**CITIZENS AND Criminal Justice**

**Lecture No. 6: (Part 2). Dealing with Sex Offences and Sex Offenders**

**1.1 Introduction**

Communities are rightly concerned about preventing the spread of sex crimes, especially those committed against vulnerable groups like young children. These concerns have increased in the last three decades as many crimes against children have come to light in many different countries. In these notes, we will examine the extent of such crimes, their effect and certain measures which have been taken in Hong Kong, the USA and England and Wales (which we will consider to a slightly lesser extent, as some of the laws governing this area are rather complex) to deal with this problem.

**1.2 Extent of the problem**

It is not easy to detect the extent of the problem of sexual abuse, especially in relation to young children, as much of it may be hidden.

Some figures are illustrative of the nature of the extent of the problem. They show it is significant, but seemingly less prevalent, in Hong Kong than other western countries:

* In Hong Kong, somewhere between about 0.5% and 6% have been reported as victims of child sexual abuse (using a figure of 16 and under).
* In western countries, rates have been estimated at between 15%-30%.

Interestingly, though, the number of reports of sexual offences against children rose 61.5% from 2004 to 2011 in Hong Kong, while reports of sexual abuse in the US dropped 52% from 1990 to 2005.[[1]](#footnote-1) Most recently, in Hong Kong, in 2019 (the most recently reported full year for reports of sexual abuse of children), there were 305 cases of reported sexual abuse of children, up from 234 in 2005.[[2]](#footnote-2)

**1.3 Recidivism**

While sexual offences against children are an especially terrible crime, it should be borne in mind that, statistically, the rate of recidivism (the rate of reoffending), is very low compared to other crimes. In Hong Kong, one study showed that the rate of recidivism amongst a cohort of 278 non-violent male offenders who were released from jail was 21%, 68% and 87% respectively, after 1, 2-and-3 years post release.[[3]](#footnote-3) This can be contrasted with rates for reoffending for child sexual offences in Hong Kong which have been estimated at 6% over a 3-year period.[[4]](#footnote-4)

A USA study, published in 2012, measured the rate of recidivism for sexual offenders registered under the Adam Walsh Act. This legislation was enacted to promote uniformity in reporting and registration for sexual offenders across the USA. It found that approximately between 5% and 10% of these offenders were convicted of a further sexual offence between 5 years and 10 years after release respectively. Interestingly, the study found that there was little difference across a range of studies in the recidivism rate of those subject to monitoring and those who were not. A key factor in recidivism for sexual offenders was age; the older the sex offender, the less likely the chances of reoffending.[[5]](#footnote-5) By way of comparison, in California, the rate of recidivism for non-violent drug offenders has been measured at 62% over a three-year period.[[6]](#footnote-6) In another study, the reconviction rate for those convicted of an offence requiring sexual registration was 61% over a three-year period. However, only 1.8% of that number were convicted of another sexual offence and 88% were convicted of parole violations.[[7]](#footnote-7)

In England and Wales, in one study, the reconviction rate for child sexual abusers for another sexual conviction within a three-year period varied between 3.2% and 10.6% depending on whether or not they received counselling under a probation service programme.[[8]](#footnote-8)

**1.4 Impact of sex crimes**

It is generally accepted in scientific and medical circles that childhood sexual abuse will have a serious detrimental effect on the development of children and elements of their functioning in later life.

Beyond just the momentary horror, significant long-term negative effects include:

* An increase in the chances of developing post-traumatic stress disorder. This can lead to problems with verbal memory impairment, depression, alcohol and drug abuse.[[9]](#footnote-9)
* A tendency to act in an angrier and overly emotional manner.[[10]](#footnote-10)
* Substance abuse problems caused by this abuse, which may then lead to physical problems.[[11]](#footnote-11)
* An increase in physical problems independent of drug abuse such as migraine headaches, chronic fatigue syndrome and asthma.[[12]](#footnote-12)
* It may also lead to intergenerational abuse by former victims of their children or a propensity for re-victimisation, especially amongst females.[[13]](#footnote-13)

Depending on the circumstances, the effect of rape on adult victims does not always reach the catastrophic level experienced by children. Nevertheless, the types of common problems suffered are not dissimilar to those suffered by children.[[14]](#footnote-14)

**1.5 Conventional means of dealing with sex offenders in Hong Kong. How effective is this?**

In Hong Kong, sex offenders are dealt with by the criminal justice system through the traditional method of sentencing, and where relevant, the provision of psychological treatment both during their stay in prison and after their release.

