

**The Role of Procedural Justice Reasoning in the Reintegration of
Sexual Offenders into the Community**

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ABSTRACT

Preventive detention schemes operate in jurisdictions around the world. Such schemes were created to protect the community from individuals who still present an unacceptable risk of harm following a term of incarceration. These schemes impose an additional term of detention or community supervision after the initial prison term. This past decade, several Australian jurisdictions implemented preventive detention schemes targeting serious sexual offenders. Legislation stipulates ongoing detention or supervision should serve utilitarian purposes and depend on the potential risk of future harm. However, research has indicated retributive factors may influence preventive detention decisions. This discrepancy highlights the need to understand motives driving preventive detention decision making.

Chapter 1 outlines the thesis, provides scope and rationalisation for the studies, and addresses its contribution to preventive detention research. Chapter 2 presents the relevant literature and provides context for the empirical chapters. Chapter 3 assesses the impact of additional variables on retributive and utilitarian motives in driving preventive detention decisions. To achieve this, an experimental vignette methodology (Study 1) and process tracing methodology (Study 2) examined the impact of offender responsibility and attitudes towards sex offenders on retributive and utilitarian motives. The findings showed participants were influenced by the risk of re-offence, rather than the offender's prior punishment. However, some results from Study 1 indicated retributive concerns and attitudes towards sex offenders affected preventive detention decisions, undermining the utilitarian purpose of the legislation. Contrary to our expectations and previous research findings, participants administered harsher preventive detention measures to offenders with more severe prior punishments.

Chapter 4 examined how additional variables of theoretical interest (political orientation and remorse) affected retributive and utilitarian motives in preventive detention decisions.

Further, this chapter sought to clarify Chapter 3's unexpected findings by examining how participants used prior punishment information. Results indicated political orientation and remorse impacted preventive detention decisions independent of retributive and utilitarian motives. The findings also demonstrated both utilitarian and retributive motives drive preventive detention decisions, with participants' *perceptions* of punishment sufficiency and risk of re-offence driving decision making, rather than *actual* prior punishment and risk.

Judges are trained to engage in preventive detention decisions within legal parameters and available evidence rather than their personal desire for retribution; thus, their preventive detention reasoning may differ from the general population. Chapter 5 thus examined the impact of specific legislation training and preferences for intuitive or deliberative reasoning on preventive detention decision making, to comment on the ability to generalise from findings described in Chapters 3 and 4 to judicial populations. Participants were presented with a brief training module, the preference for intuitive or deliberative reasoning scale, and then an experimental vignette manipulated the offender's risk of re-offence and prior punishment. Results indicated clear support for utilitarian reasoning in preventive detention decisions, with only marginal support for retribution. Furthermore, these findings were not moderated by training or preference for intuitive versus deliberative reasoning.

Chapter 6 summarises the empirical chapters' findings in the context of relevant literature and discusses key implications of this research; specifically, the roles both retribution and utilitarian play in preventive detention decision making. The findings of this research program are discussed in terms of theoretical implications for research on the psychology of justice, and practical implications for the application of preventive detention legislation.

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DECLARATION

In accordance with Swinburne University of Technology Regulations, the following declaration is made:

I, Mickael Nickolas Bojczenko, hereby declare that this thesis contains no material which has been accepted for the award to the candidature of any other degree or diploma at any university or equivalent institution, except where due reference is made in the text of the examinable outcome. To the best of the candidate's knowledge, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the examinable outcome. Where the work is based on joint research of publications, the thesis discloses the relevant contributions of the respective workers or authors.



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PUBLICATIONS AND CONTRIBUTIONS

The following publications are included in this thesis. Signed authorship indication forms are included in Appendices A, B, G, and L. In the case of chapters two, three, four, and five, the contribution of the authors to the work involved the following:

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CHAPTER 1:

GENERAL INTRODUCTION

1.1. Background of the Project

Preventive detention schemes impose a sanction on an offender (usually in the form of ongoing supervision or an additional detention order), following the completion of their custodial sentence, if they are deemed an unacceptable risk to society. Preventive detention schemes are by no means a new phenomenon. For years, governments have utilised such measures in an array of settings including dealing with suspected terrorists. However, in recent times the application of such legislative measures has become more widespread and designed to target specific offending groups, such as sexual offenders.

Preventive detention legislation is grounded in the notion of community protection; specifically, if an individual poses an unacceptable risk of harm to the community, preventive detention legislation will be imposed on that individual to ensure the safety of the public. Preventive detention schemes are imposed on an 'eligible offender', once they have completed a term of imprisonment and have been identified as presenting an 'unacceptable risk of harm'. As noted by McSherry, Keyzer, and Freidberg (2006) a majority of sentencing legislation aims to ensure that adequate punishment for the offender is achieved, allowing for the rehabilitation of the offender, as well as satisfying proportionality and deterrence principles. Preventive detention legislation deviates from these key approaches to criminal sentencing as its sole focus is on the risk the offender carries, and how to mitigate that risk to ensure community safety.

In addition to differing on the fundamental principles of sentencing (McSherry et al., 2006), preventive detention legislation comes into effect *after* the completion of a term of imprisonment. That is, once the offender has completed a custodial sentence they are then made

subject to *additional* preventive detention based on what they might do in the future. The nature of this implementation (i.e. after offender has completed their punishment), has been a point of contention in the context of human rights; specifically, the right not to be subject to ‘double punishment’ as well as the right to liberty (Keyzer, 2009; McSherry, 2014a, 2014b; McSherry & Keyzer, 2009; Morse, 2004).

In their implementation worldwide, all preventive detention schemes aim to achieve community protection, offender rehabilitation, and mitigation of risk. However, in different jurisdictions, the details of preventive detention schemes may differ in a variety of ways, including (but not limited to) prioritisation of aims, thresholds of risk, scope (i.e. targeted offending cohorts), legal domain (civil versus criminal), and structures of implementation (McSherry, 2014a; McSherry & Keyzer, 2009; McSherry et al., 2006). For example, in the United States, the primary mechanism by which preventive detention is administered is civil commitment legislation.

1.1.1. Civil Commitment Legislation (US)

Civil commitment legislation is employed in several jurisdictions across the United States and targets individuals who have committed a sexual offence, are assessed to hold a high likelihood of re-offending, and who have been diagnosed with a mental illness which contributes to their risk; these individuals are labelled ‘sexually violent predators’. In line with the core features of preventive detention, individuals who are made subject to civil commitment schemes have committed serious sexual offences and have completed a term of imprisonment for their crimes. Following the completion of the prison sentence, they can be detained for an additional period of time, sometimes indefinitely, until they are determined to no longer pose an unacceptable risk of harm to the community.

Civil commitment is a preventive detention measure as it allows for the additional detainment of eligible individuals, though its primary purpose is the rehabilitation of the offender. Unlike other preventive detention schemes, civil commitment is dealt with in the civil realm, rather than the criminal domain of the justice system; this also aligns with the rehabilitative intent of the legislation. As noted by Deming (2008), depending on the jurisdiction, a person sanctioned under civil commitment can be detained indefinitely within a ‘secured facility’ (i.e. secure psychiatric hospitals, other form of secure facility, or in a prison).

Implementation of specific civil commitment schemes varies across different jurisdictions, however, there are two broad mechanisms by which this legislation can be enacted. The first mechanism is via detainment in a secure facility, in which the offender has access to treatment. The second mechanism is via strict supervision of the offender in the community. Under this mechanism, the offender receives treatment and care whilst being allowed some level of autonomy and independent living. Outside of the United States, civil commitment models operate in New Zealand (Sentencing Act 2002), Scotland (Criminal Procedure (Scotland) Act 1995), and Germany (Strafgesetzbuch (StGB); German Criminal Code). Elsewhere, preventive detention, rather than civil commitment, is the primary mode of administering ongoing supervision or detention of offenders posing a high risk to the community. Typically, preventive detention is enacted under specific legislation that allows for ongoing supervision or detention in the criminal justice system, primarily for the purpose of alleviating the risk that would be posed by the offender to the community; this is the case in Australia, as well as New Zealand, Scotland, and Germany.

1.1.2. Serious Sex Offenders (Detention and Supervision) Act 2009

In Australia, preventive detention legislation has been enacted across several states, including Queensland, New South Wales, Western Australia, and Victoria. The Serious Sex Offenders (Detention and Supervision) Act 2009 (SSO(DS)A) was one of the first preventive detention schemes targeting serious sex offenders in Australia and was implemented in the state of Victoria. The primary aim of the Act is to "enhance the protection of the community..." (SSO(DS)A 2009, S.1(1)). The secondary purpose of the Act is to "facilitate the treatment and rehabilitation of such offenders" (SSO(DS)A 2009, S.1(2)). Both these aims are achieved through the administration of post-sentence intervention. Unlike civil commitment schemes employed in the US, preventive detention schemes like the SSO(DS)A are enacted in criminal law. This reflects the shift of primary focus from offender rehabilitation (civil commitment) to community protection (preventive detention).

The Act can operate in one of two ways. The first mechanism through which the Act can operate is through a supervision order. If made subject to a supervision order, the offender is released into the community following the completion of his or her custodial sentence, however is required to adhere to a number of lawful directions (conditions). The second mechanism in which the Act can operate is through a detention order. If made subject to a detention order, the offender is remanded in a custodial setting (i.e. prison) beyond the duration of his original custodial sentence, for the duration of the order.

1.1.2.1. Issues Associated with the SSO(DS)A

The aim of the Act is utilitarian in nature; that is, it emphasises protection of the community through the restrictions of an offender's rights and/or freedom. However, there has been discussion about this principle within the academic community, and concerns raised

regarding the imposition of a new order on an offender in the absence of a fresh conviction (McSherry, 2014a; McSherry & Keyzer, 2009).

In *Fardon v Attorney-General (Qld)* (2004), both sides of the debate were presented. One side, as presented by the sole dissenting judge, and supported by many legal scholars, is that once an offender has completed their sentence, any imposed orders (e.g., in line with preventive detention schemes) would constitute additional punishment. On the other side, the majority held that as preventive detention schemes are primarily in place for public safety, they are protective in nature, not punitive, and thus cannot be classified as ‘additional punishment’.

1.1.2.2. Psychological Research to Inform the Legal Debate

Gillespie (1998, p. 1176) notes discussion in *Kansas v Hendricks (U.S.)* (1997) referring to preventive detention as "a thinly-veiled attempt to seek an additional term of incarceration...", highlighting concerns about an implicit retributive intent driving preventive detention. In response, advocates of preventive detention legislation assert that the nature of these schemes is utilitarian, rather than punitive. The key question raised, therefore, centres on the motivations actually driving preventive detention decisions; while the Act may intend preventive detention decisions to be utilitarian in nature, are such decisions actually based on utilitarian motives or retributive motives? To address this legal question, in this dissertation I will turn to the body of psychological research in which people reason about the justice of treatment and outcomes.

1.1.3. Procedural and Distributive Justice

Distributive justice refers to the perceived fairness of outcomes that result from decision making procedures (e.g., legal procedures; Sivasubramaniam & Heuer, 2012), and distributive justice reasoning tends to be rooted in principles of equity: Equity is perceived to occur when an

individual receives benefits that are proportional to their contribution (Folger, 1977; Van den Bos, 1999). Thus, an outcome is judged to be fair if the distribution of rewards and/or punishments are seen as comparable to the actions or investments of the party involved. The theoretical basis of distributive justice research has always been closely tied to a principle of deservingness: Outcomes are judged to be fair when they are seen to be deserved by the party in question (Feather, 1999).

While distributive justice refers to the perceived fairness of outcomes that result from decision making procedures, procedural justice refers to the perceived fairness of the decision making procedures themselves (Sivasubramaniam & Heuer, 2012). Early procedural justice research emphasised the importance of respectful treatment in the determination of procedural justice judgments, but more recent research has established that procedural justice judgments are also closely tied to principles of equity (i.e., respectful treatment of a target is considered fair when the target is seen to have behaved in ways that are positively socially valued, but when the target has behaved in ways that are negatively socially valued, observers judge disrespectful treatment of the target to be fairer; Heuer, Blumenthal, Douglas & Weinblatt, 1999) and moral mandates (i.e., when individuals hold a moral mandate in relation to an outcome, respectful treatment plays a less prominent role in determining perceptions of fairness; Skitka & Houston, 2001; Skitka & Mullen, 2002).

1.1.4. Implications of Justice Research for Preventive Detention

In Heuer et al.'s (1999) deservingness model, the main emphasis is on deservingness as key to justice reasoning. Just as distributive justice researchers demonstrated that outcomes are judged to be fair when they align with the outcomes a target deserves, procedural justice theorists have now demonstrated that treatment is judged to be fair when it aligns with the treatment a

target deserves. With research having established that judgments of deservingness moderate the effect of respectful treatment on procedural and distributive justice perceptions, it is important to consider how this might apply to people judged *not* to deserve respect. The body of psychological research reviewed above suggests that justice reasoning regarding preventive detention will be based on perceptions of the treatment and outcomes that sex offenders deserve. To the extent that the behaviours of sex offenders are seen as negatively socially valued, this invites the prediction that a retributive motive at least partially drives decisions about the administration of preventive detention.

1.2. Research Gaps and Problem

As noted above, the majority of Australian jurisdictions have employed preventive detention measures with the sole, utilitarian purpose of managing sexual offenders who are deemed to be an unacceptable risk of harm to the community. This trend has ignited debate among academics and jurists who are specifically concerned with the administration of additional sanctions in the absence of a fresh conviction. In other words, unlike existing legislation which is enacted following a crime, preventive detention is enacted based on a prediction of likelihood about what *may* occur. In light of these concerns, the underlying motives that drive these decisions must be properly understood.

At time of writing, only one study has directly examined the motives driving decision making in a preventive detention context (Carlsmith, Monahan, & Evans, 2007). Carlsmith et al. (2007) examined people's application of civil commitment legislation in the United States, and their findings suggested that retribution does play an important role in preventive detention decisions. Furthermore, research on procedural and distributive justice indicates that deservingness plays a central role in justice reasoning, suggesting that retribution (i.e.,

deservingness-based justice reasoning with regard to sexual offenders) would drive preventive detention decisions. Thus, this project more closely investigated the degree to which retributive and utilitarian principles drive justice reasoning and decision making regarding ongoing detention and supervision orders for serious sex offenders.

In addition to establishing the importance of deservingness in determining both procedural and distributive justice reasoning, justice researchers have found that several factors moderate this contingency between actions and outcomes, or between actions and treatment. For example, when an actor is not responsible for a behaviour, the relationship between the actor's negative behaviour and desire for a negative outcome for the actor is weakened (Darley, Carlsmith, & Robinson, 2000). Similarly, if an actor expresses remorse for a negative behaviour, the impulse to punish the actor is weakened (Gromet & Okimoto, 2014).

Aside from contextual factors specific to the actor in a scenario, features of the perceiver are also important. For example, political orientation has been found to influence justice reasoning (Choma, Hafer, Dywan, Segalowitz, & Busseri, 2012; Clark & Wink, 2012; Gerber & Jackson, 2013; Skitka, Mullen, Griffin, Hutchinson, & Chamberlin, 2002), with conservatives placing more emphasis on deservingness and punishment for transgressions than liberals, and those high on right-wing authoritarianism more strongly endorsing punishment of offenders for the express purpose of retaliation against past wrongs. As Heuer et al. (1999) argue that the deservingness motive is an intuitive judgment, we would also predict that individual differences in intuitive versus deliberative reasoning (Richetin, Perugini, Adjali, & Hurling, 2007) would moderate the importance of deservingness in justice judgments, with deservingness a stronger driver of justice judgments among those with a more intuitive reasoning style.

Therefore, this project explored how various factors impact the balance of retributive and utilitarian motives driving preventive detention decisions. In particular, we tested the ways in which justice reasoning and decision making are moderated by several contextual variables noted above, which have been identified as important in the justice literature.

1.3. Aims

The primary aim of the project was to investigate the degree to which utilitarian and retributive principles drive justice reasoning and decision making regarding ongoing detention and supervision orders for serious sex offenders. The secondary aim of the project was to test the ways in which justice reasoning and decision making are moderated by several contextual variables identified as important in the justice literature; these variables are associated with the perceiver (specifically: attitudes toward sex offenders, political orientation, preference for intuitive versus deliberative reasoning, and training on legislation) and the offender (specifically: responsibility for offending and remorse, and offence type).

1.4. Contribution and Significance of the Project

1.4.1. Practical Contribution

The proposed research project makes a significant practical contribution to the legal debate surrounding preventing detention for sex offenders. Issues surrounding sex offending and sex offenders have generated fear within Australian society and around the world. In response to such fear, we have seen the recent creation and implementation of preventative detention schemes that target serious sexual offenders (Callinan, 2013; D. Harper, Mullen, & McSherry, 2015). Concurrently, jurists have expressed significant concern about the potentially punitive nature of preventative detention schemes, thereby raising a question about whether justice

reasoning regarding preventative detention is actually based on utilitarian motives (protection of the community and rehabilitation of the offender) or retributive motives (additional punishment of the offender; Bojczenko & Sivasubramaniam, 2016; Carlsmith et al., 2007; McSherry, 2014a). This program of research will employ experimental psychology methods to shed light on motivations driving people to impose ongoing supervision and detention on offenders, addressing an important legal question from a psychological perspective.

1.4.2. Contribution to the Academic Literature

The project also significantly advances theory on the psychology of justice reasoning in several ways. First, while there is some research that provides insight into the motivations behind decisions to punish those who violate the law (Carlsmith, 2008; Darley, Carlsmith, & Robinson, 2000; Marshall, Eccles, & Barbaree, 1993), there is a dearth of literature examining the impulse to further punish offenders based on perceived insufficiency of an initial sanction. This project, therefore, fills a theoretical gap that is of growing practical importance. Second, this program of research is the first to apply the deservingness model of procedural and distributive justice to “second-hand” punishment contexts, in which an offender has already served an initial sanction for their transgression. Finally, this program of research is the first to examine the conditions under which participants’ support for preventative detention is driven by retributive versus utilitarian motives. Across five studies, we tested the effects of several variables identified in the justice literature as important in moderating the importance of deservingness in justice judgments; as such, this research project is the first to investigate the specific conditions under which the deservingness model of procedural and distributive justice applies in “second-hand” punishment contexts.

1.5. Research Methodology

The primary aim of the project was to investigate the extent to which different motivations (i.e. utilitarian and retributive principles) influence justice reasoning in the context of post-sentence intervention. As the project is primarily concerned with investigating the causal relationship between numerous variables (i.e., factors influencing justice reasoning and decision making in a post-sentence context), an experimental methodology has been implemented throughout all studies.

The methodological framework that serves as the foundation for the studies was derived from Carlsmith et al. (2007); specifically, in this dissertation, I adapted their core experimental manipulations of “prior punishment sufficiency” and “risk of re-offence”, as well as their vignette (which was amended to fit the Victorian context). Carlsmith et al. (2007) examined underlying motivations for punishment, focusing on the mechanisms driving civil commitment for sexually violent offenders. In their research, participants were presented with a vignette depicting a case involving a ‘sexually violent predator’. The scenarios varied the sufficiency of the prior punishment received (i.e., sufficient punishment vs. insufficient punishment), as well as the likelihood that the defendant would re-offend (i.e., 0%, 4%, and 70% risk of recidivism). After being presented with the scenario, participants were asked whether they would oppose or support civil commitment for the perpetrator.

Given that civil commitment legislation cites utility as the core of its justification and implementation, participants should be more sensitive to information pertaining to the offender’s risk of re-offence. Specifically, if the offender presents as a high risk of re-offence, participants should be more likely to endorse civil commitment in order to rehabilitate the offender and/or protect the community from future harm. On the other hand, if the offender was shown to have a

low risk of re-offence, then participants should be less likely to endorse civil commitment as their utilitarian concerns (i.e. rehabilitation/community protection) are already addressed. Thus, an effect of risk information on civil commitment decisions would indicate that utilitarian motives are driving such decisions.

In line with the utilitarian nature of civil commitment, information pertaining to the offender's previous punishment (i.e., whether their prior punishment was sufficient or insufficient) should have no bearing on civil commitment decisions. As civil commitment states rehabilitation and community protection as its primary aims, the sufficiency of the offender's previous punishment should not impact a decision about whether an offender should be subject to ongoing detention or supervision. If the offender's previous punishment did affect participants' civil commitment decisions, this would suggest that participants are using civil commitment as a means of assigning a just punishment when they feel that an offender has not been punished enough in the first instance. In other words, if participants were using civil commitment as a vehicle to satisfy their retributive motives, we would see that participants who read that the offender had received an insufficient prior punishment would be more likely to endorse civil commitment. On the other hand, participants who read that the offender had received a sufficient prior punishment would be less likely to endorse civil commitment. Thus, an effect of prior punishment on civil commitment decisions would indicate that retributive motives are driving those decisions.

Results of this study showed two main effects; prior punishment and risk of recidivism, as well as an interaction effect between prior punishment and risk of recidivism. As risk of recidivism increased, so too did the support for civil commitment; this finding indicated that participants, as intended, considered information relevant to utilitarian motives when they made

preventive detention decisions, administering civil commitment more often when the offender posed a higher risk to the community. However, as punishment sufficiency increased, the support for civil commitment also decreased; this finding indicated that participants did consider the offender's prior sentence when determining whether they should administer ongoing supervision or detention. Further, the interaction effect indicated that, when participants were told that the offender had undergone an insufficient prior punishment, they were more likely to endorse civil commitment, regardless of the risk of recidivism; however, when participants were told the offender had undergone a sufficient prior punishment, the offender's risk of re-offence impacted their civil commitment decisions in the predicted direction. In other words, once their retributive concerns were satisfied (i.e., prior punishment had been sufficient), participants would then address their utilitarian concerns (i.e. administer civil commitment according to the offender's risk of re-offence).

According to the purpose of the legislation, the sufficiency of the offender's prior punishment is irrelevant, and should not be considered in a preventive detention decision; however, the findings of Carlsmith et al. (2007) indicated that civil commitment for sexually violent offenders was based on retributive motives, as well as utilitarian concerns. More specifically, the authors posited that participants would look at the information using a just deserts motive; if they believed that the punishment was insufficient, they would use civil commitment as a means to correct the perceived discrepancy between the punishment that was received, and their idea of just deserts. The findings of Carlsmith et al. (2007) therefore suggest that retribution is a primary motive for determination of additional orders. In this project, I employed the punishment sufficiency and risk of re-offence manipulations in the same way, with the expectation that information about high risk of re-offence (utilitarian motives), as well as

insufficient prior punishment of an offender (retributive motives), would lead people to administer more restrictive additional post-sentence orders.

The secondary aim of the project was to explore the extent to which utilitarian and retributive motives to administer preventive detention are moderated by an array of contextual factors. Additional variables were thus investigated throughout the course of the project to examine their effects on the balance between utilitarian and retributive motives; these additional variables, identified as important through previous research on justice reasoning, comprised both offender-specific and context-specific factors. Offender-specific factors included; responsibility (Darley et al., 2000), remorse (Gold & Weiner, 2000), and the type of offence in which the offender had engaged (Warr, 1989). Context-specific factors include; observers' attitudes toward sex offenders (Shackley, Weiner, Day, & Willis, 2014), political orientation (Choma et al., 2012; Zakrisson, 2005), preference for intuitive versus deliberative reasoning (Richetin et al., 2007), and legislation training (Kassin & Fong, 1999). Furthermore, we investigated the degree to which situational variables (offenders' responsibility, remorse, type of offence, and observers' legislation training) affected the balance of retribution and utility in determining preventive detention decisions, above and beyond observers' individual differences (attitudes, political orientation, and preference for intuitive versus deliberative reasoning).

1.6. Thematic Overview of the Thesis

The thesis comprised six chapters: General Introduction, Literature Review, Empirical Paper 1, Empirical Paper 2, Empirical Paper 3, and General Discussion. The Literature Review is the first publication being presented for examination; this paper provided an analysis of the relevant literature (which has been summarised briefly above) and underpinning the theoretical

foundations of the project. The Literature Review was published in *Psychiatry, Psychology and Law* (Bojczenko & Sivasubramaniam, 2016).

The following three chapters (Empirical Papers 1, 2, and 3) are the remaining three papers being presented for examination; these papers describe five empirical studies, with each of these studies examining different factors thought to affect the balance between utilitarian and retributive motives in preventive detention decision making. Empirical Papers 1-3 follow a focused line of inquiry specifically examining the research questions, but Empirical Paper 2 also pursues specific findings of prior studies in the thesis. Following manipulation checks in the first experimental study (described in Empirical Paper 1), it was determined that the punishment sufficiency manipulation was more complex than had been indicated by Carlsmith et al. (2007). As a result, additional questions were included in the later studies (described in Empirical Paper 2) to further investigate the nature of the punishment sufficiency manipulation, and to specifically investigate perceptions of punishment sufficiency in depth. The final study in this research program (described in Empirical Paper 3) aimed to investigate the degree to which findings would generalise from the student populations employed in Empirical Papers 1 and 2 to the populations actually determining the administration of preventive detention.

Finally, the General Discussion consists of an examination and explanation of the overall and key findings. In the General Discussion, I provide an integrated summary of the findings, and conclusions from the overall project.

1.7. Relevance of Each Empirical Paper to the Research Contribution

1.7.1. Empirical Paper 1

Empirical Paper 1 is a two-study paper, submitted on November 23rd, 2017 for publication in *Basic and Applied Social Psychology*. The findings of these two studies were

presented at the Twelfth Biennial Conference of the Society for Applied Research in Memory and Cognition (SARMAC) in Sydney in January, 2017.

The first study in this paper was an online study that examined the effects of attitudes towards sex offenders and responsibility (as well as risk of re-offence and prior punishment sufficiency) on preventive detention decisions. Collectively, criminal offenders are a stigmatised group (Chui & Cheng, 2013), and this is even more true for sexual offenders (Tewksbury, 2005; Tewksbury & Lees, 2006). Combined with a number of studies establishing that outgroups are seen as homogenous (Sample & Bray, 2006; Vásquez, Maddan, & Walker, 2008), we can infer that people generally view sex offenders in a negative light, regardless of the severity, frequency or time elapsed since their index offence(s). This inference is supported by an array of literature examining attitudes towards sexual offenders, which have consistently shown that people hold negative attitudes towards sexual offenders (Altholz & Salerno, 2016; Brown, 1999; Marshall, Eccles, & Barbaree, 1993; Valliant, Furac, & Antonowicz, 1994; Stevenson et al., 2015; Wodarski & Whitaker, 1989). However, research has also shown that the offender's responsibility for an event can moderate perceivers' attitudes.

A wide array of research indicates that the perceived responsibility assigned to an actor for a particular transgression can affect punishment decisions (Carlsmith, Darley, & Robinson, 2002; Darley & Pittman, 2003; Horai & Bartek, 1978; Vidmar & Miller, 1980). For instance, Darley et al. (2000) found that, as an actor's responsibility for a transgression increased, so too did the perceiver's recommended punishment. In other words, perceived responsibility of an actor can be a mitigating or aggravating factor when assigning punishment for a transgression. In addition to affecting how people assign punishment, perceived responsibility can also effect perceiver's opinions and attitudes towards the actor. Specifically, agents of causal responsibility

for negative events are themselves viewed negatively (Iyengar, 1989; Lagnado, Gerstenberg, & Zultan, 2013); this is clearly applicable to sexual offenders, who are seen as agents of causal responsibility in heinous crimes.

Together, the domains of research outlined above indicate that sexual offenders are generally viewed negatively and as a homogenous outgroup, but that this negative perception can be enhanced (or attenuated) depending on the degree to which they are seen as causally responsible for a particular offence. It is therefore important to examine the ways in which these variables (general attitudes towards sex offenders, and offender responsibility for a particular transgression) combine to affect preventive detention decision making; specifically, given general negative attitudes toward sexual offenders by third party observers, how will offender responsibility for a particular transgression impact the balance of retributive and utilitarian motives in driving preventive detention decisions?

Findings from Study 1 showed that the offender's risk of re-offence, responsibility, attitudes towards sex offenders (specifically, attitudes towards their treatment and punishment), and the interaction between punishment sufficiency and responsibility, were all significant predictors of sanction severity in the expected directions. Specifically, higher risk, increased responsibility and more punitive attitudes towards sex offenders all contributed to a greater likelihood of harsher sanction severity (i.e. detention order over a supervision order). The interaction between punishment sufficiency and responsibility indicated that participants will first account for the offender's previous punishment and once they are satisfied with this, they will turn to the offender's responsibility to inform their decision making. In terms of factors affecting participants' recommendations about the length of their selected order, punishment sufficiency and attitudes towards sex offenders (treatment and punishment) significantly

predicted length of supervision order, and only attitudes towards sex offenders (treatment and punishment) significantly predicted length of detention order. In both length of supervision order and length of detention order, the effects of attitudes towards sex offenders were in the expected direction. However, the effect of punishment sufficiency was in the opposite direction to that expected. Specifically, as prior punishment sufficiency increased, so too did the recommended length of supervision order.

The second study in the paper is drawn from Olivia Campbell's Honours thesis. In light of the ambiguity of the roles of retribution and utility in preventive detention decision making in the results of the first study, the second study examined motives driving preventive detention decision making in a different manner, using process tracing methodology (PTM; Jacoby, Jaccard, Kuss, Troutman, & Mazursky, 1987). Rather than presenting participants with all of the information at once, as in the first study, PTM forces the participant to choose the information they wish to see. This allows for a clear indication of information the participant deems important when engaging in decision making.

The results of the second study showed that the majority of participants actively sought utilitarian information when engaging in preventive detention decision making. Furthermore, when the participants read that the offender had a high risk of re-offence, they were more likely to recommend a harsher sanction (i.e. detention over supervision), compared to when the offender's risk of re-offence was low. These findings suggest that participants are engaging with the legislation as intended and are interested in the offender's risk when making preventive detention decisions. Interestingly, among those participants who chose to view information about the offender's prior punishment, there were no significant effects. These results are consistent

with several findings in the first study supporting the notion that people are making preventive detention decisions primarily in line with utilitarian concerns.

Overall, the findings of Empirical Paper 1 showed that participants were primarily driven by risk of re-offence information in their preventive detention decision making. This result is encouraging, as it indicates that participants are doing as they should; they are assigning outcomes in line with the utilitarian principle that should drive preventive detention decisions. However, there were some unexpected findings. For example, as punishment sufficiency increased (i.e., as participants were told that the offender had previously spent longer in prison), so too did participants' recommendations about the length of the supervision order. This finding runs counter to previous research (which showed that *insufficient* prior punishment led to more restrictive preventive detention recommendation recommendations, supporting the notion that preventive detention was used to address retributive motives); we discussed this finding with regard to perceptions of institutionalisation, as well as heuristics about offender dangerousness. The studies described in Empirical Paper 2 were developed partly in response to this finding and aimed to examine participants' perceptions of punishment sufficiency and its implications in more depth.

1.7.2. Empirical Paper 2

Empirical Paper 2 is a two-study paper, submitted on September 6th, 2017 for publication in *Psychology, Crime and Law*. The findings of these two studies were presented at the 2017 meeting of the Society of Australasian Social Psychologists in Melbourne in April, 2017.

The first study in this paper was an online study that examined the effects of political orientation and remorse (in addition to risk of re-offence and punishment sufficiency) on preventive detention decisions. Previous research has highlighted the role of political orientation

on justice reasoning. Specifically, individuals who are high on right-wing authoritarianism and conservatism are more likely to make judgements based on deservingness (Galen & Miller, 2011), and are also more likely to endorse harsher sanctions against a transgressor (Clark & Wink, 2012; Gerber & Jackson, 2013; Nemeth & Sosis, 1973). However, in general, when a transgressor expresses remorse, perceivers are *less* driven by retribution when engaging in decision making (Gold & Weiner, 2000; Jehle, Miller, & Kimmelmeier, 2009). In other words, offenders who express remorse for their transgressions are assigned less blame and receive less severe sanctions (Gold & Weiner, 2000; Jehle et al., 2009). It is therefore important to examine the ways in which these variables (perceiver's political orientation and offender's remorse) combine to affect preventive detention decision making; specifically, given a perceiver's political orientation, how will offender remorse impact the balance of retributive and utilitarian motives in driving the perceiver's preventive detention decisions?

Findings from this study showed that remorse and political orientation (in particular, right-wing authoritarianism) largely influenced preventive detention decisions in the expected manner. Specifically, participants high on right-wing authoritarianism were more likely to recommend harsher post-sentence sanctions, and they also recommended longer detention orders. Remorse expressed by the offender, on the other hand, reliably reduced the restrictiveness of sanctions imposed. Surprisingly, however, the hypothesis that political orientation and remorse would impact the balance of retributive and utilitarian motives was not supported, as there were very few significant effects of the retributive (punishment sufficiency) and utilitarian (risk) primes when it came to preventive detention decisions.

Given some of the surprising findings in the research program thus far, particularly with regard to the effects of the offender's prior punishment in Empirical Paper 1, the second study in

Empirical Paper 2 was conducted as an online study that more closely examined the nature of the punishment sufficiency manipulation. In particular, the second study first examined the mechanisms by which the punishment sufficiency manipulation may affect preventive detention decisions; we tested several possible mediating variables that have been shown to affect punishment decisions (e.g. sentiment towards the offender, perceived punishment sufficiency, perceived risk of re-offence, perceived rehabilitation, and desire to punish). Second, we tested whether the effects of the offender's prior punishment on preventive detention decisions were specific to sexual offenders or generalisable to other (in this study, violent) offenders, while controlling for several factors that may influence participants' perceptions of the punishment sufficiency manipulation (e.g. stereotypes, prejudice, discrimination, attitudes towards prisoners, and fear of crime).

In examining the relationship between the offender's prior punishment and preventive detention decisions, and the possible mediating roles of sentiment towards the offender, desire to punish, perceived risk of re-offence, perceived punishment sufficiency, and perceived rehabilitation in that relationship, findings indicated that there was no significant direct effect of prior punishment on sanction severity, but there were significant indirect effects via perceived risk of re-offence and perceived punishment sufficiency. Specifically, as prior punishment increased, perceived punishment sufficiency increased, and perceived risk of re-offence decreased. Furthermore, as perceived punishment sufficiency increased, recommended sanction severity decreased; and as perceived risk of re-offence increased, recommended sanction severity increased. In addition, desire to punish was a significant predictor of recommended sanction severity.

