, methods of arrest and detention and intermediary assistance, and that there are some similarities and differences between the SOPs analysed. The implications of this study show the importance of SOPs for autism arrest and prisoners, to meet their specific legal needs.

**Keywords:** Autism, Standard Operational Procedure, arrest, detention, laws, Malaysia Royal Police

**Abstrak:** Individu dengan autisme dikategorikan sebagai mereka yang menderita gangguan perkembangan saraf di otak. Gangguan ini menyebabkan defisit dalam interaksi sosial dan keterampilan komunikasi mereka, dengan pola pemikiran dan perilaku yang berulang. Tujuan penelitian ini adalah untuk menganalisis secara komparatif persamaan dan perbedaan SOP Autisme PDRM Malaysia dengan negara lain yaitu Malaysia, Hong Kong, United Kingdom serta empat negara di Amerika Serikat, yaitu, Wisconsin, New Mexico, Illinois dan Virginia. Penelitian ini berfokus pada pembahasan unsur-unsur penting yang ditekankan dalam SOP dan beberapa aspek persamaan dan perbedaan di antara mereka. Desain penelitian didasarkan pada analisis dokumen. Data dianalisis secara deskriptif dan tematik. Hasil penelitian bahwa penderita autis menempatkan mereka pada risiko melakukan pelanggaran hukum tanpa menyadari atau berniat melakukannya. Karena mereka juga dikategorikan sebagai penyandang disabilitas, mereka dengan demikian berhak atas jaminan hukum yang sesuai dengan status mereka. Oleh karena itu, hak mereka atas kesetaraan dan non-diskriminasi sebagai penyandang disabilitas menarik perhatian dunia secara holistik, sehingga menghasilkan Standar Operasional Prosedur (SOP) khusus di beberapa negara, termasuk Malaysia, yaitu, SOP Autisme Kepolisian Kerajaan Malaysia (PDRM). Demikian juga bahwa ada beberapa elemen penting yang diuraikan dalam semua SOP, dalam aspek penerapannya, referensi hukum, metode penangkapan dan penahanan dan bantuan perantara, dan bahwa ada beberapa persamaan dan perbedaan antara SOP yang dianalisis. Implikasi penelitian ini menunjukkan kepentingan SOP tangkapan dan tahanan autisme, bagi memenuhi keperluan perundangan khusus mereka.

**Kata Kunci:** Autisme, Standar Operasional Prosedur, penangkapan, penahanan, hukum, Polisi Kerajaan Malaysia

## Introduction

Individuals with autism face difficulties in three important aspects, namely, social interaction, communication and behavioural process (psychological and physiological processes, including mental and verbal behaviour).<sup>1</sup> They exhibited various symptoms ranging from mild to severe degree, thus these symptoms are grouped as a spectrum and this condition is known as autism spectrum disorder.<sup>2</sup> In other countries like Australia, New Zealand and Canada, some of the individuals with autism were too reported to be

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<sup>1</sup> William J. Ray, "Abnormal Psychology," 3<sup>rd</sup> Edition. Thousand Oaks, CA: SAGE Publications Inc., (2011). Susan Kraus Whitbourne, *Abnormal Psychology: Clinical Perspectives on Psychological Disorders*, 9<sup>th</sup>. New York: McGraw-Hill Education, (2020).

<sup>2</sup> American Psychiatric Association (APA), "Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM-5), Washington DC: American Psychiatric Association, (2013).

involved in serious criminal cases such as theft, causing hurt to others, random shooting, cybercrime, as well as sexual criminal offences.<sup>3</sup> Among the factors that leads them to violate the law is related to the nature of their symptoms, vis-à-vis deficits in social and communication skills<sup>4</sup>. These deficits cause difficulties for individuals with autism to understand a code of social conduct, whether certain behaviour is acceptable to the society or contrary to social norms.

The biggest challenge law enforcement officers face in performing their duty is communicating effectively with individuals with autism particularly those who also suffer from intellectual and communication deficits.<sup>5</sup> Therefore, it is necessary to communicate effectively, in accordance with the level of understanding of the person with autism who allegedly commits the crime, to ensure that he/she receives fair treatment without discrimination. George et. al. states that effective communication, sensory factors towards the environment as well as unexpected probability, are important elements/matters that need to be emphasized by legal professionals when interacting with a person with autism. Even for certain cases, preliminary measures are taken to adapt the suspect who has autism to the situation during the proceedings. For instance, lawyers are encouraged to bring their clients for an early visit to familiarize/adapt themselves with the courtroom before the trial/proceeding begins.<sup>6</sup> Therefore, the purpose of such emphasized elements, especially in communication outlined in SOP for autism, is to give clear guidelines to the law enforcers to understand the disabled person and respect their civil rights in dealing with autistic individuals.