Provision does exist for the making of hospital orders in respect of mentally disordered persons under the Mental Health Ordinance (Cap. 136) (“MHO”).[[15]](#footnote-15) Usually, such orders are made in respect of persons suffering from psychotic type illnesses. Although the definition of mental disorder[[16]](#footnote-16) could potentially cover persons who are sex offenders, it is extremely rarely, if ever, used to detain such persons.[[17]](#footnote-17)

In Hong Kong, sex offences are covered under the Crimes Ordinance (Cap. 200) (“CO”). Perhaps, the most relevant provisions which arise in respect of sexual violation of children are set out below. Arguably, the most serious of sexual offences is rape. Rape requires non-consensual sexual intercourse: s.118(3) ofCO. It carries a maximum sentence of life imprisonment.[[18]](#footnote-18)

Secondly, indecent assault carries a maximum sentence of 10 years imprisonment: s.122(1) of CO. It is not possible for a person under the age of 16 to consent to any act falling under the section.[[19]](#footnote-19) The definition does not specifically state what indecent assault comprises, but it essentially involves non-consensual sexual assault under circumstances that are considered as indecent but not sufficiently proximate to constitute an attempted rape. Common examples appearing in judgments include touching.

Some other offences which are specific to under-age victims and carry a maximum life sentence include:[[20]](#footnote-20)

1. Buggery with a girl under 21: s.118D of CO
2. Intercourse with a girl under 13: s.123 of CO.

In Hong Kong, there were 79 cases of reported rape in 2021, up from 64 in 2020.[[21]](#footnote-21) There were 1108 indecent assaults in Hong Kong in 2021, up from 682 in 2020.[[22]](#footnote-22)

There is no tariff for rape and even establishing a sentencing range will not always be possible if there are substantial aggravating circumstances.[[23]](#footnote-23) However, normally a rape charge will result in a determinate sentence. The starting point for a sentence for rape without aggravating circumstances is 5 years, although the court is not bound by this and can impose a higher sentence here.[[24]](#footnote-24) The upper range for determinate sentences appears to be around 24 years: *HKSAR* v *Cheung Lai Man*.[[25]](#footnote-25) The conventional principles to be considered in the most serious of cases of rape are retribution, denunciation and deterrence. In such cases, rehabilitation will be of lesser significance.[[26]](#footnote-26)

As noted in *HKSAR* v *Chan Li Fat*,[[27]](#footnote-27) Deputy High Court Judge Mackintosh, applying “the Hodgson criteria”, stated that an indeterminate sentence of life imprisonment will only be handed down in the following circumstances:

“(1) The offences are grave enough in themselves to require a very long sentence.

(2) That it appears from the nature of the offences and/or the history that he is a person of unstable character who is likely to commit the offences again.

1. That if the offences were committed again the consequences might be especially injurious as in the case of sex crimes or crimes of violence.”

In this case, the offender had broken into two apartments and raped and robbed two victims while threatening them with a knife. On both occasions the accused failed to wear a condom. He had a record of prior convictions for similar offences stretching back over approximately 30 years. A common feature of his crimes was that they were committed shortly after being released from prison after serving long sentences. The defendant received a sentence of life imprisonment for these offences, although he was eligible for release after serving a minimum term of 18 years.

The purpose of an indeterminate sentence of life imprisonment is to protect the public.[[28]](#footnote-28) Quoting Hon Yeung JA in *HKSAR* v *Cheung Lai Man*,[[29]](#footnote-29) “An indeterminate sentence may well be appropriate for a less serious offence if there is evidence that the defendant represents a serious danger to the public and that his condition is not treatable and is likely to persist for a long time.”

The maximum penalty for indecent assault was increased from 5 to 10 years in July 1991 and conviction for such offences will often result in a custodial sentence.[[30]](#footnote-30) However, in cases of lesser degrees of gravity involving adult victims, a sentence, other than a custodial one, may be handed down. Sentencing options have included community service orders[[31]](#footnote-31) and probation.[[32]](#footnote-32)

Indecent assaults are often carried out by adults acting in a supervisory capacity over children which constitutes an aggravating factor. A more modern adaption of indecent assault offences occurs through contact with young victims through inter-net chat rooms. The victims are often paid for their services. An aggravating aspect in some of these types of cases has been the taking of pornographic images of the victims. This can also lead to additional charges of child pornography: *HKSAR* v *Lee Tak Fai*.[[33]](#footnote-33) In this sense, the offenders are perhaps those that the public are most desirous of being recorded in a sex offenders’ register of some type or another.

In *Secretary of Justice* v *Huang Long Wei*,[[34]](#footnote-34)it was held that there are 3 main factorsinvolved in setting the length of a sentence for a perpetrator of a sexual assault:

1. To act a general deterrent.
2. To serve as a means of “general abhorrence” by the public of this type of act.
3. To serve as a grievance for the victim and other closely affected persons such as friends or relatives.

