

Does Society's Understanding and Treatment of Paedophiles Protect Children; does the Law Prevent Child Sexual Abuse?

The following will discuss how to prevent a miscarriage of justice by focusing on the circumstances around child sexual abuse (CSA) and perpetrators; discussing whether the current social, medical and legal systems are fit for the purpose of protecting children; with focus on the misappropriation of the medical diagnostic term "paedophilia" with criminal offences of CSA.¹ It will acknowledge miscarriages that can accumulate from the misappropriation and consider alternative approaches that aim to minimise or prevent CSA and resulting miscarriages of justice.

Paedophilia is a high-profile, complex and emotive subject which has become central to discourses surrounding risk, child abuse, punitiveness and public protection in moral society;² referred to as a '*...cruel, unnatural and disgusting perversion*'.³ It is problematic for the term paedophilia to be used interchangeably with CSA;⁴ it defines a recognisable clinical entity classified as a paraphilia in the DSM-5⁵ and ICD-10,⁶ but it has become a demonising pejorative.⁷ Paraphilia classifications were not intended or approved for legal use,⁸ causing society's understanding to become warped;⁹ '*the use of... "paedophilia" [is] totally divorced from the clinical and professional discourse*'.¹⁰ The typical image of a paedophile is of an unknown, psychopathic adult loner floating around parks, who does unimaginable and unexplainable things to children.¹¹ However, extra-familial offending is far less common than intra-familial;¹² estimates of 70-80% of abusers are family or extended-family members¹³ and, significantly, half of all child molestation offences are committed by adolescents,¹⁴ '*we are dealing with children...abusing children*'.¹⁵ Further, research shows

¹ R. Hall and R. Hall, 'A Profile of Paedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues' (2007) 82(4) *Mayo Clinic Proceedings* 457, 460.

² K.F. McCarten, 'Professional Responses to Contemporary Discourses and Definitions of Paedophilia' (2011) 13 *International Journal of Police Science and Management* 322.

³ *R v Mara* [2009] 209 QCA, 19; C. Glab, 'Perpetrators and Pariahs: Definitional and Punishment Issues for Child Sex Offenders and Therapeutic Alternatives for the Criminal Justice System' (2016) 16 *QUT Law Review* 85, 93.

⁴ McCarten (n 2) 323.

⁵ *Diagnostic and Statistical Manual of Mental Health Disorders* (5th edn, American Psychiatric Publishing 2013).

⁶ These are the diagnostic manuals for mental health disorders used by medical professionals; *The ICD-10 Classification of Mental and Behavioural Disorders: Diagnostic Criteria for Research* (10th edn, World Health Organisation 1993).

⁷ F.S. Berlin, 'Pedophilia and DSM-5: The Importance of Clearly Defining the Nature of a Pedophilic disorder' (2014) 42 *Journal of American and Academic Psychiatry Law* 404; Glab (n 3) 86.

⁸ R. Mulheron, 'Rewriting the Requirements for a Recognised Psychiatric Injury in Negligence Claims' (2012) 32 *Oxford Journal of Legal Studies* 77-112.

⁹ Glab (n 3) 86.

¹⁰ McCarten (n 2) 331.

¹¹ *Ibid* 332.

¹² J.V. Becker & E.M. Coleman, 'Incest' In V.B. Hasselt, R.L. Morrison, A.S. Bellack & M. Herson (eds) *Handbook of Family Violence* (Plenum Press 1998).

¹³ J. Brown, 'The Paedophile Next Door' Channel 4 Documentary (London: Testimony Films 2014).

¹⁴ 'Myths and facts about sex offenders' (*Centre for Sex Offender Management*, 2013) p5

<https://ccoso.org/sites/default/files/import/mythsfacts.pdf> Accessed 10th April 2020.

¹⁵ A. Turner, 'Child Sexual Abuse: Compulsion or Choice?' (2000) 164 *Criminal Law and Justice Weekly* 400.

that many extra-familial offences are committed in schools, child-care or similar settings; confirming the assumptions are diverting focus away from where children are most vulnerable.¹⁶

The public tend to see paedophilia in an emotionally-negative and pejorative way,¹⁷ viewed as homogeneous and labelled as abusers with inabilities of responding well to treatment.¹⁸ However, this is inaccurate; its characteristics are recognised as heterogeneous,¹⁹ and paedophiles experience significant distress²⁰ and empathy from their actions, meaning positive-responses from treatment is more probable.²¹ Paedophiles are more likely to be open to rehabilitation, remorseful, and to work hard at treatment, in contrast to abusers without paedophilic disorder.²² The concept²³ carries particular problems,²⁴ as contrary to popular belief, having paedophilic urges and acting upon them are not mutually inclusive - perpetration is not a foregone conclusion;²⁵ *'these terms...describe two, potentially relatable, but distinct phenomena'*.²⁶ Further, studies have found that around 50% of offenders do not meet the criteria to be diagnosed with paedophilia;²⁷ a further 30% have personality disorders,²⁸ which confirms that the conflation of CSA and paedophilia is inaccurate for the majority of offenders.²⁹ This reaffirms why the image of child abusers should be considerably revised. In the UK, the current broader societal discourse surrounding paedophilia has been constructed through increased and widely disparate media coverage,³⁰ fuelled by a lack of public engagement and an overreliance on existing

¹⁶ D. Howitt, 'Paedophilia Prevention and the Law' In K. Moss & M. Stephens (eds) *Crime Reduction and the Law* (Taylor & Francis 2005) 113, 131.