Hence, some countries have taken the initiative to legislate a Standard Operating Procedure (SOP). Malaysia, Hong Kong, United Kingdom, as well as four American states, namely, Wisconsin, New Mexico, Illinois and Virginia, have produced a guideline specifically for law enforcers to interact and respond to offenders who have autism as well as other disabled persons. This occurs because the behaviours of persons with autism are prone to violating the law, as reported in serious criminal cases in Malaysia and other countries. Again, as stated

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<sup>3</sup> Ian Freckelton, "Autism Spectrum Disorders and The Criminal Law", In M.R. Mohammadi (Eds.). A Comprehensive Book on Autism Spectrum Disorders, London: Intech Open, (2011) p. 249-272. Carrie Wong, et.al., "Evidence-based Practices for Children, Youth, and Young Autism Spectrum Disorder: A Comprehensive Review. *Journal of Autism and Developmental Disorders* (2014).

<sup>4</sup> Matthew D Lerner, et.al., "Emerging Perspectives On Adolescents and Young Adults With High-Functioning Autism Spectrum Disorders, Violence and Criminal Law", *The Journal of the American Academy of Psychiatry and the Law* 40, No. 2 (2012), p.177-90.

<sup>5</sup> S.J. Modell and M. Davis, "A Law Enforcement Guide for Working with Children with Autism, Intellectual and Communication Disabilities," New Mexico Coalition of Sexual Assault Programs, Inc., (2016).

<sup>6</sup> Rob George, et.al., "A Legal Professionals' Knowledge and Experience of Individual with Autism Adults in The Family Justice System," *Journal of Social Welfare and Family Law* 40, No. 1 (2018), p. 78-97.

earlier, the criminal cases include sexual offences, cybercrime, causing hurt to others, theft, vandalism and so on.<sup>7</sup>

In Malaysia, the idea of developing the Autism SOP was triggered by the case of Ahmad Zikri, a person with autism who was arrested and detained by police, and further was applied to the SOP enforced for typical people. It was alleged that Ahmad Zikri had molested a woman in a public place. Due to public pressure, a specific SOP named as “Autism: Royal Police of Malaysia Guideline” was finally drafted and came into legal effect in the year 2019.

Other countries such as the United Kingdom, Hong Kong and the United States of America, especially Illinois, Wisconsin, Virginia and New Mexico, have also legislated an Autism SOP. This article aims to analyse the SOP of people with autism or disabilities in the said countries, in the aspect of similarity and differences in the terms used, covering specific elements from the aspects of the target group, statutory reference for the SOP applied, methods of arrest and detention as well as intermediary assistance. The research design is based on document analysis of past research and official government documents relating to the Royal Police Autism Standard Operating Procedure (SOP) in Malaysia, and Autism SOPs in Hong Kong, the United Kingdom, the United States of America (Wisconsin, Virginia, Illinois and New Mexico). Data was then descriptively analysed and presented according to suitable themes. It is hoped that the analysis results will help to improve the implementation of this specific SOP, consistent with protecting the legal rights of individuals with autism and other disabled persons.

### **Introduction to SOP of Autism in Four Countries**

Several countries in the world already have SOPs for autism. This research and its discussion merely focus on the Autism SOPs implemented in 4 countries: Malaysia, the United States of America (in the States of Wisconsin, Illinois, Virginia and New Mexico) and Hong Kong. Following is a brief overview of the existing SOPs in such countries.

In Malaysia, the Royal Police Autism SOP was legislated and gazetted in March 2019. It was drafted with the cooperation of appointed committee members composed of autism experts, local university academics and non-governmental organizations (NGOs). These appointed committee members handle individuals with autism, such as the Royal Police of Malaysia (PDRM), *Permata Kurnia*, Ministry of Women, Family & Community Development, Ministry of Health, Ministry of Education and The National Autism Society of Malaysia. The

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<sup>7</sup>Zuraini Yaakub and Zuliza Mohd Kusrin. “*Remaja Autisme dan Perilaku Seksual*,” Bangi: Universiti Kebangsaan Malaysia (2017).

implementation of this SOP applies to criminal offences and civil offences<sup>8</sup>. The Standard Operating Procedure (SOP) is a procedure of detention and arrest for individual with autism. It is for PDRM to establish guidelines for police officers while dealing and communicating with individual with autism as part of law enforcement. The necessity of this SOP is vital for legal practitioners in Malaysia, considering that the SOP of standard enforcement in arrests and detention in matters of accused individuals as outlined explicitly in '*Perintah Tetap Ketua Polis Negara (PTKPN)*', including the general provisions in the Criminal Procedure Code (Act 593) and Rules of Prison 2000, is seen as to not have specialization in the handling of accused individuals from the disabled.

Secondly, in the United States of America, discussions on Autism SOPs exist in Wisconsin, Illinois and Virginia. In Wisconsin, United States of America, a specific guideline dealing with autism spectrum disorders entitled '*Autism Spectrum Disorders: A Special Needs Subject Response Guide for Police Officers*' was created in the year 2009<sup>9</sup> in collaboration with the Milwaukee Police Department with the Children's Hospital and Wisconsin Health System to be utilised by all police departments in Wisconsin. It outlines some verbal and non-verbal strategies police officers can use when interacting with a person with ASD and cognitive delay (mental retardation). Thus, this guideline could also be applied to individuals with intellectual and developmental disabilities such as Down syndrome, cerebral palsy, anxiety disorder, trauma, and others. Several techniques and strategies outlined in this guideline can assist individuals with autism in crisis situations with law enforcement.