To examine the effects of stereotypes, prejudice, discrimination, attitudes towards prisoners, and fear of crime (in addition to prior punishment and type of offence) on preventive detention decisions, findings indicated that discrimination was the sole significant predictor of recommended sanction severity, prejudice was the sole significant predictor of recommended length of detention order, and there were no significant predictors of supervision order. These findings indicate that, once measures of discrimination and prejudice are accounted for, prior punishment had no impact on preventive detention decisions.

Overall, the findings from the first study found only weak support for the role of retributive or utilitarian motives in preventive detention decision making, with risk of re-offence and punishment sufficiency each interacting with remorse to predict length of supervision and detention orders (respectively). In the second study, we probed the punishment sufficiency manipulation further and found that perceptions of punishment sufficiency and risk of offender re-offence both served as mediators of a significant indirect effect of prior punishment on sanction decisions. This finding is important because it demonstrates that the prior punishment manipulation provides participants with different types of information: participants are using the prior punishment manipulation (utilised in previous research as a retributive prime) as both a retributive and utilitarian prime. While the prior punishment manipulation did not directly affect sanction severity, it did have indirect effects via both retributive and utilitarian information. Furthermore, once several factors relating to perceptions of prisoners were controlled (e.g., stereotypes about offenders), prior punishment did not, itself, impact sanction decisions. In Empirical Paper 2, the findings of the two studies were considered in terms of their ability to illuminate participants' use of prior punishment information.

1.7.3. Empirical Paper 3

Empirical Paper 3 is a single-study paper, submitted on October 2nd, 2017 for publication in *Social Justice Research*. The study described in this paper was a laboratory-based study which examined the effects of training and preference for intuitive and deliberative reasoning (as well as risk of re-offence and punishment sufficiency) on preventive detention decisions.

The effect of training on legal decision making has been extensively researched, with a general consensus that training has positive effects on the quality of decision making (Darwinkel, Powell, & Tidmarsh, 2013; de Turk & Miller, 1990; Kassin & Fong, 1999). When administering training to police officers who investigate sexual crimes, Darwinkel et al. (2013) found that officers reported a decreased likelihood to victim blame, as well as an increased confidence in their decisions as to whether or not to pursue alleged sexual assault claims. These findings suggest that exposing people to some degree of training can result in the participants deriving more informed and appropriate responses to certain situations. More generally, these findings may also suggest that following training, people are more likely to engage in deliberative reasoning, which research suggests may impact on decision-making ability (Gigerenzer & Gaissmaier, 2011; Haidt, 2001; Kahneman, 2011).

In relation to reasoning style, research has identified two primary ‘systems’ which are engaged during decision making; a slow and deliberative system, and a quick and intuitive system (Kahneman, 2011). Several papers have contextualised such ideas to legal decision making (Saulnier & Sivasubramaniam, under review; Sivasubramaniam, under review). Such research suggests that lay people are more likely to engage heuristics when making a justice judgement (i.e. making intuitive judgements), whereas judges are more likely to engage in more deliberative processes when engaging in justice decision making. In other words, when judges

engage in their deliberative reasoning processes, they are trained to account for all information and appropriately place weight on each piece of available information. Conversely, those who engage in intuitive judgements and employ heuristics are more likely to place unbalanced emphasis on certain pieces of information, whilst underweighting or actively ignoring substantial pieces of information (Gigerenzer & Gaissmaier, 2011). In light of this difference, Haidt (2001) highlights that this difference in decision making process can lead to different outcomes in justice judgements.

In practice, preventive detention decisions are made by judges, individuals who have had extensive training in the purpose and administration of the law, and who actively employ deliberative reasoning when making their decisions. On the other hand, public opinion often operates via quick and intuitive judgements which are bias-laden. Combined with previous findings which showed that training resulted in more informed responses (Darwinkel et al., 2013), it is important to examine the effect of training and reasoning preference on preventive detention recommendations.

In this study, there were no significant effects of training, or of preference for intuitive versus deliberative reasoning (PID) on preventive detention decisions. We had predicted that training participants in relation to the legislation and its purpose would affect preventive detention decisions. The dearth of significant effects of training and PID bodes well for the generalisability of our findings to actual preventive detention decision makers, suggesting that training in preventive detention legislation, as well as a preference for deliberative (over intuitive) reasoning, do not impact preventive detention decision making. On the other hand, the lack of significant effects of training may reflect the nature of the training module presented to participants. While we worked to ensure the training materials were comprehensive and

engaging, the training modules took approximately 20 minutes to complete; in comparison, members of the judiciary who make decisions about preventive detention have years of training and experience. Our findings suggest that preventive detention decision making generalises across levels of training and PID, but caution is required: a more extensive manipulation of training is required in order to confidently infer generalisability of findings to the judiciary.

Consistent with the findings of previous studies within this project, risk of re-offence information significantly affected preventive detention decisions. Specifically, as the offender's risk of re-offence increased, so too did recommended sanction severity and recommended length of detention order. An interaction between risk of re-offence and prior punishment indicated that, as prior punishment increased, the positive effect of risk of re-offence was stronger. Overall, these findings suggest that participants are concerned primarily with the offender's risk when making preventive detention decisions, which is in line with the utilitarian nature of the legislation; however, the interaction between risk and prior punishment on length of detention orders suggests that, in line with the findings of Carlsmith et al. (2007), utilitarian concerns are weighed more heavily once retributive concerns are addressed.

1.8. Summary

Across three empirical research papers, describing five studies, this project examined the motives that were thought to drive preventive detention decision making. In addition, these studies further examined additional factors which may affect the balance between utilitarian and retributive motives when engaging in preventive detention decision making. These aims will be addressed by employing the vignette methodology used by Carlsmith, Monahan, and Evans (2007), additionally exploring context-specific and perceiver-specific variables of theoretical

importance, and contextualising the investigation of preventive detention decisions to an Australian context.

By addressing the aims described above, this project will make a significant, original, and scholarly contribution to existing knowledge. As a theoretical contribution, this project will examine motives driving punishment decisions in the second instance (i.e. once punishment in the first instance has already been administered), and it is also the first to apply the deservingness model of procedural justice to a preventive detention context. As a practical contribution, this project will inform legal debate about the underlying mechanisms driving preventive detention decisions. This is of particular importance given the current and increasing reliance on such legal mechanisms to monitor and control ‘dangerous’ offenders.

CHAPTER 2:

LITERATURE REVIEW

This paper was published as:

Bojczenko, M. N., & Sivasubramaniam D. (2016). A psychological perspective on preventive detention decisions. *Psychiatry, Psychology and Law*, 23(4), 1-17.

Abstract

Preventive detention legislation has been introduced in various forms in legal systems around the world, to allow for the ongoing detention or community supervision of sex offenders following the completion of their custodial sentences. The stated purpose of these laws is utilitarian: they are intended to protect the community and allow for ongoing rehabilitation of the offender.

However, judges and legal scholars have expressed concern that retributive, rather than utilitarian, motives might drive decisions regarding ongoing management of sex offenders. These concerns align with psychological research on procedural and distributive justice. In this paper, we review the relevant psychological literature, which shows that notions of morality and deservingness are key motives underlying justice reasoning and sentencing decisions. We discuss the ways in which retributive and utilitarian motives may impact preventive detention decisions, and how this psychological research can inform legal scholarship on the issues surrounding preventive detention.

Preventive-detention schemes that target sexual-offender groups are a relatively new phenomenon in criminal legislation. Jurisdictions in the United States were among the first to implement such legislation, through provisions for civil commitment. Civil-commitment legislation allows for the detention of a convicted sex offender following the completion of his or her sentence, taking into account several factors, such as mental state, severity of crime, and risk of recidivism (Carlsmith et al., 2007). Other countries have also implemented similar legislation, including Australia, where the first preventive detention scheme targeting serious sexual offenders was the Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld). This act allows for the indefinite detention of a serious sexual offender following the completion of his or her original sentence. Similar legislation has been implemented around the country, including the Dangerous Sexual Offenders Act 2006 (WA), the Crimes (Serious Sex Offenders) Act 2006 (NSW), and the Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic). Primarily, preventive-detention schemes operate by allowing the ongoing supervision of an offender following his or her release into the community or the ongoing detention of an offender following the expiration of his or her original sentence, though there is some variation in the mechanisms through which this is accomplished across jurisdictions.

2.1. Supervision Orders

Under the Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic), a supervision order may be imposed on an eligible offender for a period of up to 15 years. The application is put forward to either the County Court or the Supreme Court for determination. Whilst on a supervision order, the offender is made subject to a number of lawful restrictions, which can be categorised into two groups: core conditions and optional conditions. The core conditions are generic conditions that are consistent across all supervision orders imposed under

the act. Such conditions include (but are not limited to): not committing a relevant offence, not leaving the state of Victoria, and complying with directions from the Adult Parole Board. The optional conditions that may be imposed on an offender under this Act are specific to the offender with regard to risk factors and needs. Such conditions can include (but are not limited to) stipulations regarding: where the offender must reside, abiding by a curfew, places the offender must not visit, and abstinence from alcohol and drugs. According to the act, periodical reviews of the supervision order must take place no more than every three years. As of 2013, there were 39 individuals recorded as having been made subject to supervision orders under the act in Victoria (Sentencing Advisory Council, 2013).

Similar legislation in different jurisdictions across Australia also allows for post-sentence supervision for those considered ‘serious sex offenders’. For instance, the Crimes (Serious Sex Offenders) Act 2006 (NSW) contains provisions that allow the implementation of a supervision order following the completion of an offender’s sentence. Under this act, all applications for a supervision order can only be heard by the Supreme Court, and the order itself can only be for a maximum of 5 years. However, the act explicitly states that ‘nothing in this section prevents the Supreme Court from making a second, or subsequent extended supervision order against the same offender’ (Crimes (Serious Sex Offenders) Act 2006 (NSW), s. 10(3)). The act leaves the conditions to be imposed on the offender to the discretion of the court. Queensland also allows for ongoing supervision after completion of an offender’s custodial sentence, under the Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld). Its function and contents are very similar to both the Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic) and the Crimes (Serious Sex Offenders) Act 2006 (NSW), but one point of distinction of the Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) is that the legislation does not specify a maximum

period for the supervision order. In other words, the court has no limitations for setting the period of supervision.

2.2. Detention Orders

Under the Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic), a detention order may be imposed on an eligible offender for a period of up to 3 years. A detention order requires the offender to be remanded in a custodial setting for the period of the order. The application for a detention order can only be considered by the Supreme Court, and a periodic review of the detention order must occur at least every 12 months. Up to 2013, there were two individuals recorded as having been subject to detention orders under the act in Victoria (Sentencing Advisory Council, 2013). Similarly, the Serious Sex Offenders Act 2013 (NT), allows for the ongoing detention of an offender who has completed his or her custodial sentence. However, unlike the Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic), the Serious Sex Offenders Act 2013 (NT) legislation places no legal bounds on the length of the order, leaving discretion on this matter to the court. The legislation does specify that, upon review, the order can be increased, decreased, or revoked altogether. Along similar lines, the Dangerous Sexual Offenders Act 2006 (WA) allows for the indefinite post-sentence detention of an eligible offender until a court sees fit to revoke the order.

2.3. Legal Concerns Surrounding Preventive Detention in Australia

The primary aims of preventive-detention schemes are utilitarian in nature: the restriction of an offender's activities is justified in preventive-detention schemes in terms of the long-term interests of the offender and the broader interests of the community. The Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic), for example, specifically articulates these utilitarian

principles, stating that the act aims to enhance the protection of the community (s. 1.1) whilst facilitating the treatment and rehabilitation of the offender (s. 1.2). However, legal scholars have raised concerns about imposing an order on an offender (in the absence of a fresh conviction) after they have completed their custodial sentence. Most discussion is centred on the breach of human rights, as well as questioning the constitutionality of such legislation (Keyzer, 2009; McSherry, 2014a; McSherry & Keyzer, 2009). In particular, jurists have expressed concern that preventive-detention legislation breaches the right not to be subject to double punishment.

2.3.1. Right Not to Be Subject to Double Punishment

Protections against double punishment (or double jeopardy) are set out in article 14(7) of the International Covenant on Civil and Political Rights, stating that ‘no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law’ (United Nations, 1966, article 14). This is applicable in the determination of guilt, as well as in the quantification of punishment (McSherry, 2014a).

In *Fardon v Attorney-General* (Qld) (2004) the majority of the High Court of Australia did not accept the notion that preventive-detention schemes are for the purposes of punishment. The majority held that, as the aim of preventive-detention schemes is to protect the community, they are protective in nature rather than punitive. Furthermore, in *Fardon v Attorney-General* (Qld) (2004) it was argued that in considering continued detention in accordance with preventive detention schemes, the court must regard the prior offences of the offender. The majority of the High Court of Australia held that preventive detention does not breach ‘double jeopardy’ as it does not inflict further punishment on the conviction of past offences.

In *Fardon v Attorney-General* (Qld) (2004) Justice Kirby was the sole dissenting judge, and held that as the punishment to be imposed by the order is based on the same conduct as

previous punishment then it effectively increases the punishment set by the prior court. Justice Kirby's stance aligned with that of the United Nations (UN) Human Rights Committee, which contends that with the absence of a fresh conviction, a new term of imprisonment is not permissible. The majority of the UN Human Rights Committee found that preventive-detention schemes are a violation of human rights on the following grounds (as cited in McSherry, 2014a): (1) continuing detention in prison amounts to a fresh term of imprisonment, which is not permissible in the absence of a conviction; (2) as imprisonment is penal in nature, continuing detention amounts to a new sentence, which means that those subject to it are subject to a heavier penalty than that applicable at the time the offences were committed; and (3) the courts must make a finding of fact on the suspected future behaviour of a past offender, which may or may not materialise. These points were noted in a submission from the UN Human Rights Committee to the Australian government in relation to the enactment of continued detention under preventive detention schemes (*Fardon v. Attorney-General (Qld)*, 2004; *Tillman v. Attorney-General (NSW)*, 2007).

2.4. Psychological Research to Inform the Legal Debate

As outlined above, Australian and international jurists are concerned about the potentially punitive nature of preventive-detention schemes, articulating that such schemes potentially breach offenders' rights not to be subject to double punishment. Summarising the problem, Gillespie (1998) notes the correspondence in *Kansas v Hendricks* (US) (1997), where preventive detention is referred to as "a thinly-veiled attempt to seek an additional term of incarceration" (p. 1176). In response, authorities that enact and uphold preventive-detention legislation assert that the nature of these schemes is utilitarian rather than punitive. The key question raised by Australian and international jurists, therefore, centres on the motivations driving ongoing

detention and supervision orders for serious sex offenders under preventive-detention schemes; specifically, the nature of the legal debate hinges on whether justice reasoning regarding preventive detention is based on utilitarian motives (protection of the community and rehabilitation of the offender) or retributive motives (additional punishment of the offender). To address this legal question, which is of growing importance as preventive-detention schemes are enacted in jurisdictions around the world, we turn to the body of psychological research investigating the way in which people reason about the justice of treatment and outcomes. Psychological research supports these concerns, suggesting that people are motivated by retribution in making decisions about preventive detention.

2.5. Procedural and Distributive Justice

Research on the psychology of justice reasoning began with the study of distributive justice. Distributive justice refers to the perceived fairness of outcomes that result from decision-making procedures (e.g., legal procedures; Sivasubramaniam & Heuer, 2012). Early findings indicated that distributive justice reasoning is rooted in equity theory: equity is perceived to occur when an individual receives benefits or detriments that are proportional to their contribution (Folger, 1977; Van den Bos, 1999). Thus, an outcome is judged to be fair if the distribution of rewards and/or punishments is seen as comparable to the actions or investments of the party involved. Furthermore, if the ratio between rewards/punishments and actions/investments is comparable to another party then the outcome will more likely be perceived as fair and equitable (Adams, 1965; Van den Bos, 1999; Walster, Berscheid, & Walster, 1973; Walster, Walster, & Berscheid, 1978). As noted by justice scholars, the theoretical basis of distributive-justice research has always been closely tied to a principle of

deservingness: outcomes are judged to be fair when they are seen as being deserved by the party in question (Heuer et al., 1999).

While distributive justice refers to the perceived fairness of outcomes that result from decision-making procedures, procedural justice refers to the perceived fairness of the decision-making procedures themselves (Sivasubramaniam & Heuer, 2012). Research by Folger (1977) and Thibaut and Walker (1978) shifted the focus of the field from perceptions of distributive justice to perceptions of procedural justice. While the study of distributive justice has always been closely tied to principles of deservingness, the study of procedural justice has been slower to incorporate this notion.

2.5.1. Early Work on Procedural Justice

Thibaut and Walker (1978) were among the first to investigate procedural-justice reasoning in a legal context. Importantly, they showed that the degree to which disputants felt they were granted ‘voice’ (or input into the process) strongly affected their perceptions of procedural justice, as well as other judgements, such as satisfaction with the procedure (procedural satisfaction) and its outcomes (outcome satisfaction). This phenomenon has been referred to as the ‘voice effect’ (Folger, 1977), and has been replicated several times, across several decision-making contexts (Lind, Kanfer, & Earley, 1990; Lind & Van den Bos, 2002; Sivasubramaniam & Heuer, 2012; Thibaut & Walker, 1978; Tyler, Degoe, & Smith, 1996; Van den Bos, 1999; Van den Bos, Wilke, Lind, & Vermunt, 1998).

Thibaut and Walker (1975, 1978) theorized that voice is important to disputants because of their underlying motivation to obtain fair outcomes; and disputants perceive that processes which allow them voice allow them more influence in shaping these outcomes. Ultimately, therefore, Thibaut and Walker (1975, 1978) interpreted their findings as indicating that voice is

important to disputants for its instrumental value - its ability to ensure more favourable outcomes for the disputant. However, later research does not align with Thibaut and Walker's (1975, 1978) instrumental interpretation of the value of voice. In particular, Lind et al. (1990) demonstrated that even when there is no possibility that voice can lead to a more favourable outcome for the disputant, voice still enhances justice judgements. This non-instrumental voice effect led to the development of the group-value model of procedural justice, which has dominated procedural-justice research and theory.

2.5.2. Group-Value Model

The group-value model (Lind & Tyler, 1988) was initially derived from social identity theory (Tajfel, 1982; Tajfel & Turner, 1986). The fundamental presumption of the group-value model is that people value membership of social groups and find group membership socially rewarding (Tyler, 1989). People seek group membership, as social groups can provide a sense of self-validation (Festinger, 1954). In addition, groups provide the individual with emotional support and a sense of belonging (Festinger, 1954; Tajfel, 1982; Tajfel & Turner, 1986). Conversely, people are troubled when they feel rejected from groups to which they belong (Cartwright & Zander, 1953; Schachter, 1951). When individuals interact with social groups, they look for indications they are valued by the group, and voice is one such indication. In other words, if an individual is asked to contribute to a decision-making procedure (i.e., if they are granted voice), it is an indication that they are valued by the social group (Lind & Tyler, 1988). According to the group-value model, therefore, the key mechanism driving procedural justice judgements is perceived value to the social group; to the extent that procedural features (e.g., voice) make a person feel valued by the social group, they will judge that procedure to be fair.

Tyler (1989) expanded the group-value model by adding three aspects that, alongside voice, are antecedents to procedural justice judgements. These additional aspects are called the relational variables, and include (1) neutrality of the decision-maker, (2) trust in the third party, and (3) respect (or evidence of social standing). Subsequent research has reinforced the importance of the relational variables, demonstrating that they have significant effects on perceptions of justice regarding both procedures and outcomes (Van den Bos, Wilke, & Lind, 1998).

2.5.3. Recent Developments in Procedural Justice

There have been some significant, recent challenges to the dominance of the group-value model and its ability to explain procedural justice reasoning. Two of those challenges, relevant to the proposed review, are the moral mandates and deservingness perspectives.

2.5.3.1. Moral Mandates

Moral mandates can be defined as the expression of internalised and individualised values that influence feelings and responses toward certain issues, circumstances, and/or situations (Skitka & Mullen, 2002; Skitka, Winkler, & Hutchinson, 2003). Moral mandates stem from sets of heavily internalised norms and strong attitudes that are stable, consequential and resistant to change (Morse, 2004; Ogloff & Davis, 2005). Moral mandates are linked with theories of social identity in that they are representative of having a moral position, which in turn is psychologically sufficient for people to satisfy themselves as ‘authentic moral beings’ (Skitka & Houston, 2001). In several studies, researchers have demonstrated that when individuals hold a moral mandate in relation to an outcome, procedural fairness plays a less prominent role in

determining perceptions of outcome fairness (Bauman & Skitka, 2009; Skitka & Houston, 2001; Skitka & Mullen, 2002).

Skitka and Houston (2001) show that there are important facets, other than the procedure itself, which influence procedural- and distributive justice perceptions, and that moral mandates may be among those facets. In other words, when individuals do not have a moral mandate, they will utilise procedural fairness to devise fairness judgements. In instances where the individual holds a moral mandate and the outcome of a procedure is inconsistent with that moral mandate, research shows that perceptions of procedural fairness will have little impact on the sense of injustice that is perceived to have occurred. Rather, individuals will review the procedure (i.e., look for procedural flaws, or bias/unfairness) in an attempt to explain how such injustice has occurred (Skitka & Houston, 2001; Skitka & Mullen, 2002). Importantly, this perspective has shifted the focus of justice research from procedural features and relational concerns to the moral content of outcomes and how this might drive perceptions of justice.

2.5.3.2. Deservingness

Following from the moral mandates perspective, another challenge to the group-value model has been put forward in the deservingness model of fairness (Feather, 1996, 1999; Heuer et al., 1999). Feather (1999) posits that the concept of deservingness is fundamental to understanding affective and behavioural reactions to outcomes. As noted in early distributive-justice research, deservingness can be framed as an outcome that is ‘earned or achieved as a product of a person’s actions’ (Feather, 1999, p. 88). However, while Feather (1999) articulates the importance of deservingness for determining perceptions of distributive justice, Heuer et al. (1999) suggest that the principle of deservingness can be similarly applied to perceptions of procedural justice.

Heuer et al. (1999) suggest that the fundamental definition of ‘fairness’ or ‘justice’ is overlooked in the group-value model, in that, rather than being a model about procedural justice, it is a model about procedural favourability and procedural satisfaction. The group-value model suggests that a procedure will be judged as fair to the extent that it makes individuals feel good about their social standing; essentially, therefore, the group-value model articulates a hedonistic motive driving justice judgements. Heuer et al. argue that hedonism drives satisfaction but that notions of deservingness are fundamental to justice judgements. They therefore argue that the group-value model is essentially one which explains procedural satisfaction rather than procedural justice, and that in order to explain perceptions of procedural justice, notions of deservingness are fundamental. In other words, Heuer et al. argue that if an individual receives the treatment they deserve in a decision-making process then a process will be considered fair. In several studies, Heuer et al. have demonstrated that respectful treatment of a target is considered fair when the target is seen to have behaved in ways that are positively socially valued; however, when the target has behaved in ways that are negatively socially valued, observers judge disrespectful treatment of the target to be fairer. As research has identified that deservingness moderates the effect of respectful treatment on perceptions of fairness, it is important to consider how this may apply to those judged not to deserve respect.

2.6. Stigma and Stigmatised Groups

Stigma is a psychological phenomenon which affects targeted individuals by means of discrimination, expectancy confirmation, automatic stereotype activation and threats to personal identity (Major & O'Brien, 2005). Stigmatisation occurs when an individual is believed to possess an attribute (a reflection of their social identity) that is devalued in particular social

contexts (Crocker & Major, 1989). In essence, stigma is the social devaluation of an aspect of an individual which results in the individual being tainted in the opinion of others.

Although a stigma can be unique to a specific individual, it can also apply to people through their membership of a particular social group (Crocker & Major, 1989). Examples of stigmatised groups include the mentally ill, the obese, and convicted sex offenders. Most stigmatised groups are social minorities and are stigmatised by the socially dominant group. Stigma is context-specific, and as such is a result of the social context rather than being inherent to the individual (Major & O'Brien, 2005). Stigmatisation can therefore be fluid and context-specific; a group that is the dominant majority in one context may be a stigmatised minority in another context.

Stigmatisation can have important consequences for procedural and distributive fairness, as those who are stigmatised may be judged undeserving of respectful treatment or outcomes. In one study, deservingness judgements about patients with a stigmatised condition were strong predictors of the quality of care that nurses believed the patients should receive in a health-care setting (Skinner, Feather, Freeman, & Roche, 2007). A sample of health-care professionals (nurses) evaluated scenarios in which two features were manipulated: quality of hospital care (high vs low) and the type of drug a patient had taken (alcohol vs heroin). Data showed that there was a strong effect of deservingness judgements on nurses' entitlement norms, which in turn affected the quality of care the nurses thought the patients should receive: the more that nurses reported negative affect toward the patient, the lower the quality of care they judged the patients to deserve. These data support the notion that, when a target has a stigmatising characteristic, perceivers are less inclined to see the target as deserving of positive treatment or outcomes, which in turn can result in the target receiving more negative treatment or outcomes than a non-

stigmatised target. These findings are consistent with the propositions of Major and O'Brien (2005), and are also reflective of other research which clearly illustrates strong negative consequences of stigma (e.g., sex offenders; Ferguson & Ireland, 2006; Kernsmith, Craun, & Foster, 2009; Levenson, Brannon, Fortney, & Baker, 2007; Marshall et al., 1993; Nelson, Herlihy, & Oescher, 2002; Tewksbury, 2004; Valliant et al., 1994).

2.7. Implications of Justice Research for Preventive Detention

In the deservingness model of Heuer et al. (1999), the procedural-justice literature parallels the distributive-justice literature in its emphasis on deservingness as key to justice reasoning. Just as distributive-justice researchers have demonstrated that outcomes are judged to be fair when they align with the outcomes which a target deserves, procedural-justice theorists have now demonstrated that treatment is judged to be fair when it aligns with the treatment which a target deserves. In addition to establishing the importance of deservingness in determining both procedural and distributive-justice reasoning, justice researchers have found that several factors moderate this contingency between actions and outcomes, or between actions and treatment. For example, when an actor is not responsible for positively- or negatively-valued social behaviour, the relationship between the actor's negative behaviour and the desire for a negative outcome for the actor is weakened (Darley et al., 2000). Similarly, if an actor expresses remorse for negative behaviour, the impulse to punish the actor (i.e., administer the negative treatment/outcomes that he or she deserves) is weakened (Gromet & Okimoto, 2014).

Aside from contextual factors specific to the actor in a scenario, the features of the perceiver (the person judging procedural or distributive justice) are also important to the role of deservingness in justice reasoning. For example, political orientation (in particular, liberalism-conservatism and right-wing authoritarianism) has been found to influence justice reasoning

across several domains (Choma et al., 2012; Clark & Wink, 2012; Gerber & Jackson, 2013; Skitka et al., 2002), with conservatives placing more emphasis on deservingness and punishment for transgressions than liberals, and those high on right-wing authoritarianism more strongly endorsing the punishment of offenders for the express purpose of retaliation against past wrongs. As Heuer et al. (1999) argue that the deservingness motive is an intuitive judgement, we also suggest that individual differences in intuitive versus deliberative reasoning (Richetin et al., 2007) would moderate the importance of deservingness in justice judgements, with deservingness as a stronger driver of justice judgements among those with a more intuitive reasoning style. Below, we expand on each of these factors that potentially moderate the importance of deservingness-based (i.e., retributive) motives in preventive-detention decisions.

2.7.1. Responsibility

Schlenker, Britt, Pennington, Murphy, and Doherty (1994) posited that responsibility connects an individual ‘to an event and to relevant prescriptions that should govern conduct’ (p. 635), which then lays a foundation for judgement. This theorising is consistent with empirical evidence, such as findings that responsibility is one of a number of factors that affect overall perceptions of outcomes (Feather, 1996). Perceived responsibility affected perceptions of an individual’s actions and their intentions. Fundamentally, an individual was deemed more responsible for outcomes which were controlled, or which were intended to be produced. Similar trends are present when examining the effect of responsibility on sentencing motivations.

Research has found that when the perpetrator of a crime holds little responsibility for a transgression, participants are more likely to assign punishment in line with utilitarian values as opposed to retributive motives (Darley et al., 2000). Across two studies, the authors asked participants to assign a punishment to an actor who committed a crime. Participants read

vignettes, which varied in terms of the seriousness of the crime committed (theft of a compact disc, theft of a valuable painting, physical assault, murder, or assassination), the likelihood that the actor would commit a future offence (low or high), and the responsibility of the actor (brain tumour that was operable, brain tumour that was inoperable, or no brain tumour). The authors reasoned that if the main motivation driving decisions of incarceration was retributive then the seriousness of the crime would have the strongest impact on participants' judgements of the crime and decisions about punishment. On the other hand, if the main motivation driving decisions of incarceration was utilitarian then the likelihood that the actor would commit a future offence would have the strongest impact. Furthermore, the responsibility manipulation should moderate these effects. When the brain tumour is not present, the perpetrator should be seen as wholly responsible for the transgression, thus inviting the prediction that a retributive motivation would more strongly drive punishment decisions. In the conditions where a tumour (operable or inoperable) is present, a utilitarian motivation should more strongly drive incarceration decisions. The findings showed that, as the seriousness of the crime increased, participants were more likely to assign a harsher punishment, and that assigned punishments were unaffected by manipulation of the risk of future offence. These findings suggested that participants were more sensitive to retributive than utilitarian motives when assigning punishment to offenders. In addition, there was a significant main effect of responsibility. As the responsibility of the actor increased, so too did the severity of the punishment. When the actor was wholly responsible for the transgression (i.e., had no brain tumour), participants were more likely to attribute the responsibility of the transgression to the actor and recommended a harsher punishment (i.e., prison). Conversely, in conditions where a brain tumour (operable or inoperable) was present, participants were more likely to attribute responsibility to the situation, as well as recommend a

more lenient punishment. These findings ultimately suggest that responsibility has an effect on not only the motivation for punishment, but also on the severity of the recommended punishment.

2.7.2. Remorse

Research indicates that the expression of remorse can have substantial effects on judgements about the offender, treatment of the offender, and decisions about the reintegration of the offender. For example, when the offender shows no emotional reaction (i.e., no expression of remorse), the offender is judged more harshly compared to when remorse is expressed (Proeve & Howells, 2006). Research also indicates that when a transgressor expresses remorse, he or she is more likely to be reintegrated and accepted back into the group (Gromet & Okimoto, 2014).

Gromet and Okimoto (2014) found that expression of amends (remorse) by a perpetrator following a wrongdoing results in more positive outcomes for the wrongdoer in terms of reintegration compared to when no remorse is shown. The authors tested a community sample, manipulating offender amends (weak vs strong) and victim forgiveness (forgives vs does not forgive). When the wrongdoer attempted to make amends with the victim, participants were more likely to favour accepting the wrongdoer back into the social group. On the other hand, when the wrongdoer did not attempt to make amends for his or her actions, participants were less likely to accept him or her back into the social group. These findings are consistent with restorative-justice literature, which contends (among other things), that feelings of remorse, and the expression of these feelings by the offender, can be beneficial to the offender's prospects of social reintegration (Braithwaite, 2006; Harris, Walgrave, & Braithwaite, 2004).

2.7.3. Political Orientation

Political orientation has been demonstrated in a large array of research to be an important precursor to several judgements and behaviours, including political behaviour and various aspects of public opinion (Clark & Wink, 2012; Mulligan, Grant, & Bennett, 2013). In particular, research has examined the effects of political ideology on legal behaviour and decision-making (Clark & Wink, 2012; Epstein & Knight, 1997). Strong effects have been identified with regard to individuals' political orientation and their propensity to assign punishment to a transgressor. Studies have consistently shown that individuals who have a more conservative political orientation favour harsher punishments against a transgressor than those with a more liberal orientation, who are more likely to favour more lenient punishments (Clark & Wink, 2012). These authors presented (jury-eligible) participants with a vignette and asked them to judge the likelihood and level of guilt of the perpetrator. Participants were also asked to assign a punishment in terms of a prison term and/or a monetary fine. In addition, participants were asked to self-report their political ideology (liberal to conservative). After controlling for various factors, the results indicate that participants who were of a conservative political orientation were more likely to assign harsher punishments compared to those of a liberal orientation.

Another aspect of political orientation that has received considerable attention is authoritarianism. Authoritarianism can be defined as 'submission to authorities and derogation of subordinates, conformity to society's conventions and rules, and ostracism of people who challenge society's conventions and rules' (Butler & Moran, 2007, p. 60). All three factors have been shown to have some effect on how people assign punishment to transgressors (Bray & Noble, 1978; Clark & Wink, 2012). For example, Bray and Noble (1978) found that jurors and juries who were high on authoritarianism were more likely to assign a guilty verdict, as well as

assign harsher punishments, compared to those who were low on authoritarianism. Participants were presented with an audio recording of a murder trial and asked to respond to questions measuring authoritarianism and perceptions of the defendant's guilt, along with assigning a punishment to the defendant. Participants were then randomly allocated to groups (juries) and asked to deliberate about the presented case and record a verdict. The results indicate that individuals who are high on authoritarianism are more likely to assign a guilty verdict compared to those who are low on authoritarianism. A similar trend was found when looking at the length of prescribed sentence; those who are high on authoritarianism assign harsher punishments than those who are low on authoritarianism.