¹⁷ K. McCarten, 'Here there be Monsters: The Public's Perception of Paedophiles with Particular Reference to Belfast and Leicester' (2004) 44 *Medicine, Science and the Law* 327.

¹⁸ C. Greer, *Sex Crime and the Media: Sex Offending and the Press in a Divided Society* (Willan 2002); K.F. McCarten, 'Media Constructions and Reactions to Paedophilia in Modern Society' In K. Harrison (ed) *Dealing with High-risk Sex Offenders in the Community: Risk Management, Treatment and Social Responsibilities* (Willan 2010) 249-68.

¹⁹ J. Bickley & A.R. Beech, 'Classifying Child Abusers: its Relevance to Theory and Clinical Practice' (2001) 45 *International Journal of Offender Therapy and Comparative Criminology* 51.

²⁰ Glab (n 3) 85.

²¹ S. Goode, *Understanding and Addressing Adult Sexual Attraction to Children: A Study of Paedophiles in Contemporary Society* (Routledge 2010).

²² K. Beier et al, 'Can Paedophiles be Reached for Primary Prevention of Child Abuse? First Results of the Berlin Prevention Project Dunkelfeld (PPD)' (2009) 20(6) *The Journal of Forensic Psychiatry & Psychology* 851, 853.

²³ Paedophilia as an interchangeable word for child sexual abuse.

²⁴ M. Waites, *The Age of Consent: Young People, Sexuality, and Citizenship* (Palgrave Macmillan 2005) 25.

²⁵ Glab (n 3) 86.

²⁶ Beier et al (n 22) 852.

²⁷ B. Maletzky & C. Steinhauer, 'A 25years Follow-up of Cognitive/Behavioural Therapy with 7275 Sexual Offenders' (2002) 26 *Behaviour Modification* 123, 128; M. Seto, K. Hanson and K. Babchishin, 'Contact Sexual Offending by Men Arrested for Child Pornography Offenses' (2011) 23 *Sexual Abuse: Journal of Research and Treatment* 124.

²⁸ B. Vollm, J. Craissati, D. Grubin, S. Skett, F. Williams, 'Learning from Research: Adapting Interventions for Sexual Offending to Improve Outcomes' (2019) 29(4) *Criminal Behaviour and Mental Health* 227.

²⁹ Glab (n 3) 91.

³⁰ J.C. Davidson, *Child Sexual Abuse: Media Representations and Government Reactions* (Glasshouse 2008); K.J. McCarten, 'Current Understandings of Paedophilia and the Resulting Crisis in Modern Society' In J.M. Carrol & M.K. Alena (eds) *Psychological Sexual Dysfunctions Research* (Nova Publishers 2008) 51-84.

conflicting and problematic professional discourses;³¹ driving the misperception of the realities of paedophilia.³²

Paedophilia was rarely discussed pre-1990s; but after organised child-abuse rings, PIE and NAMBLA,³³ openly applied the term to themselves in the 1970s-80s, it birthed a permanent association with CSA.³⁴ It later became associated to the abduction and murder of children, after offences committed by Marc Dutroux;³⁵ continuing to reach unprecedented levels after the scandal of Ireland's Catholic priests³⁶ and the death of Sarah Payne.³⁷ Press coverage reached moral panic level in the late 1990's;³⁸ in one month alone, the Daily Mail had 25 headlines referencing CSA and paedophilia.³⁹ Poignantly, the media changed their photographic representation of crime from offenders to photographs of the victim, families and public grieving, further underlining the tragedies and forcing readers to associate with the grieving families.⁴⁰

The British media orchestrated-panic led to victims, feminist and moral conservationist group outcries, increasingly influencing protectionist attitudes and policy-making.⁴¹ The News of the World (NW) further published details of registered sex offenders which encouraged community retaliation and vigilantism; suspected paedophiles were attacked, arson of sex-offender hostels,⁴² and due to misunderstanding, an innocent paediatrician was attacked.⁴³ The Labour government at the time, who were "tough on crime",⁴⁴ engaged with the NW in compromise meetings instead of condemning the press for their involvement.⁴⁵ This was criticised as '*legitimising the hysteria over predatory paedophiles being whipped up*

³¹ K.F. McCarten, 'Paedophilia: The Actual vs. the Constructed? Is a Change of Terminology Needed?' (2009) ATSA Forum, XX1(2), 16-21.

³² McCarten (n 17).