In 2019, the State of Illinois in the United States of America took up the initiative to create an SOP for police officers in handling individuals with autism, entitled '*Law Enforcement Guide to Interacting with People with Autism*'<sup>10</sup>. This guideline is based on suggestions and opinions issued by Illinois' Attorney General, Kwame Raoul, to be applied by Illinois law enforcement. Though it is not an official policy of the Legal Department or the Board of Criminal Justice in Illinois, the guideline can be enforced anywhere in the state. Furthermore, compliance is essential for every police enforcement officer, as one of the efforts of The Disability Rights Bureau Illinois, which is responsible for protecting the

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<sup>8</sup> Zuliza Mohd Kusrin, et.al., "Necessity of Standard Operation Procedure for Detention and Interrogation of Individual with Autism," *Journal al-Irsyad* 5, No. 1 (2020), p. 179-187.

<sup>9</sup> Colin J. Lashley, et.al., "Autism Spectrum Disorders: A Special Needs Subject Response Guide For Police Officers," Retrieved from <http://scholar.google.com/scholar?> (2009).

<sup>10</sup> Illinois Attorney General, "*Law Enforcement Guide to Interacting with people with Autisme*". Retrieved June 6, 2020, from Disability Rights Bureau website:<https://ag.state.il.us/rights/disabilityrights.html>, (2009).

rights of people with disabilities to obtain their equality of legal rights.<sup>11</sup> The purpose of this guideline is to assist police officers in dealing with cases involving individuals with autism.<sup>12</sup>

In 2017, a policy model entitled "Interactions with Individuals with Intellectual and Developmental Disabilities" was drafted by IACP Law Enforcement Policy Centre in Alexandria, Virginia, involving enforcement procedures towards individuals with intellectual disabilities (ID) and individuals with developmental disabilities (DD), including autism. It is introduced with a supporting document which elaborates the model in detail to provide a deeper understanding to enforcement agencies in Virginia.<sup>13</sup> This model is prepared as a guideline for enforcement officers to interact and communicate with individuals in such a category. The framework of this model is seen to consider all essential stages of enforcement, such as during arrests, custody, and interviews. The critical element which makes this policy interesting from other guidelines provided in other countries is that the de-escalation technique approach has been clearly stated in its application, especially during the arrest procedure. The de-escalation technique is understood as a strategy for dealing with conflicts, opting for a safe and cautious measure, especially when faced with challenging and unsafe behaviour.<sup>14</sup> In the procedure during custody/detention, the officer is advised to obey measures highlighted to reduce anxiety, restlessness and the possibility of uncontrollable reactions of the suspect. Such measures highlighted include contacting family members or caregivers or individuals trained in crisis management, using mild language, avoiding conducting physical restraints, and others.

When conducting interviews, this model applies Miranda Warnings. Miranda Warnings is a mandatory requirement exercised by every police officer, especially in the United States. It requires officers to inform the suspect of specific facts and their rights during detention before questioning the suspect (MirandaRight.org). However, this model requires the Miranda Warning to be read to ID and DD suspects with a version that is easily understood, considering these disabled suspects may not fully understand their rights.

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<sup>11</sup> Illinois Attorney General, *Law Enforcement Guide to Interacting with people with autism*". Retrieved June 6, 2020, from Disability Rights Bureau website:<https://ag.state.il.us/rights/disabilityrights.html>, (2009).

<sup>12</sup> Illinois Attorney General, "*Law Enforcement Guide to Interacting with people with autism*". Retrieved June 6, 2020, from Disability Rights Bureau website:<https://ag.state.il.us/rights/disabilityrights.html>, (2009).

<sup>13</sup> IACP Law Enforcement Policy Centre in Alexandria, Virginia.

<sup>14</sup> Amanda B Brown and Jennifer H Elder, "*Communication In Autism Spectrum Disorder: A Guide For Pediatric Nurses*", <https://pubmed.ncbi.nlm.nih.gov/25929112/>. ( 2014).

In New Mexico, the United States of America, a private body and non-profit organisation, New Mexico Coalition of Sexual Assault Programs, Inc. (NMCSAP), has provided a guideline for legal enforcement in dealing with developmental disabilities. This guideline, named ‘A Law Enforcement Guide for Working with Children with Autism, Intellectual and Communication Disabilities 2016’, aims to meet the legal requirements under the Sexual Crimes Prosecution and Treatment Act of 1978, which is a legal provision in New Mexico that mandates the provision of appropriate training, assistance and services to medical, mental health, law enforcement, and social service professionals, aimed at reducing cases of sexual abuse and sexual violence.<sup>15</sup> It is created to provide practical tips for law enforcers to communicate with individuals in the category of autism spectrum disorder (ASD), communication disability (CD) and intellectual disability (ID).