2.7.4. Intuitive vs Deliberative Reasoning

When engaging in decision-making, there are two primary processes that individuals access: intuitive and deliberative processes. The intuitive process is quick, implicit and automatic, and influences thought, judgements and behaviours without the need for deliberation or conscious cognition. The deliberative process is explicit and requires the conscious processing of the thought, judgements and/or behaviour (Haidt, 2001; Kahneman, 2011). Some research has been conducted to examine the effect of particular reasoning styles on motivations driving the assignment of sanctions (Bartels, 2008; Carlsmith & Darley, 2008; Moore, Clark, & Kane, 2008). The research indicates that individuals who prioritise intuitive reasoning processes tend to punish in accordance with a retributive motivation (Carlsmith & Darley, 2008; Liberman, 2012). Conversely, those who prioritise deliberative reasoning processes tend to assign sentences in accordance with a utilitarian motivation (Bartels, 2008; Bartels & Pizarro, 2011; Greene, Sommerville, Nystrom, Darley, & Cohen, 2001).

In situations where people make moral judgements, Haidt (2001) argues that decisions are likely to be driven by intuition. Reviewing several empirical studies in support of this claim, Haidt argues for a ‘social intuitionist’ model, which highlights the role of automatic, implicit processes in moral judgements. Haidt pitted rationalist models of judgement against the intuitionist model, and his review of the empirical evidence led to the conclusion that in moral contexts, judgements are generally driven by intuitive, rather than rational, deliberative processes.

Furthering Haidt’s (2001) reasoning, Liberman (2012) investigated responses in situations that required moral judgements. In this study, participants considered scenarios in which they were asked to make decisions about their support for military action against another state, torture and the death penalty. Participants responded to several items including the approval or disapproval of retributive punishment principles, as well as numerous brief scenarios on hypothetical international transgressions (e.g. ‘How should the United States respond if Iran withdraws from the Nuclear Non-proliferation Treaty and tries to build nuclear weapons?’). The results indicated that people favour retributive (‘make them pay for their crimes’) over utilitarian (‘protecting national security interests’) responses, supporting the notion that individuals are more likely to use retributive principles to guide their decisions in moral situations. Collectively, the data therefore indicate that moral reasoning is driven by intuitive processes (Haidt, 2001) and leads to retributive responses (Liberman, 2012), suggesting a link between intuitive processes and retribution in moral situations.

There is also evidence to suggest a link between deliberative reasoning styles and utilitarian motivations (Greene et al., 2001). Across two studies, functional magnetic resonance imaging (fMRI) was used to examine this relationship. Greene et al. (2001) found that when a

‘deliberative mental system’ is accessed, participants are more likely to act in accordance with a utilitarian motivation for personal moral dilemmas. Participants were asked to respond to a battery of scenarios whilst undergoing fMRI scans, some of which were moral dilemmas. Scenarios were further classified as personal or impersonal moral dilemmas. Personal moral dilemmas were those in which participants were asked about a scenario that required close, personal action on their part (e.g., the footbridge dilemma, where a participant is asked whether it would be appropriate to push a person off a footbridge into the path of an oncoming trolley in order to save several workmen on the tracks). Impersonal moral dilemmas were those in which participants considered a scenario that required more detached, impersonal action on their part (e.g., the trolley dilemma, where a participant is asked whether it would be appropriate to flick a switch to divert the path of a trolley so that it would kill one workman on one track, rather than several workmen on another track). Participants were asked to respond to each dilemma by indicating whether the action described was ‘appropriate’ or ‘inappropriate’. In all of the moral dilemmas considered, a response of ‘appropriate’ indicates utilitarian reasoning, in which a participant engages in actions to protect the interests of several people above the interests of one person. Analyses of the fMRI scans from both studies indicate more emotional responding in the personal than impersonal dilemmas. Furthermore, and of particular relevance, was the finding that when participants took more time to respond to the personal moral dilemma, they were more likely to respond ‘appropriate’ (indicating utilitarian reasoning) than ‘inappropriate’. This difference did not occur in the impersonal moral dilemma, suggesting that when emotional processing is involved, more time invested in justice reasoning (i.e., more deliberative responding) results in utilitarian principles, thus reinforcing the link between deliberation and utilitarian motives.

2.7.5. Attitudes Towards Sex Offenders

Some research has examined attitudes toward sex offenders among the general public. There is a consistent trend of negative attitudes toward sex offenders (Brown, 1999; Ferguson & Ireland, 2006; Levenson et al., 2007; Nelson et al., 2002; Tewksbury, 2004; Valliant et al., 1994). Shackley et al. (2014) also provide a thorough overview of studies looking at attitudes towards sex offenders in different countries, again finding that different populations hold negative attitudes towards sex offenders. For instance, Olver and Barlow (2010) examined an array of attitudes towards sex offenders (e.g., management, punishment, dangerousness) in Canada. University students were asked to complete a questionnaire, assessing a variety of attitudinal and personality factors, as well as general demographic questions. The results show that the majority of respondents believed that prison sentences are insufficient, preferred not to have a sex offender living in their local area, and supported (agreed with) statements such as ‘[s]ex offenders are sick in the head’. Such responses indicate that the sample generally held negative attitudes towards sex offenders. Gakhal and Brown (2011) also evaluated and compared attitudes toward sex offenders across three populations in the United Kingdom: forensic professionals, students, and the general public. Participants were administered an amended Attitudes Toward Sex Offender Scale (ATSO; Hogue, 1993), which was modified to examine attitudes toward female sex offenders as opposed to the generic ‘sex offender’. The findings indicated that the student and general public groups generally held negative attitudes towards female sex offenders. The forensic professionals group held slightly positive views toward female sex offenders. Overall, the research indicates a general negative trend in attitudes toward sex offenders.

Negative attitudes towards sex offenders have important behavioural consequences. For instance, Brown (1999) examined public attitudes toward the integration of sex offenders into communities. Participants completed a questionnaire designed to measure stereotypes and general attitudes toward sex offenders and their treatment. The results show that the participants generally responded positively towards offering therapeutic treatment to sex offenders, as long as it corresponded with some form of punishment. Similarly, Valliant et al. (1994) surveyed a population of undergraduate psychology students, predicting that, with a greater understanding of human behaviour, more senior students (third-year level) would favour the treatment of sex offenders, whereas junior students (first-year level) would favour the denial of freedom for sex offenders. The authors formulated these predictions on the basis that the third-year students would have a less authoritarian attitude toward sex offenders due to their greater understanding of human behaviour. The findings were not consistent with these predictions; the results showed that both the first- and third-year psychology students believed that treatment should be offered to sex offenders, but both groups only endorsed treatment alongside a term of imprisonment rather than treatment on its own. In other words, despite having been educated in human behaviour (third-year level), students' attitudes toward sex offenders and their treatment was not more lenient when compared to those who were not as educated in human behaviour (first-year level), thus indicating that the participants, as a collective, held views that were more negative than anticipated. The data therefore suggest that an understanding of human behaviour does not moderate the belief that sexually deviant activities should be punished, nor does such understanding affect attitudes towards sex offenders or their treatment.

2.8. 'Second-hand' Punishment Contexts

As noted above, the research clearly demonstrates that there is potential for several factors to moderate the balance that people strike between utilitarian and retributive motives when making judgements about sex offenders. Factors such as offender responsibility, the presence or absence of remorse, political orientation, preference for intuitive or deliberative reasoning, and attitudes towards sex offenders have been shown to affect individuals' motivations, perceptions of deservingness, and willingness to punish in numerous contexts. Further research is required to determine exactly how these five aspects will affect the utilitarian-retributive balance in decisions about ongoing supervision and detention. Another important feature of preventive-detention legislation that requires further investigation is the fact that it administers an ongoing detention or supervision order once the offender's original custodial sentence has concluded. In other words, the offender has already undergone a sanction for their previous transgression, and a preventive detention scheme would potentially administer ongoing supervision or detention, which could be conceptualised (and which some legal scholars have argued should be conceptualised) as an additional sanction. It is therefore important to investigate the psychological mechanisms driving the administration of these ongoing supervision or detention decisions because there is limited data available regarding how people reason about procedural and distributive justice when they are presented with information that an offender has previously been sanctioned for a given offence. To our knowledge, only one study has examined justice reasoning in this context, and its findings are important for two reasons. First, they demonstrate that information about prior sanctions plays a role in decision-making about ongoing sanctions, and second, they support the notion that retributive motives do play a role in decision-making regarding preventive detention.

Carlsmith et al. (2007) examined the motivations driving civil-commitment decisions (following a custodial sentence) for sexually violent offenders. Participants in the United States were presented with a vignette describing the case of a ‘sexually violent predator’. In this study, two independent variables were manipulated: risk of recidivism and punishment sufficiency. Risk of recidivism was manipulated according to the assessed risk (by an expert) that the convicted person would re-offend, with three levels: 0% risk, 4% risk, and 70% risk. (Note that the risk of reoffending is the criterion on which preventive-detention decisions are supposed to be administered; when the risk is high, preventive detention is warranted under the relevant legislation.) Punishment sufficiency was manipulated according to the punishment that the offender had already served for his original offence, with two levels: high (25 years) and low (5 years). (Note that the severity of previous punishment is not a criterion on which preventive-detention decisions are supposed to be administered; when the previous punishment has been insufficient, preventive detention is not warranted as a means of administering additional punishment.)

After being presented with the scenario, participants were asked whether they would oppose or support civil commitment for the perpetrator. The findings demonstrated two main effects: punishment sufficiency and risk of recidivism. As the stated risk of recidivism increased, the support for civil commitment increased, in line with the utilitarian purposes of the legislation. However, Carlsmith et al. (2007) also found that, as punishment sufficiency decreased, the support for civil commitment increased. This finding indicates that participants were sensitive to the sufficiency of the offender’s prior sanction when determining their support for civil commitment, which is not warranted by the utilitarian purposes of the legislation and reflects retributive considerations by participants in their support for civil-commitment measures. The

authors posited that participants view information about prior sanctions through a ‘just desserts’ or deservingness motive; if they believe that the previous punishment was insufficient, they will use civil commitment as a means of correcting the perceived discrepancy between the punishment that was received, and administer their notion of just desserts. The findings from this study thus suggest that retribution can play a role in supporting the use of preventive detention that is counter to the stated (utilitarian) nature of such schemes.

More broadly, these findings indicate that participants use information about prior sanctions when making decisions about ‘secondary sanctions’, such as ongoing supervision or detention. Given the paucity of research on this question, further work is needed to investigate decisions about secondary sanctions and the ways in which they may be affected by various aspects of the situation (e.g., the offender’s remorse or level of responsibility for the original incident) and the characteristics of the decision-maker (e.g., political orientation, preference for intuitive versus deliberative reasoning, and attitude toward sex offenders).

2.9. Conclusions and Future Directions

Preventive-detention schemes have recently been implemented in jurisdictions around Australia. Aimed at protecting the community and facilitating the treatment and rehabilitation of the offender, the acts’ stated purposes are utilitarian. There have, however, been numerous points of contention raised by legal scholars regarding the use of preventive detention schemes, and a prominent concern is a potential breach of the right not to be subject to double punishment. Questions are therefore raised as to the psychological mechanisms that actually drive the administration of preventive-detention schemes. The stated purpose of preventive-detention legislation is utilitarian; however, psychological research has revealed that retributive motives can play a role in decisions about secondary sanctions such as ongoing supervision and

detention. Carlsmith et al. (2007) demonstrated that both utilitarian and retributive motives played a role in participants' decision-making regarding civil commitment at the conclusion of a sentence. Other research on the psychology of justice reasoning has identified some factors that may moderate the balance between utilitarian and retributive principles in such 'secondary sanction' contexts; however, these have not been thoroughly examined. This gap in the literature should be targeted in future research on legal decision making.

Future research should investigate the degree to which utilitarian and retributive principles drive justice reasoning and decision making regarding the ongoing detention and supervision of serious sex offenders, and test the ways in which justice reasoning and decision-making are moderated by contextual variables identified as important in the justice literature. Because the research question of interest centres on the motivations driving justice reasoning and decision-making (i.e., because we must investigate the causal effects of motivations on decisions and behaviours), experimental methodologies should be employed. A paradigm such as the one employed by Carlsmith et al. (2007) could be utilised, manipulating the risk of recidivism and punishment sufficiency to more closely examine the conditions under which participants' support for preventive detention is driven by retributive versus utilitarian motives, and the way in which these effects may be moderated by additional factors. In this way, psychological methods could be employed to address legal questions raised by the implementation of preventive detention legislation, both in Australia and internationally.

CHAPTER 3:

EMPIRICAL PAPER 1

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Abstract

Preventive detention schemes operate in jurisdictions around the world, targeting specific offending populations (e.g. sexual offenders). Such schemes should serve utilitarian purposes; however, research has indicated that retributive factors may influence preventive detention decisions. Two experimental studies were conducted to examine the motives underlying preventive detention decisions, and assess the impact of additional variables on the balance between retributive and utilitarian motives. Overall, results demonstrated that participants were primarily influenced by utilitarian concerns in decision making; however, some results indicated that retributive concerns also affect decisions. Findings are discussed in terms of their implications for preventive detention legislation and practices.

Preventive detention legislation has been implemented across numerous jurisdictions worldwide, targeting specific offending populations (McSherry, 2014a; McSherry & Keyzer, 2009). Examples of legislation with provisions allowing preventive detention include the *Mental Health Act 2007 (UK)*, the *German Criminal Code (Strafgesetzbuch, StGB)*, and the *Criminal Procedure (Scotland) Act 1995*. Such schemes are imposed on an eligible offender following the completion of their prison sentence. An eligible offender is deemed to present an unacceptable risk of harm to the community following the completion of his sentence. In other words, if an individual has completed their term of incarceration, but is still assessed as posing an acceptable risk of harm, he/she can be made subject to preventive detention legislation. Although the purpose of such legislation is utilitarian (seeking to protect the community), numerous academics and jurists are concerned that the real motivations driving the administration of preventive detention are retributive (Bojczenko & Sivasubramaniam, 2016; Carlsmith et al., 2007).

Previous research suggests a retributive motive driving initial punishment of serious offenders (Gerber & Jackson, 2013; Liberman, 2012; Strelan & van Prooijen, 2013). For example, Vidmar and Miller (1980) found that when participants who endorsed a deterrence motive in capital punishment cases were presented with evidence of its ineffectiveness, their attitudes towards capital punishment did not change. This finding indicates that rather than punishment being motivated by utilitarian means (i.e. deterrence), attitudes may be rooted elsewhere.

3.1. Motives for Second-hand Punishment

Both utilitarian and retributive motives may play a substantial role in preventive detention decisions. Some research indicates that participants endorse the idea of providing treatment for the offender, which suggests a utilitarian motive (Brown, 1999). However, other

research shows that negative attitudes towards sex offenders drive legislative endorsement, suggesting that retributive motives play a role in such decisions (Levenson et al., 2007).

To our knowledge, the only research directly examining the motivations driving preventive detention was conducted by Carlsmith et al. (2007). In a series of studies, Carlsmith et al. (2007) examined motivations underlying civil commitment of sexually violent offenders in the United States. Their findings indicated that both utilitarian and retributive motives played a substantial role in the endorsement of civil commitment for serious sexual offenders. When recommending civil commitment, individuals were driven by consideration of the risk of harm to the community, but also by consideration of whether the offender had previously received the punishment he deserved. In particular, an interaction between the effects of risk and punishment sufficiency revealed that participants would first attend to their retributive concerns (i.e., consider whether the offender's prior punishment had been sufficient) and, if these concerns were satisfied, would then consider utilitarian concerns about the offender's risk of re-offence.

The purpose of this article is to examine the motives driving justice decisions in a preventive detention context. In Australia, preventive detention occurs in the criminal justice system following completion of a period of incarceration. In light of previous research on civil commitment and other, similar schemes (Brown, 1999; Carlsmith et al., 2007; Levenson et al., 2007), it is anticipated that both retributive and utilitarian motives will drive decisions regarding ongoing detention or supervision for offenders subject to preventive detention legislation in Australia. Specifically, individuals will first account for their retributive concerns, and if these are satisfied, will then address their utilitarian concerns. The current studies aim to expand on the initial investigations by Carlsmith et al. (2007) by examining additional factors that may alter the

balance between utilitarian and retributive motives, as well as utilising a different methodology to address the underlying question.

3.2. Procedural and Distributive Justice

Research on justice reasoning illuminates the potential influence of retributive motives in people's preventive detention decisions. Distributive justice refers to the perceived fairness of outcomes that result from decision making procedures (e.g., legal procedures; Sivasubramaniam & Heuer, 2012). Distributive justice is closely tied to principles of deservingness, as outcomes are seen as fair when they are deserved by the individual, and the concept of deservingness is fundamental to understanding affective and behavioural reactions to outcomes (Feather, 1999).

While distributive justice refers to the perceived fairness of outcomes from decision making procedures, procedural justice refers to the perceived fairness of the decision making procedures themselves (Sivasubramaniam & Heuer, 2012). Heuer et al. (1999) suggest that the principle of deservingness emphasised by scholars to explain distributive justice (e.g., Feather, 1999) can be similarly applied to perceptions of procedural justice. Recent research has established that procedural justice judgments are closely tied to principles of deservingness; respectful treatment of a person is considered fair when the person appears to have behaved in a positively socially valued way, however when the target has behaved in a negatively socially valued way, observers judge disrespectful treatment of the target to be fairer (Heuer et al., 1999).

With research having established that judgments of deservingness moderate the effect of respectful treatment on procedural and distributive justice perceptions, it is important to consider how this might apply to people or populations who have behaved in a manner that is negatively socially valued (such as sex offenders), and are therefore judged not to deserve respect. The procedural justice literature indicates that notions of deservingness are likely to play a role in

decisions about sanctions or preventive detention for these populations. Specifically, research suggests that the public see violations of people's rights and negative outcomes for these populations as acceptable, because they align with what this population deserves; this leads us to predict that notions of deservingness push people towards retribution when they decide how these populations ought to be handled (both in terms of treatment and outcomes). In this paper, we investigate justice reasoning and preventive detention decisions regarding sex offenders. We extend on previous research by examining factors that may alter the balance between utilitarian and retributive motives (Study 1) and also by introducing a new methodology to investigate the priority people assign to utilitarian versus retributive information (Study 2).

3.3. The Present Research

In the current project, we aimed to investigate the motives driving preventive detention decisions, as well as factors affecting the relative balance of those motives, whilst controlling for individual differences among observers (i.e., attitudes towards sex offenders). We expected to replicate the finding of previous research that both retributive and utilitarian motives drive preventive detention decisions (Carlsmith et al., 2007), even though the intent of preventive detention legislation schemes is that these decisions are based on utilitarian concerns only. Furthermore, we expected that various contextual factors, related to the offender in question, would alter the balance between retributive and utilitarian motives, above and beyond any individual differences in observers' attitudes towards offenders.

3.4. Study 1

The first aim of this paper was to examine the effects of various contextual factors on the balance between utilitarian and retributive motives in driving preventive detention decisions. In Study 1, we examined the moderating effect of offender responsibility in preventive detention contexts.

3.4.1. Attitudes Towards Sex Offenders

Extensive research has suggested that overall, people tend to hold negative attitudes towards sexual offenders (Ferguson & Ireland, 2006; C. A. Harper & Hogue, 2016; Shackley et al., 2014). Studies have overwhelmingly shown community members feel that sex offenders should be punished via a term of incarceration (Brown, 1999; Olver & Barlow, 2010). However, studies also indicate that community participants support the treatment and rehabilitation of sex offenders, given it coincides with some form of punishment (Brown, 1999; Valliant et al., 1994).

Negative attitudes towards sex offenders have important implications not only for how sex offenders are perceived, but also how they are treated. For example, Brown (1999) examined public endorsement of the reintegration of sex offenders into the community: findings indicated that participants tolerated the treatment of sex offenders into the community as long as therapeutic intervention was paired with some form of punishment and occurred within a custodial setting. This suggests that retributive motives would be emphasised in preventive detention decisions among those who hold negative attitudes towards sex offenders.

3.4.2. Responsibility

A plethora of research has shown that perceived responsibility of a transgressor affects punishment decisions (Carlsmith et al., 2002; Darley et al., 2000; Darley & Pittman, 2003; Horai

& Bartek, 1978; Vidmar & Miller, 1980). For example, in one vignette study, Darley et al. (2000) examined the effect of perpetrator responsibility on justice decisions and found that, when an individual is perceived as more responsible for a transgression, perceivers are more likely to endorse or recommend harsher treatment. The clear link between transgressor responsibility and punishment decisions suggests that increased responsibility of an offender for his actions increases the role of retribution in preventive detention decisions.

3.4.3. The Present Study

In Study 1, we used the methodology employed by Carlsmith et al. (2007) whereby participants were presented with a vignette depicting a recidivistic child sex offender, and information about risk of re-offence and prior punishment sufficiency were manipulated within the vignette. We predicted that participants would be more likely to assign a more severe post-sentence intervention if the offender had a higher risk of re-offence. However, in line with the expectation that retributive motives play a role in preventive detention decisions, we also predicted that participants would be more likely to assign a more severe post-sentence intervention if the offender had previously experienced an insufficient punishment for his crimes, compared to when he had previously received sufficient punishment.

Carlsmith (2007) also found that punishment sufficiency and risk of re-offence interacted to affect preventive detention decisions, such that when the offender had undergone a lenient prior punishment, participants were more likely to recommend preventive detention, regardless of the risk of recidivism. However, when the offender had undergone a sufficient prior punishment, the offender's risk of re-offence impacted participants' endorsement of preventive detention in the expected direction. We expected to replicate this interaction effect in the present study.

In addition, the current study also examined the effect of responsibility on justice decisions in a preventive detention context. We predicted that when a mitigating factor (i.e. a brain tumour, as per the manipulation employed by Darley et al., 2000) has affected an offender's behaviour, then he will not be seen as wholly responsible for his crimes, thus minimising the participant's retributive motives and reducing preventive detention. Specifically, this prediction involves an interaction between punishment sufficiency, risk of re-offence and responsibility. When responsibility is high, we predicted that the effects of punishment sufficiency and risk of re-offence would be similar to those found by Carlsmith et al. (2007): both punishment sufficiency and risk of re-offence would affect preventive detention decisions. When responsibility is low, we predicted that the urge to punish retributively will decrease, thus risk of re-offence will affect post-sentence intervention decisions but punishment sufficiency will not.

The final aim of the study was to investigate community attitudes towards sex offenders and to test the degree to which the contextual variables investigated in this study impact preventive detention decisions above and beyond these attitudes. As previous research indicates that attitudes influence support for treatment and punishment of sex offenders (Brown, 1999; Valliant et al., 1994), we predicted that when attitudes towards sexual offenders are more punitive, participants would be more likely to assign harsher sanctions onto the offender, in line with the notion that retributive motives partly drive preventive detention decisions.

3.5. Method

3.5.1. Participants

Four hundred and seven undergraduates enrolled in undergraduate psychology and criminology subjects (both on-campus and online) at a mid-sized Australian university

participated in this study. Students received course credit for their participation. Data from 14 participants were discarded for failing attention checks, and data from a total of 53 participants were discarded for failing categorical manipulation checks, leaving 340 participants in the final sample. The final sample consisted of 60 males, 273 females, and 7 who did not disclose their gender, with a mean age of 31.12 years ($SD = 11.21$).

The minimum number of participants required was determined by an a-priori power analysis (Gpower: Faul and Erfelder 2013). Given an expected medium effect size of 0.15 and $p < .05$ (Cohen, 1992), a sample of 166 allowed acceptable power of 0.95 (Cohen, 1992). The ultimate sample size ($n = 340$) exceeds the number of participants required for acceptable statistical power.

3.5.2. Design

The study was conducted as a 2 (punishment sufficiency: high, low) x 3 (risk of re-offence: 0%, 4%, 70%) x 2 (responsibility: high, low) between-subjects randomised experimental design. The independent variables were manipulated in a vignette.

3.5.2.1. Risk of Re-offence

The risk of re-offence manipulation was adapted from the manipulation described by Carlsmith et al. (2007). Participants read that a panel of four psychiatrists with expertise in paedophilic recidivism estimated that upon his release, there would be either a 0, 4, or 70 percent chance that Henderson would re-offend when in the community.

3.5.2.2. Punishment Sufficiency

The punishment sufficiency manipulation was adapted from Carlsmith et al. (2007). In the low punishment sufficiency condition, Henderson had served 5 years in a comfortable

minimum-security prison where he was ‘...comfortably housed, with full access to sports, movies, libraries and visitors.’ In the high punishment sufficiency condition, he had served 25 years in a harsh, maximum security prison in where he had been ‘...repeatedly confined to a solitary cell and was admitted to the infirmary on numerous occasions for injuries consistent with having been violently assaulted by other inmates’.

3.5.2.3. Responsibility

The responsibility manipulation was adapted from Darley et al. (2000). In the low responsibility condition, participants read that during a recent medical examination, it was found that Henderson had a benign tumour pressing on the ‘...orbitofrontal cortex, leading to deficiencies in response inhibition, impulse control, and social behaviour.’ It was also stated that the medical experts ‘...agree that the tumour is a key cause of Henderson offending behaviour’, and that ‘removal of the tumour will eliminate most of the impulsivity and other behavioural issues that have contributed to Henderson’s offending behaviour.’ This condition further states that Henderson has consented, and will undergo a procedure to remove the tumour. In the high responsibility condition, participants were presented with information stating that ‘... there are no physical health issues that could have contributed to his offending behaviour.’

3.5.3. Dependent Variables

The key dependent variable was the additional order recommended by participants and was posed as a two-part question. The first question asked participants to report their recommended outcome (i.e. unconditional release, supervision order, or detention order).

Depending on their response, a second question was presented asking participants to select the

length of order (for supervision and detention orders). For participants who selected unconditional release, no follow-up question was presented.

3.5.4. Materials

3.5.4.1. CATSO

The Community Attitudes Towards Sex Offenders (CATSO; Church, Wakeman, Miller, Clements, & Sun, 2008) scale is an 18 item questionnaire which prompts participants to respond to a number of statements on a Likert-type scale, with possible responses ranging from 1 (strongly disagree) to 6 (strongly agree). Originally developed by Church et al. (2008), Shackley et al. (2014) validated the CATSO scale in an Australian population, and identified four subscales (slightly modified from the factor structure originally developed by Church et al., 2008): Social Tendencies, Treatment and Punishment, Crime Characteristics and Sexual Behaviour. The present study, conducted with an Australian sample, utilised the factors structure from the Shackley et al. (2014) study.

The Social Tendencies [CATSO (ST)] subscale is comprised of five items and measures participants' perceptions of offenders' socialisation. Scores range from 5 to 30. High scores on this subscale indicate beliefs about sex offenders being socially isolated individuals. Treatment and Punishment [CATSO (TP)] is comprised of 7 items and measures participants' beliefs about offender treatment and punishment. Scores range from 7 to 42. A higher score on this subscale indicates more punitive beliefs about the treatment and punishment of sex offenders. Crime Characteristics [CATSO (CC)] is comprised of three questions, and measures participants' perceptions relating to the seriousness of sex offenders' crimes. Scores range from 3 to 18. Higher scores on this subscale indicate higher perceived seriousness of sexual offences. The

Sexual Behaviour subscale [CATSO (SB)] has three items, and measures participants' perceptions of offenders' sexualised behaviour. Scores range from 3 to 18. Higher scores on this subscale indicate higher perceptions of sexual behaviour.

CATSO (TP) is the factor that bears the greatest theoretical significance, as the present study is looking specifically at attitudes regarding punishment of offenders. In addition, all of the CATSO factors had comparable range; however, there were differences in the normality of the distributions. CATSO (TP), was the most normally distributed (skewness = .22, kurtosis = -.30, standard deviation = .88) when compared to the other factors. As non-normally distributed elements can distort relationships and significance tests in multiple regression analysis (Tabachnick & Fidell, 2007), other CATSO factors (ST, CC, and SB) were excluded from further analysis, and only CATSO (TP) was used in subsequent analyses.

3.5.4.2. Vignette

The vignette employed in this study was adapted from the case of *Kansas v. Hendricks (1997)*. The vignette described the perpetrator 'Henderson' as having an elaborate history of repeated child sexual molestation and abuse charges. Several charges were briefly described, ranging from indecent exposure toward a minor to sexual molestation of a minor. Twelve versions of the vignette were generated by manipulating punishment sufficiency (high, low), responsibility (high, low), and risk of re-offence (0%, 4%, and 70%), as described above. One categorical and one continuous manipulation check were employed for each manipulation, to ensure that participants registered the information pertaining to each independent variable as intended.

3.5.4.3. Emotion

To monitor participants' emotional engagement with the vignettes, participants were asked to complete an emotion scale (adapted from Goldberg, Lerner, & Tetlock, 1999; Gross & Levenson, 1995). Responses were used to determine whether participants revealed appropriate emotional engagement in response to reading the vignette. Participants were required to 'select the value that best describes the greatest amount of this emotion that you felt at any time during the study.' There were 17 items, each of which represented different emotions; participants were asked to respond on a scale of 1 ('not at all') to 9 ('most I have ever felt').

In light of the influential role of emotion on justice decision making (Krehbiel & Cropanzano, 2000; Weiss, Suckow, & Cropanzano, 1999), specifically the effects on the participant's likelihood to deliver a favourable or unfavourable outcome, it is important to determine participants' emotional engagement with the material. Research examining public attitudes towards sex offenders suggest that feelings of anger, disgust, and sadness (for example) are to be expected when engaging in justice decision making involving sexual offenders (Brown, 1999; Ferguson & Ireland, 2006; Tewksbury, 2004). Therefore, this measure served as a check to ensure that, on average, participants experienced emotional engagement with the stimulus materials as we intended.

3.5.4.4. Attention Checks

To eliminate data from any participants who were not paying attention during the study, there were two attention checks embedded in the questionnaire. The first attention check asked participants whether Henderson was a 'thief', a 'sex offender', or a 'murderer'. The second attention check asked participants whether Henderson was subject to the 'Road Safety Act 1986', the 'Building (Amendment) Act 2004', or the 'Serious Sex Offenders (Detention and

Supervision) Act 2009'. Responses from participants who failed either attention check (i.e. by selecting the incorrect answer) were removed from the dataset.

3.5.5. Procedure

Participants were invited to complete an anonymous online survey. After reading an information sheet about the study and providing informed consent, participants were presented with the CATSO, and then given some background information about the Serious Sex Offenders (Detention and Supervision) Act 2009 prior to being presented with the condition of the vignette to which they had been randomly assigned. After reading the vignette, participants completed the questionnaire (which contained the dependent measures and the emotional engagement scale). Participants also responded to demographic questions: gender, age and ethnicity. Participants were thanked and debriefed. Participants took approximately 30 minutes to complete the study.

3.6. Results

3.6.1. Manipulation Checks

Once participants who failed categorical manipulation checks were discarded (as described above), a series of three-way between-subjects analyses of variance (ANOVAs) were conducted on continuous manipulation checks to ensure that participants perceived risk, punishment sufficiency, and responsibility as intended. Analyses showed that all manipulations were successful. People judged the punishment to be less sufficient in the low punishment sufficiency condition ($M = 3.51$, $SD = 0.22$) compared with the high punishment sufficiency condition ($M = 6.36$, $SD = 0.21$), $F(1, 328) = 87.98$, $p < .01$, $\eta^2 = .21$. There were no further main or interaction effects on perceived punishment sufficiency. Perceived responsibility was lower in the low responsibility condition ($M = 1.56$, $SD = 0.16$) than in the high responsibility

condition ($M = 4.02$, $SD = 0.15$), $F(1, 328) = 126.51$, $p < .01$, $\eta^2 = .28$. There were no further main or interaction effects on perceived responsibility.

Finally, perceived risk was significantly lower in the 0% ($M = 3.00$, $SD = 0.20$) and 4% ($M = 3.37$, $SD = 0.20$) conditions compared to the 70% ($M = 7.91$, $SD = .19$) condition, $F(2, 328) = 204.35$, $p < .01$, $\eta^2 = .56$. Follow-up tests revealed that there were significant differences between the 70% condition and the 0% condition ($p < .01$), and between the 70% condition and the 4% condition ($p < .01$). There was no significant difference between the 0% condition and the 4% condition ($p = .83$). Given the lack of perceived differences between the 0% and 4% risk conditions, the risk independent variable was collapsed from three levels to two: low risk of re-offense (formerly 0% and 4%) versus high risk of re-offense (formerly 70%) for all further analyses.

3.6.2. Emotion

The emotions were split into two categories: emotions that we intended participants experience in response to the vignette (labelled ‘desirable’; e.g. Disgust), and emotions we did not intend participants to experience (labelled ‘undesirable’; e.g. Happiness). Scores for items in each group were then averaged to produce an overall average score for each of the desirable and undesirable groups. There was a statistically significant difference between participants’ self-reported experience of the undesirable emotions ($M = 1.90$, $SD = 5.69$), compared to desirable emotions ($M = 3.94$, $SD = 11.64$), $t(339) = -34.81$, $p < .01$ (two-tailed), 95% CI [-20.63, -18.42], indicating that participants, on average, were emotionally engaged with the vignette as intended.

3.6.3. Preventive Detention Decisions

The overall frequencies for decision were somewhat surprising in that very few participants opted for unconditional release ($N = 3$) when compared to supervision order ($N =$

175), and detention order ($N = 162$). Given the very small group opting for unconditional release, this group was dropped from further analyses. With regard to the recommended length of the selected order, average length of supervision order was 102.45 months ($SD = 84.34$), with modal responses at 36 months, 60 months and more than 180 months (see *Figure 1*). The average length of detention order was 18.19 months ($SD = 17.69$), with modal responses at 6 months and more than 36 months (see *Figure 2*).

