



Response to the Public Consultation on  
The Proposed Law Reform of Sexual Offences Involving Children  
AND Persons with Mental Impairment  
Submitted by  
Division of Clinical Psychology, the Hong Kong Psychological Society Ltd.  
February, 2017

In response to the invitation of the Law Reform Commission of Hong Kong for public views on the proposed law reform of sexual offences involving children and persons with mental impairment (November, 2016), Division of Clinical Psychology, Hong Kong Psychological Society Ltd. would like to submit the following view.

Background of this Submission

1. Division of Clinical Psychology, the Hong Kong Psychological Society (“DCP”) (<http://www.dcp.hkps.org.hk>) was founded in 1982. It is the largest professional body representing more than 490 practicing Clinical Psychologists (as at February 2017) in Hong Kong. While there is a growing number of our members practicing in the private or non-governmental sector such as private hospitals/clinics and not-for-profit organizations, most of us are providing psychological assessment and intervention under different Government departments, public hospitals, and the public-funded universities.

2. Victims and perpetrators of sexual offences, whether they are adults or children, are the two populations with whom we frequently work in our day-to-day clinical practice. We foresee that the recommendations in this Consultation Paper would have tremendous impact on the psychological well-being of our service recipients as well as our clinical works. Therefore, we submit our views on account of our deep concern for them.

Our Responses to Some of the Recommendations

Recommendation 1 and Recommendation 2

3. DCP issued a position paper for psychologists working with lesbians, gays, and bisexual individuals in August, 2012 (retrieved from <https://goo.gl/Edz4oE>). This is our position that we advocate for an inclusive society and the promotion of equal opportunity for people. Therefore, we agree to recommendations 1 and 2. They unify the age of consent under which the people are placed under the protection of the laws irrespective of their sexual orientation and gender.

Recommendation 3

4. There is no research to support the notion that the psychological harm caused by the sexual offences to the older children would be of lesser degree than that to the



## DIVISION OF CLINICAL PSYCHOLOGY

The Hong Kong Psychological Society Ltd.

香港心理學會 臨床心理學組

<http://www.dcp.hkps.org.hk>

younger children. However, the grouping of offences according to the age of victim may disseminate a message to the public that the sexual perpetrators against older children would receive a lesser sentence. We opine that there is no need to group the offences in accordance with the age of victim.

### Recommendation 5

5. Generally speaking, we agree to Recommendation 5 that there is no need to create the separate sets of offences for adult and child offenders. Sex offender is one of the major clinical populations that our Clinical Psychologists have been working with in their settings. Indeed, a lot of researches have shown that the psychological treatment programs offered in correctional institution and community are effective in reducing the recidivism of sex offenders (e.g. Olver, Stockdale & Wormith, 2011). We think that the Law Reform Commission of Hong Kong should take a step ahead to explore the possibility of making the psychological treatment mandatory for the sex offenders upon recommendation by Clinical Psychologist in the next review of the laws of sexual offences.

### Recommendation 6

6. We opine that sexual offences, both penetrative and non-penetrative sexual activity, involving children between 13 and 16 years, same to children below 13 years, should be of absolute liability regarding the age of the victim.

7. Even though there are special arrangements for the child victims or the mentally incapacitated people ("MIP") to give police statement and testify in court, this is our clinical experience that many of them could not bear the legal procedure, which could actually cause secondary traumatization to them. Existing body of research suggested that testifying at court was not a positive experience for most children (e.g., Bottoms et al., 2009; Goodman et al., 1992; Quas et al., 2005). Child victims' negative feelings about the experience of testifying are related to lack of understanding of the court procedure (Quas, Cooper, & Wanfrey, 2009) and having to describe the sexual offence (Quas et al., 2005). It has also been found that child victims who testified showed less improvement in sign of emotional disturbance than those who did not testify in long-term follow-up despite indifference between these two groups at case disposition (Goodman et al., 1992). Moreover, report from carers of child victims, who involved in the criminal justice system, suggested that the behavioural adjustment of children who testified were more negatively affected than those who did not (Goodman et al., 1992). Some modifications, such as having a child to testify via closed circuit television (CCTV) and using a videotape of child's account, are involved in criminal proceedings in recent decades. Some research demonstrates the beneficial effect of these modifications on the accuracy of the testimony given by child victims when compared to testifying at court (e.g., Goodman et al., 1998; Saywitz & Camparo, 2013). Moreover, children who testify via CCTV were less anxious when compared with those who testify at courtroom (Goodman et al., 1992). However, studies suggested that having to testify about childhood sexual abuse was associated with



## DIVISION OF CLINICAL PSYCHOLOGY

The Hong Kong Psychological Society Ltd.

