

Research Department Report 68

Research on Sexual Crime Victims with Mental Disorders or Disabilities, etc.

Outline

This study was conducted by the Research and Training Institute of the Ministry of Justice as part of the "Comprehensive Study on Trends in Crime Victimization and Crime Victims." The purpose of the study is to provide basic data for preventing sexual crime victimization and examining policies for sexual crime victims by clarifying the actual situation of victims of sexual crimes who have mental disorders or disabilities (Article 5 of the Act on Mental Health and Welfare for Persons with Mental Disorders or Disabilities), in particular, who are likely to suffer unreported crime victimization. In addition to conducting research using various statistical data on sexual crime victims, we conducted research on the detailed examination of criminal case records centered mainly on sexual crime victims with mental disorders or disabilities, and analyzed the results of this research. This research was also carried out on the current status and issues of the policies for crime victims, etc. in the Ministry of Justice and related organizations.

1. Statistical Research (Chapter 2)

(1) Outline of the Penal Code for Sexual Offenses

In the Penal Code (Law No. 45 of 1907) concerning sexual offenses, recent amendments to the law and the outline of each offense are summarized with regard to offenses against sexual freedom of individuals (Indecent assault, Penetrative sexual assault, Indecency by custodians, Sexual intercourse by custodians, Indecency through Compulsion Causing Death or Injury and Offense of requesting a visit to a person under 16 years of age).

(2) Clearance

The number of reported cases, number of cleared cases and number of persons cleared for Penetrative sexual assault were generally on a decreasing trend after peaking around 1965, but have been on an increasing trend since 2017, and all numbers in 2023 increased more than the previous year. The clearance rate was 90% from 2015 to 2021, and fell to the 70% range in 2023.

The number of reported cases for Indecent assault had generally been on a decreasing trend after peaking in 2003, but started to increase again in 2021, and the numbers of cleared cases and persons cleared have also been increasing since the same year. The clearance rate has been on an upward trend since 2003, reaching nearly 80% in 2023.

Looking at various indicators related to victims of sexual crimes, the victim rate of Penetrative sexual assault for

females in 2023 was the highest since 2004 at 4.1, while for males it has been less than 0.2 since 2017. The victim rate of Indecent assault has been less than 10.0 for females since 2016 and less than 0.5 for males since 2004. Looking at the transition in the number of victims by age group, the largest number of female victims of Penetrative sexual assault was 20-29 years of age since 2005, while the largest number of male victims was under 13 years of age from 2017 to 2022. The largest number of female victims of Indecent assault was 20-29 years of age since 2014, and the largest number of male victims was under 13 years of age since 2004. Examining the number of cleared cases by relationship between the victim and the suspect revealed that the proportion of cleared cases where the victim and suspect were acquainted was on an increasing trend for both Penetrative sexual assault and Indecent assault.

(3) Prosecution

The number of persons prosecuted for Penal Code offenses has been on a decreasing trend at below 100,000 since 2008, while the number of persons granted suspension of prosecution has remained more or less unchanged between 68,000 and 79,000 since 2004. The number of persons not prosecuted due to insufficient evidence remained at around 23,000 since 2015, while the number of persons not prosecuted has remained almost unchanged between 12,000 and 18,000 since 2004.

Examining the trend in the number of persons prosecuted or not prosecuted by Penetrative sexual assault revealed that the number of persons prosecuted had remained within the range of 400 to 500 since 1950, but exceeded 600 in 2023. The number of persons granted suspension of prosecution and the number of persons not prosecuted due to insufficient evidence have been on an increasing trend since 2017, and in 2023, increased to slightly less than 400 and around 800, respectively. Meanwhile, the number of other persons not prosecuted significantly decreased from peaking in 2015, remaining below 50 since 2018.

Examining the number of persons prosecuted or not prosecuted for indecent assault revealed that the number of persons prosecuted was on a decreasing trend with fluctuations from 2007, and was 1,400 in 2023. The numbers of persons granted suspension of prosecution and persons not prosecuted due to insufficient evidence have been on an exceptional increase since 2017. In 2023, these numbers increased to 1,400 and 1,100 persons, respectively, while the number of other persons not prosecuted significantly decreased after peaking in 2016 to 113 persons in 2023.

(4) Judgment

Looking at the trend in the number of persons convicted (imprisonment) in a court of first instance for Penetrative sexual assault without consent, the number in 2023 was about half of that in 2004. The percent distribution by term of imprisonment since 2004 has been on an increasing trend with the proportion of "more than five years and ten years or less" and decreasing trend with the proportion of "three years or less (imprisonment without suspension of execution

of the sentence)".