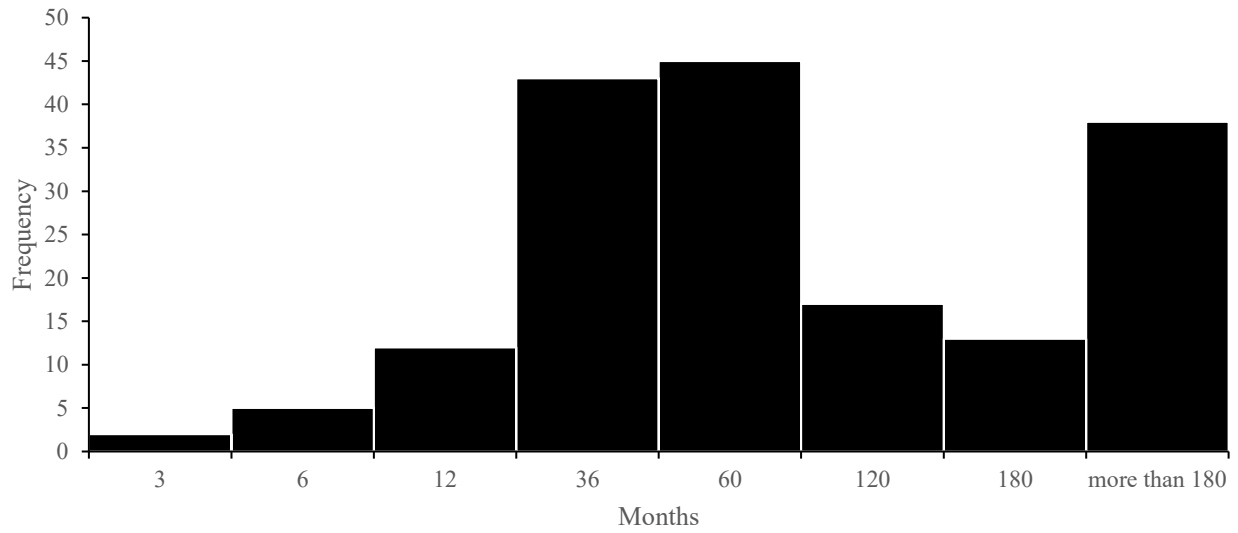


Figure 1: Frequency of recommended length of supervision order

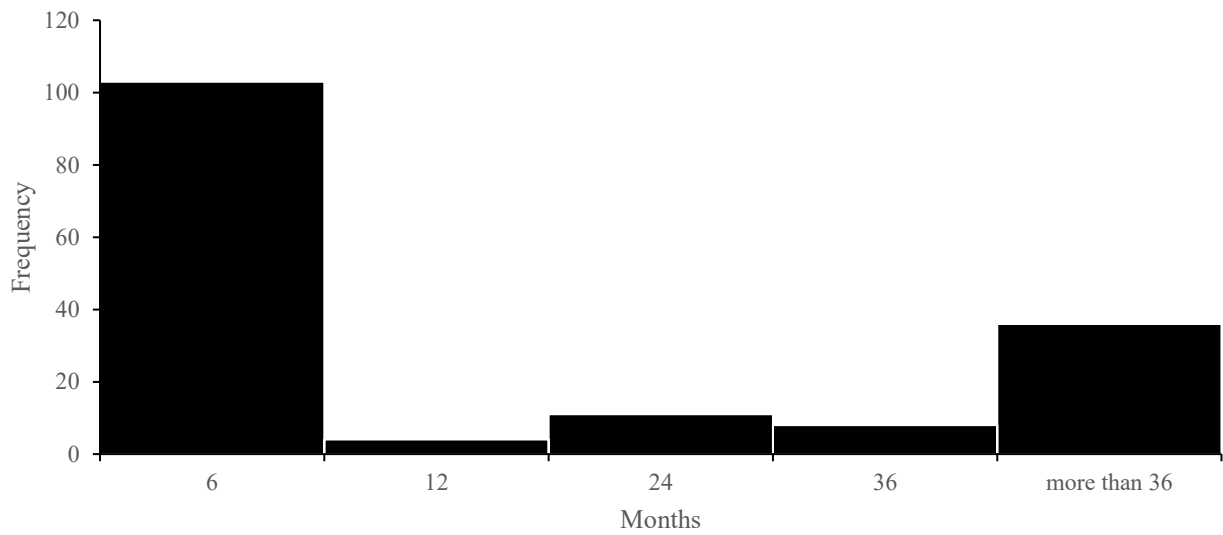


Figure 2: Frequency of recommended length of detention order

3.6.3.1. Type of Sanction

A sequential logistic regression was conducted to test the effects of risk of re-offence, punishment sufficiency, responsibility, and their interactions on type of sanction administered. CATSO (TP) scores were entered in the first block, so that we could determine the degree to which circumstances of the case would predict type of sanction administered once attitudes to treatment and punishment of sex offenders were accounted for. The main effects (of risk, punishment sufficiency, and responsibility) were entered in the second block, their two-way interactions were entered in the third block, and the three-way interaction was entered in the final block. In the final model ($\chi^2(8, N = 335) = 159.57, p < .01, R^2 = .38$), risk of re-offense (odds ratio = 10.23), responsibility (odds ratio = 7.74), punishment sufficiency x responsibility (odds ratio = .24), and attitudes towards sex offenders (treatment and punishment; odds ratio = 3.89) were significant predictors (see *Table 1*). In other words, the odds that an individual would recommend a harsher sanction (detention, as opposed to supervision) was 10.23 times higher on average when risk of re-offence was high compared to when it was low, 7.74 times higher on average when the offender was responsible for the crime compared to when the offender was not responsible, and 3.89 times higher on average for people who had more punitive attitudes towards sexual offenders. The main effect of punishment sufficiency was not significant, nor was the expected two-way interaction as seen in Carlsmith et al. (2007).

Table 1: Final model of sequential logistic regression predicting decision outcome

	<i>B</i>	S.E	Wald	df	<i>p</i>	Odds Ratio	95.0% C.I. for Odds Ratio	
							Lower	Upper
Block 1								
CATSO	1.36	0.20	47.60	1.00	0.00*	3.89	2.64	5.72
Block 2								
Risk of re-offence	2.32	0.58	16.24	1.00	0.00*	10.22	3.30	31.64
Punishment sufficiency	0.61	0.51	1.47	1.00	0.23	1.85	0.68	4.99
Responsibility	2.05	0.51	16.31	1.00	0.00*	7.74	2.87	20.90
Block 3								
Punishment sufficiency x Risk of re-offence	-0.08	0.81	0.01	1.00	0.92	0.93	0.19	4.49
Risk of re-offence x Responsibility	-0.01	0.86	0.00	1.00	0.99	0.99	0.18	5.39
Punishment sufficiency x Responsibility	-1.45	0.69	4.42	1.00	0.04	0.23	0.06	0.91
Block 4								
Punishment sufficiency x Risk of re-offence x Responsibility	1.66	1.34	1.54	1.00	0.21	5.25	0.38	72.16
Constant	-7.33	0.92	63.29	1.00	0.00*	0.00		

* $p < .001$

To further explore the significant interaction between punishment sufficiency and responsibility, we conducted simple slope analyses (Aiken & West, 1991). When the offender had spent 5 years in custody (i.e. low punishment sufficiency), high responsibility led to a more severe sanction recommendation ($\beta = 1.81, p < .05$), whereas when the offender had spent 25 years in custody (i.e. high punishment sufficiency), offender responsibility had no effect on recommended sanction severity ($\beta = .81, p = .56$). The interaction on sanction severity is illustrated in *Figure 3*.

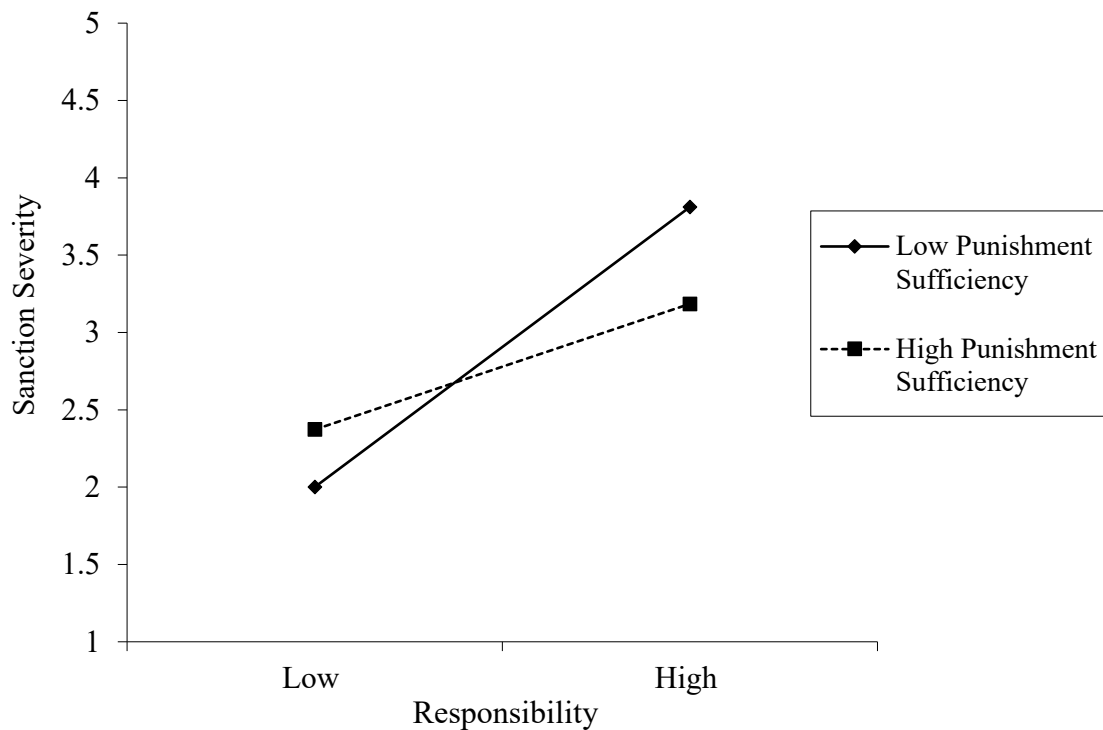


Figure 3: Sanction severity as a function of punishment sufficiency and responsibility

3.6.3.2. Recommended Length of Supervision

For participants who selected a supervision order, a hierarchical multiple regression was conducted to test the effects of risk of re-offence, punishment sufficiency, responsibility, and their interactions on length of supervision recommended. CATSO (TP) scores were entered in the first block, to determine the degree to which circumstances of the case would predict length of supervision order once attitudes to treatment and punishment of sex offenders were accounted for. The main effects (of risk, punishment sufficiency, and responsibility) were entered in the second block, their two-way interactions were entered in the third block, and the three-way interaction was entered in the final block. In the final model ($F(8, 165) = 2.73, p < .01$), punishment sufficiency ($\beta = .22, p = .02$) and attitudes towards sex offenders (treatment and punishment; $\beta = .25, p < .01$) were significant predictors of length of supervision order (see *Table 2*). In other words, for those who recommended a supervision order, participants were more likely to recommend a longer period of supervision when punishment sufficiency was high, or when they held more punitive attitudes towards sexual offenders with regard to treatment and punishment (independent of the circumstances of the case).

3.6.3.3. Recommended Length of Detention

For participants who selected a detention order, a hierarchical multiple regression was conducted to test the effects of risk of re-offence, punishment sufficiency, responsibility, and their interactions on length of detention recommended. CATSO (TP) scores were entered in the first block, to determine the degree to which circumstances of the case would predict length of detention order once attitudes to treatment and punishment of sex offenders were accounted for. The main effects (of risk, punishment sufficiency, and responsibility) were entered in the second block, their two-way interactions were entered in the third block, and the three-way interaction

was entered in the final block. In the final model ($F(8, 152) = 2.27, p = .03$), only attitudes towards sex offenders (treatment and punishment; $\beta = -.21, p = .01$) was a significant predictor of length detention order (see *Table 2*). In other words, for those who recommended a detention order, participants were more likely to recommend a longer period of detention when they held less punitive attitudes towards sexual offenders with regard to treatment and punishment (independent of the circumstances of the case).

Table 2: Final model of hierarchical multiple regression analyses for recommended length of supervision/detention order

	Supervision Order			Detention Order		
	β	t	p	β	t	p
Block 1						
CATSO	0.25	3.27	0.00*	-0.21	-2.58	0.01
Block 2						
Risk of re-offence	0.14	1.64	0.10	0.04	0.53	0.60
Punishment Sufficiency	0.22	2.28	0.02	-0.07	-0.79	0.43
Responsibility	0.09	0.95	0.34	-0.04	-0.43	0.67
Block 3						
Risk of re-offence x Punishment sufficiency	0.09	0.87	0.38	-0.07	-0.74	0.46
Risk of re-offence x Responsibility	0.05	0.45	0.65	0.13	1.46	0.15
Punishment sufficiency x Responsibility	0.01	0.11	0.91	0.11	1.24	0.22
Block 4						
Risk or re-offence x Punishment sufficiency x Responsibility	-0.11	-1.05	0.30	-0.06	-0.70	0.48
R ²	0.12			0.11		
F	2.73		0.01	2.27		0.03

Note: CATSO denotes treatment and punishment factor.

* $p < .001$

3.7. Discussion

3.7.1. Verdict

The results of Study 1 showed that participants were generally very conservative in their treatment of sexual offenders, in that nearly all participants recommended some form of post-sentence intervention. These findings are not surprising given the findings from previous research have found that community participants generally support some form of intervention being placed on sex offenders in the first instance of punishment (Brown, 1999; Carlsmith et al., 2007; Levenson et al., 2007; Valliant et al., 1994), but these findings do demonstrate a discrepancy between the approach of the public and the concerns of legal scholars with regard to preventive detention.

Manipulation checks indicated that participants interpreted manipulations as intended. Furthermore, the lack of significant interactions in manipulation checks indicate that most of the manipulations were independent of each other. However, the significant interactions between remorse and prior punishment and risk of re-offence and prior punishment may indicate that participants were interpreting the prior punishment information in line with both utilitarian and retributive components.

The findings suggest that participants were primarily motivated by utilitarian means, as risk of re-offence was a significant predictor when assigning harsher preventive detention sanctions (i.e. detention order over supervision order). Surprisingly, punishment sufficiency was not a significant predictor of preventive detention sanctions, which deviates from the previous findings by Carlsmith et al. (2007), who demonstrated that both retributive and utilitarian concerns drive preventive detention decisions.

There was some support for the role of retributive motives in preventive detention decisions. As we had predicted, when the offender was depicted as more responsible for his crimes, participants were more likely to recommend a detention order, compared with when he was not responsible for his crimes. Also, when an individual held more punitive attitudes towards sex offenders, they were more likely to recommend a detention order over a supervision order, regardless of the circumstances of the case. This demonstration that preventive detention decisions are affected by responsibility and punitive attitudes, both strongly implicated in retributive responses, supports the possibility of a retributive motive in preventive detention decisions. These findings also align with past research indicating that responsibility (Carlsmith et al., 2002; Darley et al., 2000; Darley & Pittman, 2003) and more punitive attitudes towards sex offenders (Altholz & Salerno, 2016; Brown, 1999; Stevenson et al., 2015; Valliant et al., 1994) play a role in justice decisions, but this is the first research to establish the roles of responsibility and attitudes to sex offenders on justice decisions within a preventive detention context.

In terms of the interaction effect seen in Carlsmith et al. (2007), this study failed to replicate, any such findings. Specifically, no interaction between punishment sufficiency and risk of re-offence was found. However there was a significant interaction between punishment sufficiency and responsibility indicates some support for the role of retribution in preventive detention decision; however, the role of retributive motives is not as clear as in previous findings.

3.7.2. Length of Additional Orders

As expected from previous research (Brown, 1999; Valliant et al., 1994), the more punitive an individual's attitudes towards sex offenders, the longer the recommended term of supervision. However, our other two findings regarding length of orders were surprising.

First, attitudes towards sex offenders was the only significant predictor of length of detention order but the direction of the effect was unexpected: participants with less negative attitudes towards sex offenders recommended longer periods of ongoing detention. This finding could be indicative of a disconnect between attitudes towards sex offenders and recommended length of detention order. In other words, participants assigning detention orders may be concerned with something other than punishment.

Second, punishment sufficiency significantly predicted length of supervision order but in an unexpected direction: when the offender had completed a longer custodial sentence, participants recommended a longer period of supervision compared to when punishment sufficiency was low. The direction of this effect contrasts prior research (Carlsmith et al., 2007), and suggests that participants are using punishment sufficiency information in their preventive detention decisions, but not as a retributive prime. Further work is needed to determine and replicate the way in which information about prior punishment actually affects length of additional orders.

3.8. Study 2

Previous research has shown that both utilitarian and retributive motivations play a role in preventive detention decisions (Carlsmith et al., 2007); however, in Study 1, it was unclear whether participants were driven by retribution, in contrast to previous research in the field (Carlsmith et al., 2007). To further explore motivations driving preventive detention decisions, and clarify findings from Study 1, Study 2 similarly examined the competing influences of retributive versus utilitarian motives in preventive detention, but by employing a different methodology. Specifically, Study 2 employed process tracing methodology (PTM; Jacoby et al., 1987). PTM identifies the order in which a participant prioritises information. Experimental

vignettes simply present information to participants, without allowing participants to select information they may view as important. In contrast, PTM prompted the participant to select which information they wished to see, allowing a clearer indication of the type of information participants prioritise when making preventive detention decisions.

In light of prior research showing the influence of retributive motives in preventive detention decisions (Carlsmith et al., 2007), we hypothesised that when forced to select one piece of information, participants would choose to view information about the offender's punishment sufficiency (retributive prime), over the offender's risk of re-offence (utilitarian prime).

Based on the findings of Carlsmith et al. (2002), who found that retribution was more predictive of punitive sanctions when compared to utility, we predicted that participants who elected to view punishment sufficiency information would recommend more severe sanctions compared to those who chose to view risk of re-offence information. Specifically, Carlsmith et al. (2002) found that when people assign a punishment, they are driven by a desire to give the perpetrator the outcome they deserve. Based on this, we expected that those who are more concerned with retributive information (and so choose to see it, rather than choosing to see information about the offender's risk of re-offence) would be more punitive, as their choice to view retributive information indicates their concern with satisfying a notion of just deserts. Furthermore, among participants who chose to view punishment sufficiency information, we predicted that those who read the offender previously received an insufficient punishment would assign a more restrictive additional order compared to those who read the offender previously received a sufficient punishment. Among participants who chose to view risk of re-offence information, those who read the offender presented a high risk of re-offence would assign a more

restrictive additional order compared to those who read the offender presented a low risk of re-offence.

3.9. Method

3.9.1. Participants

Three hundred and eighty-two students from a mid-sized Australian university were recruited to participate in this study. Students were enrolled in undergraduate psychology or criminology courses, either on-campus or online. Students received course credit in exchange for their participation. Data from two participants were discarded for failing attention checks, and data from a total of 24 participants were discarded for failing the categorical manipulation checks, leaving a total of 326 participants in the final sample. The final sample consisted of 66 men and 260 women, with a mean age of 33.69 ($SD = 11.00$).

The minimum number of participants required was determined by an a-priori power analysis (Gpower: Faul and Erfelder 2013). Given an expected medium effect size of 0.15 and $p < .05$ (Cohen, 1992), a sample of 160 allowed acceptable power of 0.95 (Cohen, 1992). The ultimate sample size ($n = 326$) exceeds the number of participants required for acceptable statistical power.

3.9.2. Design and Procedure

The study was conducted online using Qualtrics software and was separated into three phases. In phase one, participants read information about the SSO(DS)A (2009) legislation, followed by a vignette about the offender and instructions on how to make their upcoming choice about preventive detention, supervision or release. Participants were instructed that they may select only one further piece of information about the offender to assist in their decision:

they could either select information about the time that the offender had already served in prison or information about the offender's risk of re-offence. The dependent variable in phase one was the information selection made by the participant.

Phase two of the study was a 2 (factor chosen: risk of re-offence, punishment sufficiency) x 2 (level seen: low [4% risk; five years punishment], high [70% risk; 25 years punishment]) between-subjects design. The factor chosen independent variable was determined by the participant's information selection in phase one. The level seen independent variable was randomly selected (once the participant had chosen a factor in phase one). If participants chose to view risk of re-offence information, they were randomly allocated to see that the offender presented either a 4% or 70% risk. If participants chose to view punishment sufficiency information, they were randomly allocated to see that the offender spent either five or 25 years in prison. The dependent variable in phase two was sanction decision. Participants were asked to provide a sanction decision, indicating whether they would impose either ongoing detention, ongoing supervision (and the length of supervision or detention to be imposed) or unconditional release upon the offender. Participants were then asked to complete the questionnaire, which included manipulation and attention checks.

Phase three of the study was a 2 (punishment sufficiency: 5 years, 25 years) x 2 (risk of re-offence: 4%, 70%) x 2 (order: punishment first, risk first) between-subjects design. During this phase, participants were shown the piece of information they did not select. That is, if participants initially chose to see information about risk of re-offence, they were then presented with information about punishment sufficiency; or if participants initially chose to see information about punishment sufficiency, they were presented with information about the offender's risk of re-offence. Once participants had completed the questionnaire in phase two,

they were told: ‘We are now going to show you the piece of information that you did not choose. We would like you to consider this other piece of information, and once again consider your judgments about what should now happen regarding this offender.’ Again, participants were randomly assigned to see one of the two levels of the remaining factor. (A new independent variable emerged at this phase, concerning the order in which participants viewed the punishment and risk information.) Participants were asked to complete the questionnaire again, having now seen both punishment sufficiency and risk information. Participants were then asked for demographic information, including gender, age and ethnicity. At the end of the study, participants were thanked and debriefed.

3.9.3. Materials

3.9.3.1. Vignette

The vignette and manipulations used in this study were identical to those described in Study 1 (except that, in Study 2, risk of re-offence was manipulated as a two-level variable; 4% vs. 70%). Rather than being presented automatically within the vignette, information about risk of re-offence and prior punishment was only viewed by participants in phases two and three of Study 2, as described above.

3.9.3.2. Dependent Measures

The key dependent measures examined in this study (additional orders and their length) were identical to those described in Study 1. The questionnaire containing dependent measures was administered in phases two and three of Study 2, and also contained the attention checks, categorical and continuous manipulation checks, and demographic questions described in Study

1.

3.10. Results

3.10.1. Manipulation Checks

A series of three-way between-subjects analyses of variance (ANOVAs) were conducted to ensure that participants perceived the manipulations as intended. In phase two, participants judged the offender's risk of re-offense to be lower in the low risk of re-offence condition ($M = 2.39$, $SD = 1.81$) compared to the high risk or re-offence condition ($M = 8.10$, $SD = 0.90$), $F(1, 279) = 1141.87$, $p < .01$, $\eta^2 = .80$. There were no further main or interaction effects on risk of re-offence. In terms of punishment sufficiency, participants were unable to differentiate between high punishment sufficiency ($M = 4.35$, $SD = 3.20$) and low punishment sufficiency ($M = 2.79$, $SD = 2.50$), $F(1, 46) = 3.62$, $p = 0.06$, $\eta^2 = .07$. There were no further main or interaction effects on perceived punishment sufficiency.

In phase three, participants judged the offender's risk of re-offense to be lower in the low risk of re-offence condition ($M = 3.14$, $SD = 2.41$) compared to the high risk or re-offence condition ($M = 8.25$, $SD = 0.89$), $F(1, 327) = 682.19$, $p < .001$, $\eta^2 = .68$. There were no further main or interaction effects on risk of re-offence. In terms of punishment sufficiency, participants perceived the punishment to be less sufficient in the low punishment sufficiency condition ($M = 3.17$, $SD = 2.51$), compared to the high punishment sufficiency condition ($M = 5.85$, $SD = 3.00$), $F(1, 327) = 82.74$, $p < .001$, $\eta^2 = .20$. There were no further main or interaction effects on perceived punishment sufficiency.

3.10.2. Phase One: Information Chosen

First, a frequency analysis was conducted to ascertain which information participants initially chose to view. Counter to expectations, a large majority of participants selected to view information pertaining to the offender's risk of re-offence ($N = 278$; 85.3%), compared to

punishment sufficiency ($N = 48$; 14.7%). A chi-square goodness-of-fit test indicates that there was a significant difference in the portion of participants who chose to view risk of re-offence information compared to those who chose to view punishment sufficiency information, $\chi^2(1) = 162.27, p < .01$.

3.10.3. Phase Two: Main Effect of Choice on Sanction Decisions

Preliminary analyses revealed that participants' age was significantly correlated with their choice of information seen ($r = .11, p = .04$). Specifically, older participants were more likely to view punishment sufficiency information when compared to younger participants. Gender and ethnicity were not correlated with any independent or dependent variables in the current study. As such, in all regression analyses detailed below, age was included to control for its effects, and gender and ethnicity were excluded from further analyses.

3.10.3.1. Sanction

Frequency analyses revealed that of the 278 participants who chose to see risk of re-offence information, 111 (39.93%) chose to sanction a supervision order while 167 (60.07%) chose to sanction a detention order. Of the 48 participants who chose to see punishment sufficiency information, 13 (27.08%) chose to sanction a supervision order while 35 (72.92%) chose to sanction a detention order.

3.10.3.2. Main effect of risk of re-offence

3.10.3.2.1. Sanction

For those participants who chose to see information relating to the offender's risk of re-offence, direct logistic regression was performed to assess the impact of information about risk

on the likelihood that participants would sanction a detention order in phase two. The model contained one independent variable (risk of re-offence) while controlling for participants' age. The final model ($\chi^2(2) = 108.31, p < .01, R^2 = .05$) containing all predictors was statistically significant. Risk of re-offence (odds ratio = 17.96), and age (odds ratio = 1.03) were significant predictors of sanction decision (see *Table 3*). In other words, the odds that participants would sanction a detention order rather than a supervision order were greater for older participants than younger participants. In addition, among participants who selected to view risk of re-offence, those who read that the offender was a high risk of re-offence were 17.96 times more likely to recommend a harsher sanction (detention versus supervision) compared to those who read the offender had a low risk of re-offence.

Table 3: Final model of sequential logistic regression predicting decision outcome of participants who selected to view risk of re-offence information in phase 2

	<i>B</i>	S.E	Wald	df	<i>p</i>	Odds Ratio	95.0% C.I. for Odds Ratio	
							Lower	Upper
Block 1								
Age	0.03	0.01	5.55	1.00	0.02	1.03	1.01	1.06
Block 2								
Risk of re-offence	2.89	0.32	79.34	1.00	0.00*	17.96	9.51	33.91
Constant	-1.98	0.53	14.07	1.00	0.00*	0.14		

* $p < .001$

3.10.3.2.2. Length of Supervision

For participants who chose to see information relating to the offender's risk of re-offence and assigned a supervision order, a hierarchical multiple regression was conducted to test the effects of risk of re-offence on length of supervision recommended. The model contained one independent variable (risk of re-offence) while controlling for participants' age. In the final model ($F(2, 108) = 5.61, p = .01$), risk of re-offence ($\beta = .31, p = .01$) was the only significant predictor of length of supervision order (see *Table 4*). When risk of re-offence was high, participants recommended a longer period of supervision.

3.10.3.2.3. Length of Detention

For participants who chose to see information relating to the offender's risk of re-offence and assigned a detention order, a hierarchical multiple regression was conducted to test the effects of risk of re-offence on length of detention recommended. The model contained one

independent variable (risk of re-offence) while controlling for participants' age. In the final model ($F(2, 164) = 3.70, p = .03$), risk of re-offence ($\beta = .20, p = .01$) was the only significant predictor of length of supervision order (see *Table 4*). When risk of re-offence was high, participants recommended a longer period of detention.

Table 4: Final model of hierarchical multiple regression analyses for recommended length of supervision/detention order of participants who selected to view risk of re-offence information in phase 2

	Supervision Order			Detention Order		
	β	t	p	β	t	p
Block 1						
Age	0.01	0.06	0.95	0.07	0.95	0.34
Block 2						
Risk of re-offence	1.10	3.27	0.00*	0.20	2.59	0.01
R^2	0.09			0.04		
F	5.61		0.01	3.70		0.03

* $p < .001$

3.10.3.3. Main Effect of Punishment Sufficiency

3.10.3.3.1. Sanction

For those participants who chose to see information relating to the offender's punishment sufficiency, direct logistic regression was used to assess the impact of information about punishment sufficiency on the likelihood that participants would recommend a detention order in phase two. The model contained one independent variable (punishment sufficiency) while controlling for participants' age. The final model ($\chi^2(2) = 0.90, p = .64, R^2 = .03$) was not

statistically significant. Reading about the sufficiency of the offender's punishment had no effect on whether participants would sanction a detention order (rather than a supervision order).

3.10.3.3.2. Length of Supervision

For participants who chose to see information relating to the offender's punishment sufficiency and assigned a supervision order, a hierarchical multiple regression was conducted to test the effects of risk of re-offence on length of supervision recommended. The model contained one independent variable (risk of re-offence) while controlling for participants' age. The final model ($F(2, 10) = 2.99, p = .10$), was not statistically significant.

3.10.3.3.3. Length of Detention

For participants who chose to see information relating to the offender's punishment sufficiency and assigned a detention order, a hierarchical multiple regression was conducted to test the effects of risk of re-offence on length of detention recommended. The model contained one independent variable (risk of re-offence) while controlling for participants' age. The final model ($F(2, 32) = 1.56, p = .23$), was not statistically significant.

3.10.4. Phase Three: Effect of Order and Level of Information Seen on Sanction Decisions

3.10.4.1. Sanction

Direct logistic regression was performed to assess the impact of seeing information about both the offender's risk of re-offence and prior punishment sufficiency, and the order in which these pieces of information were seen, on the likelihood that participants would sanction a detention (versus supervision) order in phase three. The model contained three independent variables: risk of re-offence information, prior punishment sufficiency information and the order in which these pieces of information were seen. Block one contained each independent variable

and controlled for participants' age. Block two contained the three two-way interactions of the independent variables. Block three contained the three-way interaction between all of the independent variables.

The full model containing all predictors was statistically significant, $\chi^2(8) = 69.14, p < .01, R^2 = .34$ (see *Table 5*). Risk of re-offence (odds ratio = 7.67) was the sole significant predictor in the final model. With all predictors taken into account, the odds a participant would recommend a detention order over a supervision order were 7.67 times greater when participants read that there was a high risk of re-offence, compared to those who read that there was a low risk of re-offence.

3.10.4.2. Length of Supervision

Hierarchical multiple regression was performed to assess the impact of seeing information about both the offender's risk of re-offence and prior punishment sufficiency, and the order in which these pieces of information were seen, on the length of supervision order assigned in phase three. The model contained three independent variables: risk of re-offence information, prior punishment sufficiency information and the order in which these pieces of information were seen. Block one contained each independent variable and controlled for participants' age. Block two contained the three two-way interactions of the independent variables. Block three contained the three-way interaction between all of the independent variables.

The final model ($F(8, 105) = 2.31, p = .03$) containing all predictors was statistically significant. In the final model, risk of re-offence ($\beta = .32$) was the sole significant predictor of length of supervision order (see *Table 6*). As risk of re-offence increased, participants recommended longer supervision orders.

Table 5: Final model of sequential logistic regression predicting decision outcome in phase 3

	<i>B</i>	S.E	Wald	df	<i>p</i>	Odds Ratio	95.0% C.I. for Odds Ratio	
							Lower	Upper
Block 1								
Age	0.02	0.01	3.85	1.00	0.05	1.02	1.00	1.05
Block 2								
Risk of re-offence	2.04	0.43	22.36	1.00	0.00*	7.67	3.30	17.84
Punishment sufficiency	-0.13	0.36	0.13	1.00	0.72	0.88	0.44	1.77
Choice	0.18	0.62	0.09	1.00	0.77	1.20	0.36	4.03
Block 3								
Punishment sufficiency x Risk of re-offence	0.05	0.59	0.01	1.00	0.93	1.06	0.33	3.38
Risk of re-offence x Choice	-1.27	0.90	1.97	1.00	0.16	0.28	0.05	1.65
Punishment sufficiency x Choice	-0.72	1.10	0.43	1.00	0.51	0.49	0.06	4.20
Block 4								
Punishment sufficiency x Risk of re-offence x Choice	2.68	1.68	2.55	1.00	0.11	14.52	0.54	388.65
Constant	-1.03	0.47	4.88	1.00	0.03	0.36		

* $p < .001$

3.10.4.3. Length of Detention

Hierarchical multiple regression was performed to assess the impact of seeing information about both the offender's risk of re-offence and prior punishment sufficiency, and the order in which these pieces of information were seen, on the length of detention order recommended in phase three. The model contained three independent variables: risk of re-offence information, prior punishment sufficiency information and the order in which these pieces of information were seen. Block one contained all independent variables and controlled for participants' age. Block two contained the three two-way interactions of the independent variables. Block three contained the three-way interaction between all of the independent variables. The final model ($F(8, 203) = 1.10, p = .36$) containing all predictors was not statistically significant (see *Table 6*).

Table 6: Final model of hierarchical multiple regression analyses for recommended length of supervision/detention order in phase 3

	Supervision Order			Detention Order		
	β	t	p	β	t	p
Block 1						
Age	-0.02	-0/17	0.87	0.07	0.94	0.35
Block 2						
Risk of re-offence	0.32	3.26	0.00*	0.13	1.80	0.07
Punishment Sufficiency	-0.08	-0.67	0.51	0.02	0.20	0.85
Choice	0.08	0.63	0.53	0.06	0.71	0.48
Block 3						
Risk of re-offence x Punishment sufficiency	-0.22	-1.96	0.05	-0.08	-1.09	0.28
Risk of re-offence x Choice	-0/04	-0.37	0.71	0.00	0.05	0.96
Punishment sufficiency x Choice	0.16	1.39	0.17	0.00	-0.00	1.00
Block 4						
Risk or re-offence x Punishment sufficiency x Choice	0.02	0.18	0.86	0.10	1.15	0.25
R ²	0.15			0.04		
F	2.31		0.03	1.10		0.36

* $p < .001$

3.11. Discussion

Overall, the results of Study 2 are similar to those in Study 1 as they highlight the importance of utilitarian motives in preventive detention decisions, with a majority of participants electing to view information pertaining to the offender's risk of re-offence during phase one of the study. This suggests participants are more concerned with community safety when it is directly pitted against the offender's time in custody, and indicates that participants prioritise utilitarian rather than retributive motives when making preventive detention decisions.

Participants who chose to see information about risk, and read that the offender had a high risk of re-offence, were more likely to recommend a harsher sanction (i.e. detention over supervision order), as well as longer periods of supervision and detention. On the other hand, among participants who elected to view punishment sufficiency information, there were no significant effects. While some participants chose to view information about punishment sufficiency, this information had no effect on their sanction decisions, or the length of supervision or detention they recommended. (The small number of participants who elected to view punishment sufficiency information should be taken into account, as low power could be driving the lack of significant effects.)