香港心理學會 臨床心理學組

<http://www.dcp.hkps.org.hk>

negative impact on mental health in long term even with these modifications (Quas et al., 2005; Whitcomb, 1992). Based on the above research review and clinical experience, we favour absolute liability so that child victims and MIP could be protected from testifying in criminal justice procedure. If testifying is inevitable, we highly recommend the court to allow a parent or other trusted adults to accompany the child victims while they testify as the presence of trusted adults during the procedure of testifying was associated with children's ability to answer more questions and less fearful feeling reported by them (Goodman et al., 1992).

8. Research has consistently shown that sexual victimization have negative and long-lasting impacts on children and adolescents and those victims are significantly at risk of a wide range of medical, psychological, behavioural, and sexual disorders (For review, see Maniglio, 2009; Putnam, 2003). Among female victims, rape (versus molestation), knowing the perpetrator (versus strangers), and chronic sexual abuse (versus isolated incidents) were associated with higher rates of some psychiatric disorders like depression and posttraumatic stress disorder (PTSD) (Molnar et al., 2001). Although rape and chronic sexual abuse are associated with higher rates of certain psychiatric disorders compared with non-penetrative acts and isolated incidents, , non-penetrative sexual acts and isolated incidents are also associated with various mood disorders and other long-term negative consequences (Humphrey & White, 2000; Gidycz & Koss, 1989; Molnar et al., 2001). In short, both penetrative and non-penetrative sexual offences could cause psychological harm to the victims equally. Therefore, there should be no distinction between penetrative and non-penetrative sexual offences regarding the absolute liability of the victim's age.

### Recommendation 8

9. We agree to Recommendation 8. We hope it could be made a part of the guidelines for the prosecution, as mentioned in paragraph 6.18 of the Consultation Paper, that the prosecution may consult Clinical Psychologists on the psychological issues of persons between 13 and 16 who have consensual sexual activity when exercising the prosecutorial discretion. We believe the expertise of our profession in the psychology of both victim and offender could be of assistance for the prosecution.

### Recommendations 9 to 22

10. We agree to Recommendation 9 to 22. We hope these recommendations to be adopted and implemented as soon as possible. We observe that the current laws fail to reflect the seriousness of certain forms of sexual abuse, for example, penetration of a child, or protect the children from the potential risk of sexual abuse, for instance, sexual grooming.

### Recommendations 23 to 35

11. We agree to Recommendations 23 to 35. They create a range of new offences to protect persons with mental impairment ("PMI") from sexual exploitation by



## DIVISION OF CLINICAL PSYCHOLOGY

The Hong Kong Psychological Society Ltd.

香港心理學會 臨床心理學組

<http://www.dcp.hkps.org.hk>

perpetrators or people who could exercise control over PMI by their position and/or relationship with PMI.

12. We concur that the second limb of the definition of a Mentally Incapacitated Person (“MIP”) in section 117(1) of the Crimes Ordinance (Cap. 200), as mentioned in paragraph 11.37 of the Consultation Paper, should be removed. We support that all persons with mental disorder and/or mental handicap within the definitions given by section 2(1) of Mental Health Ordinance (Cap. 136) could be placed under the protection of the proposed new offences against sexual offence.

13. All DCP members have received extensive clinical training in diagnosis, assessment, and treatment of psychiatric and psychological disorders. In particular to the diagnosis of mental handicap, which involves the measurement of intellectual functioning, only Clinical Psychologists and Educational Psychologists, who are either full members or eligible for full memberships of Division of Clinical Psychology or Division of Educational Psychology of the Hong Kong Psychological Society Ltd., are qualified and entitled to administer the Wechsler Intelligence Scale for Children – Fourth Edition (Hong Kong) and Wechsler Adult Intelligence Scale – Fourth Edition (Hong Kong). However, there is no provision in current Mental Health Ordinance (Cap. 136) or the Crimes Ordinance (Cap. 200) to formally accept the diagnoses of mental disorder or mental handicap given by qualified Clinical Psychologists in Hong Kong. We hope that the Law Reform Commission could look into this issue.

### Recommendation 36

14. We expect that the draftsman would consult the mental health professions when deciding a new term to describe the person with mental impairment in the new legislations. We hope that the new term would not be a stigma attached to people with special mental needs.

