

POLICE LOCK-UPS / DETAINEES

By Supt. Ku Chin Wah

INTRODUCTION

Police Lock-up is a place gazetted for the purpose of temporary detention of persons suspected to have committed an offence under the law. The procedure on how a person arrested is to be dealt with and that of detention for more than twenty –four hours is clearly spelt out under the Criminal Procedure Code (F.M.S. Cap 6). It is meant to be a place for the confinement of persons, remanded or sentenced to such terms of imprisonment not exceeding one month. (s.7 Prison Act 1995).

2. Every major police station has a lockup for the aforesaid purpose. The responsibility of administration and supervision of the lock-ups rests mainly on the Officer-in-Charge of Police District (OCPD).

3. This article looks into the laws governing the administration of Police Lock-ups and the related departmental administrative instructions thereof for the proper compliance of the regulations and effective management of the lock-ups. It also looks into the administrative standing orders on the escort of detainees. A brief account on the new system of prisons/detainees management in some developed countries is also included. In the concluding comment the writer made some suggestions thought relevant for the improvement of the present system.

LEGISLATIONS

Prison Act 1995 (Act 537)

4. With the enactment of the Prison Act 1995 (Act 537), the Prison Ordinance 1952 has since been repealed. However, by virtue of section 68 of the Act, all subsidiary legislation, regulations made under the Prison Ordinance 1952 shall continue to remain in force and to have effect until amended, repealed, rescinded, revoked or replaced by the Act.

4.1 Police lock-up

Section 7 (1) gives the power to the Minister¹, by notification in the *Gazette*, to appoint lock-ups at such police stations and court houses as places for confinement of persons, remanded or sentenced to such terms of imprisonment, not exceeding one month. [Previously under S. 8(1) Prison Ordinance 1952]. It is not an extension of a prison but a place for the short confinement persons remanded or sentenced². [Section 7(2)]

4.2 Regulations

Section 67 (1) states that *the Minister may publish in the Gazette such regulations as may be necessary or expedient for the good management and government of prisons, and for carrying out or achieving the objects and purposes of the Act. Amongst others, under sub-section 2(b): the inspection and management of lock-ups, and the officers to be in charge of the lock-ups, and for the employment, diet and discipline of persons confined in the lock-ups.*

4.3 Custody in Hospital

It is interesting to note that under section 39 of the Act it is expressly stated that: *if a prisoner shall escape during the time he is in a hospital, no prison officer shall be liable for the escape unless the prisoner has been specifically placed in the custody of the prison officer.* (Similarly worded under the repealed section 46 of the Prison Ordinance 1952)

Additionally, under section 41 of the Act, it allows the Officer-in-Charge, in the event of there being no prison officer available, place the prisoner into the charge of two or more fit and proper persons, one of whom shall be with the prisoner at all times who shall have the power and authority to prevent the prisoner from escaping and shall be

¹ The Minister under the Act is the minister in charge of prison. Section 2-Interpretation, Prison Act 1995

² Sec.7 (2): A lockup appointed under sub-section (1) shall not be deemed to be a prison for the purpose of this Act but shall be deemed to be a prison for the purposes of Chapter XXVII of the Criminal Procedure Code or of the Debtors Act 1957.

answerable for the safe custody of the prisoner. (Similarly worded under section 48, Prison Ordinance 1952)

Lock-up Rules 1953

5. The above regulation is made under section 8(3) of the Prison Ordinance 1952, which has since been repealed by the Prison Act 1995. However, by virtue of section 68 of the Act, this regulation shall continue to remain in force and to have effect until amended, repealed, and rescinded. Inspector-General of Police's Standing Order (IGSO) part A 120 has been issued on procedural compliance with the above regulation.

5.1 Interpretations

5.1.1 "Lockup" means a lockup appointed by the Minister for Home Affairs under sub-section (1) of section 8 of the Ordinance.