In Hong Kong, there is an Equal Opportunities Commission (EOC) which enforces anti-discrimination laws. A Disability Discrimination Ordinance (DDO) prohibits discrimination against people with disabilities in all forms. The EOC, working in collaboration with legal professionals from selected enforcement departments and experts from autism centres in Hong Kong, has deployed energy and expertise to develop guidelines for law enforcement to follow when dealing with cases involving individuals with autism. Developed in 2016, the guideline is entitled ‘Autism: A Guide for Law Enforcement Officers Communicating with Individuals with Autism Spectrum Disorders’. It aims to facilitate police officers' communication with individuals with autism and to promote awareness of autism spectrum disorders so that they can perform their duties with greater sensitivity, professionalism, and attention.

### **Comparison of SOP of Autism Based on Country**

Table 1 below shows a comparison between Autism SOPs in Malaysia and other countries within the aspects of objective, application/usage/target group, statutes of reference, methods of arrest, methods of detention, and intermediary assistance. Based on this table, there are similarities and differences between Malaysia Royal Police Autism SOP and SOPs in other countries. Analysed items are themed based on the objective of SOP, usage/target group, statutes of reference, methods of arrest and detention as well as service of intermediaries.

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<sup>15</sup> S.J. Modell and M. Davis, M., “A Law Enforcement Guide for Working with Children with Autism, Intellectual and Communication Disabilities”, New Mexico Coalition of Sexual Assault Programs, Inc., (2016).

**Table 1: Analysis of Autism SOP based on Country**

No	Provision	Malaysian Royal Police Autism SOP (within the country)	Autism SOP of USA (Wisconsin, Virginia, New Mexico, and Illinois), England, and Hong Kong
01	Application of Autism SOP	Specific for Individuals with autism and Disabled Persons (Down Syndrome and Cerebral Palsy)	England, Illinois (USA), and Hong Kong: SOP for individual with autism only.  USA: Wisconsin, Virginia and New Mexico –for a person with autism and other disabled persons.
02	Statute and Convention References	<ol style="list-style-type: none"> <li>1. Dangerous Drugs Act 1952 (Revised 1980) (Act 234).</li> <li>2. Road Transport Act 1987 (Act 333).</li> <li>3. Child Act 2001</li> <li>4. Persons with Disabilities Act 2008 (Act 685).</li> <li>5. Mental Health Act 2001 (Act 615).</li> <li>6. Malaysian Penal Code (Act 574).</li> <li>7. Criminal Procedure Code (Act 593)</li> <li>8. Lock-up Rules 1953</li> <li>9. International Classification of Disease Provision (ICD-10) and International Classification of Diseases 11<sup>th</sup></li> </ol>	<p>Hong Kong: Disability Discrimination Ordinance Disabilities 1995 (DDO - Sections 2 and 6), The Convention on the Rights of Persons with Disabilities (CRPD - Article 13),</p> <p>England: Equality Act 2010</p> <p>USA: New Mexico: Sexual Crimes Prosecution and Treatment Act 1978</p> <p>Virginia: Title II of the Americans with Disabilities Act (ADA)</p> <p>Wisconsin: not stated</p> <p>Illinois: Dennis Debbaudt, Contact with Individuals with Autism, The FBI Law Enforcement Bulletin (April 2001). ii. American Psychological Association, Resolution on the Maltreatment of Children with Disabilities (February 2003), available at <a href="http://www.apa.org">www.apa.org</a>.</p>



		<p>Revision (ICD-11), World Health Organisation (WHO)</p> <p>10. United Nations Convention on the Rights of Children (CRC 1989)</p> <p>11. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD, 2006)</p>	<p>iii. Center for Disease Control, How Common is Autism Spectrum Disorder? Available at <a href="http://www.cdc.gov">www.cdc.gov</a>.</p> <p>iv. Autism Society of America, Defining Autism, available at <a href="http://www.autism-society.org">www.autism-society.org</a>.</p> <p>v. Dennis Debbaudt, Autism &amp; Law Enforcement Roll Call Briefing Handout (2005).</p> <p>vi. Dennis Debbaudt, Autism, Advocates, and Law Enforcement Professionals 26-27 (2002).</p>
03	Method of Arrest	<p>1. More detailed. Touches on the communication aspect as well as all elements during the process of arrest and interrogation/investigation</p> <p>2. It covers objective, scope, reference, work procedure, quality record, flowchart, attachment, definition, and abbreviations.</p> <p>3. No use of weapons.</p>	<p>1. More concise and focused on identifying the individual with individual with autism and methods of communication with them.</p> <p>2. It covers the meaning of autism, guidance to identify the individual with autism persons, in response to enforcement in certain situations, during arrest and detention, and during the interview.</p> <p>3. Wisconsin- Guidance on the use of weapons</p> <p>4. Virginia – Specific technique and theory (De-escalation technique)</p>