³³ Paedophile Information Exchange and the North American Man-Boy Love Association; D. Evans, *Sexual Citizenship: The Material Construction of Sexualities* (Routledge 1993).

³⁴ T. Castella, T. Heyden, 'How did the Pro-Paedophile Group PIE Exist Openly for 10years?' (BBC, 2014) <https://www.bbc.co.uk/news/magazine-26352378> Accessed 3rd April 2020.

³⁵ C. Critcher, *Moral Panics and the Media* (Open University Press 2003); I. Marsh, & G. Melville, *Crime, Justice and the Media* (Routledge 2008) 61.

³⁶ Ibid.

³⁷ Staff and Agencies, 'Sarah Payne: The Timetable' (*The Guardian*, 2000) <https://www.theguardian.com/society/2001/dec/12/childprotection2> Accessed 13th April 2020.

³⁸ Cavanagh describes as - '*moral panics are a direct product of the mundane practices of journalists*' and are '*focussed on the observation of distortion and exaggeration in presentation of [a] factual problem*'; A. Cavanagh, 'Taxonomies of Anxiety: Risk, Panics, Paedophilia and the Internet' (2007) *Electronic Journal of Sociology*; Marsh (n 35) 66.

³⁹ In the early 2000's - Marsh (n 35) 61.

⁴⁰ C. Wardle, 'Monsters and Angels: Visual Press Coverage of Child Murders in the USA and UK, 1930-2000' (2007) 8 *Journalism* 263-84; Marsh (n 35) 106.

⁴¹ R. and W. Stainton Rogers, 'What is good and Bad Sex for Children?' In M. King (ed) *Moral Agendas for Children's Welfare* (Routledge 1999) 179-97.

⁴² E. Lovell, *Megan's Law: Does it Protect Children?* (London: NSPCC 2001).

⁴³ R. Eden, 'Paediatrician Attack: "People don't want no Paedophiles here"' (2000) <https://www.telegraph.co.uk/news/uknews/1353904/Paediatrician-attack-People-dont-want-no-paedophiles-here.html> Accessed 10th April 2020.

⁴⁴ G. Robson, 'A Citizen Considers a Changing Constitution' (2007) 171 (39) *Justice of the Peace* 685.

⁴⁵ Marsh (n 35) 62.

by the media',⁴⁶ contributing to the false and dramatic image of paedophiles, which misleads more than it informs.⁴⁷

Complications arising from media hysteria and community policing include increased fear and stress in offenders *and* non-offenders. This is problematic; it can encourage known-offenders to go "underground", creating difficulties for police-tracking,⁴⁸ increase the likelihood of recidivism by previous offenders, and most alarmingly, increases the probability of non-offenders committing offences.⁴⁹ In these circumstances, the attacks are more likely to be opportunistic in nature, generally more serious,⁵⁰ and in paedophiles it can trigger a never-ending cycle of committing an offence, feelings of remorse and low mood, leading to increased risks of offending and so on.⁵¹

Research indicates media representation of paedophilia is one-dimensional and stereotypical,⁵² playing a vital role in influencing and reinforcing the misuse of medical terminology for CSA. Their prolific and unrelenting documentation of PIE, and CSA since, has solidified the association of paedophilia with abduction, molestation and murder. It is suggested that some media practitioners may understand paedophilia, arguing it has become negative and misconstrued; however, they continue to report in line with the general societal perspectives and editorial norms, maintaining and fuelling the social discourse;⁵³ reinforcing the need for improvements in media coverage of paedophilia.⁵⁴

This has caused self-identified paedophiles to work against a current of stigma, desertion and the presumption that perpetration is a foregone conclusion.⁵⁵ Paedophiles are less likely to admit to their paraphilia through fears of backlash, rejection, and loss of family and friends.⁵⁶ Dr Goode references one paedophile's, '*detailed and vivid picture of how it feels, as a lonely frightened teenager, to slowly come to the horrific realisation that you yourself are a paedophile*';⁵⁷ as such, sufferers are often unable to access treatment and

⁴⁶ J. Hyland, 'British Media Incites Lynch-mob Atmosphere over Child Sex Abuse' (World Socialist Website, 2000) <https://www.wsws.org/en/articles/2000/08/brit-a12.html> Accessed 13th April 2020; Marsh (n 35) 62.

⁴⁷ J. Silverman & D. Wilson, *Innocence Betrayed: Paedophilia, the Media and Society* (Polity Press 2002).

⁴⁸ Marsh (n 35) 62.

⁴⁹ P. Bennett, *Abnormal and Clinical Psychology: An Introductory Textbook* (McGraw Hill 2011) 284.

⁵⁰ C. Bijleveld, 'Sex Offenders and Sex Offending' (2007) 35 *Crime and Justice* 319-388.

⁵¹ W.D. Pithers, 'Relapse Prevention with Sexual Aggressors: A Method for Maintaining therapeutic Gain and Enhancing External Supervision' in W.L. Marshall, D.R. Laws and H.E. Barbaree (eds) *Handbook of Sexual Assault: Issues, Theories and Treatment of the Offender* (Plenum 1990).