In the final phase of the study, participants were able to view the other piece of information (i.e. the information they didn't view in the first phase). The order in which participants viewed the information had no effect on sanction decisions, but overall, those who read that the offender posed a high risk of re-offence were more likely to recommend a detention order over a supervision order. Furthermore, as risk of re-offence increased, the recommended length of supervision order increased. The findings of phase three are reasonably consistent with

those of phase two, in which risk of re-offence significantly affected recommended sanction decisions and length of orders.

Manipulation checks indicated that participants interpreted manipulations as intended. Furthermore, the lack of significant interactions in manipulation checks indicate that the manipulations were independent of each other. Notably, the manipulation check in phase two of the study showed that participants failed to distinguish between the levels of punishment sufficiency, however, this non-significant difference could be attributed to the very small number of participants who elected to view this information.

Overall, the findings of Study 2 indicate consistent effects of the utilitarian prime, rather than the retributive prime. Participants consistently chose to see information about risk of re-offence (in phase one), and then used that information to determine the type of additional order recommended, and the length of that order (in phase two). When all information had been presented to participants (in phase three), and the order in which information was presented was taken into account, the only factor that significantly predicted additional orders was risk of re-offence information. Findings of Study 2 thus indicate the importance of risk information in driving preventive detention decisions.

3.12. General Discussion

Previous research examining preventive detention decisions found that both utilitarian and retributive motives play a role (Carlsmith et al., 2007), and our findings across both studies broadly support this principle. Results from Study 1 suggested participants were sensitive to risk of re-offence when assigning harsher preventive detention measures (i.e. detention order over supervision order), and effects of risk information dominated the findings of Study 2.

Surprisingly, punishment sufficiency was not a significant predictor of the likelihood of

assigning preventive detention in Study 1; however, significant effects of offender responsibility and CATSO (TP) scores on preventive detention decisions in Study 1, as well as a reasonable minority of participants (around 15%) electing to view prior punishment information in Study 2, suggest that it is still premature to disregard the possible role of retributive motives in preventive detention decisions. To consider the implications of these findings, we must look to participants' interpretations of the punishment sufficiency manipulation in our paradigm. In particular, we must consider the possibility that participants could have viewed an individual who has been in custody for 25 years as a person who may need additional supervision or detention to assist with his reintegration into society.

The effect of institutionalisation is well established within academic literature (Denney, Tewksbury, & Jones, 2014; Houston, 2013). Effectively, once an individual has been in an institutional setting (e.g. prison) for a period of time, they become dependent on that environment to provide for them. Once they are removed from that environment (e.g. released), they have difficulty undertaking everyday tasks as they have become dependent on the institutional setting. As such, participants who read that Henderson was in custody for 25 years may have felt he required extra support to readjust to the demands of daily life. Conversely, when participants read that Henderson had served five years in prison, they may have felt he was not institutionalised, and thus did not require as much support following his release from custody.

Alternatively, participants could be interpreting punishment sufficiency information in terms of offender dangerousness, considering that an offender dangerous enough to warrant such a long sentence may need more supervision to protect the community. The fact that the effect of punishment sufficiency information was only evident in the context of a supervision order, and

not a detention order, could also be explained by the perceived dangerousness of the offender, whereby participants used time spent in custody as a heuristic for dangerousness upon release into the community. For instance, participants who recommended that Henderson be released with a supervision order may have reasoned that he is an acceptable risk to the community, given the conditions of his supervision order. However, participants who selected a detention order would have reasoned that he was an unacceptable risk to the community regardless of the possible length or conditions of a supervision order. As such, it is possible that participants are interpreting information about prior punishment as a utilitarian, rather than retributive, prime.

Study 2 attempted to clarify the findings from Study 1 by identifying participants' own prioritisation of the retributive versus utilitarian primes. A strong majority of participants sought risk or re-offence information over punishment sufficiency information, indicating participants are driven more by utilitarian than retributive motives. Furthermore, as risk of re-offence increased, as did the restrictiveness of the additional order. This finding supports the primacy of utilitarian motives in preventive detention decisions findings from Study 1.

3.12.1. Limitations

One limitation of this project is the sample employed. Research has highlighted the importance of sampling populations representative of the population to which the results are to be generalised (Banerjee & Chaudhury, 2010). This project examined a student population, so caution is required when generalising results to the wider community; however, it should be noted that our sample is not a stereotypical student sample, in that it comprised both on-campus and off-campus students. Of particular note, the off-campus population allowed a much broader range of age, family make-up (i.e. children), education attainment, and employment characteristics, overcoming many of the general limitations of student samples.

A further limitation of the study was the generalisability of findings in the Australian context to legislation in the broader global context. Preventive detention legislation can vary between different jurisdictions, not only interstate, but internationally. For instance, past research has examined civil commitment legislation in the United States as a form of preventive detention (Carlsmith et al., 2007).

Although civil commitment and other preventive detention laws may not be directly comparable, given numerous fundamental differences (e.g. civil v. criminal jurisdictions, mental health issues etc.), the fact they are both implemented following the completion of a sentence is consistent across most preventive detention measures worldwide. The two studies described in this paper are among the first to examine questions that apply to global preventive detention schemes, which implement secondary restrictions on offenders once an initial punishment is completed.

In monitoring emotional engagement, it is clear that we assumed the genesis of some monitored emotions (e.g. anger). For instance, we assumed the participant felt anger at the offender's past crimes in the situation described, however we did not specifically measure this. It could be the case, for example, that the anger is instead directed towards the justice system officials for their negative treatment of the offender. This omission limits our discussion around the participant's emotional engagement.

An additional limitation lies in the possibility that individuals may choose to ignore specific information when engaging in preventive detention decision making. The methodology employed in Study 1 presented participants with all information (i.e. prior punishment and risk of re-offence) simultaneously, however there was no measure employed to test whether participants used all of the information during their deliberations, or whether they effortfully ignored certain

information. Study 2 did explore participants' choices about information to which they would attend, however the Study 2 paradigm allowed the participants to avoid information, rather than ignore it when presented. Future research should further investigate the differential impacts of ignoring versus avoiding information.

3.12.2. Future research

Findings from this project did not replicate those of Carlsmith et al. (2007), but some of our findings suggest that both retributive and utilitarian motives play a role in post-sentence intervention decisions. An interesting point of departure from previous research is the manner in which participants in this study appear to be interpreting punishment sufficiency information. Future research in this area should further investigate the ways in which punishment sufficiency information is understood by participants who are making justice decisions in the post-sentence context. For instance, do people use information about prior punishment as a retributive prompt, as in past research, or do participants use this information in a manner centred on utilitarian concerns? Future research should dissect prior punishment information to determine exactly what people draw from it, and how they use such information in post-sentence justice decisions.

Both studies show clear evidence in support of the role of the utilitarian motive in preventive detention decisions. Specifically, both of our studies have shown that participants are primarily driven by information pertaining to the offender's risk of re-offence. Although this doesn't align with previous research (Carlsmith et al., 2007), this finding is encouraging as preventive legislation is primarily concerned with protection of the community. While some of our findings (e.g., the effects of negative attitudes towards sex offenders on preventive detention decisions) suggest that further investigation of the role of retribution is warranted, overall, our data suggest that people who are called upon to make preventive detention decisions do focus on

information pertaining to community protection, and use that information appropriately in their preventive detention decisions.

CHAPTER 4: EMPIRICAL PAPER 2

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Abstract

Preventive detention legislation allows for ongoing detention or supervision following completion of an offender's sentence. Utilitarian motives should drive the administration of preventive detention, however, research has indicated retributive concerns also drive decision making. Two studies were conducted to examine the motives driving preventive detention decisions, and how contextual variables affected the balance between retributive and utilitarian motives. In Study 1, participants were presented with information about an offender's remorse, prior punishment, and risk of re-offence. In Study 2, participants were presented with information about an offender's prior punishment, and offence type, and the relative strength of various potential mediators was tested, to determine factors driving effects of prior punishment information. Overall, results demonstrated participants were driven by both retributive and utilitarian motives, as well as personal characteristics (e.g., political orientation, prejudice against offenders) when making preventive detention decisions. Findings are discussed in terms of their implications for preventive detention legislation.

Preventive detention legislation targeting serious sex offenders has been implemented across several jurisdictions around the world (McSherry, 2014b; McSherry & Keyzer, 2009). Such legislation is imposed on an individual once they have completed their prison sentence if they are still judged to pose an unacceptable risk of harm to the community. The primary goal of preventive detention schemes is utilitarian; that is, to prevent future harm to the community. However, some psychological research suggests that the administration of preventive detention decisions could in fact be driven by retributive motives to further punish the offender (Bojczenko & Sivasubramaniam, 2016; Carlsmith et al., 2007). Moving forward, it is clear that legislators will continue to widen the scope of preventive detention schemes to target more offending groups (D. Harper et al., 2015; C. Smith & Nolan, 2016). For instance, in the state of Victoria, D. Harper et al. (2015) argue that preventive detention legislation should encompass not just serious sexual offenders, but also serious violent offenders. As such, it is important to understand the cognitive mechanisms that drive justice decisions in a preventive detention context.

4.1. Motivations Driving Preventive Detention Decisions

In a series of studies, Carlsmith et al. (2007) found support for their prediction that both utilitarian and retributive motives drive preventive detention decisions. Utilitarian motives refer to the desire to behave in a way that produces benefits to the community; this leads people to administer preventive detention in order to keep their community safe. Retributive motives refer to the desire to punish the offender for a transgression he has committed, according to principles of just deserts; this leads people to administer preventive detention as an additional opportunity for punishment.

Across two studies, Carlsmith et al. (2007) examined the motivations that drive preventive detention decisions in a case involving a child sex offender. After being presented

with a vignette describing the offender's convictions, participants were asked to recommend post-sentence sanctions. The researchers manipulated the offender's risk of re-offence (a utilitarian prime), and the sufficiency of the offender's original sentence for their crimes (a retributive prime). According to the stated purpose of the legislation, people should only be influenced by the utilitarian prime when making recommendations about preventive detention; any influence of the retributive prime would suggest that people are administering preventive detention to correct for an insufficient prior punishment, which indicates a retributive motive driving decision making. When making decisions about preventive detention, Carlsmith et al. (2007) found that participants were influenced by the offender's risk of re-offence (i.e. utilitarian motive), as well as the severity of the offender's previous punishment (i.e. retributive motive). These findings suggest that individuals are motivated by both retributive and utilitarian concerns when making preventive detention decisions, and that people's reasoning about preventive detention runs counter to the stated purpose of the legislation, which is solely utilitarian. Despite the provocative and important implications of these findings, to our knowledge, the study by Carlsmith et al. (2007) is the only one directly investigating the motivations that drive justice decisions in a preventive detention context.

4.2. Implications of Procedural and Distributive Justice Research

More broadly, the justice literature suggests that retribution may play a role in preventive detention decisions (e.g. Feather, 1999; Folger, 1977; Sivasubramaniam & Heuer, 2012). In this literature, scholars have considered the role of "just deserts" in people's reasoning about distributive justice and procedural justice. For example, Heuer et al. (1999) propose that principles of deservingness are fundamental to procedural justice; specifically, that respectful treatment of an individual is perceived to be fair when the individual is seen to behave in a

manner that is valued positively by society. When an individual is perceived to behave in a manner that is negatively valued, then disrespectful treatment of the individual is perceived to be fair (Heuer et al., 1999). It is therefore important to consider how judgments about procedural and distributive justice are made with regard to populations (such as sex offenders) who would be seen as undeserving of respectful treatment and/or favourable outcomes.

Research has also established an influential role of moral mandates on justice decisions (Skitka & Houston, 2001; Skitka & Mullen, 2002). Moral mandates are internal, idiosyncratic values which influence responses (both emotional and physical) towards certain situations or circumstances (Skitka & Mullen, 2002; Skitka et al., 2003). Research has shown that when an individual holds a moral mandate regarding a circumstance, situation or outcome, tenets of procedural justice are less influential in determining perceived fairness of outcomes (Bauman & Skitka, 2009; Skitka & Houston, 2001; Skitka & Mullen, 2002). Similarly to concerns about deservingness, therefore, it is important to consider how people form justice judgements with regard to populations (such as sexual offenders) who are seen to have violated moral mandates.

There is also a dearth of research examining factors which may affect the balance between retribution and utility in the formation of preventive detention decisions. For instance, research generally shows that people are more likely to make decision in a manner consistent with retribution when they align with a conservative ideology, or endorse right-wing authoritarian ideals (Clark & Wink, 2012; Gerber & Jackson, 2013; Nemeth & Sosis, 1973). Offender remorse has also been shown to moderate the prevalence of retribution in decision making; when a transgressor expresses remorse, perceivers are less driven by retribution (Gold & Weiner, 2000; Jehle et al., 2009). While some studies establish that remorse and political orientation impact the role of retribution in this way, current research focuses on decisions about

punishment in the first instance; there is no research examining the role of political orientation and offender remorse in ‘second hand punishment’ (i.e. sanctions, such as preventive detention, that are administered *after* an initial punishment has already occurred).

In sum, the procedural justice literature indicates that people will judge disrespectful procedures and/or negative outcomes to be fair for people who have behaved in a way that is negatively socially valued, and which violates moral mandates. This invites the prediction that retributive, “just deserts” motives will play a role in preventive detention decisions for these populations because the administration of additional punishment is in line with what these offenders may be seen to deserve. Previous research (Bojczenko, Campbell, & Sivasubramaniam, 2017; Carlsmith et al., 2007) highlights that both retributive and utilitarian motives drive preventive detention decision making; however, more thorough examination of the retributive motive is necessary, as is an understanding of how the balance between utilitarian and retributive motives is impacted by other, contextual variables such as the remorse of the offender and the political orientation of the person making the preventive detention decision.

4.3. The Present Research

In this paper, we examined motives driving preventive detention decisions in relation to serious sex offenders. In particular, we examined the balance of utilitarian and retributive motives driving preventive detention decisions, as well as factors that may moderate that balance (Study 1). We expected to replicate results of previous research in the area, which found that both utilitarian and retributive motives drive preventive detention decisions (Carlsmith et al., 2007). In addition, and in line with the justice literature, we expected that the offender’s expression of remorse for their crime would moderate the balance between retributive and utilitarian motives. In addition, we also predicted that the offender’s expression of remorse

would affect the balance of retribution and utility above and beyond factors affecting a person's attribution of responsibility to the offender for their crime (e.g., political orientation).

Furthermore, in light of several indications in the justice literature that the role of retribution in driving preventive detention decisions required further investigation, we more closely examined the nature of retributive motives in such decisions (Study 2).

4.4. Study 1

Previous research suggests that the role of retribution in decision making depends on the extent to which particular features are present in the observer (e.g., political conservatism) and the target of the judgment (e.g., remorse); we therefore explored the effects of these variables in the preventive detention context, testing whether remorse would moderate the balance between utilitarian and retributive motives in preventive detention decisions, once an observer's political orientation was controlled for.

4.4.1. Political Orientation

Studies in several domains of the law have demonstrated a relationship between political orientation and endorsement of punishment; specifically, conservative political orientation (Clark & Wink, 2012; Nemeth & Sosis, 1973) and right-wing authoritarianism (Gerber & Jackson, 2013) are associated with the administration of more severe punishments. The mechanism for the relationship between political orientation and sanctions appears to align with motives to punish transgressions. Research has shown a link between political orientation and the tendency to attribute blame to personal factors, compared to situational factors. For instance, right-wing authoritarianism is related to a tendency toward hostile attribution bias (Milburn, Niwa, & Patterson, 2014); individuals high on right-wing authoritarianism are more likely to interpret the behaviour of others as hostile, even when the behaviour itself is benign. Furthermore, individuals

high on need for closure are more likely to endorse conservative values as well as blame individuals for social issues (Chirumbolo, Areni, & Sensales, 2004).

Generally, previous research indicates some relationship between political orientation and likelihood to attribute blame to individual factors over situational factors. The location of blame for a transgression is closely linked with the existence of retributive motives; the more an offender is seen as blameworthy, the stronger the motive to exact retribution against that offender. In support of this link, Gerber and Jackson (2013) found that the motive to administer retribution in punishment was related to right-wing authoritarianism; those high on right-wing authoritarianism were more likely to be driven by retributive concerns when dealing with rule breakers. As the present study examined the prevalence of retributive motives in preventive detention decisions (i.e., the administration of further sanctions once original sanctions have already been carried out), it is important to examine the role of political orientation, which has been demonstrated to affect people's decisions about punishment in the first instance.

4.4.2. Remorse

Remorse also plays an influential role in judgements about wrongdoers (Gold & Weiner, 2000; Gromet, Okimoto, Wenzel, & Darley, 2012; Proeve & Howells, 2006). If a transgressor expresses remorse for his/her actions, they are considered more favourably by perceivers compared to when no remorse is expressed. Other studies specifically examining the effect of remorse on judgements of sex offenders have rendered similar results (Proeve & Howells, 2006): when the sex offender showed no remorse, the offender was judged more harshly compared to when the offender did express some form of remorse. This harsher judgment of the offender by the perceiver translates into the perceiver wanting to punish the offender more for their transgressions. Many studies have examined the effect of remorse in the initial instance of

punishment (Jehle et al., 2009; Kleinke, Wallis, & Stalder, 1992; Pipes & Alessi, 1999), however no studies examine the effect of remorse in a preventive detention context.

4.4.3. The Present Study

Study 1 was based on the methodology originally implemented by Carlsmith et al. (2007): participants were presented with a scenario depicting the case of a child sex offender. In the scenario, information was presented pertaining to the offender's risk of re-offence (utilitarian prime) as well as the sufficiency of the offender's original punishment (retributive prime). In line with the findings of Carlsmith et al. (2007), we predicted that participants would more likely recommend harsher post-sentence interventions if the participants read that the offender had a higher risk of re-offence, compared to a low risk of re-offence. Furthermore, we predicted that when participants read that the offender had an insufficient prior punishment, they would be more likely to assign harsher post-sentence intervention, compared to if the offender had a sufficient prior punishment.

Aside from the main effects of punishment sufficiency and risk of re-offence, Carlsmith (2007) also found a significant interaction between punishment sufficiency and risk of re-offence. Specifically, when the offender was described as having undergone an insufficient prior punishment, participants were more likely to recommend preventive detention, regardless of the risk of recidivism. However, when the offender was described as having been subject to a sufficient prior punishment, the offender's risk of re-offence impacted participants' endorsement of preventive detention in the expected direction. We expected to replicate this interaction effect in the present study.

In addition, the present study also explored the effect of offender remorse in preventive detention decision making. In line with previous research examining remorse, we predicted that

when participants read that the offender was truly remorseful for his crimes, their retributive urge would be attenuated, thus reducing the impact of the retributive prime. Specifically, we expected that when the offender expressed no remorse for their crimes, participants' preventive detention decisions would be impacted by both the retributive and utilitarian primes (as found by Carlsmith et al. (2007)). However, when the offender expressed remorse, we expected that the retributive urge would decrease, so that only the utilitarian prime (and not the retributive prime) would affect participants' preventive detention decisions.

The final aim of Study 1 was to examine the effect of political orientation on justice decisions in a preventive detention context. In line with previous research indicating that conservatism and right-wing authoritarianism are associated with tendencies towards blame of individuals who have transgressed (Chirumbolo et al., 2004; Milburn et al., 2014) and harsher punishment decisions (Bray & Noble, 1978; Clark & Wink, 2012), we anticipated that conservative political orientation would drive more restrictive preventive detention decisions, even when the circumstances of the case (i.e., the offender's risk of re-offence, prior punishment, and remorse) were taken into account.

4.5. Method

4.5.1. Participants

Four hundred and eight undergraduates, enrolled in a variety of psychology related subjects (both on-campus and online) at a mid-sized Australian university, participated in this study. Students received course credit in exchange for their participation. Data from five participants were discarded for failing attention checks, and data from 78 participants were discarded for failing categorical manipulation checks, thus leaving a total of 325 participants in the final sample. The final sample consisted of 54 males and 271 females, with a mean age of

30.46 years ($SD = 10.70$). A large majority of participants identified as Australian (78.5%), followed by English (3.4%) and Italian (1.8%).

The minimum number of participants required was determined by an a-priori power analysis (Gpower: Faul and Erfelder 2013). Given an expected medium effect size of 0.15 and $p < .05$ (Cohen, 1992), a sample of 172 allowed acceptable power of 0.95 (Cohen, 1992). The ultimate sample size ($n = 325$) exceeds the number of participants required for acceptable statistical power.

4.5.2. Design and Materials

The study was conducted as a 2 (prior punishment: high, low) x 2 (risk of re-offence: high, low) x 2 (remorse: high, low) between-subjects randomised experimental design. The independent variables were manipulated via information presented to participants about an offender in a brief vignette.

4.5.2.1. Vignette

The vignette used in this study was adapted from *Kansas v. Hendricks (1997)*. The vignette depicted a recidivistic child sex offender “Henderson”, and described his history of repeated child molestation charges. These charges ranged in severity from indecent exposure through to sexual molestation. Eight versions of the vignette were created by manipulating the three independent variables (risk of re-offence, prior punishment, and remorse) as described below.

4.5.2.1.1. Risk of Re-offence Manipulation

Information pertaining to the offender's risk of re-offence was adapted from Carlsmith et al. (2007). Participants read that the offender had been assessed by a panel of psychiatrists with particular expertise in paedophilic recidivism, and that they had assessed the offender to be at either a 4 percent or 70 percent risk of re-offence if released into the community.

4.5.2.1.2. Prior Punishment Manipulation

The prior punishment manipulation was adapted from Carlsmith et al. (2007). In the low prior punishment condition, participants read that the offender had served five years in a comfortable minimum-security prison, where he was "...comfortably housed, with full access to sports, movies, libraries and visitors." In the high prior punishment condition, participants read that the offender had served 25 years in a harsh, maximum security prison where he had been "...repeatedly confined to a solitary cell and was admitted to the infirmary on numerous occasions for injuries consistent with having being violently assaulted by other inmates".

4.5.2.1.3. Remorse Manipulation

The remorse manipulation was adapted from Gold and Weiner (2000). In the low remorse condition, participants read that the offender showed no signs of remorse throughout the review process, stating that he "...feels fine with what he has done..." In the high remorse condition, participants read that the offender was extremely remorseful for his actions and that he "...apologised for what he had done. He cried and cried and said how sorry he was for what he had done – sobbing, he said that he felt absolutely terrible about his behaviour."

4.5.2.2. Dependent Variables

The key dependent variable was the preventive detention decision made by participants; this was asked as a two-part question. The first part of the question required participants to make a preventive detention recommendation (i.e. unconditional release, supervision order, or detention order). Depending on their response, a second question was asked, requiring participants to select a length of the order (for supervision and detention order selections). For participants who selected unconditional release, no follow up question was presented.

4.5.2.3. Political Orientation Scale

Political orientation was measured via three constructs; right-wing authoritarianism (Zakrisson, 2005), conservatism (Choma et al., 2012), and liberalism (Choma et al., 2012). Right-wing authoritarianism was measured using the shortened right-wing authoritarianism scale (sRWA; Zakrisson, 2005), a 15-item questionnaire in which participants responded to statements on a Likert scale, with responses ranging from 1 (strongly disagree) to 7 (strongly agree), e.g., “The ‘old-fashioned ways’ and ‘old-fashioned values’ still show the best way to live.” Conservatism and liberalism were measured separately, with participants asked to respond to six items (three items measuring conservatism, and three items measuring liberalism) relating to social policy, economic policy, and how much they generally align with a specific orientation, e.g., “how liberal/conservative do you tend to be in general?”. Participants responded on a Likert scale, with responses ranging from 1 (not at all liberal/conservative) – 7 (extremely liberal/conservative). The scores from conservatism and liberalism scores were summed to give two values; a liberalism score, and a conservatism score for each participant. Correlations between the political orientation measures are presented in *Table 7*; all of the correlations align with expectations about relationships between the political orientation constructs.

Table 7: Correlations between right-wing authoritarianism, conservative and liberal political orientations

Scale	1	2	3
1. Right-wing Authoritarianism	-		
2. Liberalism	-.29**	-	
3. Conservatism	.54**	-.33**	-

** $p < .001$ (two-tailed)

4.5.2.4. Emotion

Emotional engagement has an important impact on justice reasoning. Lerner (2003) posited that principles of deservingness influence justice decisions more strongly when individuals are emotionally engaged with those justice decisions. To monitor their emotional engagement with the vignettes, participants were asked to complete an emotion scale (adapted from Goldberg et al., 1999; Gross & Levenson, 1995). Participants were required to “select the value that best describes the greatest amount of this emotion that you felt at any time during the study.” There were 17 items, each of which represented different emotions; participants were asked to respond on a scale of 1 (“not at all”) to 9 (“most I have ever felt”). The items were divided into two categories: emotions we expected participants to experience (i.e. “desirable”; anger, confusion, contempt, disgust, hopelessness, interest, sadness, tension), and emotions we did not expect participants to experience (i.e. “undesirable”; amusement, arousal, contempt, embarrassment, fear, happiness, pain, relief, surprise). Scores from items in each group were averaged. Responses on this measure were used to gauge whether the participants were appropriately emotionally engaged with the material.

4.5.2.5. Attention Checks

To eliminate data from any participants who were not paying attention during the study, there were two attention checks embedded in the questionnaire. The first attention check asked participants whether Henderson was a ‘thief’, a ‘sex offender’, or a ‘murderer’. The second attention check asked participants whether Henderson was subject to the ‘Road Safety Act 1986’, the ‘Building (Amendment) Act 2004’, or the ‘Serious Sex Offenders (Detention and Supervision) Act 2009’. Responses from participants who failed either attention check (i.e. by selecting the incorrect answer) were removed from the dataset.

4.5.3. Procedure

Participants were invited to complete an anonymous online survey. If they consented to participate, they were asked to complete the political orientation scale, and they were then given some background information about the Serious Sex Offenders (Detention and Supervision) Act 2009 prior to being presented with the vignette (according to the condition they had been randomly assigned). After reading the vignette, participants completed the questionnaire (which included the dependent measures and the emotional engagement scale). Participants also responded to demographic questions: gender, age and ethnicity. After completing the questionnaire, participants were thanked and debriefed.

4.6. Results

4.6.1. Manipulation Checks

Following the screening procedure, which excluded data from participants who failed the attention checks and categorical manipulation checks (as described above), three-way between-subjects analyses of variance (ANOVAs) were conducted to ensure that participants perceived

the manipulations as intended. Analyses shows that each of the manipulations were successful. Participants judged the offender's risk of re-offense to be lower in the low risk of re-offence condition ($M = 3.36$, $SD = 0.27$) compared to the high risk or re-offence condition ($M = 5.39$, $SD = 0.26$), $F(1, 317) = 29.67$, $p < .01$, $\eta^2 = .09$. Participants judged the offender's remorse to be lower in the low remorse condition ($M = 0.31$, $SD = 0.14$) than in the high remorse condition ($M = 5.61$, $SD = 0.14$), $F(1, 317) = 753.99$, $p < .01$, $\eta^2 = .70$. Finally, participants perceived the punishment to be less sufficient in the low prior punishment condition ($M = 2.20$, $SD = 0.20$), compared to the high prior punishment condition ($M = 5.36$, $SD = 0.20$), $F(1, 317) = 120.93$, $p < .01$, $\eta^2 = .28$.

There were also main effects of remorse ($F(1, 317) = 6.35$, $p = .01$, $\eta^2 = .02$) and risk of re-offence ($F(1, 317) = 7.56$, $p < .01$, $\eta^2 = .02$) on judgments of prior punishment. Prior punishment was perceived to be higher (i.e. more sufficient) when remorse was high ($M = 5.58$, $SD = 0.20$) compared to when remorse was low ($M = 4.86$, $SD = 0.21$), and prior punishment was perceived as higher (i.e. more sufficient) when risk of re-offence was low ($M = 5.61$, $SD = 0.20$), compared to high ($M = 4.83$, $SD = 0.21$).

4.6.2. Emotion

Scores for each participant from the “desirable” emotions category (i.e. anger, confusion, contempt, disgust, hopelessness, interest, sadness, tension) and “undesirable” emotions category (i.e. amusement, arousal, contempt, embarrassment, fear, happiness, pain, relief, surprise) were averaged, to produce an overall score for each participant in each category. There was a significant difference between participants' ratings in the undesirable emotions category ($M = 1.95$, $SD = 0.93$) and the desirable emotions category ($M = 4.34$, $SD = 1.51$), $t(324) = -37.30$, p

$< .01$ (two-tailed), 95% CI [-2.52, - 2.26], indicating that participants were appropriately emotionally engaged with the vignette.

4.6.3. Preventive Detention Decisions

All participants in the sample recommended either a supervision order ($N = 97$) or a detention order ($N = 228$), and no participants recommended unconditional release.

4.6.3.1. Verdict

A sequential logistic regression was conducted to test the effects of risk of re-offence, prior punishment, remorse, and their interactions on type of sanction administered. Participant conservatism, liberalism and right-wing authoritarianism scores were entered at block 1, to determine the degree to which circumstances of the case would predict type of sanction administered once political orientation was accounted for. The main effects (of risk, prior punishment, and remorse) were entered in block 2, their two-way interactions were entered in block 3, and the three-way interaction was entered in block 4.

In the final model ($\chi^2(10, N = 325) = 62.89, p < .01, R^2 = .18$, right-wing authoritarianism (odds ratio = 1.73) and remorse (odds ratio = .38) were significant predictors (see *Table 8*). The odds of an individual recommending a harsher sanction (i.e. detention order over a supervision order) was estimated to be 1.73 times higher on average when right-wing authoritarianism was high compared to when it was low. The odds ratio of .38 for remorse indicated that when remorse was high, participants were less likely to recommend a detention order over a supervision order.

The offender's risk of re-offence ($p = .07$), and the interaction between prior punishment and risk of re-offence ($p = .07$) were marginally significant. The odds of an individual

recommending a harsher sanction (i.e. detention order over a supervision order) was estimated to be 2.67 times higher when the offender's risk of re-offence was high, compared to when it was low. The interaction between prior punishment and risk of re-offence indicates that when the offender had only spent 5 years in prison, information that the offender was a greater risk of re-offence drove participants more strongly from supervision to detention (compared to the condition when participants were told that the offender had already spent 25 years in prison). However, these marginally significant results should be interpreted with caution.

Table 8: Final model of sequential logistic regression predicting decision outcome

	<i>B</i>	S.E	Wald	df	<i>p</i>	95.0% C.I. for Odds Ratio		
						Odds Ratio	Lower	Upper
Block 1								
Conservative	-0.05	0.13	0.16	1	0.69	0.95	0.73	1.23
Liberal	0.04	0.13	0.10	1	0.75	1.04	0.81	1.33
Right-wing authoritarianism	0.55	0.21	6.95	1	0.01	1.73	1.15	2.59
Block 2								
Risk of re-offence	0.98	0.54	3.26	1	0.07	2.67	0.92	7.73
Prior punishment	-0.69	0.47	2.21	1	0.14	0.50	0.20	1.25
Remorse	-0.96	0.49	3.87	1	0.05	0.38	0.15	1.00
Block 3								
Prior punishment x Risk of re-offence	1.58	0.87	3.27	1	0.07	4.83	0.88	26.66
Risk of re-offence x Remorse	0.65	0.75	0.76	1	0.39	1.91	0.44	8.25
Prior punishment x Remorse	1.03	0.67	2.41	1	0.12	2.81	0.76	10.37
Block 4								
Prior punishment sufficiency x Risk of re-offence x Remorse	-0.98	1.19	0.68	1	0.41	0.38	0.04	3.84
Constant	-1.07	1.02	1.09	1	0.30	0.34		

4.6.3.2. Recommended Length of Supervision

For participants who selected supervision order, a hierarchical regression was conducted to test the effects of risk of re-offence, prior punishment, remorse, and their interactions on length of supervision recommended. Participant conservatism, liberalism and right-wing authoritarianism scores were entered at block 1, the main effects (of risk, prior punishment, and remorse) were entered in block 2, their two-way interactions were entered in block 3, and the three-way interaction was entered in block 4.

In the final model ($F(10, 86) = 3.48, p < .01$), remorse ($\beta = .25, p = .04$) and the interaction between risk of re-offence and remorse ($\beta = .50, p < .01$) were significant predictors of length of supervision order (see *Table 9*). For those who recommended a supervision order, participants recommended a longer period of supervision when the offender showed remorse.

To further explore the interaction between risk of re-offence and remorse, we conducted simple slope analyses (Aiken & West, 1991). When the offender expressed remorse, higher risk of re-offence led to an increased recommended length of supervision order ($\beta = .47, p < .01$), whereas when the offender did not express remorse, risk of re-offence has no significant effect on recommended length of supervision order ($\beta = -.03, p = .49$). The interaction on recommended length of supervision order is illustrated in *Figure 4*.

