

Sex Offences Review

Response by *The Christian Institute*

February 2001

Introduction

The Christian Institute is a non-denominational charity for the promotion of the Christian faith. Many of those involved with *The Christian Institute* work with young people, as doctors, teachers, church leaders, voluntary group leaders or social workers. We therefore have a particular concern to protect young people from the harm caused by sexual abuse and by early sexual activity.

The Christian Institute made a submission to the Home Office review on abuse of trust in September 1998 and participated in a Home Office conference on capacity to consent July 1999.

In 1999 and 2000, *The Christian Institute* supported amendments put forward by Edward Leigh MP and Baroness Young to the Sexual Offences (Amendment) Bill. During the course of two years of debates, they proposed a number of measures, including:

- Extending the law of incest to cover step-parents, fostering and adoptive parents and a wider range of family members.
- Extending the law of incest to cover homosexual as well as heterosexual abuse.
- Extending new offence of 'abuse of trust' to protect part-time pupils, and to cover youth leaders, church leaders and those who 'groom' young people for later abuse.

The Christian faith

The Christian faith teaches the right context for sexual activity and provides an explanation for why sexual licence causes such damage to individuals and to society. Christianity also requires adults to do all they can to protect children and condemns those who cause moral or physical damage to them.

These beliefs, outlined only briefly here, form the basis of the submissions made below.

General observations

The review has taken a wide-ranging look at the law and its proposals are, in our view, very mixed. Some of the proposals take on board very real concerns in relation to the protection of children. Others undermine the moral underpinning and protective effect of the law.

When the Government began its review of sexual offences in January 1999, it produced an explanatory leaflet which stated that "A review of the criminal law on sex offences is long overdue... Much of the law dates from a hundred years ago and more, when society was very different."

We would be very cautious about changing the law on sexual offences merely for the sake of change. A law is not wrong or bad simply because it is old. Changes should only be made where there is a demonstrable need.

There has been no great popular campaign for wholesale change to the laws on sex offences. **Any legislative proposals which emerge from this review should focus on where there is a clear need to provide greater protection and to ensure justice for victims and perpetrators of sexual crimes.**

Necessary discrimination

A policy paper produced by the Home Office early on in the Sex Offences Review said that, “the criminal law should not discriminate unnecessarily between men and women nor between those of different sexual orientation”.

The fact is that some of the new offences proposed by the review do discriminate and quite rightly. With good reason they discriminate against men since they are overwhelmingly the greatest perpetrators of sexual offences. But at the same time the proposals specifically set out to eradicate any discrimination between homosexual and heterosexual acts, even though there are grounds of necessity which justify the distinction.

The propensity of homosexual men to engage in sexual activity in public is one of those grounds of necessity. The offences of buggery and gross indecency make specific reference to the fact that these acts cannot be lawful when they take place in a public toilet. No such provision exists for heterosexual offences simply because heterosexual activity very rarely takes place in such a setting, whereas it is common amongst homosexual men.¹

The proposal to abolish gross indecency [para.6.6.10] is therefore a mistake.

The real priority

Any attempts at bringing in new legislation on sex offences must focus overwhelmingly on the problem of child sex abuse. We welcome the fact that the review does suggest new offences to make it easier to prosecute child abusers who carry out acts falling short of rape. However, much more needs to be done to tackle the stunning fall in prosecutions of child sex offenders.

In 1998 the Home Office published a major report on sexual offences against children by Professor Don Grubin. Exact figures regarding the incidence of sex offending against children are difficult to calculate for obvious reasons. But official police figures indicate the true level of child sexual abuse may be as high as 72,600 cases a year.²

¹ See Weatherburn P et al, *The Sexual Lifestyles of Gay and Bisexual Men in England and Wales*, HMSO, 1992, page 20, which found that most homosexual men had casual sexual partners. Of those over one quarter (27%) had met at least one in a 'cottage' (public lavatory), over one quarter (26%) had met at least one at a cruising ground, just under one quarter (24%) had met at least one in a sauna and 8% had met a casual partner in the street.

² Grubin, Prof D, *Sex offending against children: understanding the risk*, Home Office, Police Research Series, Paper 99, 1998, page 12

Table 1 of Professor Grubin's report (below) shows that "the number of cautions or convictions for sexual offences against children has been declining steadily in recent years."³

Table 1: Number of convictions or cautions in England and Wales for the six most common sexual offences against children in 1985 and 1995 ¹			
	1985	1995	% change
Indecent assault on female < 16	2,416	2,116	-12%
Unlawful sexual intercourse with girl < 16	1,550	603	-61%
Indecent assault on male < 16	674	476	-29%
Gross indecency with girls 14 or under	206	129	-37%
Unlawful sexual intercourse with girl < 13	168	122	-27%
Gross indecency with boy 14 or under	122	84	-31%
Total	5136	3530	-31%

¹ This excludes rape of girls under 16, for which there were 118 cautions or convictions in 1995 but no comparable figures for 1985 when this offence was not separately recorded.