⁵² C. Critcher, 'Media, Government and Moral Panic: The Politics of Paedophilia in Britain' 3 *Journalism Studies* 521-35; McCarten (n 18)249-68.

⁵³ McCarten (n 2) 330-31.

⁵⁴ Ibid 330.

⁵⁵ Glab (n 3) 90.

⁵⁶ M. Kaplan, 'Pedophilia: A Disorder, not a Crime' (*New York Times* 2014) 23; N. Wigham, 'Experts are Calling for Prevention Strategies for Paedophilia, so why is No One Listening?' (*News*, 18th July 2015) <http://www.news.com.au/lifestyle/real-life/experts-are-calling-for-prevention-strategies-for-paedophiles-so-why-is-no-one-listening/news-story/0de393948df51aace92e6add639b13ef> Accessed 15th April 2020.

⁵⁷ Goode (n 21) 5.

consequently, have to self-manage.⁵⁸ Research suggests that those who continue to have a positive support network, a law-abiding, non-offending lifestyle is highly likely, and where a supportive network is not maintained, a converse outcome is probable,⁵⁹ displaying that isolation and vilification of sufferers can increase CSA risks.⁶⁰

The stigma is reported as farther-reaching than community alone; in one German study, 95% of psychotherapists acknowledged an unwillingness to work with paedophile patients due to negative attitudes towards them,⁶¹ hindering medical development and progression. Paraphilias are characterised as life-long individual conditions⁶² with unchanging manifestations;⁶³ for paraphilias that are abnormal, deviant or potentially dangerous, knowledge of their aetiology is necessary to navigate treatment and prevention approaches.⁶⁴ The aetiology is commonly understood as multi-functional, comprising neurological⁶⁵ and biological factors,⁶⁶ such as brain function and structure alterations⁶⁷ developed in utero;⁶⁸ and psychosocial factors; '*neglect, abandonment, sexual, physical and emotional abuse...all have a strong negative impact on a child's development, including...sexual development*'.⁶⁹ This prejudice impacts heavier on identified, non-offending paedophiles (virtuous paedophiles),⁷⁰ by preventing them from obtaining treatment, either due to stigma-fears or unwilling medical professionals. The hysteria causes stress and anxiety in paedophiles which makes them more likely to offend and the outcome of loss of support further increases this risk; confirming the current discourse is detrimental for protecting children.

Official practitioners⁷¹ associate paedophilia with CSA offending and its impact on victims, viewing it as a public protection and risk management issue, focusing on control,

⁵⁸ Glab (n 3) 85.

⁵⁹ Goode (n 21) 116.

⁶⁰ It is also suggested reoffending rates increase where human needs are unmet and personal skills are low - T. Ward & M. Brown, 'The Good Lives Model and Conceptual Issues in Offender Rehabilitation' (2004) 10(3) *Psychology, Crime & Law* 243.

⁶¹ M. Stiels-Glenn, 'The Availability of Outpatient Psychotherapy for Paedophiles in Germany' (2010) 28(2) *Retch & Psychiatrie* 74, 75; Glab (n 3) 89.

⁶² M. Seto, 'Is Paedophilia a Sexual Orientation?' (2012) 41 *Archives of Sexual Behaviour* 231, 232.

⁶³ K. Beier, H. Bosinski and K. Loewit, *Sexual Medizin* (Elsevier Urban & Fischer 2005).

⁶⁴ Glab (n 3) 87.

⁶⁵ J. Cantor et al, 'Cerebral White Matter Deficiencies in Pedophilic Men' (2008) 42 *Journal of Psychiatric Research* 167, 180.

⁶⁶ M. Seto, *Pedophilia and Sexual Offending Against Children: Theory, Assessment, and Intervention* (American Psychological Association 2008) 108-111.

⁶⁷ S. Mohnke et al, 'Brain Alterations in Paedophilia: A Critical Review' (2014) 122 *Progress in Neurobiology* 1, 4; Glab (n 3) 87.

⁶⁸ J. Cantor et al, 'Quantitative Reanalysis of Aggregate Data on IQ in Sex Offenders' (2005) 131(4) *Psychological Bulletin* 555, 565.

⁶⁹ TC. Johnson, 'Development of Sexual Behaviour Problems in Childhood' In J.A. Shaw (ed) *Sexual Aggression* (American Psychiatric Association 1999) 41; D. Stevens, 'Influences of Early Childhood Experiences on Subsequent Criminology Violent Behaviour' (1997) 6(1) *Studies on Crime and Crime Prevention* 34.

⁷⁰ Individuals with the sexual urge who learn to control it, although they accept they have the sexual attraction, they do not seek to offend against children: Glab (n 3) 90.