		4. No specific technique or theory.	
04	Method of Detention	<ol style="list-style-type: none"> <li>1. Not handcuffed.</li> <li>2. Use simple language.</li> <li>3. Use of topic cards.</li> <li>4. Specific questions.</li> <li>5. Visual Aid materials.</li> <li>6. Not using tag/leading questions.</li> </ol>	<ol style="list-style-type: none"> <li>1. Hong Kong – no imprisonment</li> <li>2. England –not stated</li> <li>3. New Mexico – not using interrogative statements</li> <li>4. Wisconsin – Precautionary measures (Medical aid)</li> <li>5. Virginia - Miranda Warning</li> <li>6. Illinois – more time allowed for interrogation/ planning of questions based on level or ability of autistic.</li> </ol>
05	Intermediary Assistance	Intermediary assistance (Friends of Autism)	No intermediary assistance in other countries except in England and Wales (Witness Intermediary Scheme - Appropriate Adult (AA) and intermediaries)

**Similarities and Dissimilarities of the Autism SOP**

In terms of the main objectives of the SOPs, the autism SOPs between Malaysia and the other said countries. Hong Kong, England, and American states (New Mexico, Illinois. Wisconsin and Virginia), are similar. The objectives are to increase awareness, give exposure (open to learning experience) and guideline for police to handle and communicate with individual with autism, as well as to improve the service of duty and work procedure of law enforcers to be more prepared to handle involving individual with autism. However, some similarities and dissimilarities regarding the application, statute or acts reference, method of arrest, method of detention and intermediary assistance will be discussed below.

**Application of the SOP**

Analysis of the SOPs in four countries shows that almost all Autism SOPs outside Malaysia specify their usage exclusively for persons with autism, such as in Illinois (USA), England and Hong Kong. However, in Malaysia, Autism SOP is used for individuals with autism and other disabled persons, such as those who have cerebral palsy and Down syndrome. This is also the case with SOP in New Mexico, Wisconsin and Virginia (USA), where it is more general and may be applied to other disabled persons.

In some countries, Autism SOP is exclusively used for individuals with autism because autism is a neuro-developmental disorder that is different from other mental disorders. Therefore, dealing with individuals with autism requires a specific approach. Others deem it suitable to extend its use, especially the SOP provision for arresting and detention individual with autism to other mentally disabled persons. The reason is that among people with autism who suffer from the neuro-developmental disorder, some also suffer from hyperactivity and deficit attention disorder (attention deficit hyperactivity disorder or ADHD), learning disability, and a motor disorder, for example, tic disorder or Tourette syndrome.<sup>16</sup> Autism spectrum disorder is different from other mental disorders, as individuals with autism physically do not appear to have any self-deficiency. The deficit becomes apparent only after interaction with them. Thus, if they break the law, they are entitled to a specific SOP to ensure fair treatment due to their status as non-typical individuals.

It has been shown that some individuals with autism are exceptionally skilled in certain areas.<sup>17</sup> Past studies have shown that is that approximately 10% of individuals with autism have exceptional abilities and skills in music and arts, as well as skills involving memory<sup>18</sup>. There are even professionals who have autism, for example, Temple Grandin who hold a doctorate degree and is a professor in animal science at Colorado State University, USA. She claims to suffer from Asperger syndrome and that she was diagnosed as an autistic child.<sup>19</sup>

### Statute Reference

A Standard Operating Procedure (SOP) is to detail a provision in a relevant statute. The statute is usually general and contains provisions to implement an action. Hence, reference to legal requirements in a statute/enactment is required to develop an SOP. In the Malaysian Penal Code (Act 574), under general exceptions of Part IV, Section 84 expressly provides an exception to criminal liability if a person of unsound mind commits an act. Provisions in other statutes support this exception to the general rule, for example, the Mental Health Act 2001, Criminal Procedure Code (Act 593), Persons with

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<sup>16</sup> American Psychiatric Association (APA), “*Diagnostic and Statistical Manual of Mental Disorders*”, Fifth Edition (DSM-5). Washington DC: American Psychiatric Association, (2013).

<sup>17</sup> William J. Ray, “*Abnormal Psychology*”, 3<sup>rd</sup> Edition. Thousand Oaks, CA: SAGE Publications, Inc. (2021).

<sup>18</sup> Darold A Treffert, “The Savant Syndrome: An Extraordinary Condition. A Synopsis: Past, Present, Future,” *Philosophical Transactions of The Royal Society B Biological Sciences* 364 (2009), p. 1351-1357.

<sup>19</sup> Temple Grandin and Catherine Johnson, “Animals in Translation: Using the Mysteries Of Autism To Decode Animal Behavior”, Scribner/Simon & Schuster. (2005).

Disabilities Act 2008 (Act 685), Child Act 2001,<sup>20</sup> as well as by United Nations conventions, such as Convention on the Rights of Persons with Disabilities (CRPD), Convention on the Rights of the Children (CRC) and so on. Hence, in developing an Autism SOP for the Malaysian Royal Police (PDRM), reference is made to relevant statutes as partial legal sources. Proof of this is the successful launching of the specific Autism SOP for PDRM on March 29, 2019, which has been implemented since then. The significance of statute reference is to allow for smooth implementation of the SOP by the enforcement authority.