Other important factors to be considered are that:

1. Even in the absence of a victim impact statement the possibility cannot be discounted that the victim has suffered major psychological trauma as a result of the violation.
2. These types of offences may not always be disclosed because of a natural unwillingness for younger victims to come forward to report such incidents.
3. The protection of children is the most important principle to be borne in mind by sentencing courts.

Because of the varied nature of indecent assault cases (and with the exception of indecent assault cases on public transport),[[35]](#footnote-35) there is no tariff which attaches to them: *HKSAR* v *Ian Peter Nash* (involving a sexual assault of boys who were minors).[[36]](#footnote-36)

As to lengthening a person’s sentence because of a prior criminal record, this often presents a quandary for the sentencing judge as it can tend to punish the offender twice for the same crime and does not fit well with the notion of Desert Theory and proportionality.[[37]](#footnote-37)

In the case of *HKSAR* v *Chan Kwing Tung*,[[38]](#footnote-38) the defendant was found guilty of indecent assault on two girls, aged 8 and 9, including direct touching of the victims’ genitalia. It was found that the offender’s perceived high risk of offending, along with the breach of trust, were aggravating factors which raised the length of the sentence from 18 months to 3 years.

**1.6 USA**

In the United States, a number of states have significantly increased sentences for repeat sexual offenders (in relation to determinate sentences). Examples include Missouri with minimum sentences of no less than 15 years. In Iowa, those who are convicted of having committed “sexually predatory offences”, and who have a record for the same type of conviction, must serve twice the length of time in prison as compared to those who do not have this type of conviction.[[39]](#footnote-39)

**1.8 Psychological treatment for sexual offences**

**1.8.1 Introduction**

The use of psychological treatment for sexual offences appears to be a valuable tool in reducing reoffending.A wide-ranging study has found that reconviction rates for sexual reoffending for those who had psychological treatment, as opposed to those who have not had such treatment, was, respectively, 9%, as opposed to 12.4%.[[40]](#footnote-40)

**1.8.2 Hong Kong**

The most effective method for reducing recidivism amongst sex offenders in Hong Kong lies in psychological treatment. Sex offenders may be compelled in three main ways to engage in such treatment:[[41]](#footnote-41)

1. By a probation order under theProbation of Offenders Ordinance (Cap. 298) (“PO”). The offender must be under supervision of a probation officer for between 1 and 3 years[[42]](#footnote-42) and adhere to certain conditions e.g. reside at particular address.[[43]](#footnote-43)A probation order will generally be imposed as an alternative to a custodial sentence in the case of less serious offences or where an offender has a relatively good record. The court may require the offender to undertake psychological counseling.[[44]](#footnote-44)

The probationer may be sentenced for the original offence and, where relevant, the subsequent offence if the probationer is convicted of an offence during the probation period[[45]](#footnote-45) or fails to comply with the probation conditions.[[46]](#footnote-46)

1. Through the incentive of a remission of up to 1/3 rd. of the total of the actual term served on the basis of the prisoner’s industry or good conduct: Rule 69 Prison Rules (Cap. 234A); and
2. Through supervised early release schemes, the most relevant of which is the Post-Release Supervision of Prisoners Ordinance (Cap. 475) (“PRSPR”). This scheme is confined to a number of specific crimes, especially those of a sexual and violent nature.[[47]](#footnote-47) Released prisoners may be subject to various supervisory orders which may include compulsory counseling in respect of the problems relating to a sexual offence: *HKSAR* v *Kam Wing Yin*.[[48]](#footnote-48) One lacuna in the legislation is that it does not cover prisoners sentenced to terms of imprisonment for less than 2 years.[[49]](#footnote-49)

Therefore, the system is designed to offer a comprehensive menu of supervisory options, containing certain ‘carrots’ in the nature of early release on the basis for good behavior to encourage rehabilitation (which may involve participation in counseling), and ‘sticks’ in the nature of recall for breach to ensure, as far as possible, that post-release, sex offenders are kept on the straight and narrow. It is not clear how successful this programme is in reducing recidivism of sex offenders as no specific data appears to have been released here. However, the success rate, measured in terms of those who are not convicted during the statutory supervision period is 90%.[[50]](#footnote-50) There is though some general support for the proposition that treatment programmes have achieved some success in reducing recidivism.[[51]](#footnote-51)

**1.8.3 Psychological treatment for sex offenders in England and Wales**

In England and Wales, psychological programmes exist for the treatment of sex offenders who are in prison, or are on post-release from prisons or have received non-custodial sentences e.g. who are under probation.[[52]](#footnote-52) Such treatment in prisons and for those undergoing probation appears to be effective in reducing recidivism amongst both high risk and medium risk offenders; low risk offenders tend not to reoffend irrespective of whether or not they have been treated.[[53]](#footnote-53)