⁷¹ Such as police, Government, legal and policy makers.

punishment and regulation, rather than rehabilitation.⁷² This is supported by the fact that treatment programmes in prison are not compulsory, only around 25% of offenders engage in rehabilitation during incarceration;⁷³ which is surprising when research figures show that CSA offenders who undertake treatment have far lower reoffending rates than those who do not.⁷⁴ The current methodology in the criminal justice system (CJS) (perpetration-prevention, sentencing and reintegration) is not as effective as it should be, which is of little benefit to potential victims or perpetrators.⁷⁵ It is stated that *'the system in England and Wales operates to reduce crime and reoffending; to punish offenders; to protect the public; to provide victims with reparation...'*⁷⁶ and the Sexual Offences Act⁷⁷ introduced, *'...new provision about sexual offences, their prevention and the protection of children from harm...'*⁷⁸ However, it can be seen that it focuses on sentencing alone, with minimal interaction with prevention or reintroduction. This is due to the law requiring an *actus reus* and *mens rea* to act,⁷⁹ it cannot engage without a criminal offence. And so, its only form of *prevention* is through deterrence, which evidenced through rising reports of CSA each year,⁸⁰ does very little to actually prevent CSA. Therefore, it can be seen to merely punish after the act, and only where there is enough evidence to support the conviction; this supports the argument that the law, and current methodology, do little for *preventing* children being harmed, as it is a prerequisite that harm has occurred.

There is no law against paedophilia, nor any legal definition of the term.⁸¹ The reason for this is that a person cannot be guilty of a criminal act without an act; to criminalise a mental health condition, that all paedophiles are abusers, would be the same as suggesting all persons with personality disorders are murderers. Flurries of legislation will not necessarily sufficiently prevent or reduce occurrences of CSA; critics argue that further legislation only deters attention from failings within government and child protection systems.⁸² Any positive reform of the law would require focus on enforcement of proper rehabilitation programmes and treatment as a requisite upon conviction; this may be highly unlikely with

⁷² Davidson (n30); J. Kitzinger, *Framing Abuse: Media Influence and Public Understandings of Sexual Violence Against Children* (Pluto 2004).

⁷³ Bennett (n 49) 288.

⁷⁴ J. Peebles, 'Therapeutic Jurisprudence and the Sentencing of Sexual Offenders in Canada' (1999) 43(3) *International Journal of Offender Therapy and Comparative Criminology* 275, 280; RK. Hanson and K. Morton-Bourgon, *Predictors of Sexual Recidivism: An Update Meta-Analysis* (Public Safety and Community Preparedness Canada 2004); F. Losei and M. Schmucker, 'The Effectiveness of Treatment for Sexual Offenders: A Comprehensive Meta-Analysis' (2005) 1(1) *Journal of Experimental Criminology* 117.

⁷⁵ Glab (n 3) 90.

⁷⁶ National Audit Office, *Efficiency in the Criminal Justice System* (HC 852, Session 2015-16) 10.

⁷⁷ Sexual Offences Act 2003.

⁷⁸ *Ibid*, Introductory text.

⁷⁹ K. Harrison, 'Multi-disciplinary Definitions and Understandings of Paedophilia' (2010) 19 *Social and Legal Studies* 481, 490; Lord Bingham, 'What is the Law?' (2009) 40 *Victoria University of Wellington Law Review* 597-612.

⁸⁰ See Appendix 1: Office for National Statistics, 'Child Sexual Abuse – Appendix Tables' (NAO, 14th January 2020) <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/childsexualabuseappendixtables> Accessed 29th April 2020.

⁸¹ Harrison (n 79) 486.

⁸² Howitt (n 16) 130.

current attitudes towards offenders.⁸³ In opposition, if reform were to be considered under the usual “tough on crime” stance, it would be futile as it would likely enter preventative-imprisonment territory, which is considered unconstitutional and breaches Human Rights.⁸⁴ Another fundamental concern with the current methodology is the associated costs; on average the UK has 13 new CSA cases every day,⁸⁵ with each offence suggested to cost society £36,952,⁸⁶ each new prison-place costing £119,000⁸⁷ and each yearly prison-place averaging at £40,843.⁸⁸ The estimated number of men in the UK having paedophilic tendencies is 936,857,⁸⁹ and as the public purse is always the tightest for funding the CJS, the outcry for “locking them up” for the rest of their lives⁹⁰ cannot be accommodated⁹¹ or sustained.

One suggested alternative derives from careful studies across the medical, psychological and sociological fields, which suggest treatment, for prevention and rehabilitation,⁹² rather than incarceration is a “legitimate social and correctional response”.⁹³ Canada has a more progressive approach to sentencing and offender-assistance, moving towards a rehabilitation-focussed CJS.⁹⁴ For CSA, the Relapse Prevention Programme offers therapy to

⁸³ S. Rao, ‘Public Attitudes Towards Criminal Punishment, Rehabilitation and Reform’ (OnePoll, 2015) <https://www.onepoll.com/public-attitudes-towards-criminal-punishment-rehabilitation-and-reform/> Accessed 29th April 2020.

⁸⁴ Unless required under the Mental Capacity Act 2005 or the Mental Health Act 2007; Human Rights Act 1998, Art 5.