In Hong Kong, the Autism SOP, named 'Autism: A Guide for Law Enforcement Officers Communicating with Persons with Autism Spectrum Disorder, was developed in the year 2016 by reference to Article 13 of *The Convention on the Rights of Persons with Disabilities* (CRPD) and Sections 2 and 6 of the *Disability Discrimination Ordinance* (DDO). According to the DDO, disability is intended to mean more than only physical disability. It includes mental disorders and disabilities that affect a person and may interfere with his emotions during court proceedings. Thus, it is wrong or discriminatory if anyone with autism is treated the same as typical persons (Section 6, DDO). It is therefore important to refer to a statute or convention when dealing with individuals with autism so that enforcement officials know how to handle them with prudence and are guided by the law.

In New Mexico, USA, the Autism SOP named, A Law Enforcement Guide for Working with Children with Autism, Intellectual and Communication Disabilities 2016, contains reference to the statute, Sexual Crimes Prosecution and Treatment Act. However, it is more geared towards the sexual abuse of individuals with autism. Hence, its approach is appropriate for sexual offences; for example, the SOP frequently states that it is crucial to reduce the victimization of individuals with autism as the risk increases. It is argued that a sexual offender believes that the individual with autism cannot describe the crime and won't be believed if she tells others of it.<sup>21</sup>

In Virginia, USA, entities of state and local governments, as well as law enforcers, apply the SOP with reference to Title II, Americans with Disabilities Act (ADA). Usually, the SOP in some states in the USA has the same legal system, particularly in the technique and terms used. In addition, in England, which is renowned for its effective enforcement system, the Autism SOP used, of course, has reference to a specific statute, namely, the Equality Act 2010. Wisconsin and Illinois in the USA also have Autism SOP, but the SOPs do not expressly state the laws of reference.

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<sup>20</sup> Zannah Binti Noor and Nazirah Lee, Preserving Child's Faith in Malaysian Law: A Maqasidic Approach," *Ulumuna: Journal of Islamic Studies* 27, No. 1 (2023).

<sup>21</sup> Diane Nelson Bryen, et.al., "Ending the silence: Adults who use Augmentative Communication and Their Experiences as Victims of Crimes, Augmentative and Alternative Communication (Baltimore, Md.: 1985).

### Method of Arrest

In the aspect of arrest, each country applies a different approach. In Malaysia, the method of arrest contained in the SOP is more systematic and detailed, especially in communication skills while dealing with them. Furthermore, it covers various aspects of communication and other actions before and during the arrest process. The Malaysian Autism SOP is more concise and focuses on identifying individuals with autism and their communication method. In some countries, guidance on how to handle an individual with autism is based on prior experience with the individual. Except in England, persons with autism in other countries do not receive specific assistance from intermediaries in work procedures as in Malaysia.

There is a wider emphasis on other elements in the Malaysian Autism SOP to ensure systematic and practical enforcement action, as the usual existing SOP for typical people is unsuitable for the arrest, detention and investigation of individuals with autism with their level of mental deficit. Hence, an inappropriate legal procedure is feared to affect individuals with autism adversely; for example, the lockup environment and excessive police behaviour during the interview process will probably cause trauma to the autistic.<sup>22</sup>

Individuals with autism are categorised as disabled; their sensory hypersensitivity affects their behaviour, such as being unable to make eye contact and possibly unable to understand things happening because their cortical brain areas show a different response in brain imaging measurement. This condition indirectly causes their deficit in social interaction and communication. They need assistance from others, such as parents/guardians.<sup>23</sup> Due to this, the case of Ahmad Zikri's arrest and detention of an individual with autism in Malaysia became the trigger for the need to develop the Royal Police of Malaysia (PDRM) Autism SOP.

In Illinois, USA, the elements of communication are contained in their Autism SOP because enforcement officers are not able to diagnose autism and not sufficiently skilled to handle them even though given formal training. Hence, understanding at least their general characteristics helps the police to use a suitable method for communicating and responding to incidents involving disabled persons. Therefore, the Illinois State Attorney's Office also issued simple information material and gave practical suggestions for police usage.<sup>24</sup> Generally, they issued a basic SOP for police officers to handle autistic offenders.

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<sup>22</sup> Airunnisa 2018 <https://www.utusan.com.my/nasional/2018/09/autisme-didakwa-adil-atau-selayaknya/>

<sup>23</sup> William J. Ray, "*Abnormal Psychology*". 3<sup>rd</sup>. edition. Thousand Oaks, CA: SAGE Publications, Inc. (2021).

<sup>24</sup> Clare S Allely, "Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom, and the Prison Environment," University of Gothenburg, Sweden, (2015).

In other countries, the individual with autism's deficit in communication skills is a factor for Autism SOP to focus on communication elements in their arrest procedure. There are many cases involving individuals with autism in other countries. However, individuals with autism are also not an exception to becoming victims of crime, such as sexual, verbal or physical assault. By focusing on an effective communication method, police can overcome obstacles in communication when interviewing individuals with autism or requesting help from the autism community.