**1.8.4 Psychological treatment for sex offenders in the USA**

The USA also has a system for treating sex offenders. One system for offenders in Federal systems operates on the basis that low to moderately low offenders are treated in a non-residential system, whereas high risk offenders are placed in a more intensive residential programme. In both cases, this occurs 36 months prior to their release date. Treatment tends to be centered on the development of cognitive thinking skills to modify unhealthy thinking and alter behavioral tendencies.[[54]](#footnote-54) Some interesting statistics coming out of a New Jersey study found there was no overall significant change in recidivism based on either the presence of treatment or non-treatment, but that some types of offenders were more likely to reoffend than others following treatment in prison. Those more likely to offend were those offending against strangers rather than against people they know. Rapists are more likely to reoffend than child sex abusers.[[55]](#footnote-55) This is suggestive that certain aspects of the current system of counselling work well and would be worthwhile continuing with certain types of offenders. On the other hand, there may be benefits in exploring other mechanisms against other types of offenders.

**2. Alternative methods of dealing with sex offenders**

In a number of states in the USA, there are two fairly radical ways of dealing with sex offenders, civil commitment and chemical castration. These methods are not available in Hong Kong, although in relation to the former, as seen above, indeterminate life sentences may be handed down in the case of certain very serious sexual offences.

**2.1 Civil commitment**

The conventional way in common law countries of dealing with offenders is by way of prosecution in a court of law operating in the criminal jurisdiction, followed by an acquittal or a conviction. In this regard, the prosecution is required to prove that the offender is guilty beyond a reasonable doubt.

The notion of civil commitment deviates from this principle in a number of significant ways. Civil commitment is a process under which the terms of offenders can be lengthened if it is considered, that broadly speaking, they pose a threat to the community, on the basis that they are likely to commit further serious crimes of a sexual and/or violent nature. The length of the commitment is usually indefinite.

Key differences broadly are that with civil commitment:

* The onus of proof is on the balance of probabilities rather than beyond a reasonable doubt.
* The commitment occurs as an increment to an existing sentence, which is absent further crimes.
* The focus of the commitment is somewhat speculative in nature. It relies largely on the predictive reasoning of medical professionals such as psychiatrists. This type of process can be rather arbitrary.

The emphasis here lies in a rather extreme application of the crime control method. Of particular concern is that the underlying offence is not always one that might be regarded as monstrous.

**2.1.1 Civil commitment in the USA**

Minnesota’s system of civil commitments came into focus in 2015 following a court challenge to these laws.[[56]](#footnote-56) Minnesota places persons in indefinite treatment if they have been categorized as Sexually Dangerous Persons or Sexually Psychopathic Personalities. Broadly speaking, these persons have committed serious sexual offences, have a severe mental disorder preventing them from exercising control over their sexual impulses and, as a result, are more likely than not to commit further offences of this nature. Key concerns with the Minnesota system (echoing complaints across the twenty or so states which employ this model) is that it is very expensive, the screening procedures are arbitrary, political and subjective, and it locks up people who are no longer a menace to society, including persons committed as juveniles.[[57]](#footnote-57)

Minnesota has the largest number of offenders who are civilly committed amongst all the states in the USA.[[58]](#footnote-58) The increase in numbers followed on from publicity concerning a kidnap, rape and murder of a female college student called Dru Sjodin by a sex offender, Alfonzo Rodrigues Jr, shortly after he had been released from prison in 2003 (and who had not been subject to civil commitment).[[59]](#footnote-59) Offenders are locked up on the basis of what they might do, rather than just what they have done.[[60]](#footnote-60) As at November 30 2021, there were 740 inhabitants in this system. Since the inception of these laws in 1995, only 14 inmates have been fully released and only 48 inmates have been provisionally released (living in community placements).[[61]](#footnote-61)

Indefinite civil commitment of sexually violent predators has been deemed constitutional by the US Supreme Court in the case of *Kansas* v *Hendricks*.[[62]](#footnote-62) That case also established that test used for civil confinement (which as noted above is a lesser standard than the criminal one of beyond reasonable doubt) is only constitutionally valid when there is no “punitive purpose” involved such as retribution or deterrence.[[63]](#footnote-63)

In states such as New York, decisions on civil commitment are only rendered after a unanimous decision of a jury.[[64]](#footnote-64) In Minnesota, there is no right to a jury trial.[[65]](#footnote-65)