⁸⁵ C. Mckim, ‘13 New Cases of Child Sexual Abuse Every Day in the UK’ (*The Scotsman*, 2014) <http://www.thescotsman.com/news/politics/13-new-cases-of-child-sex-abuse-every-day-in-uk-1-3606978> Accessed 10th January 2017.

⁸⁶ The Home Office statistics - H. Wood, *Applied analytic work in forensic settings: The understanding and treatment of paedophilia*. In: Off the couch: Contemporary psychoanalytic applications. (Taylor & Francis 2010) pp. 143-159. ISBN 0415476151, 9780415476157.

⁸⁷ K. Marsh, ‘The Real Cost of Prison’, (*The Guardian*, 2008) <https://www.theguardian.com/commentisfree/2008/jul/28/justice.prisonsandprobation> Accessed 15th April 2020.

⁸⁸ The Ministry of Justice, ‘Costs per Place and Costs per Prisoner by Individual Prison’ (*Gov*, 31st October 2019) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/841948/costs-per-place-costs-per-prisoner-2018-2019.pdf Accessed 3rd April 2020; K. Marsh (n 87).

⁸⁹ Statistics show 1 in 35 males have tendencies, equating to an average of 936,857 men in the UK - M. Evans. ‘One in 35 Men have Paedophile Tendencies, Crime Agency Reports’ (*The Telegraph*, 2015) <http://www.telegraph.co.uk/news/uknews/11690451/One-in-35-men-has-paedophile-tendencies-crime-agency-claims.html> Accessed on the 2nd April 2020; ‘Mid-year Population Estimate of the United Kingdom (UK) in 2018, by Gender and Country’ (*Statistica*, 2019) <https://www.statista.com/statistics/281240/population-of-the-united-kingdom-uk-by-gender/> Accessed 2nd April 2020.

⁹⁰ L. Mckinstry, ‘Only by Locking up the Paedophiles will we Safeguard our Children’ (*Express*, 2007) <https://www.express.co.uk/comment/columnists/leo-mckinstry/9856/Only-by-locking-up-the-paedophiles-will-we-safeguard-our-children> Accessed 15th April 2020; J. Grierson, ‘Prisons in England and Wales are Facing a Safety Crisis, Warns MPs’ (*The Guardian*, 2019). <https://www.theguardian.com/society/2019/oct/31/prisons-in-england-and-wales-are-facing-a-safety-crisis-warn-mps> Accessed 25th February 2020.

⁹¹ The current prison places are 86,830; ‘Prison population figures: 2019’ (*Gov*, updated 10th January 2020) <https://www.gov.uk/government/statistics/prison-population-figures-2019> Accessed 21st April 2020.

⁹² Glab (n 3) 95.

⁹³ R. Wolfe and D. Marino, ‘A Programme of Behaviour Treatment for Incarcerated Pedophiles’ (1975-1976) 13 *American Criminal Law Review* 69.

⁹⁴ Glab (n 3) 100.

suspected, convicted and non-offending persons seeking preventative help,⁹⁵ which has had considerable success and expansion since its introduction.⁹⁶ A similar programme in New South Wales, the Pre-Trial Diversion of Offenders Regulation 2005,⁹⁷ was a therapeutic jurisprudence (TJ) approach for low-level intra-familial offenders⁹⁸ that had evaluations establishing reductions of recidivism by 52%.⁹⁹ TJ is widely researched as establishing that the law can successfully function as therapeutic, opposed to punitive,¹⁰⁰ where appropriate.¹⁰¹ The theory takes account of defendants, victims, survivors and witnesses; emphasising the need for balanced approaches in sentencing, with importance of ethical treatment, for encouraging more positive outcomes post-incarceration.¹⁰² Another method that has proven successful is Cognitive Behavioural Therapy (CBT);¹⁰³ one meta-analysis conducted with 11,000 sex offenders revealed only 7.2% who had CBT reoffended, inclusive of non-sexual offences.¹⁰⁴ Other promising treatments are mixtures of medication, such as anti-androgen and SSRIs, costing between £50-2000;¹⁰⁵ and intensive treatments and community supervision, costing between £5,000-15,000 per year.¹⁰⁶ In the UK and Ireland there is a non-for-profit campaign called Stop It Now! that works with abusers and at-risk of abusing adults which has also had considerable success.¹⁰⁷ This supports that treatment, instead of costly incarceration, is a legitimate and viable alternative for protecting children,¹⁰⁸ and as the upfront cost of community-based treatment is less than custodial sentencing,¹⁰⁹ the system will maximise returns on its initial outlay of resources.¹¹⁰ The

⁹⁵ L. Gillies et al, 'Relapse Prevention in Pedophiles: Clinical Issues and Programme Development' (1992) *Canadian Psychology* 199, 200.

⁹⁶ *Ibid* 205.

⁹⁷ No longer in force.

⁹⁸ J. Goodman-Delahunty and K. O'Brien, 'Parental Sexual Offending: Managing Risk Through Diversion' (Trends and Issues in Crime and Criminal Justice Series, Paper No 482, Australian Institute of Criminology 2014).