5.1.2 "Prisoner" means any person, whether convicted or not, who is confined or detained in a lockup.

5.1. General Charge and Administration of Lockups

Rule 3 – this has been adequately stated under IGSO A120³.

5.2 Notice of Facilities

Rule 14 – *notices setting forth facilities to which prisoners are entitled as regards communication with friends or legal advisers, the granting of bail and the provision of medical assistance shall be displayed at the entrance to each lockup. In all cases where it is necessary the contents shall be communicated to all prisoners in a language they understand.*

IGSO A120 para 5 states that the notices on the above in 4 languages is a store item (Pol.224). It should be displayed as required. It is the Deputy Officer-in-Charge's responsibility to inform the prisoner of his

³ Para 4- The OCPD is the "Officer-in-Charge" if the lock-up is situated in the District Headquarters and if it is situated in police stations the respective OCSs shall be the 'Deputy Officer-in Charge'.

right to a visit by a close relative within 24 hours or a friend within 48 hours.

5.3 Visits/ Letters

Rules 22, 23, and 24 deal with visits to prisoners by close relatives or friends, advocates; its duration, hours of visits, procedure etc. Rule 25 states that a prisoner shall be entitled to write a letter on admission and thereafter to write and receive one letter each week.

IGSO A120 para. 16 sets out the detail procedures in compliance with the above. In para. 16.3.7 it emphasized that *the fundamental principle to observe is that, as far as possible, everything should be done to meet the wishes of lawyers and the accused and that, if a visit is refused or delayed, it should be done only where this can be justified as necessary and reasonable in the interest of justice.*

5.3 Responsibilities of Officer-in-Charge

Rule 34 places responsibility to the Officer-in-Charge of Lock-ups for strict adherence of all written laws and rules relating to lock-ups, prisoners and staff and that discipline and cleanliness are maintained. It also requires the maintenance of a Journal on matters and occurrences of importance to be signed daily.

In this respect, para 30 of the IGSO A120 laid down the recording of entries in Station Diary and para 11, for the maintenance of prisoner's property (Pol. 56) and Lock-up Roster (Pol.84) by the Deputy Officer-in-Charge (OCS). The OCS is also responsible for the cleanliness of prisoners, and of the lock-ups, latrines and bathroom; washing of cloths and haircuts by prisoners. (Para 31)

Rule 35 requires the Officer-in –Charge or the Deputy Officer-in – Charge to inspect daily (at least once) all parts of each lockup. And, *shall see every prisoner confined therein at least once in every twenty-four hours and shall visit each lockup at an uncertain hour of the night at least once in every seven days.* In addition, *a police officer shall be*

detailed daily by the Officer-in-Charge to visit cells at least once each night to see that they are secure and to check the number of prisoner.

In this regard, IGSO A120 para 33 requires the OCPD or a Senior Police Officer detailed by him to inspect the District Headquarters lock-up daily. OCS shall inspect their lock-ups daily. In addition, lock-ups other than the District Headquarters will be inspected by the OCPD or by a Senior Police Officer at least once weekly.

IGSO A120 para 41 also mandates the OCPD of a Police District to issue Local Station Standing Orders in amplification of and for the interpretation as is necessary for the understanding of the Lockup Rules 1953 and IGSO A120.

5.4 Medical Officer's Visit to Lockups

Rule 38 states that *the Medical Officer shall visit each lockup whenever requested to do so by the Officer-in-Charge, and he shall enter in the Journal his comments on the state of the lockup and the prisoners confined therein.*

IGSO A120 para 32 requires the OCPD to request the Local Medical Officer of Health to inspect all *gazetted* lockups *once a week*. Para. 13 requires the OCPD to arrange for the Health Officer to certify the maximum number of prisoners to be confined in each cell. This number will be written on each cell or at a conspicuous place above the cell.

5.5. Conducts of Subordinate Police Officers

Rules 42 to 47 outline the conducts of the Rank & File discipline their responsibility for the safe custody of prisoners under their charge.