In 2015, after hearing a class action for release of the 700 offenders**found thatthat the**Minnesota programme was unconstitutional as it was punitive in nature .[[66]](#footnote-66) In coming to this decision, Judge Frank noted amongst other things that there is no provision for regular assessments of individuals to allow discharge, procedurally it is much more difficult to get in than out of the system and the state is not obliged to facilitate release of those who no longer present a threat.[[67]](#footnote-67)

Judge Frank’s order was the subject of an appeal before the US Court of Appeals for Eight Circuit on April 12, 2016.[[68]](#footnote-68) On January 3 2017, the Appeals Court upheld the appeal on the grounds that the Minnesota civil commitment system was not unconstitutional as it did not breach the due process rights of those committed. This was because the system did not fail the relevant threshold in that it was not “conscience shocking” (and here the court applied the precedent that it had to constitute “malice” or “sadism” so as to lead to “a brutal and inhumane abuse of official power” as well as violating a “fundamental liberty interest”).[[69]](#footnote-69) Rather, the court found that the laws bore “a reasonable relationship to a legitimate government purpose.”[[70]](#footnote-70) The US Supreme Court denied an appeal on 31 October 2017.[[71]](#footnote-71)

**3. Reporting and related means of dealing with sex offenders.**

**3.1 Introduction**

A common system of dealing with sex offenders in common law countries is to institute various reporting and notification and other requirements for them. The extent of the obligations varies greatly between many of these countries. We will look at the procedures used in Hong Kong, England and Wales and the USA.

**3.2 Hong Kong**

On 1 December 2011, Hong Kong introduced a voluntary system to allow organizers (aside from schools which already have a mandatory checking system in place) who work with children and mentally incapacitated persons to require potential employees to disclose whether or not they have a relevant criminal record.[[72]](#footnote-72) It is known as the Sexual Conviction Record Check (“SCRC”). It involves a procedure whereby the offender agrees to disclose his record to the employer through the Hong Kong Police Force. Interested employers might be tutorial schools or sporting clubs.

A key hallmark of this scheme is that it is entirely voluntary for those falling within the ambit of the scheme. Namely, both offenders and employers.[[73]](#footnote-73) It also does not extend to volunteers and private tutors.[[74]](#footnote-74)

The operation of the scheme applies in this somewhat ad hoc way and so does not apply to a monitoring of the daily lives of offenders. It does not seek to ban offenders from certain positions or residing in certain places. Therefore, it takes a much stronger stance towards rehabilitation rather than the crime control model. The success of this scheme is yet to be comprehensively evaluated.

**3.3 England and Wales**

England and Wales have a much more robust reporting system than Hong Kong. In particular, certain offenders (those who have received various convictions or sufficiently lengthy sentences or have been the subject of a commitment to a hospital),[[75]](#footnote-75) are required to report to police stations near where they reside.[[76]](#footnote-76) These police powers are supplemented by further powers to enter premises of registered offender.[[77]](#footnote-77) Provision also exists for imposing a wide array of orders to control the activities of sex offenders. For example, Sexual Harm Prevention Orders may be made against a person acting as a home tutor for children.[[78]](#footnote-78)

Ordinarily, information about convicted sex offenders is not made public, but can be available on request to persons such as caregivers and parents, and even friends and neighbours, if the evidence indicates such disclosure is proportionate and it will be necessary to protect a child.The information which is disclosed must be kept confidential by the recipient and disclosure may result in police action.[[79]](#footnote-79)

These notification and disclosure provisions are complimented by the Multi-Agency Public Protection Arrangements ("MAPPA") scheme. This a very comprehensive scheme, that coordinates the work of a number of government bodies, such as police and probation officers, so as to adequately monitor the activities of serious offenders, including sexual offenders.[[80]](#footnote-80) Recidivism rates for offenders covered by this organization have been reported to be as low as 0.44% over a 2-year period.[[81]](#footnote-81)

**3.4 USA**

The registration requirements in the USA to deal with sex offenders are much more serious than even England and Wales. These tough laws have often followed after terrible crimes involving strangers and children. Key features of this scheme, following on from legislation called Megan’s Law,[[82]](#footnote-82) are that photos and addresses of sex offenders are publicly available online.[[83]](#footnote-83) Offenders in some states like Ohio are required to register their relevant personal particulars every day. Concerns exist as to whether these aspects of the scheme stigmatize offenders and thereby detrimentally affects their prospects for rehabilitation. Questions also exist whether the paper work generated by the reporting assists in preventing sex crimes, or simply takes up a lot time for law enforcement officers.[[84]](#footnote-84) According to the Sex Offenses and Sex Offender Registration Task Force Final Report, these registration and notification requirements have not affected either the rate of sexual offences, nor the rate of recidivism of these crimes in the USA.[[85]](#footnote-85)

**4. Chemical castration. USA**[[86]](#footnote-86)

In this case, sex offenders take medication which reduces their libido with the purpose of reducing their predilection for committing sex offences. It has reportedly significantly reduced recidivism in repeat pedophilic offenders. However, it is only effective while offenders are on the regime; it does not operate as a permanent solution.[[87]](#footnote-87) While many people have ethical misgivings about such a treatment, it is important neither to forget the rights of victims nor to forget it may allow a potential sex offender to lead a law-abiding life. Having said that, it is one of a number of controversial law enforcement methods which are present in this area.