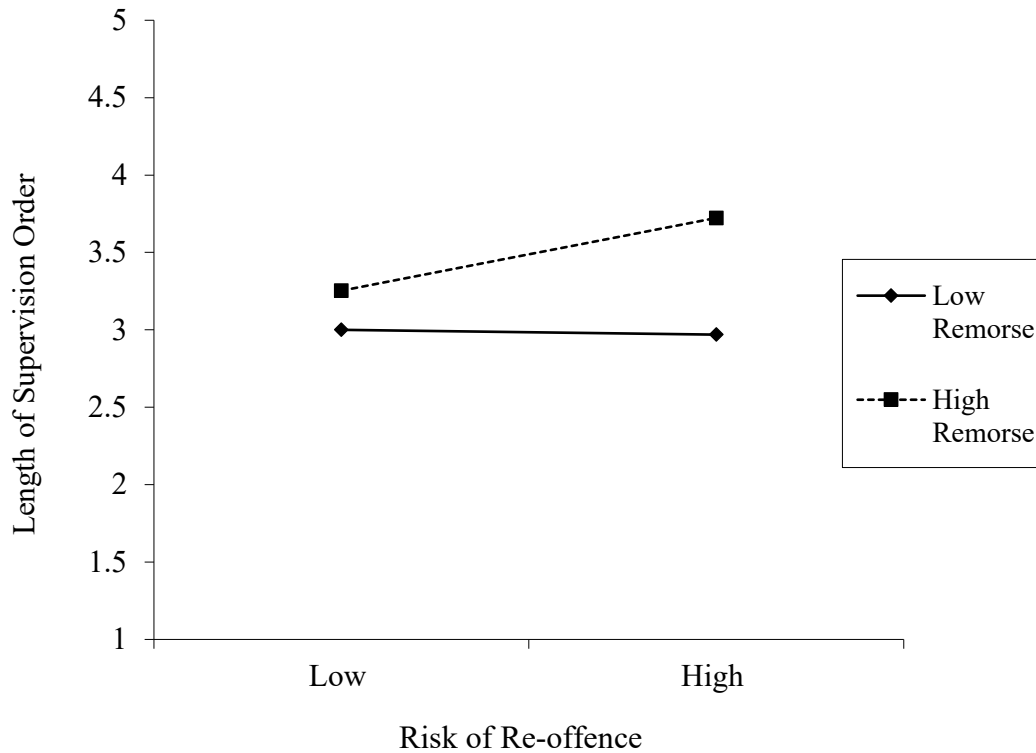


Figure 4: Length of supervision order as a function of risk of re-offence and remorse

4.6.3.3. Recommended Length of Detention

For participants who selected a detention order, a hierarchical regression was conducted to test the effects of risk of re-offence, prior punishment, remorse, and their interactions on length of detention recommended. Participant conservatism, liberalism and right-wing authoritarianism scores were entered at block 1, the main effects (of risk, prior punishment, and remorse) were entered in block 2, their two-way interactions were entered in block 3, and the three-way interaction was entered in block 4.

In the final model ($F(10, 217) = 3.65, p < .01$), liberalism ($\beta = .18, p = .01$), right-wing authoritarianism ($\beta = .32, p < .01$), and the interaction between prior punishment and

remorse ($\beta = .16, p = .02$) were significant predictors of length of detention order (see *Table 9*). For those who recommended a detention order, participants recommended a longer period of detention if they were high on liberalism, or if they were high on right-wing authoritarianism.

To further explore the interaction between prior punishment and remorse, we conducted simple slope analyses (Aiken & West, 1991). When the offender had spent 5 years in custody (i.e. low prior punishment), offender remorse had a marginally significant effect: remorse decreased recommended length of detention order ($\beta = -.08, p = .06$). When the offender had spent 25 years in custody (i.e. high prior punishment), offender remorse had no significant effect on recommended length of detention order ($\beta = .07, p = .50$). The interaction on recommended length of detention order is illustrated in *Figure 5*.

Table 9: Final model of hierarchical multiple regression analyses for recommended length of supervision/detention order

	Supervision Order			Detention Order		
	β	t	p	β	t	p
Block 1						
Conservative	-0.11	-0.86	0.39	-0.10	-1.25	0.21
Liberal	0.25	1.83	0.07	0.18	2.83	0.01
Right-wing authoritarianism	0.21	1.71	0.09	0.32	4.23	0.00*
Block 2						
Risk of re-offence	-0.03	-0.31	0.76	0.11	1.78	0.08
Prior punishment	0.10	0.81	0.42	0.05	0.72	0.47
Remorse	0.25	2.10	0.04	-0.08	-1.27	0.20
Block 3						
Risk of re-offence x Prior punishment	0.02	0.18	0.86	-0.01	-0.12	0.91
Risk of re-offence x Remorse	0.50	4.20	0.00*	-0.01	-0.17	0.86
Prior punishment x Remorse	0.03	0.28	0.78	0.16	2.41	0.02
Block 4						
Risk or re-offence x Prior punishment x Remorse	0.00	-0.01	0.99	-0.02	-0.37	0.72
R ²	0.29			0.14		
F	3.48		0.00*	3.65		0.00*

* $p < .001$

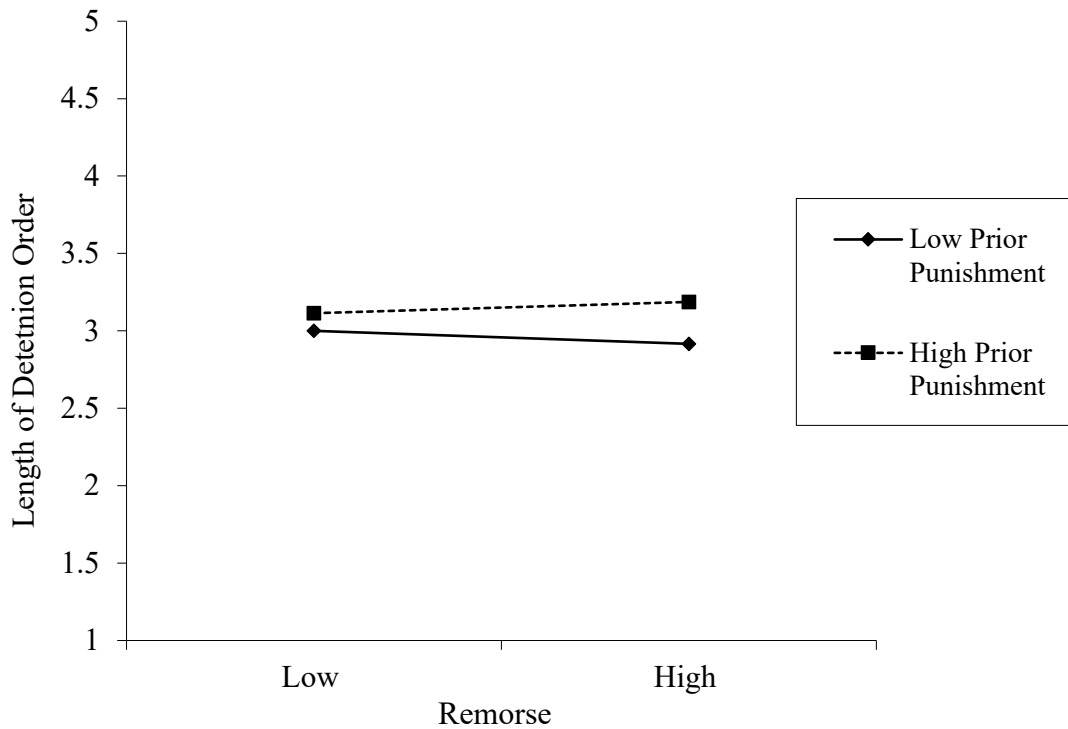


Figure 5: Length of detention order as a function of prior punishment and remorse

4.7. Discussion

4.7.1. Verdict

Overall, the sample recommended quite harsh treatment of sexual offenders. All participants recommended some form of post-sentence sanction, with no one recommending unconditional release. This trend is not unexpected given findings from previous studies examining community perceptions of treatment of sexual offenders (Brown, 1999; Carlsmith et al., 2007; Levenson et al., 2007; Valliant et al., 1994), and our study sought to examine the motives driving these decisions about preventive detention.

Manipulation checks indicated that participants interpreted manipulations as intended. Furthermore, the lack of significant interactions in manipulation checks indicate that most of the

manipulations were independent of each other. However the significant interactions between remorse and prior punishment, and risk of re-offence and prior punishment may indicate that participants were interpreting the prior punishment information in line with both utilitarian and retributive components.

The main and interaction effects of Carlsmith et al. (2007), were not convincingly replicated here. However, there were a number of significant finding which illuminates some intricacies of preventive detention decision making. Participants' decisions about sanction type (supervision vs. detention) were influenced by right-wing authoritarianism and remorse. These findings are consistent with previous research showing that individuals high on right-wing authoritarianism are more likely to be driven by retributive means when making punishment decisions (Gerber & Jackson, 2013), and that expression of remorse by a transgressor decreases the perceiver's desire to punish (Gold & Weiner, 2000; Proeve & Howells, 2006). The findings of the present research demonstrate that the importance of right-wing authoritarianism and remorse generalise from punishment in the first instance to post-sanction preventive detention decisions.

4.7.2. Length of Additional Orders

Our results suggested that remorse, as well as the interaction between risk of re-offence and remorse, were significant predictors of length of recommended supervision orders. However, this study produced unexpected results with regard to remorse: as remorse increased, so too did the recommended length of supervision order. This finding stands in stark contrast to previous research, which generally finds that expression of remorse by a transgressor decreases the perceiver's desire to punish (Gold & Weiner, 2000; Proeve & Howells, 2006).

One explanation for this finding may be that some participants initially intended to recommend a detention order, but on seeing an expression of remorse from the offender, instead opted for a supervision order; however, while their initial intention to recommend a detention order was mitigated by expression of remorse, these more punitive participants recommended longer supervision orders than did the participants who saw no remorse by the offender (and yet still chose to recommend supervision). This interpretation is consistent with the successful manipulation check for remorse in this study, and also aligns with the effect of remorse on sanction severity, whereby increased remorse resulted in a recommendation of a more lenient sanction (i.e. supervision order over a detention order). In light of this interpretation, the interaction between risk of re-offence and remorse on supervision orders was unsurprising and indicated that the positive effect of remorse on length of supervision orders was enhanced when the offender presented a higher risk of re-offence.

Liberalism, right-wing authoritarianism, and the interaction between prior punishment and remorse predicted participants' recommendations about length of detention orders. While right-wing authoritarianism significantly increased length of detention orders as expected, other findings of political orientation were surprising. In particular, participants higher on liberalism were more likely to recommend a longer detention order; this finding ran counter to previous research showing that individuals who identify more strongly with a liberal ideology favour more lenient punishments (e.g. Nemeth & Sosis, 1973). Some have argued that the effects of political orientation on justice reasoning are not clear-cut, and may rely on an array of moderating factors (Clark & Wink, 2012; Gibson, 1978; Marcus-Newhall, Blake, & Baumann, 2002). Our finding regarding liberalism and detention orders highlights the need for more

thorough and nuanced exploration of the effects of political orientation (liberalism and conservatism) on justice decision making.

Finally, the interaction between prior punishment and remorse significantly impacted recommended length of detention orders: when remorse was high, participants recommended shorter detention orders, and this effect was stronger when prior punishment was high compared to when it was low. This effect of remorse aligned with the findings of previous research; when remorse is expressed, participants will generally recommend less severe sanctions onto transgressors (Gold & Weiner, 2000; Proeve & Howells, 2006). Furthermore, the finding that this effect is amplified when prior punishment is high suggests that people's attention to remorse is enhanced when their retributive concerns are satisfied (i.e., when the offender has already been punished harshly), in line with previous research (Carlsmith et al., 2007).

Overall, the findings of Study 1 indicated that remorse and political orientation impact the balance of utilitarian and retributive motives in preventive detention decisions (through their interactions with prior punishment and risk), but they also have several effects on preventive detention reasoning independent of utilitarian and retributive motives. While there were some effects of utilitarian and retributive motives on decision making, Study 1 did not replicate the consistent and convincing main (and interactive) effects of the retributive prime on decision making that other researchers have shown to be problematic in legal decision making (Carlsmith et al., 2007). In Study 2, therefore, we dissected the nature of the prior punishment manipulation to determine the mechanisms by which this manipulation affects (or does not affect) preventive detention reasoning.

4.8. Study 2

In Study 2, we first examined the mechanisms by which the prior punishment manipulation may affect preventive detention decisions. We tested an array of context-specific variables that have been shown to affect punishment decisions, and which may mediate the relationship between prior punishment and preventive detention decisions. Second, we tested whether the effects of the offender's prior punishment on preventive detention decisions were specific to sexual offenders or generalisable to other offenders, while controlling for several, more stable factors that may influence participants' perceptions about the prior punishment manipulation itself.

Van Knippenberg, Dijksterhuis, and Vermeulen (1999) examined the effects of stereotypes and cognitive load on participants' judgements of guilt and severity of recommended punishment. When cognitive load was high, negative stereotypes held in relation to the target prompted higher judgements of guilt and attracted harsher punishment recommendations. Research consistently shows that prejudice is also an influential factor in the assignment of punishment; for example, Curry and Klumpp (2009) found that individuals who are the target of prejudice are more likely to be convicted of crimes, even in the face of less incriminating evidence than groups who suffer lower prejudice. Research also suggests that given the nature and public perceptions of sexual offending, sex offenders are subject to discrimination which in turn makes them subject to "special punishment" (Douard, 2008, p. 39). Further, McCorkle (1993) showed that a sample of community members held negative attitudes towards offenders and that these attitudes contributed to strong endorsement of punitive treatment and pro-punishment attitudes. Finally, Keil and Vito (1991) showed that people's fear of crime was associated with higher endorsement of punishment. Each of these perceiver-specific factors have

therefore been shown to influence punishment decisions, thus highlighting the importance of examining their effects in a preventive detention context.

In addition to the perceiver-specific variables addressed above, research suggests that there are an array of context-specific factors which are less stable, and subject to situational change, that may mediate the effect of prior punishment on preventive detention decisions. For example, Bartels (2008) discusses the role of sentiment in terms of moral decision making. Specifically, sentiment towards a transgressor is linked to moral judgements, and thus sentiment affects decision making in line with the participant's moral stance on the situation. These findings suggest that it is important to examine sentiment towards offenders when considering the impact of prior punishment on preventive detention decisions. Additionally, Carlsmith et al. (2002) suggested that the desire to punish affects preventive detention sanctions. Specifically, they found that when assigning a punishment, people were driven by a desire to give the perpetrator the outcome they deserved. This invites the suggestion that the desire to punish will vary depending on the offender's prior circumstances, and that it will also impact subsequent decisions about the offender. Finally, Bojczenko and Sivasubramaniam (in preparation) suggested that participants' perceptions of risk, prior punishment sufficiency and rehabilitation were sensitive to the information presented in a scenario, and that these perceptions were taken into account when participants made preventive detention decisions.

While our research thus far focuses on sexual offenders, research suggests that treatment of these offenders is unique in some ways. For example, previous research has identified a hierarchy in terms of perceived crime seriousness. Francis, Soothill, and Dittrich (2001) showed that sexual offending (rape) is one of the highest ranked crimes in terms of seriousness; this level of seriousness is also assigned to violent offences endangering life. If crimes are perceived

differently in terms of their perceived seriousness, the cognitive or emotional processes that people employ when determining punishment for those crimes may also differ. With preventive detention legislation being extrapolated to apply to different offending groups (D. Harper et al., 2015; McSherry, 2014a; C. Smith & Nolan, 2016), it is important to examine the extent to which different offence types influence preventive detention decision making.

Considering the mixed effects of prior punishment in previous research, we predicted that the effect of prior punishment would be mediated via a number of context-dependent perceptions (i.e. sentiment towards the offender, perceived punishment sufficiency, perceived risk of re-offence, perceived rehabilitation, and desire to punish). In addition, we predicted that several stable participant characteristics (i.e. stereotypes, prejudice, discrimination, attitudes towards prisoners, and fear of crime) would affect preventive detention decisions, independent of the context-specific information presented about the offender. Furthermore, in light of the difference in perceived seriousness of different offences, we predicted that the relative influence of retributive motives would be stronger for sexual offenders than violent offenders.

4.9. Method

4.9.1. Participants

A total of 271 undergraduates enrolled in a variety of psychology-related subjects (both on-campus and online) from a mid-sized Australian university participated in this study. Students received course credit for their participation. The data from 25 participants were excluded for failing attention checks, and data from an additional 25 participants were excluded due to failed manipulation checks, leaving a total of 221 participants in the final sample. The final sample consisted of 45 males, 175 females, and one participant who did not disclose their gender. The

mean age of the sample was 33.6 years ($SD = 10.15$), and approximately 67.1% of the sample identified as Australian, 5.6% identified as English, and 9.2% identified as ‘Other’.

The minimum number of participants required was determined by an a-priori power analysis (Gpower: Faul and Erfelder 2013). Given an expected medium effect size of 0.15 and $p < .05$ (Cohen, 1992), a sample of 204 allowed acceptable power of 0.95 (Cohen, 1992). The ultimate sample size ($n = 221$) exceeds the number of participants required for acceptable statistical power.

4.9.2. Design and Materials

The study was conducted as a 2 (prior punishment: high, low) x 2 (offence type: violent, sexual) between-subjects randomised experimental design. As in the first study, the independent variables were manipulated via the information presented in a vignette. The vignette used in this study was based on that used in the first study. Four versions of the vignette were created by manipulating the two independent variables (prior punishment, offence type). The prior punishment manipulation was identical to that employed in the first study.

4.9.2.1. Offence Type Manipulation

The offence type manipulation depicted an offender, “Henderson”, as being either a violent offender, or a sexual offender. The sexual offender version of the vignette was identical to the vignette used in the first study. The violent offender vignette depicted the offender as being a recidivistic violent offender. These charges ranged in severity from breaking and entering to armed robbery and assault with threat to kill. The severity and number of offences were matched between both versions of the vignette.

4.9.2.2. Dependent Variables

The key dependent variables were preventive detention decisions, measured in the same way as in Study 1.

4.9.2.3. Emotion

The emotion scale (adapted from Goldberg et al., 1999; Gross & Levenson, 1995), was implemented as described in Study 1.

4.9.2.4. Attention Checks

To eliminate data from any participants who were not paying attention during the study, there were two attention checks embedded in the questionnaire. The first attention check asked participants whether Henderson was a ‘crossing supervisor’, a ‘serious criminal offender’, or a ‘volunteer at the local homeless shelter’. The second attention check asked participants whether Henderson had ‘never offended in his life’, the ‘offended, but never been caught’, or ‘has re-offended on numerous occasions’. Responses from participants who failed either attention check (i.e. by selecting the incorrect answer) were removed from the dataset.

4.9.2.5. Participant characteristics

We measured several, stable participant characteristics thought to influence the way in which participants may perceive the prior punishment manipulation; they were participants’ stereotypes, prejudice, discrimination, attitudes towards prisoners, and fear of crime.

4.9.2.5.1. Stereotypes

To measure stereotypes about offenders, we administered the questionnaire employed by Fiske, Cuddy, Glick, and Xu (2002). This was a 15-item questionnaire, in which participants

responded to statements on a Likert-type scale ranging from 1 (not at all) to 5 (extremely), e.g., “As viewed by society, how competent are members of this group?” The items from this measure were summed to produce four different dimensions of stereotypes (competence, warmth, status, and competition).

4.9.2.5.2. Prejudice

Prejudice against offenders was measured using two items employed by Clow and Leach (2015). Participants were asked to rate their emotional reactions from 1 (not at all) to 5 (extremely). Following Clow and Leach (2015), the two emotional responses analysed to determine prejudice were ‘anger’ (for contemptuous prejudice) and ‘pity’ (for paternalistic prejudice).

4.9.2.5.3. Discrimination

Discrimination was measured using two scales (Clow & Leach, 2015; Triandis & Triandis, 1960). The first measure contained 5 items, each asking whether the offender was entitled to a particular form of government assistance (e.g., job training, subsidised housing), and responses were recorded as yes or no. Responses were summed (yes = 1, no = 2) to give a total score. The second measure was a 16-item questionnaire. Participants reported whether they would wish to be in each of the situations with a member of the offending group, e.g., “I would accept this person as close kin by marriage.” Items were summed (yes = 1, no = 2) to obtain a total score.

4.9.2.5.4. Attitudes Towards Prisoners

The attitudes towards prisoners scale (ATP; Hogue, 1993) is a 36 item questionnaire in which participants respond to a number of statements (e.g., “You have to constantly be on your

guard when with prisoners.”), on a Likert type scale, with responses ranging from 1 (disagree strongly) to 5 (agree strongly). Responses were summed to obtain a total score.

4.9.2.5.5. Fear of crime

The fear of crime scale (Williams, McShane, & Akers, 2000) is a 7 item questionnaire that generates scores on four dimensions. The first was a single item asking “How concerned are you about crime in general?”, with participants responding on a Likert type scale of 1 (not concerned at all) to 10 (very concerned). The remaining three dimensions were each created by adding together two items that asked “Overall, how worried are you about becoming a victim of [any type of/a sexual/a violent] offence during the next year?” and “Overall, how worried are you about someone you know becoming a victim of [any type of/a sexual/a violent] offence during the next year?” Participants responded to each item on a scale of 1 (not worried at all) to 10 (very worried).

4.9.2.6. Mediators

We measured several context-dependent variables thought to mediate the relationship between the prior punishment manipulation and preventive detention decisions. Specifically, we measured sentiment towards the offender, perceived punishment sufficiency, perceived risk of re-offence, perceived rehabilitation, and desire to punish the offender.

4.9.2.6.1. Perceptions of Rehabilitation, Risk of Re-offence and Punishment Sufficiency

Perceptions of rehabilitation were measured by presenting participants with three items relating to their belief that the offender had reformed (e.g., “To what degree do you think Henderson is rehabilitated?”), with participants responding on a Likert scale (1 = not

rehabilitated at all; 9 = completely rehabilitated). Perceived risk of re-offence was measured by presenting participants with six items relating to their belief of the offender's risk of re-offence (e.g. "I believe Henderson is likely to re-offend"), with participants responding on a Likert scale (1 = very unlikely; 9 = very likely). Perceived punishment sufficiency was measured by presenting participants with six items relating to their beliefs about the offender's prior punishment (e.g. "Henderson's most recent punishment was fair"), with participants responding on a Likert scale (1 = strongly disagree; 9 = strongly agree). It is important to note that the punishment sufficiency manipulation check and the punishment sufficiency mediator differ as the latter is a broader, more comprehensive measure of perceived punishment sufficiency consisting of a number of items, whereas the punishment sufficiency manipulation check consists of just a single item specifically gauging the participant's perception of the punishment information presented in the stimulus materials; however, as discussed below, the overlap between these two measures may lead to multicollinearity in the bootstrapping analysis, with perceived punishment sufficiency acting as a proximal mediator.

4.9.2.6.2. Sentiment Towards the Offender

Sentiment towards the offender was measured using three items described by Gromet and Okimoto (2014). Participants responded to statements (e.g., "I like Henderson") on a Likert type scale ranging from 1 (strongly disagree) to 9 (strongly agree). Scores were summed to produce a value for this construct.

4.9.2.6.3. Desire to Punish

Desire to punish was measured using three items adapted from Carlsmith et al. (2002) and Gromet and Darley (2011), e.g. "How much are you in favour of assigning an additional

order to Henderson?”. Participants responded to statements on a Likert type scale ranging from 1 (not at all) to 9 (extremely). Responses were summed to produce a total score.

4.9.3. Procedure

Participants were invited to anonymously complete an online survey in exchange for course credit. After reading the information statement and providing consent, the participants were presented with background information about preventive detention legislation, and then presented with a vignette depicting either a violent or sexual offender. After reading the vignette, participants were asked to complete the dependent measures (including preventive detention decisions, measures of participant characteristics, and mediators). Participants also responded to an emotion scale and provided demographic information. Finally, participants were debriefed and thanked for their participation. Participation took approximately 30 minutes.

4.10. Results

4.10.1. Manipulation Checks

After the data from participants who failed the attention and manipulation checks were excluded (as detailed above), a two-way between-subjects analysis of variance (ANOVA) was conducted on the continuous manipulation check to ensure participants perceived punishment sufficiency as intended. The manipulation was successful: People judged the punishment to be less sufficient in the low sufficiency condition ($M = 2.03$, $SD = 0.24$) compared with the high sufficiency condition ($M = 5.91$, $SD = 0.24$), $F(1, 217) = 134.25$, $p < .01$, $\eta^2 = .38$.

A two-way between-subjects analysis of variance (ANOVA) was also conducted to assess participants' perceptions of offence seriousness across conditions. Results revealed that

participants perceived the sexual offending ($M = 7.56, SD = 0.11$) to be slightly more serious than the violent offending ($M = 7.00, SD = 0.10$), $F(1, 217) = 17.48, p < .01, \eta^2 = .06$.

4.10.2. Emotion

Emotions were categorised as desirable or undesirable exactly as described in Study 1. There was a significant difference between the undesirable group ($M = 1.86, SD = 0.90$), and the desirable group ($M = 3.99, SD = 1.46$), $t(219) = -26.82, p < .001$ (two-tailed), 95% CI [-2.28, -1.97], indicating that participants were appropriately emotionally engaged with the vignette.

4.10.3. Preventive Detention Decisions

Participants recommended either a supervision order ($N = 66$), or detention order ($N = 154$); no participants recommended unconditional release.

4.10.3.1. Punishment Sufficiency

A multiple regression using a bootstrapping technique (Preacher & Hayes, 2008) to simultaneously model multiple mediators was conducted to test whether specific outcome variables were mediating the relationship between prior punishment and sanction severity. The mediation model is depicted in *Figure 6*.

The statistical significance of the indirect effect of prior punishment on sanction severity (supervision versus detention; dependant variable) was tested using the bootstrapping procedure outlined by Preacher and Hayes (2008) with bias corrected and accelerated to 5,000 samples. Instead of utilising traditional null hypothesis significance testing, statistical significance for this analysis was defined as the confidence interval failing to include zero (MacKinnon, Lockwood, & Williams, 2004; Preacher & Hayes, 2004).

The pattern of unstandardised regression coefficients predicting sanction severity from punishment sufficiency, sentiment towards the offender, desire to punish, perceived punishment sufficiency, perceived risk of re-offence and perceived rehabilitation is shown in *Figure 6*.

Before the addition of the mediating variables to the model, regression analyses failed to yield a significant overall effect between prior punishment and the outcome variable sanction severity.

Following the addition of the mediators to the model, there were significant direct effects of prior punishment on perceived punishment sufficiency and perceived risk of re-offence; and there were significant direct effects of desire to punish, perceived punishment sufficiency, and perceived risk of re-offence on sanction severity.

Significant indirect effects of prior punishment upon sanction severity were found via pathways through the variables perceived punishment sufficiency, $B = -0.07$, $SE(B) = 0.04$, 95% CI = $[-0.15, -0.01]$, and perceived risk of re-offence $B = -0.04$, $SE(B) = 0.03$, 95% CI = $[-0.11, -0.01]$. Planned contrasts indicated that perceived punishment sufficiency contributed to the model significantly more than did sentiment towards the offender, and that perceived risk of re-offence contributed to the model significantly more than did sentiment towards the offender. There were no significant differences between the contributions of the remaining mediators. The indirect effect of the five mediating variables explained 27% of the total effect of the model, $R^2 = .27$, $F(6, 213) = 13.41$, $p < .01$.

A Pearson product-moment correlation was run to determine the relationship between to mediators of the bootstrapping analysis (refer to *Table 10*). The results show significant relationships between perceived risk of re-offence, perceived rehabilitation, perceived punishment sufficiency, sentiment towards the offender, and desire to punish; which indicates that there was a degree of multicollinearity between the mediators. Specifically, there was a

strong, negative correlation between perceived risk of re-offence and perceived rehabilitation ($r = -.75, n = 221, p < .001$), a strong, positive correlation between perceived risk of re-offences and desire to punish ($r = .59, n = 220, p < .001$), and a strong, negative correlation between desire to punish and perceived rehabilitation ($r = -.55, n = 220, p < .001$). The results of the analysis also show some multicollinearity between the variables, thus potentially reducing power in the analysis (Kenny, 2018).

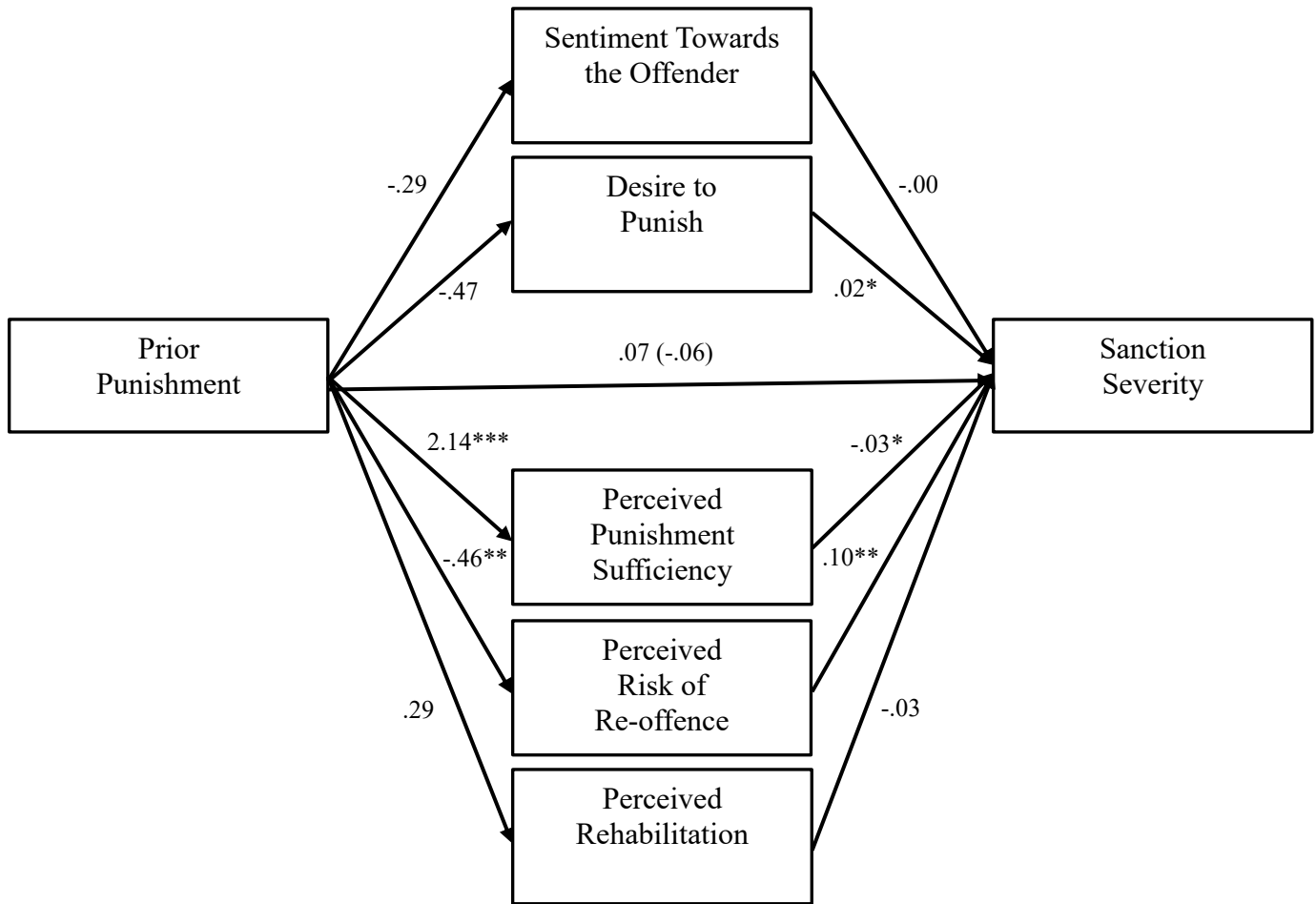


Figure 6: Indirect effects of prior punishment on sanction severity through sentiments towards the offender, desire to punish, perceived rehabilitation, perceived risk of re-offence, and perceived punishment sufficiency

Note: * $p < .05$, ** $p < .01$, *** $p < .001$

Table 10: Correlations between perceived risk of re-offence, perceived rehabilitation, perceived punishment sufficiency, sentiment towards the offender, desire to punish and sanction severity

Mediator	1	2	3	4	5	6
1. Perceived Risk of Re-offence	-					
2. Perceived Rehabilitation	-.75**	-				
3. Perceived Punishment Sufficiency	-.33**	.20*	-			
4. Sentiment Towards the Offender	-.22*	.19*	.16*	-		
5. Desire to Punish	.59**	.55**	-.17*	-.32**	-	
6. Sanction Severity	.46**	-.39**	-.23**	-.16**	.37**	-

* $p < .05$ (two-tailed)
 ** $p < .001$ (two-tailed)

4.10.3.2. Verdict

A sequential logistic regression was performed to test the effects of punishment sufficiency, offence type and their interactions on type of sanction administered. The various stable, perceiver-specific measures (stereotypes, prejudice, discrimination, attitudes towards prisoners and fear of crime) were entered at block 1, so that we could determine the degree to which the specific information presented in the scenario predicted preventive detention recommendations once these offender-specific variables were accounted for. The main effects of prior punishment and offence type were entered in block 2, and their interactions were entered at block 3.

In the final model ($\chi^2 (16, N = 220) = 41.06, p < .01, R^2 = .17$), discrimination (relational; odds ratio = 1.29) was the only significant predictor (see *Table 11*). The more participants discriminated against sexual offenders, the more likely they were to recommend a harsher sanction (i.e. detention order over a supervision order).

Table 11: Final model of sequential logistic regression predicting decision outcome

	<i>B</i>	S.E	Wald	df	<i>p</i>	Odds Ratio	95.0% C.I. for Odds Ratio	
							Lower	Upper
Block 1								
Stereotypes (competence)	0.30	0.25	1.47	1	0.23	1.35	0.83	2.21
Stereotypes (warmth)	-0.29	0.32	0.81	1	0.37	0.75	0.40	1.40
Stereotypes (status)	-0.40	0.24	2.81	1	0.09	0.67	0.42	1.07
Stereotypes (competition)	-0.12	0.18	0.42	1	0.52	0.89	0.62	1.27
Prejudice (anger)	0.19	0.15	1.56	1	0.21	1.21	0.90	1.64
Prejudice (pity)	-0.19	0.14	1.86	1	0.17	0.83	0.63	1.09
Discrimination (assistance)	-0.30	0.71	0.18	1	0.67	0.74	0.19	2.97
Discrimination (relational)	0.26	0.09	7.98	1	0.00*	1.29	1.08	1.55
ATP	0.01	0.01	1.14	1	0.29	1.01	0.99	1.03
Fear of Crime	0.07	0.09	0.66	1	0.42	1.08	0.90	1.28
Fear of Crime (general)	-0.08	0.05	2.34	1	0.13	0.92	0.83	1.02
Fear of Crime (sexual offence)	0.01	0.06	0.01	1	0.93	1.01	0.89	1.13
Fear of Crime (violent offence)	0.06	0.06	0.86	1	0.35	1.06	0.94	1.19
Block 2								
Offence type	-0.88	0.54	2.62	1	0.11	0.41	0.14	1.20
Prior punishment	-0.48	0.53	0.80	1	0.37	0.62	0.22	1.77
Block 3								
Offence type x Prior punishment	0.53	0.69	0.58	1	0.45	1.69	0.44	6.56
Constant	-2.10	2.21	0.90	1	0.34	0.12		

Note: ATP denotes attitudes towards prisoners scale.

