

Evidence (Amendment) Bill
proposed abolition of the corroboration rules in sexual offences

The proposed abolition

As stated in paragraph 1 of the Legislative Council Brief, the purpose of the Bill is to abrogate the corroboration rules in sexual offences. Paragraphs 2 and 3 of the Brief explained that the corroboration rules are manifested in two ways, the first is the common law practice which establishes that a warning is required to be given in certain categories of cases, and the second are the statutory provisions for the seven offences under the Crimes Ordinance, Cap. 200 in respect of which prosecution evidence must be corroborated.

2. The Department of Justice prepared an Information Paper on the proposed abolition to accompany a speech delivered by the Secretary for Justice in March 1999 (the "Paper") at a workshop organized by the Equal Opportunities Commission. A copy of the Paper was distributed to all LegCo Members in April 1999, and to NGOs in May 1999, prior to introduction of the Bill into LegCo in July 1999. A copy of the Information Paper is annexed (marked "A") for ease of reference. The Information Paper also set out the two ways in which the corroboration rules apply.

3. The statutory requirement and the common law practice are really two sides of the same coin. The statutory requirement provides that a person cannot be convicted unless the witness is corroborated. The common law practice requires that a warning of the danger of convicting on uncorroborated evidence be given where the witness is not corroborated. The corroboration required under the statutory provisions is often exactly the same kind of evidence the lack of which would automatically trigger the requirement for a warning where the common law practice applies.

4. Unless the statutory requirement for corroboration is abrogated at the same time as the common law requirement for a corroboration warning, the latter would be meaningless in the case of these particular sexual offences. The evidence from victims of different kinds of sexual offences would be treated differently. Depending on the kind of injury suffered or situation endured, the victim would be automatically classified as more or less credible. This is an even greater injustice and anomaly than the present situation.

5. The historical assumption common to both the common law practice and the statutory requirements is that the evidence of women and girls in sexual offence cases is prone to be fabricated for reasons such as jealousy or fantasy. This assumption is the focus of the present proposal for abrogation.

Community Responses to the abolition of the statutory provisions

6. The fact that the corroboration rules apply by way of common law practice and statutory provisions and both are sought to be abolished by the Bill is acknowledged in the submissions from the Hong Kong Human Rights Monitor, the Bar Association and the Association Concerning Sexual Violence Against Women (which represents 18 subgroups) and the Hong Kong Family Law Association (copy letter dated 30 November 1999 enclosed marked “B”).

Practice in other jurisdictions in relation to crimes that are similar to those provided for in the seven statutory provisions in the Crimes Ordinance

7. The Administration has been requested to indicate whether mandatory corroboration is required in other jurisdictions for crimes similar to those covered by the seven sections in the Crimes Ordinance. The following is a short outline of available information.

8. It should be noted that not all jurisdictions have all the seven offences and the language used in each jurisdiction may differ.

United Kingdom

9. The seven offences in the Crimes Ordinance are similar to the following, which were governed by the Sexual Offences Act 1956 of the United Kingdom-

Crimes Ordinance, Cap. 200 (HK)		Sexual Offences Act, 1956 (UK)	
s.119	Procuring a person by threats or intimidation to do an unlawful sexual act	s. 2	Procurement of a woman by threat
s. 120	Procuring a person by false pretences or false representations to do an unlawful sexual act	s. 3	Procurement of a woman by false pretences
s.121	Administering drugs to another person to obtain or facilitate an unlawful sexual act	s. 4	Administering drugs to obtain or facilitate intercourse
s. 131	Procuring a person to become a	s. 22	Causing prostitution of women

	prostitute		
s. 132	Procuring a girl under 21 to have unlawful sexual intercourse	s. 23	Procuration of a girl under 21
s. 130	Exercising control or direction over another person for purposes of unlawful sexual intercourse or prostitution		No exact equivalent in the UK Act.
s. 133	Procuring a woman who is a defective to have unlawful sexual intercourse	ss. 7,8, 9	Intercourse with an idiot or imbecile; intercourse with defective; procurement of defective. These sections do not require corroboration.