Generally, SOP content in other countries have similarities covering the meaning of autism, guideline on identifying an autistic, the appropriate response of enforcers to specific situations or guidelines for arrest and detention as well as during an interview. Unlike in Malaysia, the Autism SOP covers objectives, scope, references, work procedure, quality records, flowcharts, and attachments, as well as specific definitions and abbreviations to recognise terms associated with autism. Exposure to autism covers only scientific and legal definitions, while the characteristics of autism are not explained in detail. The legislators of SOP probably realised that the police might not fully adapt to and understand the actual condition of individuals with autism; thus, another initiative is to apply for assistance from Friends of Autism (*Rakan Autisme*).

Therefore, identifying autism in an alleged offender facilitates the law enforcer and police to understand the condition of the autistic before taking any action to avoid triggering a tense and aggressive reaction. After explaining the characteristics of autism, the SOP clarifies the suggestion to communicate during and after arrest. In comparison, the Autism SOPs of Wisconsin and Hong Kong do not comprehensively state the scope of work procedure, except for work procedures involving clear communication, such as interviews. In contrast, there is no elaboration on other work procedures.

Nonetheless, this emphasis on communication helps convey accurate information to the autistic. This technique of law enforcement is to control and curb a precarious situation which can trigger a more aggressive physical outburst by the alleged autistic offender. Failure to communicate with and respond specifically to an autistic may give rise to the allegation that police used force or violence.<sup>25</sup>

In terms of specific technique and theory, SOPs of other countries do not specify the method to be applied, except the SOP of Virginia, USA, which stipulates a de-escalation technique in the arrest procedure. De-escalation is used to reduce the risk of more extreme behaviour and is frequently applied to mentally disordered persons. For example, speaking in a calm tone, using simple language that is easy to understand, not touching the suspect, reducing bright light or avoiding light with specific wavelengths (LED or fluorescent), which affect the

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<sup>25</sup> Lisa A Osborne, et.al., “Parenting stress reduces the effectiveness of early teaching interventions for autistic spectrum disorders”, 38, No. 6 (2008), p. 1092-103.

autist.<sup>26</sup> The inability of law enforcers to handle the situation may increase the risk of triggering aggressive behaviour. For example, in the USA, there was a case of causing hurt by an individual with autism who was explicitly diagnosed with Asperger syndrome. A 44-year-old male stabbed his neighbour's wrist with a screwdriver because he was stressed by the noise of her car and the barking of her dog. The noise was worsened by the sound of railway tracks located next to their housing area.<sup>27</sup>

In Wisconsin, USA, the approach for the method of arrest is also quite different from the other states and countries. Enforcers can carry weapons, such as a taser, aerosol sprayer and baton, for use in urgent situations when implementing Autism SOP. Thus, they researched and gave special training for enforcement officers to put the SOP into practice. It can be seen that indirectly; the SOPs of other countries are more or less the same in content and focus.

### Method of Detention

In terms of specific techniques or theory, SOPs of other countries do not state a particular method to be applied, except for Virginia, USA. The SOP in Virginia is slightly different; it involves the Miranda Warning technique in the investigation process. In the USA, Miranda Warning is a type of notification usually given by police to suspects in police custody (or in a custodial interrogation) to advise them of their right to be silent or refuse to answer questions or provide information to law enforcement or other officers. This right is frequently called Miranda rights to protect suspects from self-incrimination. If law enforcers refuse to offer the Miranda Right to a suspect in their custody, they may interrogate him, and act based on the information obtained. Still, they may not use his statements against him as evidence in a criminal trial.

In Virginia, USA, an enforcement officer cannot interrogate a suspect without the aid of a "support person" or the presence of a lawyer with him to ensure fair treatment of the autistic as the autistic is unable to understand matters happening to him; thus the aid of certain parties will be beneficial for the investigation process. Unlike other countries, in Hong Kong, the Autism SOP focuses on detention issues, namely, that individuals with autism cannot be imprisoned. Being alone and isolated in a gloomy atmosphere will adversely affect an autistic who is at risk of losing self-control out of fear. This situation

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<sup>26</sup> William J. Ray, "Abnormal Psychology," 3<sup>rd</sup> Edition, Thousand Oaks, CA: SAGE Publications, Inc. (2021).

<sup>27</sup> Ghaziuddin M. et. al., 1991."Violence in Asperger Syndrome, A Critique," *Journal of Autism and Developmental Disorders*, v21 n, September (1991), p. 349-354.

indirectly will cause him to be traumatised.<sup>28</sup> Thus, individuals with autism need to be given a particular room during the investigation.

In New Mexico, provoking interrogative statements is not allowed. Interrogation must be conducted calmly, and the questions must be in simple language that is easy to understand. Likewise, in Illinois, even asking easy questions will take a long time. The SOP allows more time to be utilised for the investigation process to make the autistic feel at ease and enable law enforcers to conduct the process effectively. Matters stated in SOPs of other countries are not significantly different from those in the Autism SOP of Malaysia. The emphasised elements are the same; for example, no handcuffs for individuals with autism, using simple language and specific questions, and no leading or tag questions.

In Malaysia, using "topic cards" as a visual aid during the investigation process also helps. Special education teachers and medical experts believe that visual aids help individuals with autism understand something more thoughtfully. Therefore, topic cards may help law enforcers give instructions to an autistic or convey early notification to ensure a smooth arrest and detention process.

