

Submission by Civic Party on (English version only)
the Law Reform Commission's Consultation Paper on Sexual
Offences involving Children and Persons with Mental Impairment

Introduction

1. Civic Party (“CP”) refers to the Consultation Paper published by the Review of Sexual Offences Sub-committee of the Law Reform Commission of Hong Kong (the “LRC”) on Sexual Offences involving Children and Persons with Mental Impairment. CP agrees with the general direction of the Law Reform Commission (the “LRC”) to amend the Crime Ordinance (Cap.200) to better protect children and persons with mental impairment from sexual exploitation.
2. CP is also aware of the current law being outdated, overlapping and discriminatory in many areas and therefore supports the LRC’s positions that a more comprehensive legislative regime should be implemented. This is especially compelling in light of the recent incidents involving victims of sexual offences who are mentally incapacitated, such as the incident of the “Bridge of Rehabilitation” Residential Home (康橋之家事件)” in late 2016. CP has no major comments on the LRC’s recommendations except for the following:

Recommendation 8: Consensual sexual activity between persons who are between 13 and 16 be criminalized but with prosecutorial discretion to bring a charge in appropriate cases

3. CP agrees with the current proposed to reject an express “close-age” exemption or defence as this will lessen the protection afforded to young persons. The accused or the victim having similar age or that they are in “puppy love” do not naturally mean that the sexual activities are conducted on completely voluntary or consensual basis.
4. CP however, agrees that the “close age” between the accused and

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地址：香港北角屈臣道4-6號海景大廈B座2樓202室

Address : Unit 202, 2/F, Block B, Sea View Estate, 4-6 Watson Road, North Point, Hong Kong

電話 Tel : 2865 7111 傳真 Fax : 2865 2771 電郵 Email : contact@civicparty.hk

victim should be included as a factor in the guidelines for the prosecution to take into account in considering whether to bring about prosecution.

Recommendation 6: Whether absolute liability should apply to offences involving children between 13 and 16 years be considered by the Hong Kong community

5. CP acknowledges that the proposed legal reform aims to provide more protection to young persons in sexual offences cases but it is of the view that imposing an absolute liability on sexual offences involving children between the age of 13 to 16 will be draconian.
6. An absolute liability without the defence of “reasonable belief that the child was not under-age” may also put an accused’s constitutional rights at stake, even though the laws in relation to the defence of mistake is complex.
7. CP suggests that considerations should be given to the Canadian approach where the defence of honest and reasonable mistake is available only available when the accused has taken reasonable and sufficient steps in all the circumstances to ascertain the victim’s age in sexual offences involving young persons between the age of 13 and 16. This may provide a good balance in protecting children and ensuring the constitutional rights of an accused not being infringed.

Recommendation 40: Whether there should be legislation for the protection of young persons aged 16 or above but under 18 be considered by the Hong Kong community

8. CP acknowledges that young persons may be more susceptible to abuse and exploitation by persons in positions of trust but it is also aware that persons above 16 should be sufficiently mature to make rational choices or seek help.

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9. CP therefore suggests that research should be conducted to assess whether cases where a person in a position a trust exploits a child between the ages of 16 to 18 years old are prevalent in Hong Kong. This could shed light on whether there is a need to introduce such an offence to Hong Kong.

Conclusion

10. CP welcomes the recommendations suggested by the LRC and wishes to see the relevant legislative proposals be introduced to the Legislative Council in a timely manner.

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The Civic Party

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