

THE HONG KONG COUNCIL OF SOCIAL SERVICE  
Family Service and Child Care Division  
**Comments on the Information Paper on the  
“Proposed Creation of the Offence of ‘Persistent Sexual Abuse of a Child’”**

1. A consultation paper was issued by the Department of Justice in November 2000 proposing to create a new offence of “persistent sexual abuse of a child” to the Crimes Ordinance (Cap. 200). Public views are invited.
2. It is a fact that sexual abuses of children often only come to light a long time after they occur. Very often, the victims may not, whether due to young age when the abuses occurred, or the passage of time before disclosure to a third party, recall the particulars of abuses with sufficient details. The lack of sufficient particulars has caused difficulties in prosecuting such cases, and may either result in the alleged abuser getting off scot free, or only receiving a sentence that may not truly reflect the heinous nature of the crime perpetrated. The Administration therefore proposes the creation of new offence to give extra protection to the children.
3. Similar law in New South Wales was referred to for proposing the offence. The gist of the Australian model is:
  - the prosecution needs only prove that the defendant committed an unlawful sexual act more than thrice (in some states, twice) within a specified time period;
  - it is not necessary to prove the dates on which any of the unlawful sexual acts were committed or the exact circumstances in which any of the unlawful sexual acts were committed;
  - and the unlawful sexual act that was committed on any one of the occasions need not have been the same as the unlawful sexual act that was committed on each or any of the other occasions.
4. In response to this information paper, the Family Service & Child Care Division convened a focus group to study the paper. The focus group comprised social workers including those experienced in handling child abuse cases and a lawyer. The comments are spelt out in the paper attached, for Executive Committee’s consideration.

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Jan. 16, 2001

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The Department of Justice has issued in November 2000 a consultation paper on the “Proposed Creation of the Offence of ‘Persistent Sexual Abuse of a Child’”. The Council has studied the paper and the views are spelt out in the paragraphs that follow.

**1. The Stance**

The Council agrees that there is a need to give extra support to child victims of sexual abuse in the area of prosecution. However, there is also a concern on the rights of the defendants to defend against the alleged acts of misconduct. It is noted that the existing proposal has made it much easier to prosecute the child molesters while on the other hand, has put the defendants at a disadvantaged position. Questions that are related to giving of due protection to the defendants have been raised but not yet fully answered in the Information Paper.

The spirit of the proposal to propose new legislation to help the child victims of sexual abuse is supported. The proposed creation of new offence of “Persistent Sexual Abuse of a Child” is also supported in principle. However, the administration is recommended to work out details of the proposed legislation especially on issues related to the rights of both the child victims and the defendants, before proceeding to the law making process. It is believed the rights of both the child and the defendants should be duly protected.

**2. Specific Comments on the Proposal**

- 2.1 It is true that it is difficult for the child victims to recall the details of the abuses. It is because sexual abuse often come to light a long time after they occur and the victims either because they were very young when the abuses occurred or, with the passage of time, could not recall these details. This has made the prosecution difficult. The case of CHIM Hon-man v HKSAR in 1999 has made future prosecution on child sexual abuse more difficult.

2.2 The Administration has proposed to solve the problem by creating a new offence of "persistent sexual abuse of a child". While the spirit is supported, many questions have yet to be answered and further information to be collected to substantiate the proposal:

a) The reasons against the creation of the proposed offence, as specified in paragraphs 12 till 16, were valid ones. Many of them related to the interests of the defendants. They have not been addressed in the Information Paper. The only comment given, is that the Administration is confident that the judges will act impartially to protect the interests of all parties, including those of the defendants. This is not enough. It is recommended that the questions raised regarding the rights of the defendants be addressed to balance the rights of both the child victims and the defendants.

b) The experience of Australia is based on for working out the proposed creation of new offence. Their experience in implementing the legislation should be studied to analyze the effectiveness and the applicability in Hong Kong.

c) Details of the proposal have not yet been specified. For instance, there is no specification on the number of proven incidents of an unlawful sexual act that the defendant committed in order to secure a conviction of the offence.

It is noted that in Australia, the prosecution needs only prove that the defendant committed an unlawful sexual act more than thrice (in some states, twice) within a specified time period. The rationale for proposing this number in Australia could be referred to for formulating the number in Hong Kong.

Generally speaking, thrice will be enough. This will avoid asking children to go through lengthy and painful procedures of recalling the individual incidents which they might forget or could not recall and hence defeat the purpose of creating the new offence. On the other hand, more than one occasion of proven incidents is needed to help maintain the rights of the defendant.

d) In the proposed creation of the offence, the dates and exact circumstances in which any of the unlawful sexual acts were committed, are no longer necessarily to be proven in the accusation. Such removal of requirement might put the defendants at a disadvantaged position in defending against a particular incident. To provide protection to the defendant, it is suggested to have some auxiliary evidence to support the accusation e.g. evidence showing the creditability of the child victim

### **3. Other Comments**

- 3.1 It is recommended to establish mandatory counselling for the offenders. The accused when found guilty, should be sentenced to mandatory counselling with or without imprisonment. The counselling could help the abuser and his/her family to work through the individual and family problems and thus prevent future child abuse and/or other family violence. The mandatory counselling could be provided by the family service centres of both the SWD and the NGOs.
  
- 3.2 It will be useful to have statistics showing the number of cases involved in such prosecution and how many of them fail to proceed because of the requirement in the existing laws etc. The data will help the public understand the seriousness of the problem and make appropriate recommendations.

### **4. Concluding remark**

The spirit of the proposal, that is, to propose new legislation to help the child victims who are in a disadvantaged situation under the existing practice of legislation, is supported. However, the Information Paper does not give enough assurance on the balance of rights of the child victims and the defendant. This subject should be carefully examined to prevent problems related to protection of rights of the defendants and to ensure effective implementation of the proposed legislation.