IGSO A120 devotes para 38 on the handling and security procedure on movement of prisoners. It also bans personnel on guard duty from carrying any money; taking unauthorized materials/items and weapon in to the cell. It calls for exercising of great care in posting lockup

sentries. Para 34 spoke in length the procedure, conduct and authority on the movement of prisoners.

5.6 Hospital Lockup

Para 42 of IGSO A120 states that where hospitals have lock-ups, the police formation concerned is to lay down Standing Orders.

IGSO A124- POLICE ESCORTS

6. This Standing Order deals with the escort of prisoner⁴ as well as treasury/explosive escort. A separate Standing Order under B106 deals with the escort and movement of security detainees with “detention order” appearing before Advisory Board.

6.1 Pre-Requisites for Escort

Para 2 of A124 outlines the pre-requisites for escort followed by further explanations in para 4,5 and 6 respectively.

6.2 Strength of Escort

Para 8 laid down the strength of escort for “Special Prisoner” and para 9, for “Ordinary Prisoners” and para 10 deals female prisoner on the strength and requirement of female escorts.

6.3 Minimum Strength

It is expressly stated in para 11 that minimum strength may be increased but will not be reduced without the express permission of the Chief Police Office.

6.4 Use of Handcuffs

Para 12 succinctly explains the proper use of handcuffs and para 14 spelt out the proper way of escort during a journey to prevent their weapons and handcuff keys being seized by the prisoner. Additionally,

⁴ Interpretation under the Lockup Rules 1953- “Prisoner” means any person, whether convicted or not, who is confined or detained in a lockup.

para 15-18 detailed the proper way of escort including procedure when prisoner wishes to go to the lavatory.

6.5 Operation Order

The express provision for operational orders by the OCPD in para 23 however, is only meant for the escorts for treasure exceeding RM 500,000.00, to be in the command of an officer of not less than an Inspector's rank. There is no specific mention of operational orders for the escort of prisoners. However, under B106 para 3, notification of a planned move of detainees would be made to Operation Branch, Bukit Aman at least 48 hours before the move.

MANAGEMENT OF PRISONS/ DETAINEES BY PRIVATE AGENCIES

7. In the United Kingdom, private security companies have been used for some time to escort prisoners/detainees to and from courts, and also to supervise the electronic monitoring of offenders. Similarly, private –sector involvement has emerged on a large scale, with the provision of detention services in a variety of guises in Australia, Canada, New Zealand and the USA. In the USA, the private sector has been involved in a whole range of activities at the 'hard end' of the detention sector. These include the design, construction, management and financing of prisons, the escorting of prisoners, the use of prison labour and the management of prisons and detention facilities. The private sector has also even offered to operate the entire prison system in the US State of Tennessee. (George & Button 2001)

8. Britain now has ten prisons run by private companies. Between them they house around six thousand offenders, or about eight percent of the prison population. The Wacknenut Corrections Corporation is one of the Custodial Groups, which now manages five British prisons and a Secure Training Centre for persistent young offenders. It also has contracts for prison escort and court custody services. (Gould. 6 September 2001).

COMMENT

9. Prisoners escaping from police lock-ups or on journey or whilst receiving treatment in hospitals has recently put PDRM in unwanted bad publicity. Whilst the problems of old, depilated lock-ups, overcrowding, and lack of manpower notwithstanding, it is often the human factor that leads to the failure of a system. The Lockup Rules 1953 and IGSO A120 and A124 provide very comprehensive guidelines and instructions for the proper administration and conduct of lockups and prisoners management. It is often the non-compliance and laxity that leads to such occurrences.

10. The suggestion for a Central Lock-up System may reduce the amount of uncoordinated movement of prisoners to and return from courts by police stations of each police district. In addition, there should be a special unit solely in-charge of prisoners escorting and guarding. The members of this unit may be recruited with lower entry qualification (like EPCs) or an entire different scheme of service conferred with the powers of a prison officer. It will free trained policemen to take on more sensitive and higher frontline operational duties such as crime prevention and detection of crime. High-risk prisoners however, would continue to be escorted by regular policemen/prison officers.