Source: Home Office (1997)

Right across the board, convictions for sexual offences against children have been falling year after year. *The report shows that from 1985 to 1995 convictions for the six most serious sexual offences against children fell by 31%.*

Professor Grubin points out that *reports* of gross indecency with children 14 and under (girls and boys) *more than doubled* from 633 to 1,287 over the ten year period to 1995, yet *convictions declined*.⁴ There is clearly a serious problem with enforcement of laws against child sex offences.

Summary of the review's proposals

These are our summaries of some of the main conclusions of *Setting the Boundaries*, along with our comments:

Recommendations 1-9

- *Recommendation:* The review says that the offence of rape should be extended to cover forced oral sex and offences against transsexuals⁵ whilst a new offence of sexual assault by penetration would cover other forms of penetration without consent.⁶
- *Recommendation:* The definition of consent should be defined by reference to 'free agreement'.⁷ This is an attempt to cover more situations where coercion is used to obtain sex from a victim. It is suggested that the law

³ *Ibid* page 4

⁴ *Ibid* page 4, see also Hansard, House of Commons, 9th March 1999, cols 129-130 wa

⁵ Recommendation 1, Para 2.8.5

⁶ Recommendation 3, Para 2.9.2

⁷ Recommendation 4, Para 2.10.5

should also allow a conviction on the grounds of recklessness where the perpetrator 'could not care less about consent'.⁸

Comment: Any new definitions of rape and of consent will probably create as many problems as they solve. Furthermore, by equating rape to other forms of sexual attack such as forced oral sex, the new offence risks downgrading the seriousness of actual rape.

Juries may also be discouraged from convicting if they don't feel that the act for which someone is prosecuted is as serious as actual rape. **Alongside a new offence of penile penetration, rape should be retained as a separate offence in order to allow a distinction between rape and other forms of penile penetration. However, the range of penalties available for the two offences should be the same.**

Recommendations 10-18

- *Recommendation:* A new offence of sexual assault should be introduced to cover sexual touching (i.e. behaviour that a reasonable bystander would consider to be sexual) where the victim does not consent.⁹

Comment: Drafting of the offence would have to be done very carefully to make sure that courts found it easier to convict rather than more difficult. The danger is that the proposed definition is so vague that courts would interpret it very narrowly.

- *Recommendation:* As a matter of public policy the age of legal consent should remain at sixteen.¹⁰ The law should also state that children below thirteen can never effectively consent to sexual activity.¹¹

Comment: It is vital that the law states that children are not legitimate objects of sexual activity. Legally, all those under 18 are children. Our view is that the age of consent should be raised to 18 so that no-one may have sex with a person who is still a child. The review was specifically told that lowering the age of consent below sixteen was not an option it could consider, although groups such as Outrage have lobbied for it. The review's apparent support for the age of consent at 16 is, however, undermined by its later recommendation¹² that children who engage in consensual sexual activity together when they are both under sixteen, should not be subject to criminal intervention. **This would effectively legalise under-age sex.**

Recommendations 19-29

- *Recommendation:* There should be a new offence of adult (over 18) sexual abuse of a child (under 16)¹³. There would be no time limit on this offence, so that victims who took years to come forward could do so in the

⁸ Recommendation 8, Para 2.12.6

⁹ Recommendation 10, Para 2.14.4

¹⁰ Recommendation 17, Para 3.5.7

¹¹ Recommendation 18, Para 3.5.11

¹² Recommendation 28, Para 3.9.19

¹³ Recommendation 19, Para 3.6.5

knowledge that a prosecution could still be brought.¹⁴ This would be complemented by new offence of persistent sexual abuse of a child.¹⁵

Comment: This is a most welcome proposal. It recognises that sex between adults and children is wrong and very damaging. **It should be accompanied by guidance to the police requiring them to resume prosecuting offences under the existing age of consent laws.** This includes cases where sexual advantage is taken of a person who is only just under the age of consent. Prosecutions under the existing laws have been declining at an alarming rate. This trend must be reversed.

- *Recommendation:* Those who give help or advice to children in matters of ‘sexual health’ should not be regarded as aiding and abetting a criminal offence, nor should the children who seek such advice.¹⁶

Comment: It is alarming to think that some of those engaged in this kind of work might actually be committing a criminal offence. The answer is for them to make sure their actions are not criminal, rather than giving them an exemption.

- *Recommendation:* There should be a new offence of sexual activity between minors to cover 16 and 17 year-olds where the other party is under 16. The review wants “appropriate non-criminal interventions” for those under sixteen engaging in mutually agreed under-age sex.¹⁷

Comment: Both of these measures downplay the seriousness of teenage sexual experimentation. As well as the risk of pregnancy and sexually transmitted diseases, there is a serious cost in terms of emotional damage to young people who regret their early sexual experiences. Girls in particular tend to be taken advantage of by boys simply concerned with their own sexual gratification. There is also evidence linking early intercourse with adult promiscuity. **These proposals must be rejected. The law should send an unambiguous signal of the unacceptability of childhood sex.**

Recommendations 30-43

- *Recommendation:* There should be a new offence of breaching a relationship of care. This would prohibit sexual relationships between a patient in medical care or residential care and a member of staff, as well as between doctors and patients. However a “pre-existing relationship” would constitute a defence.¹⁸

Comment: These measures are welcome, as far as they go. However, it is a mistake to build in a wide defence for pre-existing relationships since this will simply provide abusers with an automatic defence. Many will simply claim that a relationship was already in existence before they came within the reach of the new offence. It may be difficult to adduce evidence to contradict this defence, especially where the victim is still sympathetic to the abuser.