Examining the trend in the number of persons convicted (imprisonment with work) in a court of first instance for indecent assault, those convicted in 2023 was about 90% of that of 2004. The percentage of those sentenced to "two years or more and three years or less (suspension of execution of the sentence with all their sentences)" was on an increasing trend from 2004, while the percentage of those sentenced to "one year or more and less than two years (imprisonment without suspension of execution of the sentence)" was on a declining trend.

2. Research on sexual crime victims with mental disorders or disabilities, etc. through criminal case records (Chapter 3)

The subject cases were those convicted of Forcible sexual intercourse, Constructive Forcible sexual intercourse, Sexual intercourse by custodians, Indecency through compulsion, Constructive Indecency through compulsion or Indecency by custodians between January 1, 2018 and December 31, 2022, when the victim had a mental disorder or disability. When the victim did not have a mental disorder or disability, the subject cases were those convicted of Forcible sexual intercourse, Sexual intercourse by custodians, Indecency through compulsion or Indecency by custodian, which was included in the offense for which the judgment was rendered between January 1 and December 31, 2022. Regarding the aforementioned cases, a detailed investigation of criminal case records was conducted, and 176 victims with mental disorders and 349 persons without mental disorders were analyzed.

In the analysis, research items were divided into five categories: attributes and characteristics of the cases; characteristics of the offenders; recognition of sexual crime victimization and circumstances of unreported crime victimization; circumstances of report crime victimization and detection to investigation bodies; and victims in the criminal justice process and situation after damage. Trends and characteristics of each research item were compared by the attributes of victims of three groups (a group with mental disorder, a group without mental disorder (under 16 years), and a group without mental disorder (over 16 years)). In addition, the analysis was conducted from the viewpoint of identifying the risk of the crime going unreported by the victim according to the type and degree of mental disorder, age and relationship with the offender.

(1) Comparison between three groups of crime victims

(a) Attributes and Characteristics of the cases

Regarding the sex of victims, the percentage of females was high overall, but there was a tendency for males under 16 years of age to have a higher percentage for both those with mental disorders and those without mental disorders.

According to the results of the research on the types of mental disorders, more than 70% of persons with mental disorders fall under the category of intellectual disability.

As for the type of act of the first time they became a victim, over 70% were through "Indecency thorough compulsion" in the group with mental disorder, the group without mental disorder (under 16 years), and the group without mental disorder (over 16 years). As for where the first time they became a victim took place, outdoors was most common in the group without mental disorder (under 16 years) and the group without mental disorder (over 16 years). In the group with mental disorder, the most common place where the first time took place was at a school, work place, sanatorium, day care facility, etc.

(b) Characteristics of the offenders

Almost all offenders of cases for the group with mental disorder, the group without mental disorder (under 16 years), and the group without mental disorder (over 16 years) were males, and those with a similar criminal history accounted for about 10% to 20%. On the other hand, there was significant difference in the age group of the offenders. For offenses against the group without mental disorder (under 16 years) and the group without mental disorder (over 16 years), a higher number of offenders were of a younger age group such as in the 20s to 30s, while a higher number of offenders of offenses against the group with mental disorder were of an elderly group (over 65 years of age). In addition, regarding the position of offenders from the viewpoint of victims, in the cases for the group without mental disorder (under 16 years) and the group without mental disorder (over 16 years), the offenders were likely to be unacquainted. Meanwhile the offenders of cases against the group with mental disorder were most likely to be support personnel, and the number of support personnel was higher than that of those who were unacquainted.

(c) Recognition of sexual crime victimization and Circumstances of unreported crime victimization

The victim perception at the time of victimization was lower in the group with mental disorder and the group without mental disorder (under 16 years) than in the group without mental disorder (over 16 years) because they did not understand the meaning of the act committed by the offender or because they did not clearly recognize that they were a victim of a sexual criminal act. This lack of recognition of sexual crime victimization may be related to the reason why the victim could not file a report until the victim was repeatedly victimized, and also to the reason why it took a long time before investigating authorities discovered the crime. In addition, in the group with mental disorder and the group without mental disorder (under 16 years), there was a tendency for the period until the discovery of the sexual crime to be long, and there was a relatively large number of cases in which the sexual crime was committed multiple times against the same victim. This indicates that the sexual crime was committed multiple times before the crime was discovered.