11. The design of new lock-ups should also take into considerations, the physical structure that is user-friendly but secure for the fulfillment of the Lockup Rules 1953 requirements such as, proper area for visitors, advocates, physical exercise, washing of cloths, haircuts and bath. (Note: under Rule 9, every prisoner *shall take a bath on admission and thereafter twice daily and* under Rule 9A, every prisoner, *except Sikh, shall on admission have his hair cut close.*)

12. Understandably, management of lock-ups and prisoners is not an easy task. The manpower needed for the daily escort of prisoners to the courts and return has put a strain on the more needed core policing duties by our police personnel. The strain can be made worst when one or two prisoners unexpectedly fall sick and admitted to hospital for treatment. Extra manpower has to be deployed for guard duty at the hospital.

13. It is probably with foresight that the Prison Ordinance 1952 and Prison Act 1995 both made provision excluding the liability of the prison officer when a prisoner escapes from hospital. In addition, it allows the Officer-in-Charge to delegate the power and authority to persons other than a prison officer to prevent the escape of prisoners from hospitals. Expanding further this concept of delegation of power and authority, perhaps it is time to make a study on the possibility of changing the mindset of conventional management of prisoners by the government. It is argued that the private developers can manage these operations more effectively than public sector, offsetting the higher financing costs and providing taxpayer with value for money. Of course, political will and public opinions have to be sought and laws, such as the Prison Act 1995, Police Act 1967, Private Agencies Act 1971 and some other relevant laws have to be amended to accommodate such change.

References

Criminal Procedure Code (F.M.S. Cap.6) (Amend: April 1996). Kuala Lumpur: MDC Publishers Printers Sdn. Bhd.

George, Bruce & Button, Mark (2001). Private Security, Volume 1 Chapter 7. Private Sector Detention Services. USA: Perpetuity Press.
[http:// www.securitymanagement.com/library/Button0601.html](http://www.securitymanagement.com/library/Button0601.html). Downloaded on 21 March 2002.

Gould, Peter. 6 September 2001. Criminal justice reshaped. BBC News.
<http://news.bbc.uk/hi/english/indepth/business/2001/ppp/newsid1529000/1529488>. Downloaded on 19 March 2002.

Handsard. 21 February 2000. Second Reading Speech by Minister for Home Affairs on Prison (Amendment) Bill 2000. United Kingdom: Government Stationary.

IGSO A 120 (Amend: 21 September 1990). Kuala Lumpur: Bukit Aman Police Headquarters

IGSO A124 (Amend.10 August 1992). Kuala Lumpur: Bukit Aman Police Headquarters

IGSO B 106 (Amend. 1October 1981). Kuala Lumpur: Bukit Aman Police Headquarters

Lockup Rules 1953. Prison Ordinances of Malaysia & Lock-up Rules (as at 5 July 1993). Kuala Lumpur: International Law Books Service

Private Agencies Act 1971. (Act 27). Laws of Malaysia-Private Agency Act 1971 (as at 29 April 1971). Kuala Lumpur: International Law Books Service

Prison Ordinance 1952. Prison Ordinances of Malaysia & Lock-up Rules (as at 5 July 1993). Kuala Lumpur: International Law Books Service

Prison Act 1995 (Act 537). Kuala Lumpur: His Majesty's Government Gazette.

Sabah Prisons Ordinance 1956 (No. 7 of 1956). Prison Ordinances of Malaysia & Lock-up Rules (as at 5 July 1993). Kuala Lumpur: International Law Books Service

Sarawak Prisons Ordinance 1956(Cap. 24) Prison Ordinances of Malaysia & Lock-up Rules (as at 5 July 1993). Kuala Lumpur: International Law Books Service