⁹⁹ L. Butler, J. Goodman-Delahunty and R. Lulham, 'Effectiveness of Pre-Trial Community-Based Diversion in Reducing Reoffending by Adult Intrafamilial Child Sex Offenders' (2010) 39 *Criminal Justice and Behaviour* 493.

¹⁰⁰ J. Kotz et al, 'Cognitive Restructuring Through Law: A Therapeutic Jurisprudence Approach to Sex Offenders and the Plea Process' (1992) 15 *University of Puget Sound Law Review* 579, 581.

¹⁰¹ It is suggested treatments may be ineffective in some individuals such as psychopaths or sociopaths who lack empathy - Beier et al (n 22) 853.

¹⁰² A. Birgden, 'Therapeutic Jurisprudence and Sex Offenders: A Psycho-Legal Approach to Protection' (2004) 16(4) *Sexual Abuse: A Journal of Research and Treatment* 351.

¹⁰³ W. Marshall, 'Appraising Treatment Outcome with Sexual Offenders' In W. Marshall, Y. Fernandez, L. Marshall and G. Serran (eds) *Sexual Offender Treatment* (Wiley 2006) 255.

¹⁰⁴ M. Alexander, 'Sexual Offender Treatment Efficacy Revisited' (1991) 11 *Sex Abuse* 101, 112; J. Marques et al, 'Effects of Cognitive-Behavioural Treatment on Sex Offender Recidivism-Preliminary Results of a Longitudinal Study' (1994) 21(1) *Criminal Justice and Behaviour* 28.

¹⁰⁵ S. Elmhurst, 'What should we do with paedophiles?' (*The Guardian*, 2016)

<https://www.theguardian.com/society/2016/mar/01/what-should-we-do-about-paedophiles> Accessed 21st April 2020.

¹⁰⁶ 'The Paedophile Next Door' Channel 4 Documentary (London: Testimony Films 2014); 'Myths and facts about Sex Offenders' (*Centre for Sex Offender Management*, 2013)

<https://ccoso.org/sites/default/files/import/mythsfacts.pdf> Accessed 21st April 2020.

¹⁰⁷ Glab (n 3) 100.

¹⁰⁸ Cost benefit analysis in America that treatment programmes saves taxpayers considerable amounts of money, as well as reducing offences of CSA - Turner (n 15).

¹⁰⁹ H. Wermink et al, 'Comparing the Effects of Community Service and Short-term Imprisonment on Recidivism: A Matched Samples Approach' (2010) 6 *Journal of Experimental Psychology* 325.

¹¹⁰ Glab (n 3) 103.

primary benefits of self-help programmes are that they can reach wider demographics; they are extremely low-cost forms of intervention,¹¹¹ and as the willingness to engage is motivated by personal morals, rather than pressure from the CJS,¹¹² they are more likely to be successful. A common misunderstanding about these methods is that they are perpetrator-assistive or lenience; however, emphasis of this being a proactive child protection method should be enforced,¹¹³ by being proactive at prevention, unlike punitive, it is able to protect potential victims before they are harmed.¹¹⁴

Those who commit CSA offences become pariahs, universally reviled and notorious within a system structured to punish instead of rehabilitate or prevent.¹¹⁵ Certain crimes do necessitate removal from society, and those without remorse, who do not want to change, cannot be reached with a therapeutic approach. However, imprisonment is costly, ineffective, and punishment without purpose is not beneficial,¹¹⁶ doing little to prevent offending or upholding the human rights of victims or perpetrators.¹¹⁷ As such, traditional punitive methods are no longer successful in protective endeavours, and rehabilitative alternatives might do more.¹¹⁸ Paedophiles, opportunistic child sex offenders and offenders with paedophilia must be distinguished from one another for effective intervention and punishment.¹¹⁹ It is imperative that the CJS, medical and wider communities distinguish involuntary desires and voluntary actions¹²⁰ – between ‘*being sexually attracted to children and acting on that attraction...a distinction often lost*’.¹²¹ In doing so, approaches to prevention and punishment may be more successful than current methodologies.¹²² ‘*[W]e must counter the emotionality surrounding the topic of paedophilia in the popular media*’¹²³ in order to wholly address a problem that perplexes;¹²⁴ such changes may bridge the gap between those with paedophilic tendencies and those who want to protect society’s most vulnerable¹²⁵ in order to prevent CSA.

In conclusion, the tendency for “paedophilia” to generate strong opinions rather than facts¹²⁶ has no practical utility;¹²⁷ and is particularly problematic for offenders, victims,

¹¹¹ M. Seto, ‘Internet-Facilitated Sexual Offending’ In *Office of Justice Programmes, Sex Offender Management Assessment and Planning Initiative* (US Department of Justice 2013) 77, 83.

¹¹² Beier et al (n 22) 852.

¹¹³ Glab (n 3) 102.

¹¹⁴ Ibid.