### Intermediary Assistance

In Malaysia, the guidebook on autism or Malaysian Royal Police Autism SOP results from the synergy of the committee appointed to draft the guidelines. This committee later became one of the reference bodies to handle individuals with autism and was re-named "Friends of Autism" (*Rakan Autisme*). It comprises volunteers from non-governmental organizations (NGOs), the Ministry and autism centres operating in Malaysia. They are more skilled in handling individuals with autism due to direct involvement with managing them and the law.

Hence, the police can request the help of "*Rakan Autisme*" as an intermediary, especially in communicating with individuals with autism, so that the arrest and investigation process runs smoothly. The Autism SOP in Malaysia is thus more focused on the pre-trial process of arrest and detention, which is essential to obtain information from the autistic. The explanation for every level of the procedure is clear and easy to follow by police compared with the SOPs of other states, such as Illinois USA.<sup>29</sup>

Next, except for England and Wales, SOPs of other countries do not clearly explain the use of intermediaries by law enforcers. The autism community in England and Wales got their advocacy by introducing the Witness Intermediary

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<sup>28</sup> Ian Freckelton, "*Autism Spectrum Disorders and the Criminal Law. A Comprehensive Book on Autism Disorder*", [https://www.researchgate.net/publication/221916701\\_Autism\\_Spectrum\\_Disorders\\_and\\_the\\_Criminal\\_Law](https://www.researchgate.net/publication/221916701_Autism_Spectrum_Disorders_and_the_Criminal_Law), (2011).

<sup>29</sup> Zuliza Mohd Kusrin, et.al., "*Intervention of Individual with Autisme Concerning Sexual Behaviour*," *MANU* 31, No. 1 (2020), p. 121-137



Scheme in 2004.<sup>30</sup> They utilise "intermediaries" as a party to help the police. In the SOP enforced in England, the intermediary is named "Appropriate Adult" (AA). Intermediaries comprise trained and unbiased (not for any party or self-interest) registered professionals. Early assessment of the Witness Intermediary Scheme is positive and shows the help of intermediaries increases the quantity and quality of evidence given by witnesses during the investigation process.<sup>31</sup> Likewise, in New Mexico, they believe that the lack of understanding and ability of the police to communicate with individuals with autism puts the latter at risk of becoming victims of crime.<sup>32</sup>

The use of intermediaries to obtain justice is also welcomed as a model for other countries such as New South Wales, Australia,<sup>33</sup> European countries, Canada and New Zealand.<sup>34</sup> Intermediaries are also available for defendants in the form of "unregistered intermediaries", who also have the skills and expertise to help communicate with plaintiffs, such as questioning them. This is one of the efforts to help defendants effectively exercise their rights and obtain justice in trials.<sup>35</sup>

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<sup>30</sup> Katie L Maras, et.al., "A Brief report: Autism in the Courtroom: Experiences Professionals and the Autism Community," *Journal of Autism and Developmental Disorders* (2017).

<sup>31</sup> Joyce Plotnikoff and Richard Woolfson, "Intermediaries in the Criminal Justice System: Improving Communication for Vulnerable Witnesses and Defendants," Bristol University Press, Policy Press, (2015).

<sup>32</sup> S.J Modell and M. Davis, "A Law Enforcement Guide for Working with Children with Autism, Intellectual and Communication Disabilities," New Mexico Coalition of Sexual Assault Programs, Inc. (2016).

<sup>33</sup> Penny Cooper and Michelle Mattison, "Intermediaries, Vulnerable People and The Quality of Evidence: An International Comparison of Three Versions of the English intermediary model," *The International Journal of Evidence and Proof* 21, No. 4 (2016).

<sup>34</sup> Joyce Plotnikoff and Richard Woolfson, "*Intermediaries in the Criminal Justice System: Improving Communication for Vulnerable Witnesses and Defendants*", Bristol University Press, Policy Press, (2015).

<sup>35</sup> Clare S. Allelly and Penny Cooper, "Jurors' and Judges' Evaluation of Defendants with Autism and the Impact on Sentencing: A Systematic Preferred Reporting Items for Systematic Reviews and Meta-analyses (PRISMA) Review of Autism Spectrum Disorder in the Courtroom," *Journal of Law and Medicine*, 25/1, No. 1 (2017), p.105-123.

Handling Individual with autism Detainees by Religious Law Enforcers)  
(Research Code- FRGS/1/2019/SS06/UKM/02/4).

## **Conclusion**

Based on past cases recorded by previous research, the tendency of individuals with autism to break the law is high. There are similarities and differences in the elements of the existing Autism SOPs, such as target group, method of arrest, method of detention and intermediary assistance, that are suitable for each country. Hence, the element of focus must be necessary for generating an Autism SOP at the state level and can become the reference in further refinement of the existing SOP. Research implication shows that it is important for every state to have SOP of arrest and detention of autism in order to protect autism's rights, as a group that is vulnerable to commit crime unintentionally. In addition, due to the increasing number of people with autism, it is imperative for the research on autism be extended to the understanding of police officer or legal enforcer in identifying and dealing with them according to their legal rights.

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