(d) Circumstances of Report crime victimization and Detection to Investigation Bodies

In the group with mental disorder and the group without mental disorder (under 16 years), there was a tendency for unreported crime victimization or reported crime victimization firstly to relatives, supporters, school personnel, etc.. In the group with mental disorder in particular, there was a tendency for relatives, etc. who were informed of the victimization to first conduct internal hearings, etc. and to prioritize contacting medical institutions, etc. than investigative authorities.

(e) Victims in the Criminal Justice Process and Situation after Damage

In light of the fact that there are many cases in which hearings are not conducted in the group with mental disorder due to the effect of the mental disorder causing difficulties in making statements, it became clear that a relatively high proportion of hearings through forensic interviews were conducted. In addition, it became clear that in most cases, measures such as shielding and video-link were taken when crime victims appeared as witnesses in the group with mental disorders, group without mental disorders (under 16 years), and group without mental disorders (over 16 years).

(2) Analysis of the risk for unreported sexual crime victimization

(a) By type and degree of mental disorder or disability

Examining differences in the risk for unreported sexual crime victimization by the type and degree of mental disorder or disability, many of the victims with developmental disorders and mild intellectual disabilities were aware that they had been victimized by the offender, while many of the victims with dementia and severe or most severe intellectual disabilities were unaware of the acts committed by the offender, and often did not understand the meaning of the acts committed, or did not report the victim, suggesting the possibility that the victim was more likely to go unreported

(b) By Age

There was a clear contrast when examining differences in the risk of unreported sexual victimization by age. For example, in the perception of victimization at the time of the victimization, all the offenders in the group without mental disorders were able to recognize that they had been victimized by criminal acts when they were over 15 years of age. On the other hand, in the group with mental disorder, a certain number of persons at any age did not understand the meaning of the act committed by the offender, and although they recognized that the act was accompanied by discomfort, they did not clearly recognize that they were a victim of a criminal act. Therefore, the relation between lack of recognition and age is not necessarily clear.

(c) By relationship to the offenders

Examining differences in the risk of unreported sexual victimization by relationship to the offender revealed that in cases where the offender was a relative, teacher, employer or support-related person, etc., the number of cases tended to be high in both the group with mental disorder group and the group without mental disorder (under 16 years). In cases where the offender was close to the offender on a daily basis, the tendency to commit multiple sexual offenses was high, suggesting that the victim may be more likely to go unreported. In addition, regarding the reasons why the victim could not file a report until the crime was repeated, in the group with mental disorder and the group without mental disorder (under 16 years), a high percentage of sexual crime victims by relatives, etc. answered "I couldn't say because of the relationship with the offender or people around me" and in the group where the offenders were teachers, employers, support personnel, etc., there was a high percentage of sexual crime victims who lacked recognition of sexual crime victimization.

(3) Comprehensive considerations

The trends and characteristics of sexual crime victims with mental disorders or disabilities, etc. as well as the risk of unreported victimization were reviewed on the basis of the results of the research.

3. Research on the Current Measures (Chapter 4)

In order to grasp the current status and issues of the measures concerning crime victims in the criminal justice process as well as at the relevant agencies, a survey was conducted and the results were compiled from the following three perspectives: 1. a system for crime victims, etc., 2. measures on policies for crime victims, etc. and 3. development of staff to address crime victims, etc.

4. Discussion (Chapter 5)

On the basis of the results of researches, the following three points were emphasized as recommendations to further enhance and enforce support for sexual crime victims with mental disorders or disabilities, while considering the environment in which sexual crime victims with mental disorders are placed, and the characteristics of sexual crime victims with mental disorders or disabilities.

(1) Importance of continued operation and implementation of various systems to date

It was emphasized that continuously promoting the operation and implementation of various systems to support sexual crime victims was of importance.

(2) Forensic Interview

It was emphasized that the forensic interview helps to protect victims by facilitating the understanding of facts concerning sexual crime victims, and in turn, to realize appropriate punishment for offenders, and emphasis was also placed on the importance of providing public prosecutors repeatedly with training on conducting forensic interview and the importance of publicizing the fact that persons who have received such training are engaged in interviewing victims who have suffered from sexual crime.

(3) System for Hearing and Communication of Victims' Sentiments

Regarding the system of hearing and communication of victims' sentiments at penal institutions, probation offices, and regional parole boards, it was emphasized that it is more difficult to apply the system for sexual crime victims with mental disorders or disabilities and sexual crime victims under 16 years of age than for sexual crime victims without mental disorders over 16 years of age, and it is necessary to improve the way in which information is provided in order to promote the use of the system.

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