¹¹⁵ Ibid 85.

¹¹⁶ Ibid 103.

¹¹⁷ Ibid.

¹¹⁸ Ibid 95.

¹¹⁹ Ibid 98.

¹²⁰ Ibid 90.

¹²¹ Goode (n 21) 2.

¹²² Glab, (n 3) 90.

¹²³ Goode (n 21) 1.

¹²⁴ Glab (n 3) 86.

¹²⁵ Ibid 105.

¹²⁶ H. Musk et al, *Illicit and Illegal: Sex, Regulation and Social Control* (Willan Publishing 2005) 75.

¹²⁷ Harrison (n 79) 492-3.

practitioners and, by implication, society.¹²⁸ It continues to lead to miscarriages through the requirement of abuse;¹²⁹ increasing the risks of offences being committed;¹³⁰ inability to access appropriate medical care and treatment; innocent victims subjected to retaliation; considerable costs from *not* protecting children; media influence permeating the government; and the demonisation of and discrimination against mental disorders. Legal reform, unless therapeutic-based, would be ill-advised as it would not prevent abuse and entails significant costs. Congruently, the benefits derived from alternative approaches are considerable¹³¹ through diminishing occurrences of CSA,¹³² saving money, relieving pressures on the CJS and improving the lives of victims, paedophiles, and offenders alike. Understanding and responding to paedophilia requires a multi-agency and multi-disciplinary endeavour; the collaboration needs to be proactive in education and calming moral panic, in order to minimise risks and protect children from abuse.¹³³ In the interests of justice, it cannot be assumed that all paedophiles are pathological or criminal; or that all offenders are paedophiles.¹³⁴ Adults have a civic duty to contribute to the protection of children; society does not serve children if it perpetuates the myth of psychiatric disorders causing CSA, ignoring the reality that there are highly effective treatment provisions for its reduction.¹³⁵ If society is serious about protecting children, it is crucial to remember that the greatest risk to children will not be at the hands of strangers or paedophiles;¹³⁶ more likely it will derive from the child that was disbelieved,¹³⁷ or the unnoticeable child in an abusive home.¹³⁸

¹²⁸ *ibid* 482.

¹²⁹ *ibid* 486.

¹³⁰ H. Wakeling, R. Mann and A. Carter, 'Do Low-Risk Sexual Offenders Need Treatment?' (2003) 51(3) *The Howard Journal of Criminal Justice* 286.

¹³¹ M. Shanahan and R. Donato, 'Counting the Cost: Estimating the Economic Benefit of Paedophile Treatment Programs' (2001) 25(4) *Child Abuse & Neglect* 541.

¹³² *Glab* (n 3) 103.

¹³³ *McCarten* (n 2) 323.

¹³⁴ *Glab* (n 3) 87.

¹³⁵ Turner, 'Child Sexual Abuse: Compulsion or Choice?' (n 15).

¹³⁶ *Ibid*.

¹³⁷ *Ibid*.

¹³⁸ Dr. D. Robinson, 'Child Abuse Cases: Working Together on the Diagnosis of Child Sexual Abuse' (2007) *Law Society Gazette* (Issue 7) 26th April.

Appendix 1:**Table 32: Police recorded sexual offences against children, by sexual offence, year ending March 2018 to year ending March 2019 (Experimental Statistics)^{1,2}**

England and Wales		Apr '17 to Mar '18	Apr '18 to Mar '19
		Number ³	
Sexual offences against children		70,869	73,260
Rape		19,266	19,481
19C	Rape of a female aged 16 or over ⁴	2,787	2,354
19D	Rape of a female child under 16	7,534	7,690
19E	Rape of a female child under 13	5,372	5,735
19F	Rape of a male aged 16 or over ⁴	170	131
19G	Rape of a male child under 16	885	967
19H	Rape of a male child under 13	2,518	2,604
Other sexual offences		51,603	53,779
71	Abuse Of Children Through Sexual Exploitation	1,206	1,012
73	Abuse of Position of Trust of a Sexual Nature	289	276
22A	Causing Sexual Activity Without Consent ⁴	212	173
88E	Exposure and Voyeurism ⁴	1,000	748
23	Incest or Familial Sexual Offences ⁴	376	280
88C	Other Miscellaneous Sexual Offences ⁴	28	25
70	Sexual Activity etc With A Person With A Mental Disorder ⁴	17	16
21	Sexual Activity Involving A Child Under 13	8,553	9,390
22B	Sexual Activity Involving A Child Under 16	14,560	15,250
20A	Sexual Assault On A Female Aged 13 And Over ⁴	6,386	5,985
20B	Sexual Assault On A Female Child Under 13	9,672	10,047
17A	Sexual Assault On A Male Aged 13 And Over ⁴	1,026	882
17B	Sexual Assault On A Male Child Under 13	3,824	3,795
88A	Sexual Grooming	4,452	5,900
72	Trafficking For Sexual Exploitation ⁴	0	0
88D	Unnatural Sexual Offences ⁴	2	0