The requirements of corroboration set out in the Sexual Offences Act 1956 (which were closely related to the corroboration warning required for complainants in sexual offences) in relation to offences of procuring unlawful sexual intercourse and prostitution were repealed by section 33(1) of the Criminal Justice & Public Order Act 1994. The common law requirement for corroboration warning was repealed by section 32 of the 1994 Act.

Canada

10. In Canada, section 274 of the Criminal Code (a copy of which is provided marked "C") provides that, in relation to certain sexual offences, no corroboration was required for a conviction and, further, that the judge should not instruct the jury that it was unsafe to convict in the absence of corroboration. The offences are-

- incest;
- gross indecency;
- offence in relation to juvenile prostitution;
- sexual assault;
- sexual assault with a weapon;
- threats to a third party or causing bodily harm; and
- aggravated sexual assault.

New Zealand

11. The Crimes Act, 1961 of the New Zealand has the following provisions, which pertain to crimes similar to the seven in the Crimes Ordinance of Hong Kong-

Section 138	Sexual intercourse with idiot or imbecile woman or girl
Section 136	Conspiracy to induce sexual intercourse

Section 135	Indecent assault on woman or girl
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12. Section 3 of the Evidence Amendment Act (No. 2) 1985 provided that where any person is tried for, inter alia, the said offences, or for any other offence against the person of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted, and in any such case the Judge shall not be required to give any warning to the jury relating to the absence of corroboration.

13. Copies of respectively the extract from the Crimes Act 1961 and the Evidence Amendment (No. 2) Act 1985 are enclosed marked "D".

Australia

14. Copies of the following provisions are enclosed marked "E"

(a) South Australia

Section 34I(5) of the Evidence Act 1929 provides that in proceedings in which a person is charged with a sexual offence, the judge is not required by any rule or law or practice to warn the jury that it is unsafe to convict the accused on the uncorroborated evidence of the alleged victim of the offence.

(b) New South Wales

Section 164 of the Evidence Act 1995 abolished corroboration requirements and provided that despite any rule, whether of law or practice to the contrary, a judge does not have to warn the jury of the danger of convicting on uncorroborated evidence.

(c) Australian Capital Territory

Section 76F of the Evidence Act 1971 provides that any rule of law or practice requiring the corroboration of evidence or requiring the judge to give a warning to the jury in criminal proceedings to the effect that it is unsafe to convict a person on uncorroborated evidence is abolished in so far as the rule applies to or in relation to evidence given by the complainant in the trial of a person for a prescribed sexual offence.

(d) Victoria

Sections 47, 48, 49, 51, 53, 57, and 60A of the Crimes Act provide for crimes of similar nature to the seven offences in the Crimes Ordinance.

Section 61 of the Crimes Act provides that no corroboration is required for these crimes.

- (e) Northern Territory
Sections 128, 129, 130, 188(2)(k) and 192 of the Criminal Code Act are similar to the seven sections in the Crimes Ordinance. Section 4 of the Sexual Offences (Evidence and Procedure) Act pertains to corroboration requirement.
- (f) Western Australia
Section 50 of the Evidence Act 1906 pertains to corroboration requirement.

It can be seen from the above that there is either no corroboration requirement, or such is specifically abrogated. No distinction has been made between requirement for corroboration and the corroboration warning.

Methodology of the proposed amendments

15. The historical assumption of an inherent lack of credibility of the evidence of women and girls in sexual offences cases which led to the evolution of the corroboration rules under the common law is now widely regarded as discredited and without any scientific basis. It has therefore been decided that the common law practice should be abrogated, and that the statutory provisions, which are based on the same discredited assumption, be abolished consequentially. Assessments of credibility should be made not by assumption but by a full evaluation of the merits of the case.

16. The effect of abolishing the statutory requirements as independent items or as consequential items is the same.

17. Please also find enclosed marked "F" statistics on the number of cases charged under the 7 sections in question for the period between 1 January 1997 and 17 May 2000.

Department of Justice
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