* $p < .001$

4.10.3.3. Recommended Length of Supervision

For participants who selected a supervision order, a hierarchical multiple regression was conducted to test the effects of punishment sufficiency, offence type, and their interactions on recommended length of supervision order. Again, the various stable, perceiver-specific measures (stereotypes, prejudice, discrimination, attitudes towards prisoners and fear of crime) were entered at block 1, the main effects (of prior punishment and offence type) were entered at block 2, and their interaction was entered at block 3. The final model ($F(16, 49) = 1.35, p = .21$) was not significant (see *Table 12*).

4.10.3.4. Recommended Length of Detention

For participants who selected a detention order, a hierarchical multiple regression was conducted to test the effects of punishment sufficiency, offence type, and their interaction on recommended length of detention order. The various stable, perceiver-specific measures (stereotypes, prejudice, discrimination, attitudes towards prisoners and fear of crime) were entered at block 1, the main effects (of prior punishment and offence type) were entered at block 2, and their interaction was entered at block 3.

In the final model ($F(16, 137) = 2.72, p < .01$), prejudice (anger; $\beta = .27, p < .01$), was the sole significant predictor of recommended length of detention order (see *Table 12*). For those who recommended a detention order, participants were more likely to recommend a longer duration of the order when they were more prejudiced against offenders.

Table 12: Hierarchical multiple regression analyses for recommended length of supervision/detention order. Final model only

	Supervision Order			Detention Order		
	β	t	p	β	t	p
Block 1						
Stereotypes (competence)	0.13	0.73	0.47	0.05	0.58	0.56
Stereotypes (warmth)	-0.26	-1.63	0.11	-0.05	-0.55	0.59
Stereotypes (status)	0.38	1.92	0.06	0.13	1.21	0.23
Stereotypes (competition)	-0.22	-1.24	0.22	0.04	0.46	0.64
Prejudice (anger)	0.04	0.30	0.77	0.27	2.97	0.00*
Prejudice (pity)	0.17	1.24	0.22	0.14	1.59	0.11
Discrimination (assistance)	-0.13	-0.79	0.43	-0.04	-0.39	0.69
Discrimination (relational)	0.21	1.16	0.25	0.18	1.86	0.06
ATP	-0.13	-0.84	0.41	-0.03	-0.33	0.75
Fear of Crime	0.10	0.74	0.46	0.01	0.08	0.94
Fear of Crime (general)	0.26	1.87	0.07	-0.04	-0.33	0.74
Fear of Crime (sexual offence)	0.20	0.86	0.40	0.11	0.84	0.40
Fear of Crime (violent offence)	-0.28	-1.17	0.25	-0.04	-0.35	0.72
Block 2						
Offence type	0.05	0.31	0.76	-0.10	-0.99	0.32
Prior punishment	0.14	0.98	0.33	-0.10	-1.19	0.24
Block 3						
Offence type x Prior punishment	-0.21	-1.48	0.15	-0.01	-0.16	0.87
R ²	0.31			0.24		
F	1.35		0.21	2.72		0.00

* $p < .001$

4.11. Discussion

Study 2 participants were similar to those in Study 1 in their punitiveness; specifically, no participant recommended an unconditional release for the offender, and the majority of participants recommended detention over supervision. While participants perceived sexual offences to be more serious than violent offences, the effect size was small and means for both offence types were relatively high. This finding speaks to societal attitudes towards serious offenders, such as sexual and violent offenders (Kernsmith et al., 2009; Levenson et al., 2007; Radley, 2001; Shackley et al., 2014).

The results of the mediation indicate that prior punishment has significant effects on perceived punishment sufficiency and perceived risk of re-offence, and that both these mediators have effects on recommended severity of preventive detention. First, as prior punishment increased, the less risk the offender was judged to pose, and the less likely participants were to impose a harsher sanction. Interestingly, the relationship between the prior punishment manipulation and perceived risk of re-offence suggests that participants are interpreting information about prior punishment, partially, as an indication of risk; this indicates that the prior punishment manipulation is serving, to some degree, as a prime for the utilitarian motive, in addition to serving as the intended retributive prime. Second, as prior punishment increased, perceived punishment sufficiency increased, and participants were less likely to impose a more severe sanction. This finding is consistent with the assertion by Carlsmith et al. (2007) that prior punishment affects preventive detention decisions, but adds to previous research by clarifying that perceptions about prior punishment, rather than prior punishment per se, are driving sanction decisions. Finally, the results of the mediation analysis shed light on the null effects of prior punishment on sanction decisions in Study 1; prior punishment is interpreted both in terms of

perceived risk and perceived punishment sufficiency, and these mediators have opposing indirect effects, resulting in inconsistent mediation and the suppression of a direct effect of prior punishment on sanction decisions.

Follow up analysis revealed significant correlations between several of the measures of interest. Some of these correlations lend support to the construct validity of the measures; for example, the strong negative correlation between perceived risk and rehabilitation confirms the expectation that when perceived risk increases, perceived rehabilitation decreases. Other correlations allow insight into the nature of the desire to punish; while this might seem, *prima facie*, to be a measure of a purely retributive motive, both the positive correlation between desire to punish and perceived risk of re-offence, and the negative correlation between desire to punish and perceived rehabilitation, suggest that desire to punish is to some degree related to utilitarian concerns.

Further, the findings of the mediation analysis indicated that information pertaining to the offender's prior punishment (a retributive prime) also provides participants with information relevant to utility (i.e. the perceived risk that the offender will re-offend). This finding suggests that previous research which implemented this, or similar, manipulations of prior punishment may not have been capturing retribution and cleanly as previously thought; some of the effects of this variable may actually be due to utilitarian rather than retributive motives. It is important to note, however, that perceived punishment sufficiency impacted preventive detention decisions over and above perceived risk of re-offence, lending support to the notion that perceived punishment sufficiency provides some retributive information that is, itself, influencing preventive detention decisions.

Planned contrasts indicated that the indirect effects of perceived risk of re-offence and perceived punishment sufficiency were more powerful predictors of sanction severity than the indirect effect of sentiment towards the offender, but there were no significant differences in relation to any of the other indirect effects. The failure to detect any significant difference between these indirect effects, however, does not necessarily indicate that there is no difference between the relative strength of the mediators; rather, it may reflect their small effect sizes, with contrasts not sufficiently far from zero (Preacher & Hayes, 2008).

When holding constant participant characteristics, discrimination was the sole significant predictor of severity of sanction (i.e., detention order over supervision order), and contemptuous prejudice was the sole predictor of length of detention orders. The more discriminatory participants' attitudes towards the offender, the more likely they were to recommend detention over supervision order), and the higher participants' contemptuous prejudice, the longer the detention order they assigned. These effects are consistent with expectations based on previous research (e.g. Caprariello, Cuddy, & Fiske, 2009; Clow & Leach, 2015; MacLin & Herrera, 2006), but they highlight the importance of participant characteristics in driving preventive detention decisions; once these factors were controlled for, no context-specific information affected preventive detention decisions.

4.12. General Discussion

Previous research examining motives that drive preventive detention decisions has established that people are influenced by both retributive and utilitarian concerns (Carlsmith et al., 2007). The findings from both studies reported here are broadly consistent with this finding. Despite our pattern of results differing from those of Carlsmith et al. (2007), our findings show

support for the proposition that both utilitarian and retributive motives influence preventive detention decisions.

Our studies show strong support for the findings of Carlsmith et al. (2007) that utilitarian motives play a role in preventive detention decision making. Specifically, participants' perceptions of risk of re-offence were a consistent and significant predictor of sanction severity. Study 2 results indicate that when the participants perceived a substantial risk of harm to the community if the offender was released, they were more likely to recommend harsher sanctions. Our findings regarding the role of utilitarian motives in preventive detention decisions align with the stated purpose of preventive detention legislation; that when an offender poses an unacceptable risk of harm to the community, they should be made subject to a preventive detention measure which will ensure community protection. The finding that participants are accounting for utilitarian concerns (i.e. community protection) is promising, as it indicates that people are implementing the legislation as intended.

Our findings also demonstrate participants' concern with retribution in preventive detention decision making. For example, in Study 2, participants' perceptions of prior punishment sufficiency significantly affected sanction severity. In addition, mediation analyses in Study 2 indicated that, when participants had a desire to punish, recommended sanction severity was harsher; this effect of desire to punish on participants' decisions about whether to impose a supervision or detention order explicitly indicates the role of retribution in preventive detention decision making. Collectively, these findings indicate that participants are, to some extent, addressing retributive concerns when making preventive detention decisions. This trend is problematic as preventive detention legislation has no scope for any role of retribution, and explicitly endorses only utilitarian concerns (i.e. community protection).

This finding that retribution partly drives preventive detention decisions for serious sex offenders supports concerns raised by Yunker, Starr and Roskopf (2011). In their audit of civil commitment for sexual offenders in Minnesota, the authors found that despite participating in prescribed treatment, offenders were not being released from their commitment. This finding indicates that the utilitarian drive for such decisions is not being employed as intended, and is contaminated by retributive motivations.

Our findings, therefore, expand on previous research on preventive detention to establish that people are driven (partially) by retributive concerns when engaging in preventive detention decision making (Carlsmith et al., 2007). In particular, the establishment of perceived punishment sufficiency as a mediator of the effect of prior punishment on sanction decisions in Study 2 raises some concern relating to implementation and endorsement of preventive detention measures, as retribution should have no bearing in such decisions. These concerns have been underscored by academics and jurists in the field (Keyzer, 2009; McSherry, 2014a; McSherry & Keyzer, 2009). Furthermore, the influence of right-wing authoritarianism on decision making in Study 1, and the effects of discrimination and contemptuous prejudice on preventive detention in Study 2, indicate that characteristics of the participants' themselves are influencing preventive detention decisions. Taken together, our findings highlight that more research is needed to fully understand the role of extra-legal factors (including a desire for retribution) in preventive detention decision making.

4.12.1. Limitations and Future Directions

It is important to ensure that research samples are representative of the population to which the results are to be applied (Banerjee & Chaudhury, 2010), but both of our studies utilised student samples. Some caution is therefore warranted in applying these findings to the

wider community. Overall, the generalisability of these findings is an empirical question which can be addressed by administering this experimental procedure to a sample of judges who actively make these decisions in the line of their work. Alternatively, dimensions on which judges may differ from the sample (e.g. preference from intuitive or deliberative reasoning styles, or training on the legislation) can be considered to assess whether these dimensions impact on decision making about preventive detention.

The findings of our studies may also be limited in their generalisability because they focused on Australian (specifically, Victorian) legislation. Preventive detention legislation varies in implementation, goals, and target groups across jurisdictions worldwide. For example, other research examining preventive detention in the United States focuses on civil commitment legislation (Carlsmith et al., 2007). Civil commitment legislation is dealt with in the civil jurisdiction and emphasises rehabilitation of the offender as well as community protection, and the legislation is applied to those who have a mental illness. In contrast, the legislation that forms the basis of our studies (i.e., *Serious Sex Offenders (Detention and Supervision) Act 2009*) is located in the criminal jurisdiction and places emphasis on community protection, with offender rehabilitation as secondary. Furthermore, the legislation targets serious sexual offenders and does not specifically target those with a mental illness. Despite these fundamental differences across jurisdictions, our research primarily examines the basic motivations driving decision making in the preventive detention context, rather than targeting a specific factor or factors unique to any particular legislation. We would argue that these basic motivations are unchanged across contexts, but future research could examine how the various aspects and foci of different preventive detention models (e.g., rehabilitation focus versus community protection focus) may impact decision making about preventive detention outcomes.

4.12.2. Conclusions

Overall, findings from this project reveal that both utilitarian and retributive motives drive preventive detention decisions. The influence of a utilitarian motive is warranted, in line with the legislation; however, our findings indicating the influence of the retributive prime are problematic because this runs counter to the utilitarian intention of preventive detention legislation. Furthermore, our data indicate that several participant characteristics (e.g., political orientation, discrimination and prejudice) affect decisions about preventive detention, overriding participants' consideration of case-specific information. These data lend support to the concerns expressed by legal scholars that extra-legal factors undermine the purpose of preventive detention legislation. Future research should focus on developing a more thorough and nuanced understanding of the motives driving preventive detention decisions, and the conditions under which retributive motives and other factors are more likely to interfere with utilitarian reasoning.

CHAPTER 5:

EMPIRICAL PAPER 3

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Abstract

Preventive detention legislation operates in jurisdictions around the world. Such legislation targets specific offending populations and applies to offenders deemed to present an unacceptable risk of harm to the community following the completion of their custodial sentence. Preventive detention legislation is primarily concerned with community protection, so it is designed to serve utilitarian purposes. However, research has indicated that retributive concerns may also influence decision-making processes regarding the administration of preventive detention. In the present study, we examined the extent to which information relevant to utilitarian versus retributive motives drives preventive detention decision making, and assessed the impact of additional factors (i.e. training) on the balance between retributive and utilitarian motives. Participants were first presented with a brief online module, in which we manipulated the type of training they received about preventive detention legislation. All participants then read a vignette describing a child sex offender, in which we manipulated the offender's risk of re-offence (utilitarian information) and sufficiency of their prior punishment (retributive information). Participants' preference for intuitive versus deliberative reasoning styles were also measured. Results indicated that participants were primarily driven by utilitarian concerns when making preventive detention recommendations, and there was minimal support for the role of

retribution in these decision-making processes. The importance of utilitarian motives in decision making was not moderated by training or reasoning style. Findings are discussed in terms of their implications for the administration of preventive detention legislation.

Public opinion and attitudes are highly influential in determining how societal authorities deal with those who commit crime (Levenson et al., 2007; Willis, Levenson, & Ward, 2010). In other words, when certain offending groups are brought to the attention of the public, laws targeting these groups are often amended or created (see; Callinan, 2013; D. Harper et al., 2015). A prime example of this relationship in recent times is the management of those deemed to be serious sexual offenders (D. Harper et al., 2015).

Numerous jurisdictions worldwide have enacted legislation allowing preventive detention for serious sex offenders (McSherry, 2014b; McSherry & Keyzer, 2009). Preventive detention schemes are applied to an offender once they have completed their prison sentence if the offender is deemed to present an unacceptable risk of harm to the community once released. As such, the primary concern of preventive detention legislation is community protection; thus, preventive detention schemes are explicitly utilitarian in nature. However, some research suggests that preventive detention decisions could also be influenced, or even primarily driven, by retributive concerns (Bojczenko et al., 2017; Bojczenko & Sivasubramaniam, 2016, 2017; Carlsmith et al., 2007).

Given the current trends in preventive detention implementation, it is clear that preventive detention schemes will broaden in scope and be more widely applied (D. Harper et al., 2015). As such, it is imperative that the motives underpinning preventive detention decision making are clearly understood.

5.1. Motives Driving ‘Second-hand’ Punishment Decisions

Several studies have examined motivations driving the administration of justice in the first instance (i.e., the administration of a sanction for an offence; Carlsmith et al., 2002; Darley et al., 2000); however, research examining preventive detention decisions (administered

“second-hand,” as the original offence has already been sanctioned via the original sentence) is somewhat scarce. Fundamental concerns have been raised by legal scholars about the ways in which the original sentence or sanction may impact decisions about preventive detention. The primary purpose of preventive detention is supposed to be utilitarian: if an offender poses a certain level of risk to the community, people should endorse preventive detention as a means to keep the community safe. In other words, the conditions of the original sanction should have no bearing on the preventive detention decision, which should be based solely on an assessment of the ongoing risk posed by the offender. However, legal scholars have raised concerns about the possible, implicit role of retributive motives in decision making about preventive detention (Keyzer, 2009; McSherry, 2014a). Retributive motives relate to the notion of ‘just deserts’, and drive people to ensure the offender has been sufficiently punished for their original offence. Of particular concern is the possibility that, if people feel the offender was not punished sufficiently in the first instance (e.g., if the offender served a short prison sentence), people would be more inclined to endorse preventive detention measures as a mechanism for ensuring just deserts.

Psychological research has supported this notion that preventive detention decision making is driven by retributive, as well as utilitarian, motives (Bojczenko et al., 2017; Bojczenko & Sivasubramaniam, 2017; Carlsmith et al., 2007); however, this research is in its infancy. At time of writing, only one published paper directly examined the motives underlying preventive detention decision making.

In two studies, Carlsmith et al. (2007) explored the effect of risk of re-offence (a utilitarian prime) and prior punishment (a retributive prime) on preventive detention decision making. Participants were presented with a hypothetical vignette describing a recidivistic child sex offender, in which the researchers manipulated both the offender’s risk of re-offence (high or

low) and the punishment that the offender had already served for his crimes (lenient or severe). Participants were then asked to recommend a preventive detention outcome for the offender. Results showed that both risk of re-offence and prior punishment information significantly affected preventive detention recommendations. (Note that risk of re-offence is a criterion on which preventive detention should be administered – when risk to the community is high, preventive detention is warranted under the legislation. However, prior punishment sufficiency is *not* a criterion on which preventive detention should be administered – when the previous sanction is insufficient, preventive detention is not justified as a mechanism for the administration of further punishment.) The findings of this study, therefore, suggested that both retributive and utilitarian motives drive preventive detention decision making. This is highly problematic; the stated purpose of preventive detention legislation is utilitarian, so retribution should have no bearing on decision making in this context.

5.2. Procedural and Distributive Justice

While only one published study directly demonstrates the role of retributive motives in preventive detention decisions, a large body of procedural and distributive justice research lends support to the notion that retribution would play a role in this domain. Distributive justice refers to perceptions of fairness in relation to an outcome of a procedure (Sivasubramaniam & Heuer, 2012), and distributive justice tends to be rooted in the notion of equity. That is, when an individual receives an outcome proportional to their contribution, the outcome is perceived to be more fair (Folger, 1977; Van den Bos, 1999). Principles of deservingness are central to the formation of distributive justice judgments; when an outcome is seen to be deserved, then the outcome is perceived to be fair (Feather, 1999). This relationship between deservingness and

perceptions of outcome fairness is important in understanding behavioural reactions to outcomes (Feather, 1999).

While distributive justice focuses on perceptions of fairness in relation to outcomes, procedural justice focuses on perceptions of fairness in the procedures that render those outcomes (Sivasubramaniam & Heuer, 2012). Recognising that deservingness is a pivotal factor in distributive justice judgments (Feather, 1999), Heuer et al. (1999) argued that deservingness should be similarly applied to procedural justice, and across three studies, demonstrated that this was the case. Specifically, when an individual acted in a manner positively valued by society, respectful treatment was deemed fair; however, when an individual acted in a manner negatively valued by society, disrespectful treatment was judged fair.

The established links between treatment and deservingness, and between outcomes and deservingness, prompt us to consider how people judge the treatment of groups deemed undeserving of respectful treatment and positive outcomes (e.g. sexual offenders). Essentially, for groups that have behaved in ways that are negatively socially valued, the enactment of deservingness principles equates to a desire for “just deserts” or retribution. The procedural and distributive justice research therefore suggests that retributive motives will influence people’s decision making about groups that have behaved in anti-social ways: to the extent that a convicted sex offender is deemed deserving of negative treatment and outcomes, retribution is likely to play a role in an observer’s decision making about that offender, including their decisions about the administration of preventive detention.

While the procedural and distributive justice literature outlines the fundamental role of retributive motives in justice decisions, there are some characteristics of those who administer preventive detention decisions that may moderate the influence of retribution. In particular,

existing research examining preventive detention decisions employs student samples (Bojczenko et al., 2017; Bojczenko & Sivasubramaniam, 2017; Carlsmith et al., 2007), when decisions about preventive detention are in fact made by judges. There are crucial differences between students and judges that may impact the role played by retributive motives in justice decisions. For example, judges are trained extensively to make decisions within the parameters of the law, and tend to engage in deliberative decision making when doing so. Student and observer samples, on the other hand, are usually untrained in the detail and purpose of legislation, and are more likely to process justice-related information quickly, under conditions that encourage heuristic decision making. These differences may moderate the importance of retribution; however, no research has directly investigated the impact of training and reasoning style on preventive detention decisions.

5.3. Training

There is broad support for the notion that training affects decision making across a number of contexts (Giudice et al., 2015; Lai, Shum, & Tian, 2016; Moritz et al., 2014; Skogan, Van Craen, & Hennessy, 2015). Examining the effect of an intensive metacognitive training program on people experiencing positive symptoms of schizophrenia, Moritz et al. (2014) found that training relating to cognitive biases commonly associated with delusions reduced symptoms. While this study showed that targeted training can have a substantial impact on internal cognitive processes, other research has shown that training impacts behaviour. For instance, across two studies, Skogan et al. (2015) demonstrated that the administration of a procedural justice training module positively impacted police officers' interactions with the public.

The aforementioned studies employed face-to-face training (Moritz et al., 2014; Skogan et al., 2015), but in the past decade, research has more closely examined online delivery of training material. For example, Lai et al. (2016) showed that after an online training program,

participants (university students) were more likely to engage in self-directed language learning. By directly comparing both modes of training (i.e. online vs in-person), Giudice et al. (2015) showed no difference in outcomes between online and in-person modes of training.

The effects of training on justice-related decisions have been examined across a variety of contexts (Darwinkel et al., 2013; de Turck & Miller, 1990; Kassin & Fong, 1999). Within a legal context, Darwinkel et al. (2013) examined the effects of training on police officers' confidence to pursue an investigation of a sexual crime (case authorisation), as well as attitudes of victim blaming in sexual assault cases. The authors suggested that a possible reason behind the trends of victim-blaming and lack of confidence in case authorisation was the endorsement of 'rape myths' (Jordan, 2004) by officers. Following an intensive training program on sexual offending, police officers were more confident in case authorisation for sexual crimes, and were less likely to victim blame in sexual assault cases. In general, evidence suggests that training people in certain procedures can have the desired effect of producing more appropriate and informed responses, as well as negating common misconceptions. This latter point is especially prudent in dealing with sexual offenders (Darwinkel et al., 2013).

In terms of the judiciary, the training received by Judges of both the Supreme and County Courts (hereon referred to collectively as Judges) is extensive. In the state of Victoria, admission to the role of Judge follows a rigorous selection process whereby applicants are approved by the Governor in Council and must have a standing within the legal profession for a period of at least five years (*Constitution Act 1975; Supreme Court Act 1986; County Court Act 1958*). Once selected, Judges then undergo an extensive two-year induction programme which is designed to "assist new appointees to make a successful transition from legal practice to the bench" (*Framework of judicial abilities and qualities for victorian judicial officers*, 2008). In addition to

the induction programme, Judges are also subject to ongoing professional development, as well as access to a learning centre which is overseen by the Judicial College of Victoria (*Judicial College of Victoria Act 2001*). A key facet of the training received by the judiciary is the emphasis on making deliberations within the confines of the law, and the understanding that such decisions should be made in a deliberative manner, free from personal biases and extra-legal influence.

5.4. Intuitive vs Deliberative Reasoning

Numerous studies have shown that decisions are driven primarily by two ‘systems’; a quick and intuitive system, and a slower, more deliberative system (Chaiken & Trope, 1999; Cummins & Cummins, 2012; Greene, 2007; Kahneman, 2011). Heuristic processes are described by Kahneman (2011) as the quick and intuitive ‘System 1’, whereas deliberative processes are described by Kahneman (2011) as the slower ‘System 2’. Typically, quick and automatic heuristic responses require very little cognitive capacity, but deliberative processes incorporate complex calculation and effortful cognition, demanding active cognitive attention. Evans and Stanovich (2013) further proposed that, unless System 2 processing occurs, System 1 processes are generally ‘default responses’. Other iterations of dual processing models have been proposed over time (Chaiken & Trope, 1999; Evans & Stanovich, 2013; Kahneman, 2011); for example, E. R. Smith and DeCoster (2000) proposed that two systems (associative processing, and rule-based processing) occur in tandem. In this model, associative processing is automatic and draws on previously made associations learned over a number of instances. On the other hand, rule-based processing is more deliberate and occurs within conscious awareness.

In relation to justice decisions, Saulnier and Sivasubramaniam (under review) applied dual processing models to the legal literature, highlighting that in response to criminal behaviour,

perceivers engage in two cognitive processing systems; heuristic processing or deliberative processing. Generally, when first presented with a criminal transgression, people are more likely to engage in the heuristic process, responding automatically, and according to the perceiver's intuition or 'gut feel' (Lerner, 2003; Saulnier & Sivasubramaniam, under review; Sivasubramaniam, under review). Deliberative processes are engaged when the perceiver consciously evaluates the evidence related to the transgression, and actively avoids the intrusions of heuristic reasoning (Saulnier & Sivasubramaniam, under review; Sivasubramaniam, under review). Gigerenzer and Gaissmaier (2011) suggest that when engaging in heuristic processes, substantial information is actively ignored by the perceiver, and the two systems can lead to very different decision making about justice-related events (Haidt, 2001).

Often, people untrained in the legal profession will make judgements about justice-related events under conditions that prompt engagement in heuristic processes. Common conditions where lay people encounter justice-related scenarios may be through exposure to media (i.e. TV, newspaper, or via social media), and the conditions under which people most commonly engage with these media sources are when attention may be split across different stimuli, or when they are presented with a quick snapshot of a case. These circumstances prompt people to form judgements quickly, lacking the time and attentional resources for deliberation and informed opinion. On the other hand, people trained in the legal profession (e.g. judges), are more likely to make decisions about justice-related events under conditions that prompt engagement in a systematic, deliberate and complex analysis of the available information. It is likely that the conditions under which justice research is conducted (which may be conducive to heuristic processing) are different from the conditions under which justice decisions are actually made by judges (which require deliberative processing); it is therefore important to examine the

effect of the different reasoning styles (heuristic vs. deliberative) on the endorsement and recommendation of preventive detention.

5.5. The Present Study

In light of the procedural justice literature, and particularly in light of suggestions that perceived deservingness can affect perceptions of fairness, it is important to consider how preventive detention legislation is applied to people who are deemed not to deserve respectful treatment or favourable outcomes. We contend that perceptions of deservingness influence preventive detention decisions in relation to sexual offenders; that is, people will perceive disrespectful procedures or negative outcomes for sexual offenders as fairer, because their behaviours (i.e., their crimes) are negatively socially valued. This perception that sexual offenders deserve negative treatment and outcomes will affect preventive detention decisions about those offenders; so that, when dealing with sexual offenders who have committed heinous crimes, deservingness-based justice reasoning (i.e., a drive for retribution, or “just deserts”) will underlie decision making.

In the present study, we examined the motives driving justice decision making in relation to sexual offenders in a preventive detention context. The vignette methodology employed in this study was based on that used by Carlsmith et al. (2007). Participants were presented with a vignette depicting the case of a recidivistic child sex offender, in which we manipulated the offender’s risk of re-offence (high, low) and prior punishment (high, low). In line with the findings of Carlsmith et al. (2007), we predicted that participants would recommend harsher preventive detention interventions if they read that the offender had a higher risk of re-offence, compared to a low risk of re-offence; this would reflect utilitarian motives driving preventive detention decisions, and is allowed within the parameters of preventive detention legislation.

Furthermore, we predicted that when participants read that the offender had previously served an insufficient prior punishment, they would assign harsher preventive detention interventions, compared to an offender who had served a sufficient prior punishment; this would reflect retributive motives driving preventive detention decisions (with participants employing preventive detention as a means to satisfy a notion of “just desserts” that had previously been unfulfilled), and runs counter to the purely utilitarian purpose of preventive detention legislation.

In addition to the main effects of prior punishment and risk of re-offence, Carlsmith (2007) detected an interaction effect between punishment sufficiency and risk of re-offence: if the offender had undergone an insufficient prior punishment, participants were more likely to recommend preventive detention measures, regardless of the risk of recidivism. However, when the offender had undergone a sufficient prior punishment, the offender’s risk of re-offence impacted participants’ endorsement of preventive detention in the expected direction. We expected to replicate this finding in the present study.

The present study also explored the degree to which legislation training influenced the balance between retributive and utilitarian motives in preventive detention decisions, above and beyond the effect of reasoning style. In line with previous research examining the effect of training on decision making, we predicted that when participants were presented with a training module explicitly instructing them to make decisions in line with the purpose of preventive detention legislation, they would be more strongly driven by utilitarian concerns (i.e. risk of re-offence information). On the other hand, when participants did not receive such training, they would be more strongly driven by retributive concerns (i.e. punishment sufficiency information). Furthermore, we predicted that when an individual preferred an intuitive reasoning style, retributive motives would play a stronger role in their preventive detention decisions, whereas

those who preferred a deliberative reasoning style would be more strongly influenced by utilitarian concerns.

5.6. Method

5.6.1. Participants

One hundred and fifty-four undergraduates enrolled in a variety of psychology-related subjects (both on-campus and online) at mid-sized Australian university participated in this study. Students received course credit for their participation. Data from 10 participants were excluded for failing categorical manipulation checks, thus leaving a total of 144 participants in the final student sample. The final student sample consisted of 43 males and 101 females, with a mean age of 22.02 years ($SD = 6.62$). Approximately 63% of participants identified as being “Australian”, 4.2% as “Chinese”, and 4.2% as “English”.

In addition to the student sample, ninety-six community members who responded to an online advertisement participated in this study. Community participants received payment of \$30 for their participation. Data from two participants were excluded for failing attention checks, and data from 12 participants were disregarded for failing categorical manipulation checks, thus leaving a total of 82 participants in the final community sample. The final community sample consisted of 43 males and 39 females, with a mean age of 25.62 years ($SD = 6.90$). Approximately 23% of participants identified as being “Australian”, approximately 16% as “Chinese”, and approximately 16% as “Indian”.

The minimum number of participants required was determined by an a-priori power analysis (Gpower: Faul and Erfelder 2013). Given an expected medium effect size of 0.15 and $p < .05$ (Cohen, 1992), a sample of 116 allowed acceptable power of 0.95 (Cohen, 1992). The

ultimate sample size ($n = 226$) exceeds the number of participants required for acceptable statistical power.

A series of regression analyses showed that there were no significant effects of sample (i.e. student or community sample) on recommended sanction, recommended length of supervision order, and recommended length of detention order. In light of this, we collapsed across community and student participants and analysed the sample as a whole for all results presented henceforth.

5.6.2. Design and Materials

The study was conducted as a 3 (training: legislation, legislation and purpose, control) x 2 (prior punishment: high, low) x 2 (risk of re-offence: high, low) between-subjects randomised experimental design. The independent variable of training was manipulated via the presentation of a brief training module, and the independent variables of risk and prior punishment were manipulated in a brief vignette.

5.6.2.1. Training Modules

Participants were presented with one of three training modules: legislation training, legislation training and purpose, or control (information on courtroom etiquette, unrelated to the legislation). Each training module first presented participants with the training information relevant to the particular condition, and then presented a quiz consisting of 10 multiple choice questions (with four response options per question). If participants answered a question correctly, they were informed in a brief video clip that the answer was correct, and that they should move on to the next question. If participants answered the question incorrectly, they were informed in a video clip that their answer was incorrect, and that they should try again. Participants were

presented again with the material relevant to that question, and then the question was presented once more. This was repeated until participants had three attempts at the question; if participants answered all three attempts incorrectly, they were informed in a video clip that their answer had been incorrect, but that they should move on to the next question.

We predicted that legislation training of any kind would prompt people to employ utilitarian reasoning when engaging in preventive detention decisions; that is, we expected that both the legislation training condition and the legislation training and purpose condition would prompt increased utilitarian reasoning.

5.6.2.1.1. Legislation

The legislation training module was 10 pages of material, extracted from the *Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)*. Each of the pages consisted of approximately 250 - 350 words and contained 1 - 2 images of neutral, law-related images. Participants were instructed to read the material and then complete the quiz, which was directly related to the presented material. The legislation training module consisted of information designed to help participants interpret extracts from the *Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)*. The purpose of this module was to train people exclusively on the content of the legislation.

5.6.2.1.2. Legislation and Purpose

The legislation and purpose module consisted of 10 pages of extracts from the *Serious Sex Offenders (Detention and Supervision) Act 2009 (Vic)*; identical to the information provided in the legislation training module), and two additional pages of material about the purpose of the legislation and how it should be implemented. Each of the pages consisted of approximately 250

- 350 words and contained 1 - 2 neutral, law-related images. The legislation and purpose module consisted of the material from the legislation training module, with additional instructions relating to the purpose of the legislation and when it should or should not be implemented. Participants in this condition were explicitly instructed that the legislation was designed to allow additional measures to be imposed for utilitarian, not retributive, purposes. These instructions outlining the purpose of the legislation were extracted from the *Victorian Sentencing Manual*.

5.6.2.1.3. Control

The control module consisted of 10 pages of information about general courtroom etiquette. The information presented in this module was completely unrelated to the legislation. Each of the pages consisted of approximately 250 - 350 words and contained 1 - 2 images of neutral, law-related images. This information was designed to provide participants with a training module of comparable duration to the two training conditions.

5.6.2.2. Vignette

The vignette employed in this study was adapted from *Kansas v. Hendricks (1997)*. The vignette included details of a recidivistic child sex offender and described his history of repeated child sex crimes. These crimes varied in nature and severity, ranging from indecent exposure, through to sexual molestation. Four versions of the vignette were created by manipulating the two independent variables: risk of re-offence (high, low) and prior punishment (high, low).

5.6.2.2.1. Risk of Re-offence

The risk of re-offence manipulation was adapted from Carlsmith et al. (2007). Participants were presented with information pertaining to the offender's risk of re-offence,

stating that he had been assessed by a panel of expert psychiatrists, and that they had deemed his risk of re-offence to be either 4 percent or 70 percent if released into the community.

