

## New legislative framework for forensic medical examinations (“FME”)

1. FME comprise physical medical examinations, collection of body samples from any body part, taking of photographs, casts and impressions of body parts, which may include intimate parts.
2. Forensic evidence is critical for investigations – there are no substitutes for specific types of FME, which is time-sensitive as the forensic evidence may also be lost, degraded or contaminated over a short time.
3. Two examples where evidence obtained through FME contributed to bringing the perpetrator to justice are set out below:

### Rape of 27-year-old female by stranger (2016) – Penile swab on accused corroborating victim’s account

Accused broke into the victim’s house, assaulted and raped the victim, before making off with the victim’s mobile phone and other belongings. The Police traced and arrested the accused on the same day. **FME was conducted on the accused’s penis, and the victim’s DNA profile was established to be present on the accused’s penis.**

### Rape of 12-year-old female (2002) – Cold hit of unknown DNA sample leading to identification of accused

In 2002, a 23-year-old man raped a 12-year-old girl near her home in Singapore. **Swabs were taken from the victim’s intimate areas** and also at the crime scene, and an unknown DNA sample was found. The case was solved when the accused was arrested in 2014 for theft and a blood sample was taken from him and sent for DNA testing. The accused’s DNA profile matched the one taken from the victim’s body and at the crime scene.

4. We propose to set out a clear legislative framework on the conduct of FME, which will provide clarity and allow more effective criminal investigations.
5. The Police will be empowered to require accused persons to undergo FME where it is relevant to the investigation of an offence that is reasonably suspected to have been committed:
  - It will be an offence if an accused person required to undergo FME refuses to do so without reasonable excuse. The prescribed punishment will be imprisonment of up to 7 years, a fine, or both (this is the same as the penalty for obstruction of justice under s 204 of the Penal Code).
  - The Court may also draw negative inferences if FME is refused without reasonable excuse.

- Reasonably necessary force may be used for FME that do not involve intimate parts or invasive procedures (e.g. buccal swabs, hair samples). Force cannot be used for procedures involving intimate parts and invasive procedures.

6. The legislative framework also covers the conduct of FME on alleged victims. For alleged victims, informed consent will generally be required from the alleged victims and/or their authorised decision-maker (depending on the age of the alleged victim).

- **Exceptions:** FME may be carried out in exceptional cases where informed consent cannot be obtained within a reasonable time because of the alleged victim's physical or mental condition (e.g. alleged victim is in a comatose state).
  - The exception only applies if delay in carrying out the FME may result in the loss, degradation or contamination of evidence that is relevant to the investigation.
  - In practice, where the condition is temporary, Police will still try, as far as possible, to wait for the victim to recover and seek their consent to undergo FME.

7. Safeguards will be put in place. The proposed legislative safeguards for the conduct of FME include:

- The person conducting the FME must be satisfied that the FME will not endanger the subject, before proceeding.
- Only qualified medical professionals (i.e. doctors and nurses) can conduct physical medical examinations and invasive medical procedures (e.g. drawing of blood).
- Only Police officers holding at least the rank of Inspector can require FME involving intimate parts to be conducted.
- FME carried out by Police officers or forensic specialists must be carried out with reasonable privacy measures.
- Trained Police officers and forensic specialists will be authorised to take photographs of and perform surface swabs on body parts. Where these involve the intimate parts of a female subject, these must be conducted by a female officer/specialist.
- Measures will be put in place to minimise leakage and unauthorised sharing of materials obtained through the FME procedure.

## New sentences for public protection

1. Currently, there are two primary sentencing options to address repeat offenders who commit serious offences: Corrective Training<sup>1</sup> (“CT”) and Preventive Detention<sup>2</sup> (“PD”). A review of these two regimes is necessary:

- As rehabilitation programmes are increasingly available to all inmates, CT has become qualitatively similar to imprisonment.
- CT and PD are for a set duration and offenders whose offences did not justify life imprisonment at the outset. However, they may still pose a threat to the public and would still have to be released at the end of those sentences.

2. To better protect the public from dangerous offenders, we propose to:

- Repeal the CT regime and amend the PD regime – this will be renamed the **Sentence for Public Protection (“SPP”)**.
- Introduce a new sentencing regime for dangerous offenders with a substantial risk of re-offending – **Sentence for Enhanced Public Protection (“SEPP”)**. SEPP allows for the detention of serious offenders for as long as is needed for public safety, but not for life at the outset. This is to address egregious cases where the offenders may have a high risk of committing further serious violent or sexual offences after their release from prison.

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<sup>1</sup> The CT regime applies to offenders aged 18 years and above, whom the courts assess need corrective training for a substantial period, followed by supervision if released before the expiration of the sentence, in order for the offender to reform, and to prevent their further commission of crimes. The court will impose a term of between 5 years and 14 years; this term entails detention in prison as well as possible early release for supervision in the community.