Concerns have been expressed as to the various side effects experienced by offenders. These range from fatigue, depression and gain in weight.[[88]](#footnote-88)

Chemical castration is popular among law makers as it is a much cheaper form of curbing the desires of sex offenders, and paedophiles in particular, than incarceration.[[89]](#footnote-89)

Chemical castration can be mandatory for sex offenders in eight states in the USA convicted of sexual abuse against children.[[90]](#footnote-90)

1. Mark Kielsgard and Jack Burke, “Achieving the Right Balance Between Rehabilitation and Public Safety Under the New Sex Offenders Record Scheme” 42(3) *Hong Kong Law Journal* (2012) 717, 724. [↑](#footnote-ref-1)
2. Social Welfare Department, The Government of the Hong Kong Special Administrative Region, ***Newly Reported Child Abuse Cases from January to December 2019* at** <https://www.swd.gov> > vs > stat\_en > stat… [↑](#footnote-ref-2)
3. Heng Choon (Oliver) Chan, T Wing Lo, Lena Y Zhong and Wing Hong Chui, “Criminal Recidivism of Incarcerated Male Nonviolent Offenders in Hong Kong” 59(2) *International Journal of Offender Therapy and Comparative Criminology* (2015) 121, 133-134. [↑](#footnote-ref-3)
4. Law Reform Commission of Hong Kong, *Report on the Sexual Offences Records Check for Child-related Work Interim Proposals* (February 2010) paragraphs 1.24 -1.25, available at www.hkreform.gov.hk/en/docs/rsexoff\_e.pdf. [↑](#footnote-ref-4)
5. Kristen M Zgoba et al, *Research Report Submitted to the National Institute of Justice. A Multi-state Recidivism Study Using Static-99R and Static -2002 Risk Scores and Tier Guidelines from the Adam Walsh Act* (November 2012) 1-9, available at www.ncjrs.gov › Sex Offenders. [↑](#footnote-ref-5)
6. Kate Wagnin, *Reducing the Recidivism Rate of Non-violent Felony Drug Offenders in California: Evaluation of the Effectiveness of Alternative Re-entry Programs* (Denver: University of Denver Institute of Public Policy. Spring 2014) 6, available at www.du.edu/ahss/ipps/media/documents/wagnonmemo2014.pdf. [↑](#footnote-ref-6)
7. California Department of Corrections and Rehabilitation, *2013 Outcome Evaluation Report* (January 2014) 26-27, available at www.cdcr.ca.gov/Adult.../Outcome\_evaluation\_Report\_2013.pdf. [↑](#footnote-ref-7)
8. David Middleton, “The Assessment and Treatment of Sexual Offenders in England and Wales” *Resource Materials Series No.72* (undated but post 2005) 48 at www.unafei.or.jp/english/pdf/RS\_No72/No72\_09VE\_Middleton1.pdf. [↑](#footnote-ref-8)
9. J Douglas Bremmer et al, “MRI and PET Study of Deficits in Hippocampal Structure and Function in Women with Childhood Sexual Abuse and Posttraumatic Stress Disorder” 160 *American Journal of Psychiatry* (2003) 924, 928 - 930. [↑](#footnote-ref-9)
10. Adults Surviving Child Abuse Website, *Impacts of Child Abuse on Physiology of the Brain,* available at www.asca.org.au/About/.../Impact-on-the-physiology-of-the-brain.aspx. [↑](#footnote-ref-10)
11. Australian Government, Australian Institute of Family Studies, *Effect of Child Abuse and Neglect for Adult Survivors* (January 2014) not paginated, available at https://www3.aifs.gov.au/.../effects-child-abuse-and-neglect-adult-surviv. [↑](#footnote-ref-11)
12. Les Gallo-Silver, Christopher M Anderson and Jaime Romo, “Best Clinical Practices for Male Adult Survivors of Childhood Sexual Abuse: “Do No Harm”” 18(3) *The Permanent Journal* (Summer 2014) 82, 82-87. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Nidirect Government Services, *The Effects of Rape and Sexual Assault* at [www.nidirect.gov.uk/victims-of-rape-and-sexual-assault](http://www.nidirect.gov.uk/victims-of-rape-and-sexual-assault), available at www.nidirect.gov.uk/...services/.../victims.../victims-of-rape-and-sexual-. [↑](#footnote-ref-14)
15. Section 45 of MHO. [↑](#footnote-ref-15)
16. Section 2 of MHO mental disorder" is defined to mean-