### Recommendation 40

15. We opine that there is no need to have legislation for the protection of young persons aged between 16 and 18. They should be given trust and freedom by our community as used to be to choose whether to participate in consensual sexual activity.

### Conclusion

16. Overall speaking, we welcome the recommendations in this Consultation Paper to expand the coverage of the laws of sexual offences against children below the age of 16 and people with mental impairment. But equally, we are concerned about how to prevent the sexual offences. In terms of the preventive measures, we appreciate the implementation of sex offender register which could in a way reduce the risk of sexual exploitation in certain settings. We hope that the Law Reform Commissioner



## DIVISION OF CLINICAL PSYCHOLOGY

The Hong Kong Psychological Society Ltd.

香港心理學會 臨床心理學組

<http://www.dcp.hkps.org.hk>

could continue to study and explore how legislations could possibly contribute to the prevention of sexual offences in further and/or facilitate the treatment work for the sex offenders.

17. We are willing to offer our assistance and provide more information on the opinions in this paper if required.

### Reference

- American Psychiatric Association. (2013). Diagnostic and statistical manual of mental disorders (5th ed.). Washington, DC: Author.
- Bottoms, B., Najdowski, C., & Goodman, G. (2009). Children as victims, witnesses, & Offenders. New York: The Guilford Press.
- Easton, S. D., Coohey, C., O'leary, P., Zhang, Y., & Hua, L. (2011). The effect of childhood sexual abuse on psychosexual functioning during adulthood. *Journal of Family Violence*, 26(1), 41-50. doi: 10.1007/s10896-010-9340-6
- Gidycz, C. A., & Koss, M. P. (1989). The impact of adolescent sexual victimization: Standardized measures of anxiety, depression, and behavioral deviancy. *Violence and Victims*, 4(2), 139-149.
- Goodman, G., Taub, E, Jones, D, England, P, Port, et al. (1992). Testifying in criminal court: Emotional effects of criminal court testimony on child sexual assault victims. *Monographs of the Society for Research on Child Development*, 57(5), 1-159.
- Goodman, G., Tobey, A., Batterman-Faunce, J., Orcutt, H., Thomas, S., Shapiro, C., & Sachsenmaier, T. (1998). Face-to-face confrontation: Effects of closed-circuit technology on children's eyewitness testimony and jurors' decisions. *Law and Human Behavior*, 22, 165-203.
- Hanson, R. K. (1990). The psychological impact of sexual assault on women and children: A review. *Annals of sex research*, 3, 187-232.
- Humphrey, J. A., & White, J. W. (2000). Women's vulnerability to sexual assault from adolescence to young adulthood. *Journal of Adolescent Health*, 27(6), 419-424.
- Maniglio, R. (2009). The impact of child sexual abuse on health: A systematic review of reviews. *Clinical psychology review*, 29(7), 647-657.
- Molnar, B. E., Buka, S. L., & Kessler, R. C. (2001). Child sexual abuse and Subsequent psychopathology: results from the National Comorbidity Survey.



American journal of public health, 91(5), 753.

- Olver, M. E., Stockdale, K. C., & Wormith, J. S. (2011). A meta-analysis of predictors of offender treatment attrition and its relationship to recidivism. *Journal of Consulting and Clinical Psychology*, 79(1), 6-21.
- Putnam, F. W. (2003). Ten-year research update review: Child sexual abuse. *Journal of the American Academy of Child & Adolescent Psychiatry*, 42(3), 269-278.
- Quas, J., Goodman, G., Ghetti, S., Alexander, K., Edelstein, R., Redlich, A., Cordon, I., & Jones, D.P.H. (2005). Childhood sexual assault victims: Long-term outcomes after testifying in criminal court. *Monographs of the Society for Research in Child Development*, 70 (2), 1-128.
- Quas, J., Cooper, A., & Wandrey, L. (2009). Chapter 8 Child witnesses in dependency court. In B. Bottoms, C. Najdowski, & G. Goodman, (pp. 128-149). *Children as victims, witnesses, & Offenders*. New York: The Guilford Press.
- Saywitz, K.J., & Camparo, L.B. (2013). *Evidence-based Child Forensic Interviewing: The Developmental Narrative Elaboration Interview (Programs The Work)*. U.S.A.: Oxford University Press.
- Whitcomb, D. (1992). *When the Victim is a Child*. (2nd ed.). Washington, D.C.: U.S. Department of Justice. National Institute of Justice.
- World Health Organisation.(1992).*International Statistical Classification of Diseases and Related Health Problems, 10th Revision (ICD-10)*. Geneva: WHO.