<sup>2</sup> The PD regime applies to offenders aged 30 years and above, whom the courts assess need to be detained for a substantial period, followed by supervision if released before the expiration of the sentence, for the protection of the public. The court will impose a term of between 7 years and 20 years; this term entails detention in prison as well as possible early release for supervision in the community. Generally, the PD regime is reserved for more serious offenders, as compared to the CT regime.

	Sentence for Public Protection (SPP)	Sentence for Enhanced Public Protection (SEPP)
<p><b>Key features</b></p>	<p><b>Replaces existing sentences of CT/PD</b></p> <ul style="list-style-type: none"> <li>• Aimed at recalcitrant offenders.</li> <li>• Minimum age threshold of 21 years old at the time of the offence (lower than PD's current age threshold of 30 years old at the time of conviction and higher than CT's current age threshold of 18 years old at the time of conviction).</li> <li>• Sentence is for a <b>fixed term</b> of 5 to 20 years, as determined by the court.</li> </ul>	<p><b>New sentence aimed at extremely dangerous offenders</b></p> <ul style="list-style-type: none"> <li>• Aimed at dangerous offenders who have committed serious sexual or violent offences and pose a substantial risk of causing serious physical or sexual harm to others.</li> <li>• Applies to offenders who are at least 21 years of age at the time of the offence.</li> <li>• Sentence is for a <b>minimum term</b> of 5 to 20 years as determined by the court and may be <b>up to life</b>.</li> </ul>
<p><b>Release (no automatic remission)</b></p>	<p><b>Offender may be released on license by Minister for Home Affairs after serving 2/3 of the sentence, and must be released after serving the full term of the sentence</b></p>	<p><b>Offender may be released on license by Minister for Home Affairs after serving the minimum term:</b></p> <ul style="list-style-type: none"> <li>• If <u>not</u> suitable for release, the offender may continue to be detained up to life but will be regularly reviewed.</li> <li>• If suitable for release, the offender will be released on license and may be unconditionally discharged thereafter.</li> </ul>
<p><b>Safeguards</b></p>	<p>Imposed by the court after considering a pre-sentencing report by Prisons on the offender's suitability for SPP.</p>	<ul style="list-style-type: none"> <li>• Imposed by the court, generally after considering risk assessment reports by the Institute of Mental Health and other experts.</li> </ul>

	Sentence for Public Protection (SPP)	Sentence for Enhanced Public Protection (SEPP)
		<ul style="list-style-type: none"> <li>• Limited to serious offences. These include: <ul style="list-style-type: none"> <li>• <u>Serious violent offences</u> e.g. culpable homicide; causing death of a vulnerable victim; attempted murder or attempted culpable homicide; voluntarily causing grievous hurt by dangerous means;</li> <li>• <u>Serious sexual offences</u> e.g. aggravated outrage of modesty; rape; sexual assault by penetration; sexual penetration of minor; exploitative sexual penetration of a minor of or above 16 but below 18 years of age; and procurement of sexual activity with person with mental disability.</li> </ul> </li> </ul>

**Amendments on criminal disclosure**

1. Currently, the disclosure obligations in criminal cases are set out in statute and case law.
  - Statute: The CCD regime was introduced in 2010. It is set out in the CPC and applies to certain categories of cases. Where the CCD regime applies, the Prosecution and the Defence sequentially disclose and exchange information about their cases before trial.
  - Case law: The courts have also established:

- The Kadar disclosure obligations (“**KDO**”), which requires the Prosecution to disclose to the Defence unused material that tends to undermine the Prosecution’s case or strengthen the Defence’s case, and is likely to be:
  - (1) Admissible, and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused; or
  - (2) Inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to material that is likely to fall within (1).
- The additional disclosure obligation (“**ADO**”), which requires the Prosecution to disclose to the Defence all statements of material witnesses, i.e. persons who can be expected to confirm or contradict the accused’s defence in material respects, who are not called as Prosecution witnesses.

2. After conducting a comprehensive review of both sets of disclosure laws, we propose to place the common law disclosure obligations on a statutory footing either by:

- Broadly codifying various aspects of the KDO and ADO, to improve legal certainty; or
- Clarifying or modifying some aspects of the KDO and the ADO.

This will achieve greater clarity, certainty and coherence in our disclosure laws.

3. We will also fine-tune aspects of the CCD regime.

- The CCD regime has been in place for over a decade. It has worked well in promoting fair trials, creating more just outcomes and building more confidence in the system. The proposed amendments improve the operation of the regime.
- Among other things, we propose to make it compulsory for accused persons to participate in the CCD regime in both State Court and High Court cases where the regime applies. Currently, accused persons can opt out of the CCD process in State Court cases; in High Court cases, accused persons can elect not to file a Case for the Defence (containing information about the accused’s case) even after receiving the Case for the Prosecution (which contains information about the Prosecution’s case).
- There will also be changes to require greater disclosure by the Prosecution in High Court cases, which mirror the position for the State Courts’ CCD regime. Specifically, the amendments will:
  - Require the Prosecution to file a Summary of Facts as part of its Case for the Prosecution in the High Court.

- Allow the Court may order a discharge not amounting to an acquittal of the charge if the Prosecution fails to file a CFP.