    “(a) mental illness;  
    (b) a state of arrested or incomplete development of mind which amounts to a significant impairment of intelligence and social functioning which is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;  
    (c) [psychopathic disorder](http://www.hklii.hk/eng/hk/legis/ord/136/s2.html#psychopathic_disorder); or  
    (d) any other disorder or disability of mind which does not amount to [mental handicap](http://www.hklii.hk/eng/hk/legis/ord/136/s2.html#mental_handicap), and "mentally disordered" shall be construed accordingly.”

    Also under s.2, [psychopathic disorder](http://www.hklii.hk/eng/hk/legis/ord/136/s2.html#psychopathic_disorder) is defined to mean “a persistent disorder or disability of personality (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned”.

    A stated exception under s.2 to the operation of the MHO being “sexual deviancy” probably does not relate to sex offences per se but rather consensual legal conduct. [↑](#footnote-ref-16)
17. Searches have not revealed that such an order has ever been made in respect of sex offenders, absent any other conventional psychiatric illness and consequential offence that would normally of itself lead to such an outcome. [↑](#footnote-ref-17)
18. Section 118 of CO. [↑](#footnote-ref-18)
19. Section122(2) of CO. [↑](#footnote-ref-19)
20. The commentary in this section of the paper will focus primarily on the types of sentences imposed for rape and indecent assault. [↑](#footnote-ref-20)
21. Hong Kong Police Force website, available at <http://www.info.gov.hk/police/hkp-home/english/statistics/index.htm>. [↑](#footnote-ref-21)
22. [Ibid](http://www.info.gov.hk/police/hkp-home/english/statistics/index.htm). [↑](#footnote-ref-22)
23. *HKSAR* v *KKK* [2001] HKCFI 1849: This case involved the rape by a father of his underage daughters. The defendant received a sentence of 23 years and 7 months imprisonment after the usual 1/3rd discount for pleading guilty and the additional discounts available in sexual offences consequent upon such a plea for not requiring the victims to testify. [↑](#footnote-ref-23)
24. *Archbold Hong Kong 2021* (Hong Kong: Sweet and Maxwell November 2020) para 21-11. [↑](#footnote-ref-24)
25. [2004] 2 HKLRD 473. In this case, the accused raped 3 students. [↑](#footnote-ref-25)
26. Ibid. [↑](#footnote-ref-26)
27. [2009] HKCFI 2259. [↑](#footnote-ref-27)
28. Ibid. [↑](#footnote-ref-28)
29. (n 25). [↑](#footnote-ref-29)
30. I Grenville Cross and Patrick WS Cheung, *Sentencing in Hong Kong* (Eighth Edition Hong Kong: LexisNexis Butterworths 2018) 818. [↑](#footnote-ref-30)
31. *HKSAR* v *Chan Chi Hin* [2012] HKCFI 185; *HKSAR* v *Chau Pak Yuen* HCMA 124/2003. [↑](#footnote-ref-31)
32. *HKSAR* v *Choi Wing Leung* [2008] HKCFI 561. [↑](#footnote-ref-32)
33. [2010] HKDC 1429. [↑](#footnote-ref-33)
34. [2009] 3 HKLRD 136. [↑](#footnote-ref-34)
35. *Attorney General* v *Wai Yan Shun* Application for Review No 17 of 1990. In these cases, some of which amount to momentary brushing of fingers on the legs or buttocks of a victim, a tariff of 14-28 days imprisonment is imposed as a deterrent because of the prevalence of these types of offences. [↑](#footnote-ref-35)
36. [2009] HKDC 1566. [↑](#footnote-ref-36)
37. P Flahery, *Sentencing the Recidivist: Reconciling Harsher Treatment for Repeat Offenders with Modern Retributivist Theory* (CIL 2006/2007) 319. [↑](#footnote-ref-37)
38. [2013] HKDC 1393. [↑](#footnote-ref-38)
39. Mark Kielsgard and Jack Burke, “Post Incarceration Supervision of Pedophile Offenders: An International Comparative Study” 51(1) *Criminal Law Bulletin* (2015) 24. [↑](#footnote-ref-39)
40. Ministry of Justice. National Offender Management Service (May 2010) 1, available at <https://www.justice.gov.uk/downloads/.../foi.../foi-75519-annex-a.pdf> - referring toM Schmucker and F Losel, (2009) *A Systematic Review of High Quality Evaluations of Sex Offender Treatment. Paper presented at the Annual Conference of the European Society of Criminology*, Ljublana, Slovenia. [↑](#footnote-ref-40)