¹⁴ Recommendation 20, Para 3.6.6

¹⁵ Recommendation 25, Para 3.7.3

¹⁶ Recommendation 26, Para 3.8.1

¹⁷ Recommendation 28, Para 3.9.19

¹⁸ Recommendations 32 and 33, Paras 4.8.15 and 4.8.17

Those in pre-existing sexual relationships (other than in the very narrow circumstances given in Para 4.8.17) should simply be required to end the relationship, or change their professional arrangements so that they are no longer in a position of trust towards that sexual partner.

- *Recommendation:* A new offence of familial sexual abuse should replace incest. Uncles and aunts related by blood would be covered, as would step-parents, foster-parents and adoptive parents. The offence would also extend to anyone living in the household in a position of trust or authority. Sexual relations between adoptive siblings should be prohibited until age 18.¹⁹

Comment: The law of incest must remain. Sex within the family is a particularly grotesque abuse of trust and should be recognised for what it is. ‘Incest’ is a word which people understand and which communicates the gravity of the offence. The law of incest is explicitly based upon the Judeo-Christian ethic (See Leviticus chapter 18 verses 6 to 16) and is concerned to preserve the sanctity of family ties. It is not designed primarily to protect the gene pool (although it does, of course, have this side effect). Incest should be retained and extended to cover step-relations. A separate offence of family sexual abuse *in addition* to this, to cover the wider family, would be welcome.

Recommendations 44-62

- *Recommendation:* The laws on buggery and gross indecency should be repealed. Sexual acts in public should be covered by a single offence covering homosexual and heterosexual acts.²⁰

Comment: We oppose the repeal of buggery and gross indecency. There are moral and medical differences between penetration of the vagina and penetration of the anus. There is also a difference between heterosexual activity and homosexual activity. These differences have long been recognised in law, and by the majority of people.

The legal term ‘buggery’ should be retained. In 1984 the Home Office’s Criminal Law Revision Committee produced its fifteenth report²¹. We would not agree with many of its proposals. However, in relation to its proposal to retain the word ‘buggery’ for the offence of anal intercourse with a girl under age, it said this: “There has been little adverse comment on our use of the word “buggery” to describe the proposed offence of anal intercourse with a girl under age. The word has been in use in the law for centuries. It undoubtedly has a condemnatory flavour, be we think that that is appropriate for the offence we are proposing.”

In relation to sexual acts in public, we would welcome any measure to toughen up the law, regardless of the nature of those acts. If the proposal were to introduce a heterosexual equivalent of gross indecency, we would welcome it.

¹⁹ Recommendations 35 to 39, Paras 5.5.6, 5.5.7, 5.5.13, 5.6.2 and 5.6.3

²⁰ Recommendation 45, Para 6.6.10

²¹ Cmnd 9213

We would reiterate the comments about homosexual offences made in the introduction. Historically, the specific problem of homosexual acts in public merited specific laws to tackle it. There is nothing wrong with a law which tackles a clearly defined problem, even if it gives the appearance of discriminating against certain types of activity.

- *Recommendation:* Trafficking of persons for sexual exploitation and sexual exploitation of under eighteens should also be criminalised.²²

Comment: This is a very welcome response to longstanding concerns.

- *Recommendation:* There should be a further review of the law on prostitution.²³

Comment: This is a very ominous proposal. It opens the door to those who wish to decriminalise prostitution. Whilst we agree strongly with efforts to target more of the pimps and users of prostitutes, it is wrong to pretend the prostitutes themselves are blameless. Everyone involved in prostitution should face criminal penalties. It is a serious public nuisance and criminal penalties and genuine efforts to enforce the law are the only appropriate response.

- *Recommendation:* There should be a new public order offence but only where the person knew or should have known that his sexual behaviour in public was likely to cause distress, alarm or offence.²⁴

Comment: We are totally opposed to this proposal. It would probably legalise sex in public where the perpetrators did not realise they could be seen (such as in a cornfield). It imposes a high burden of proof by requiring distress, alarm or offence. Presumably the perpetrators could argue in their defence that those who observed them were not really distressed or offended. It is difficult to imagine how the victims would prove otherwise and they should not be required to go through such indignity. The presence of sex in public should be assumed to cause offence and should always be illegal.

There have been high profile cases of sex in public going unpunished. The Home Office should issue guidance to police requiring them to enforce the existing public order offences against those who engage in sexual acts in public. As stated earlier, if there were a proposal for a heterosexual equivalent of gross indecency, where any public element or the involvement of a group of people made the act illegal, we would support such a proposal.

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²² Recommendation 49, para 7.5.14

²³ Recommendation 53, para 7.8.3

²⁴ Recommendation 56, para 8.4.11