41. Certain exceptions exist as to the eligibility of those who may be ordered to be released early under supervision. For instance, the Post–Release Supervision of Prisoners Ordinance (Cap. 475) is not applicable to a person whose sentence has been converted from an indeterminate sentence to a determinate sentence by the Chief Executive under the Long-term Prison Review Ordinance (Cap. 524). It is beyond the scope and need of this paper to list all these various exceptions. [↑](#footnote-ref-41)
42. Section 3(1) PO. [↑](#footnote-ref-42)
43. Sections 3(2) and (3) PO. [↑](#footnote-ref-43)
44. According to Patsy Moy, “Breast-grope Woman to Undergo Psycho Tests”, *South China Morning Post* (June 18 2010), an order was made requiring an offender found guilty of indecent assault to undergo psychological counseling. [↑](#footnote-ref-44)
45. Sections 6(4) – (6) PO. [↑](#footnote-ref-45)
46. Sections 5(2)(a) and (3)(b) PO. [↑](#footnote-ref-46)
47. Section 2 and Schedule 1 Post-Release Supervision of Prisoners Regulations (Cap. 475A). [↑](#footnote-ref-47)
48. [2006] HKCA 288. [↑](#footnote-ref-48)
49. Sections 7(1) and (2) PRSPR. [↑](#footnote-ref-49)
50. *Hong Kong:* *The Facts. Correctional Services* (July 2018), available at www.gov.hk/en/about/abouthk/factsheets/docs/correctional\_services.pdf. [↑](#footnote-ref-50)
51. Lam Kwok Leung et al, Group 2, “Effective Prevention and Enhancement of Treatment for Sexual Offenders” *Resource Materials Series No.72* (undated but post 2005) 151 at [www.unafei.or.jp/english/pdf/RS\_No72/No72\_18RC\_Group2.pdf](http://www.unafei.or.jp/english/pdf/RS_No72/No72_18RC_Group2.pdf). [↑](#footnote-ref-51)
52. Ray Bull et al, *Criminal Psychology* (Oxford: One World Publications 2009) 201. [↑](#footnote-ref-52)
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54. *A Directory of Bureau of Prison’s National Programs* (May 21 2014) 16-17. [↑](#footnote-ref-54)
55. Cynthia Caulkins Mercardo, Elizabeth Zeglic, Keith Marcus, R Karl Hanson and Jill Levenson, *Sex Offender Treatment, Management and Civil Commitment: An Evidence Based Analysis Aimed at Reducing Sexual Violence* (September 2013) 5, available at https://www.ncjrs.gov/pdffiles1/nij/grants/243551.pdf. [↑](#footnote-ref-55)
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58. Lucy Massopust and Raina Borrelli, ““A Perfect Storm”: Minnesota’s Sex Offender Program-More than Twenty Years Without Successful Reintegration” 41(3) *William Mitchell Law Review* (2015) 708-709. [↑](#footnote-ref-58)
59. Ibid 712. [↑](#footnote-ref-59)
60. Ibid 708. [↑](#footnote-ref-60)
61. Minnesota Department of Human Resources, *Frequently Asked Questions,* available at https://mn.gov/dhs/people-we-serve/adults/services/sex-offender.../faqs.jsp. [↑](#footnote-ref-61)
62. 521 US 346 (1997) referred to in John Petrila, “Because They Do Horrible Things: Fear, Science and the Erosion of Civil Liberties in Sexually Violent Predator Proceedings” *The Journal of Psychiatry and Law* 36 (Fall 2008) 359 at 362. [↑](#footnote-ref-62)
63. Eric S Janus and Jon Brandt, “Karsjens v Jesson: Challenging the Un-Civil Commitment of Civil Rights” *ABA Journal*, available at apps.americanbar.org/.../access/.../summer2015-0715-karsjens-v-jesson-c. [↑](#footnote-ref-63)
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65. Ibid 723. [↑](#footnote-ref-65)
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67. Ibid 66-67. [↑](#footnote-ref-67)
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70. Ibid 16. [↑](#footnote-ref-70)
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72. Mark Kielsgard and Jack Burke, (n 1) 717. [↑](#footnote-ref-72)
73. The Hong Kong Police Force, *Sexual Conviction Record Check* -*Notes to Employers* (October 2021), available at [www.police.gov.hk](http://www.police.gov.hk) > 11\_useful\_info > scrc. [↑](#footnote-ref-73)
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