5.6.2.2.2. Prior Punishment

The prior punishment manipulation was adapted from Carlsmith et al. (2007). Participants were presented with information about the offender's punishment for his recent offence. Participants read that the offender had either served five years in a comfortable minimum security prison, where he was "...comfortably housed, with full access to sports, movies, libraries and visitors", or "served 25 years in a harsh, maximum security prison where he had been "...repeatedly confined to a solitary cell and was admitted to the infirmary on numerous occasions for injuries consistent with having being violently assaulted by other inmates".

5.6.2.3. Dependent Variables

The key dependent variable of this study was the preventive detention decision made by participants. Participants were first asked to recommend a preventive detention outcome (i.e. unconditional release, supervision order, or detention order). Depending on their response, a second question was presented asking participants to select the length of the order (if they had recommended a supervision or detention order). If participants recommended a supervision order, they were asked to select a length of supervision, with options ranging from 3 months to more than 15 years. If participants recommended a detention order, they were asked to select a length of detention, with options ranging from 3 months to more than 3 years. These time frames are reflective of the maximum order length in the legislation (*Serious Sex Offenders (Detention*

and Supervision) Act 2009). For participants who selected unconditional release, no follow up question was presented.

5.6.2.4. Preference for Intuitive or Deliberative Reasoning

Participants were presented with the preference for intuitive or deliberate reasoning task (Richetin et al., 2007). Reasoning style was measured using 18 items (9 items to measure preference for intuitive reasoning, and 9 items to measure preference for deliberative reasoning), in which participants responded to statements on a Likert scale, with responses ranging from 1 (strongly disagree) to 7 (strongly agree), e.g., “Before making decisions I usually think about the goals I want to achieve.” Scores were then summed to derive two scores per participant; preference for intuitive reasoning, and preference for deliberative reasoning.

5.6.2.5. Emotion

Research has shown that when individuals are emotionally engaged in a legal procedure, they are more likely to be driven by perceptions of deservingness when engaging in justice-related decisions (Lerner, 2003). In light of these findings, the current study employed an emotion scale (adapted from Goldberg et al., 1999; Gross & Levenson, 1995) to monitor the emotional engagement of participants with the material in the vignette. The emotion scale was used to assess whether participants were emotionally engaged appropriately with the presented material. The 17-item scale asked participants to “select the value that best describes the greatest amount of this emotion that you felt at any time during the study.” Responses were assessed on a scale of 1 (“not at all”) to 9 (“most I have ever felt”).

5.6.2.6. Attention Checks

To eliminate data from any participants who were not paying attention during the study, there were two attention checks embedded in the questionnaire. The first attention check asked participants whether Henderson was a ‘thief’, a ‘sex offender’, or a ‘murderer’. The second attention check asked participants whether Henderson was subject to the ‘Road Safety Act 1986’, the ‘Building (Amendment) Act 2004’, or the ‘Serious Sex Offenders (Detention and Supervision) Act 2009’. Responses from participants who failed either attention check (i.e. by selecting the incorrect answer) were removed from the dataset.

5.6.3. Procedure

Participants were invited to participate in a computer-based study in a laboratory setting. Participants were presented with an information statement, and those who consented to participate in the study first completed the preference for intuitive or deliberative reasoning task. Participants then undertook one of the three brief training modules (depending on the condition to which they had been randomly assigned), and following this, participants were presented with one of the four versions of the hypothetical vignette (depending on the condition to which they had been randomly assigned). Participants were then asked to respond to the questionnaire (including dependent measures, the emotional engagement scale, and the demographics items). At the completion of the study, all participants were fully debriefed and thanked for their time.

5.7. Results

5.7.1. Manipulation Checks

Following the exclusion of participants who failed the attention checks and categorical manipulation checks (as described above), a number of two-way between-subjects analyses of

variance (ANOVAs) were conducted to ensure that the participants perceived the manipulations as intended. Analyses showed that the manipulations were successful. Participants judged the offender's risk of re-offense to be lower in the low risk of re-offence condition ($M = 2.90$, $SD = 0.31$) compared to the high risk of re-offence condition ($M = 4.82$, $SD = 0.31$), $F(1, 216) = 18.73$, $p < .01$, $\eta^2 = .08$, and participants perceived the punishment to be less sufficient in the low prior punishment condition ($M = 2.47$, $SD = 0.23$) than in the high prior punishment condition ($M = 5.45$, $SD = 0.24$), $F(1, 216) = 79.53$, $p < .01$, $\eta^2 = .27$. There were no further main or interaction effects on risk of re-offence or punishment sufficiency.

5.7.2. Emotion

The items measured in the emotion scale were split into two categories: emotions we expected participants to experience (i.e. desirable emotions in this context: anger, confusion, contempt, disgust, hopelessness, interest, sadness, tension), and emotions we did not expect participants to experience (i.e. undesirable emotions in this context: amusement, arousal, contempt, embarrassment, fear, happiness, pain, relief, surprise). Scores from items in each group were averaged, which produced an overall score for both groups. There was a significant difference between the undesirable emotions group ($M = 2.35$, $SD = 1.15$), and the desirable emotions group ($M = 4.28$, $SD = 1.61$), $t(225) = -20.96$, $p < .01$ (two-tailed), 95% CI [-2.11, -1.75], indicating that participants were appropriately, emotionally engaged with the vignette.

5.7.3. Preventive Detention Decisions

Participants recommended either an unconditional release ($N = 6$), a supervision order ($N = 110$), or a detention order ($N = 110$). Given the very small number of participants who recommended unconditional release, this group was dropped from subsequent analyses. With

regard to recommended length of sanction, the modal response was 36 months for those who selected supervision order (see *Figure 7*), and greater than 36 months for those who selected detention order (see *Figure 8*). These frequencies indicate that overall, the sample was quite punitive in their sanction recommendations, especially those who recommended a detention order.

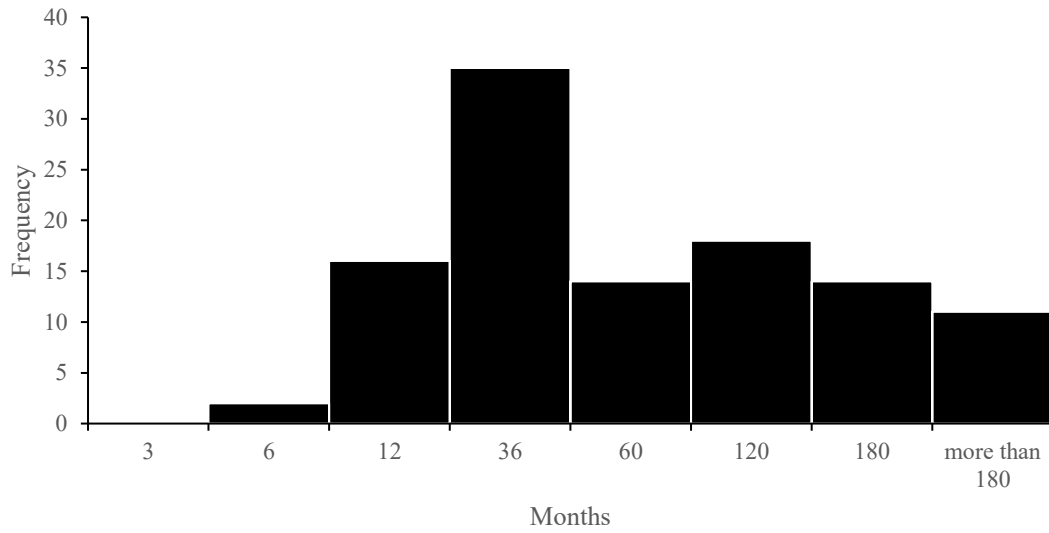


Figure 7: Frequency of recommended length of supervision order

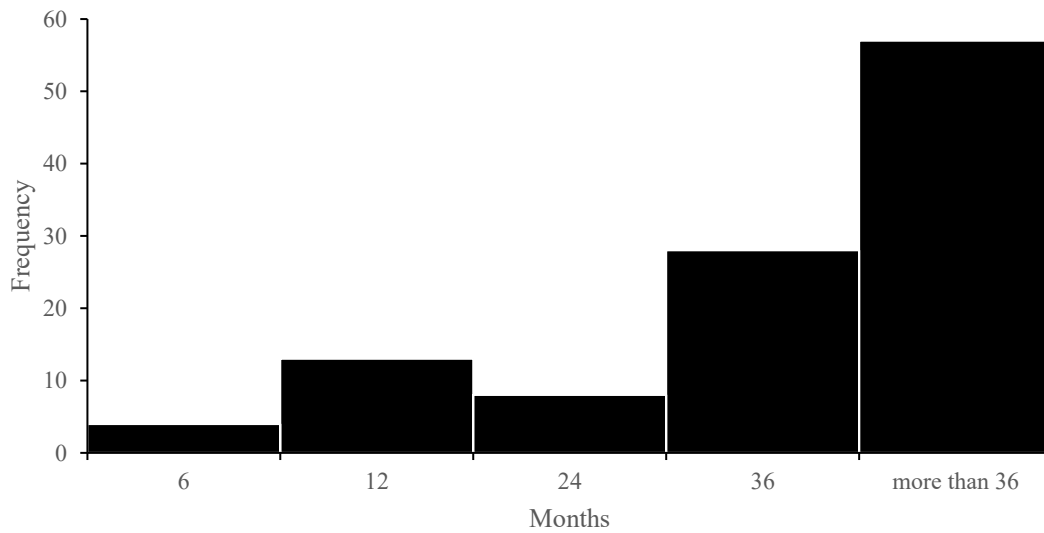


Figure 8: Frequency of recommended length of detention order

5.7.3.1. Type of Sanction

A sequential logistic regression was conducted to test the effects of risk of re-offence, prior punishment, training, and their interactions on type of sanction administered. Participants' preference for intuitive reasoning and preference for deliberative reasoning scores were entered at block 1 to determine the degree to which circumstances of the case would predict type of sanction administered once reasoning style preference was accounted for. The main effects (of risk, prior punishment, and training) were entered in block 2, their two-way interactions were entered in block 3, and the three-way interaction was entered in block 4.

In the final model ($\chi^2(9, N = 220) = 114.01, p < .01, R^2 = .42$), risk of re-offence (odds ratio = 17.93) was the sole significant predictor (see *Table 13*). The odds of an individual recommending a harsher sanction (i.e. detention order over a supervision order) was estimated to be 17.93 times higher on average when the offender's risk of re-offence was high compared to when it was low.

Table 13: Final model of sequential logistic regression predicting decision outcome

	<i>B</i>	S.E	Wald	df	<i>p</i>	Odds Ratio	95.0% C.I. for Odds Ratio	
							Lower	Upper
Block 1								
Intuition	0.10	0.05	3.44	1	0.06	1.10	0.99	1.22
Deliberation	0.05	0.05	1.27	1	0.26	1.05	0.96	1.15
Block 2								
Risk of re-offence	2.89	0.77	13.95	1	0.00*	17.93	3.94	81.53
Punishment sufficiency	-0.10	0.83	0.01	1	0.91	0.91	0.18	4.61
Training	-0.43	0.50	0.74	1	0.39	0.65	0.24	1.73
Block 3								
Punishment sufficiency x Risk of re-offence	-0.20	1.10	0.03	1	0.86	0.82	0.10	7.04
Risk of re-offence x Training	1.58	0.90	3.06	1	0.08	4.87	0.83	28.69
Punishment sufficiency x Training	0.38	0.67	0.32	1	0.57	1.46	0.39	5.46
Block 4								
Punishment sufficiency x Risk of re-offence x Training	-1.69	1.07	2.48	1	0.12	0.18	0.02	1.51
Constant	-6.14	2.29	7.17	1	0.01	0.00		

* $p < .001$

5.7.3.2. Recommended Length of Supervision

For participants who thought that a supervision order should be administered, a hierarchical regression was conducted to test the effects of risk of re-offence, prior punishment, training, and their interactions on length of supervision recommended. Participants' preference for intuitive reasoning and preference for deliberative reasoning scores were entered at block 1 to determine the degree to which circumstances of the case would predict the length of sanction administered once reasoning style preference was accounted for. The main effects (of risk, prior punishment, and training) were entered in block 2, their two-way interactions were entered in block 3, and the three-way interaction was entered in block 4. The final model ($F(9, 100) = 1.80$, $p = .08$), failed to reach significance.

5.7.3.3. Recommended Length of Detention

For participants who selected a detention order as the appropriate response, a hierarchical regression was conducted to test the effects of risk of re-offence, prior punishment, training, and their interactions on length of recommended detention order. Participants' preference for intuitive and deliberative reasoning scores were entered at block 1 to determine the degree to which circumstances of the case would predict the length of sanction administered once reasoning style preference was accounted for. The main effects (of risk, prior punishment, and training) were entered in block 2, their two-way interactions were entered in block 3, and the three-way interaction was entered in block 4.

In the final model ($F(9, 100) = 1.97$, $p = .05$), risk of re-offence ($\beta = .20$, $p = .04$), and the interaction between risk of re-offence and prior punishment ($\beta = .26$, $p = .05$) were significant predictors for length of detention order (see *Table 14*). In other words, among those

who recommended a detention order, participants were more likely to recommend a longer period of detention if the offender's risk of re-offence was high, compared to when it was low.

To further explore the interaction between risk of re-offence and prior punishment, we conducted simple slopes analyses (Aiken & West, 1991). When the offender was described as serving a 25 year term of imprisonment (i.e. high prior punishment), an increased risk of re-offence led to a longer recommended detention order ($\beta = .46, p < .01$). When the offender was depicted as having served a 5 year term of imprisonment (i.e. low prior punishment), an increased risk of re-offence again led to a longer recommended detention order ($\beta = .20, p < .01$), but the effect size was smaller. The interaction on recommended length of detention order is illustrated in *Figure 9*.

Table 14: Final model of hierarchical multiple regression analyses for recommended length of supervision/detention order

	Supervision Order			Detention Order		
	β	t	p	β	t	p
Block 1						
Intuition	-0.02	-0.19	0.85	0.17	1.80	0.08
Deliberation	-0.12	-1.25	0.21	-0.01	-0.05	0.96
Block 2						
Risk of re-offence	0.16	1.05	0.30	0.20	2.07	0.04
Punishment sufficiency	0.32	1.66	0.10	-0.10	-0.78	0.44
Training	-0.05	-0.26	0.80	-0.14	-1.02	0.31
Block 3						
Punishment sufficiency x Risk of re-offence	0.16	0.83	0.41	0.26	2.03	0.05
Risk of re-offence x Training	0.01	0.04	0.97	-0.10	-0.76	0.45
Punishment sufficiency x Training	0.04	0.20	0.84	0.06	0.43	0.67
Block 4						
Punishment sufficiency x Risk of re-offence x Training	0.07	0.39	0.70	0.00	0.02	0.98
R ²	0.14			0.15		
F	1.80		0.08	1.97		0.05

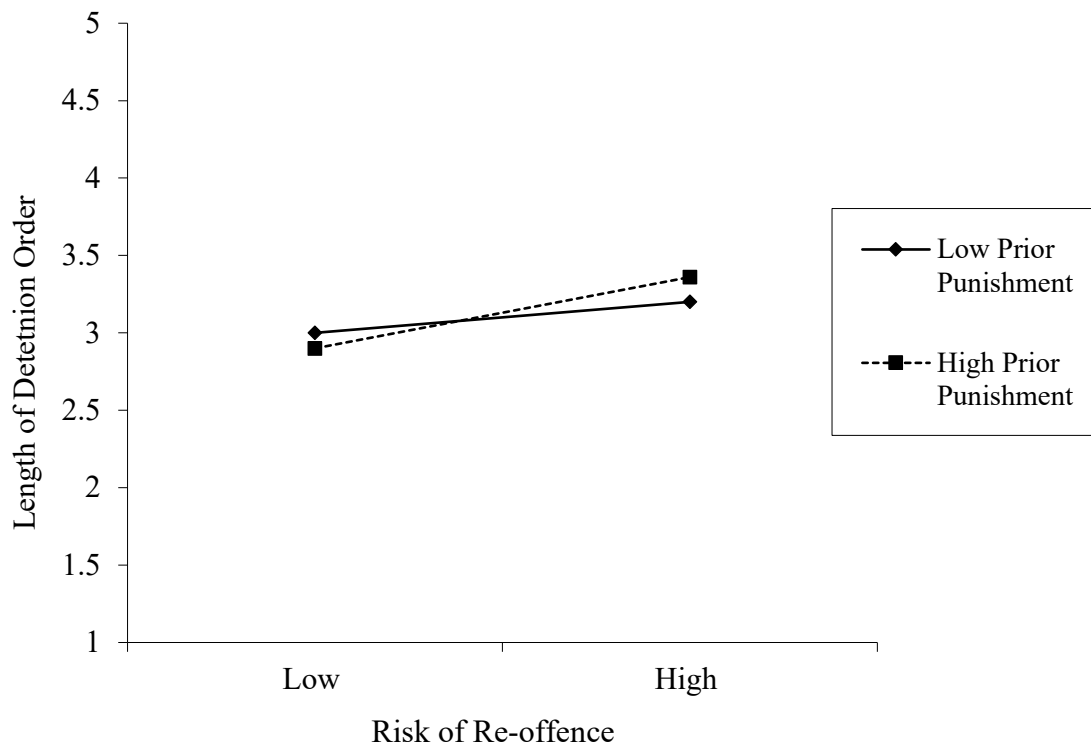


Figure 9: Length of detention order as a function of prior punishment and risk of re-offence

5.8. Discussion

5.8.1. Type of Sanction

The data were somewhat surprising in that they revealed the sample were quite punitive; only six participants recommended unconditional release for the offender, and the large majority of participants recommended either a supervision or detention order. In addition, the data demonstrated that most participants recommended longer orders, and that this was particularly true of participants who recommended a detention order. These findings are consistent with research which has found that individuals generally support some form of intervention on convicted sex offenders (Carlsmith et al., 2007; Levenson et al., 2007), but they also demonstrate that members of the public appear not to share the reluctance of legal academics regarding the administration of preventive detention (McSherry, 2014a; McSherry & Keyzer, 2009).

Manipulation checks indicated that participants interpreted manipulations as intended. Furthermore, the lack of significant interactions in manipulation checks indicate that the manipulations were independent of each other.

In preventive detention recommendations themselves, participants were primarily influenced by the offender's risk of re-offence. As expected, as the offender's risk of re-offence increased, so too did the severity of sanction recommended (i.e., a detention order over a supervision order). This result is consistent with other research examining the factors affecting preventive detention decision making (Bojczenko et al., 2017; Carlsmith et al., 2007), and supports the notion that participants are primarily concerned with potential risk of harm to the community; by imposing harsher sanctions on a 'high risk' offender, their utilitarian concerns are being addressed. Again, these data contradict concerns raised by legal academics that retribution has an insidious, implicit impact on preventive detention decisions (McSherry, 2014a; McSherry

& Keyzer, 2009); in another sense, however, these data are promising as they indicate that people primarily administer preventive detention in line with the utilitarian purpose of the legislation.

5.8.2. Length of Additional Orders

Interestingly, the model predicting recommended length of supervision order failed to reach statistical significance, but both risk of re-offence and the interaction between risk of re-offence and prior punishment significantly predicted length of detention order. The lack of significance in the model predicting recommended length of supervision order may be due to the difference in the nature of supervision compared to ongoing detention. Specifically, as a supervision order involves the offender being released into the community (whereas ongoing detention involves a custodial setting), those who elect to administer supervision rather than detention may be considering a different set of factors compared with those who selected a detention order. For example, participants who recommended supervision may be less concerned with the likelihood that the offender will re-offend; if they were concerned with this factor, they would have selected a detention order. Similarly, if participants wanted to ensure retribution for an offender who had served an insufficient prior sentence for his crimes, they would have selected a detention order. Participants who selected supervision orders may be concerned with other factors, such as the potential for the offender to be reunited with family, or to be rehabilitated and become fully functional in society. Among participants selecting supervision, therefore, length of supervision order may be determined by these other factors, rather than being governed by the same factors determining length of detention orders.

As expected, when the offender's risk of re-offence was high, participants were more likely to recommend a longer period of detention. This finding is consistent with findings of

previous research and speaks to the utilitarian motive that does, and should, drive preventive detention decisions (Bojczenko et al., 2017; Carlsmith et al., 2007). However, the interaction between risk of re-offence and prior punishment supports the notion, demonstrated in previous research, that both utilitarian and retributive motives affect preventive detention decision making (Carlsmith et al., 2007). Specifically, this interaction effect indicates that participants are primarily concerned with retributive concerns (whether the offender has served a sufficient prior punishment); only once these retributive concerns are addressed can utilitarian concerns have their full impact on preventive detention decisions.

This finding that both retributive and utilitarian motives influence detention orders is concerning. Preventive detention legislation is concerned with community protection; thus, participants should be making such decisions in line with utilitarian concerns alone, and the legislation does not allow scope for retributive concerns. The interaction between risk of re-offence and prior punishment aligns with concerns raised by legal scholars that retributive motives play some role in preventive detention decisions, at least in the form of recommended length of detention orders (McSherry, 2014a; McSherry & Keyzer, 2009).

5.8.3. Moderating Variables

The training manipulation employed in this study did not produce any significant effects, even though previous research has shown that training programs significantly impact decision making. For instance, Darwinkel et al. (2013) showed that training affects perceptions of sexual assault within a law enforcement sample, and other research has highlighted the importance of training in decision making processes more broadly (de Turck & Miller, 1990; Kassin & Fong, 1999). The discrepancy between the findings of previous research and this study may be due to our participants already engaging in deliberative processing (via their focus on information about

risk of re-offence); thus, it could well be the case that the material covered in the training modules was already fundamental to participants' decision processes, and therefore did not require reinforcement. In other words, our design of the training modules assumed that participants would be acting on a retributive impulse, and training was required to encourage deliberative processing of utilitarian information; however, given that participants were already prioritising utilitarian information, the training modules were ineffective.

Similarly, neither intuitive nor deliberative reasoning preference had any effect on preventive detention decision making. These results were surprising as previous work has suggested a link between reasoning style and decision making (Chaiken & Trope, 1999; Cummins & Cummins, 2012; Greene, 2007; Kahneman, 2011), but our findings indicated that reasoning style did not moderate the way in which lay people make decisions about preventive detention decisions. The default dominance of utilitarian information in people's reasoning about preventive detention, consistent with deliberative reasoning, seems to indicate that participants are fundamentally concerned with the risk posed by offenders, regardless of whether their preference was for intuitive or deliberative reasoning.

5.8.4. Limitations

We have addressed some important conclusions that can be drawn from the null findings regarding training and preference for intuitive versus deliberative reasoning style, but lack of significant effects could be attributed to other things, for example, the nature of the training modules. The length of, and material employed in, the training modules was far less extensive than the training judges would receive when making these decisions. Specifically, participants (who were not primarily trained in legal principles) were presented with online training modules which took approximately 30 minutes to complete. On the other hand, judges are members of the

legal profession for years before they are invited to join the judiciary. In addition to their vast exposure, and experience in administering the law, they receive extensive training and guidance in making legal decisions. The findings of our study therefore cannot discredit the role of training in preventive detention decision making; rather, they may speak to the nature and extent of training required to alter preventive detention decisions.

A further limitation of this study pertains to the generalisability of a study focusing on legislation in Victoria, Australia. Across different jurisdictions worldwide, preventive detention legislation varies in many different aspects (e.g. target population, implementation and goals). Despite such differences, one aspect of preventive detention consistent across all jurisdictions is that they are implemented following the completion of a term of prior punishment. The sufficiency of that prior punishment may impact people's judgments about sanctions that are appropriate to follow that punishment; as such, the findings of this study can still be applied to preventive detention legislation across other jurisdictions.

5.8.5. Future Research

Future research should examine training more thoroughly to ascertain the role it plays in preventive detention decision making processes. Specifically, it is clear that the judiciary, who are responsible for making preventive detention decisions, receive thorough training, not only on the legislation, but also on the nature of the law and how it should be applied. However, the results of this study did not reveal any significant effects of training in decision making processes, despite previous literature suggesting otherwise (Darwinkel et al., 2013; de Turck & Miller, 1990; Kassin & Fong, 1999). As such, future studies should replicate, more closely, the kind of training that the judiciary actually receive. Specifically, training should occur face-to-face, and cover an array of modules over an extended period of time; for example, future

research could examine preventive detention reasoning before and after students have undergone university-level training in the legal discipline and profession.

In addition, the literature explored in this paper also suggests that the judiciary are more likely to engage in deliberative processing of justice-related decisions than are lay persons (Saulnier & Sivasubramaniam, under review; Sivasubramaniam, under review); however, in this study, preference for intuitive versus deliberative reasoning did not moderate preventive detention decisions. In light of previous research indicating important consequences of reasoning style for decision making, future research should focus more closely on the role of intuitive and deliberative processes in justice decision making, perhaps operationalising reasoning style in different ways. For example, participants could consider a case involving a preventive detention under conditions conducive to intuitive versus deliberative processing (e.g., by manipulating distraction, time available to make the decision, level of emotional engagement of the participant with the scenario presented, etc.), to determine whether these conditions moderate the importance of utilitarian versus retributive motives in preventive detention decisions.

5.8.6. Conclusions

As the scope of preventive detention increases across jurisdictions worldwide, it is evident that such laws will play a prominent part in the management of those considered to be ‘serious’ and ‘high risk’ offenders. Despite the explicit purpose of such legislation being community protection, there are concerns that preventive detention could be used as a means of administering further punishment, which is not warranted under law. This possibility is of particular concern as the populations targeted by preventive detention legislation are highly stigmatised by society, and the nature of their crimes provokes a strong, negative emotional response from the public.

This study has found strong support for the role of utilitarian motives in preventive detention decision making, in line with the stated intent of the legislation; however, we did also find some evidence of the role of retribution in preventive detention decisions. This is problematic as it indicates that people administer preventive detention partly to satisfy their notions of just deserts, which is not warranted under the legislation. This study also aimed to examine the role of reasoning style and effect of training on preventive detention decision making; however, there was no support for the predicted moderating effects of these variables. These findings are encouraging, as they indicate that preventive detention decisions are dominated by utilitarian reasoning, and that this is not moderated by training (i.e., it is not only the case among people who are trained in the content and/or purpose of the legislation) or reasoning style (i.e., it does not only occur among people who prefer to engage in deliberative reasoning). Regardless, the findings of this paper lend some support to the concerns raised by academics and jurists in relation to the role of retribution in preventive detention decisions, and highlights the need for more research to better understand the motives underlying endorsement of preventive detention.

CHAPTER 6:

GENERAL DISCUSSION

Despite an abundance of research examining motivations and factors that influence punishment decisions, research examining the motives driving preventive detention decision making is lacking. Prior to this research program, only one study explicitly addressed this particular iteration of offender management (Carlsmith et al., 2007). The previous research shows that when engaging in preventive detention decision making, observers are driven by both utility and retribution.

This thesis explored preventive detention decision making in an Australian context, with the primary aim of examining the extent to which retribution and utility drive preventive detention decisions. In addition, the research in this thesis also aimed to investigate the degree to which offender-specific variables (i.e., offender remorse, offender responsibility, and offence-type) and observer-specific variables (i.e., political orientation, attitudes towards sex offenders, reasoning style preference, and training) moderated justice decision making.

Across five studies described in three empirical research papers, these aims were addressed, rendering some results that were in line with expectations, and others that opened new lines of inquiry. Broadly, the findings showed that both retribution and utility play a role in preventive detention decision making and that there was an array of offender-specific and context-specific factors that also influenced these decisions.

6.1. Summary and Synthesis: Motives Driving Preventive Detention Decisions

We predicted that people would act on both utilitarian and retributive concerns when making preventive detention decisions, in line with the findings of Carlsmith et al. (2007). Both

utility and retribution were operationalised in a similar manner across all five studies, consistent with the manipulations employed by Carlsmith et al. (2007).

6.1.1. Utility

Utility was manipulated by presenting participants with information about the offender's risk of re-offence. The manipulation was consistent with previous research, but adapted to be relevant to the scope of the *Serious Sex Offenders (Detention and Supervision) Act 2009*.

Participants were presented with information stating that upon release from custody, the offender had either a 0%, 4% or 70% risk of reoffending. These percentages were taken from Carlsmith et al. (2007), who showed that participants were able to discriminate between these different levels of risk in their responding. However, results from Empirical Paper 1 did not replicate this level of discrimination, with participants failing to discriminate between the 0% and 4% conditions. As a result, these levels were collapsed, and the remainder of our studies employed risk of re-offence as a two-level variable (4% versus 70%). Although this amendment deviates from the original design (Carlsmith et al., 2007), it enhances its practical relevance, as a sex offender is seldom assessed as a 0% chance of re-offence in contemporary risk assessment (Hanson & Bussiere, 1998).

We found strong support for the role of utility in preventive detention decision making. Across all three empirical research papers, as the offender's risk of re-offence increased, so too did the severity of recommended sanctions. Additionally, in the second study of Empirical Paper 1, participants clearly prioritised the acquisition of information related to the offender's risk of re-offence when making preventive detention decisions. These findings suggest that the motives actually driving people's preventive detention decisions align well with the intended purpose of preventive detention legislation, which is primarily concerned with community protection

(Keyzer, 2009; McSherry, 2014a). The findings in this thesis provide clear evidence that people are using risk of re-offence information as intended, and in line with the stated aims of the legislation. These findings are not only consistent with those of previous research (Carlsmith et al., 2007), but they also indicate that preventive detention legislation is being used as a utilitarian tool. This was the key premise of *Fardon v Attorney-General (Qld)* (2004), where the High Court of Australia held that, as the legislation emphasised community protection, it was not punitive in nature, despite the fact that it effectively limited the freedom of the affected offender in the absence of a fresh conviction.

6.1.2. Retribution

Information relevant to retributive concerns was presented to participants in the form of a statement about the offender's prior punishment, in line with the operationalisation employed by Carlsmith et al. (2007). Participants were told that the offender had either served 5 years in a minimum security prison, or 25 years in a maximum security prison. According to the utilitarian nature of preventive detention legislation, the offender's prior punishment should have no effect on decision making, as participants should not use preventive detention as a tool to rectify what they may deem to be an 'insufficient punishment'. In contrast to the stated purpose of preventive detention legislation, Carlsmith et al. (2007) showed that information about the offender's prior punishment had a significant influence on preventive detention recommendations; however, the results from our three empirical papers are mixed in relation to the specific effects of retributive motives.

Results from Empirical Paper 1 showed some support for the notion that participants were sensitive to the offender's prior punishment when making preventive detention decisions. Specifically, there was a significant interaction between punishment sufficiency and

responsibility, showing that when participants were told the offender had undergone an insufficient prior punishment for their offences, information that the offender had been responsible for his past offences drove participants more strongly from supervision to detention decisions (compared with the condition where participants were told that the offender had previously served a sufficient prior punishment). While this finding indicates that participants are assigning some priority to retributive motives, overall, the findings in Empirical Paper 1 do not demonstrate support for retributive concerns as clearly as those of Carlsmith et al. (2007).

Interestingly, the offender's prior punishment was a significant predictor of participants' recommended length of supervision order in Empirical Paper 1; however, this finding was in the opposite direction to that expected. As the offender's prior punishment increased, so too did the recommended length of supervision order. The direction of this relationship may suggest that the participants are not viewing information about prior punishment as primarily indicative of retributive concerns, perhaps interpreting the information in terms of its implications for institutionalisation of the offender (i.e., participants who read that the offender was in custody for 25 years may have felt that he required extra support to readjust to the demands of daily life outside of the institution, whereas those who read that he had served 5 years in prison may have felt that he was not institutionalised, and thus did not require as much support following his release from custody) or dangerousness of the offender (i.e., participants may have considered that an offender dangerous enough to warrant a 25-year sentence may need more supervision to protect the community).

The results from the first study in Empirical Paper 2 again showed some support for the role of retributive motives in preventive detention decision making. Specifically, the significant interaction between prior punishment and remorse suggests that when the offender had already

undergone a sufficient punishment, participants then accounted for whether the offender was remorseful. In other words, once the participants' retributive concerns were satisfied, they then accounted for the offender's remorse when formulating their preventive detention decision. Similarly, in Empirical Paper 3, an interaction between risk of re-offence and prior punishment indicated that, as prior punishment increased, the positive effect of risk of re-offence was stronger; thus, in line with the findings of Carlsmith et al. (2007), utilitarian concerns were weighed more heavily once retributive concerns were addressed. Taken together, these findings suggest that retributive motives play a fundamental role in preventive detention decisions; however overall the support for retributive motives is more nuanced than the support for utilitarian motives in preventive detention decisions.

As the findings from the previous three studies presented some ambiguities regarding the nature and influence of the retributive prime (i.e., how participants were interpreting the manipulation of prior punishment sufficiency) in their preventive detention decision making, the second study of Empirical Paper 2 was designed to examine participants' interpretations of the prior punishment manipulation in more detail. Results showed that participants interpreted the retributive prime as presenting information about both the sufficiency of the offender's prior punishment and his risk of re-offence; further, participants' *perceptions* of the offender's prior punishment and *perceptions* of offender's risk were both significant predictors of recommended sanction severity. Specifically, as perceived prior punishment increased, so too did sanction severity. This result shows support for the finding of previous research that retribution does drive preventive detention decision making (Carlsmith et al., 2007), and is also important as it indicates that participant perceptions are more important in shaping decision making than the objective presentation of information to participants.

6.2. Summary and Synthesis: Moderators of the Balance Between Utility and Retribution.

In addition to examining the motives that drive preventive detention decision-making, this program of research also explored the degree to which an array of perceiver-specific and offender-specific factors moderated the balance between retributive and utilitarian drives. While some of the predicted interaction effects were revealed (e.g., responsibility and remorse interacted with retributive information to impact preventive detention decisions), generally, the effects of these perceiver-specific and offender-specific variables were main effects, suggesting that these variables had standalone effects on preventive detention decisions rather than moderating the importance of utility or retribution in decision making.

6.2.1. Attitudes Towards Sex Offenders

The findings from Empirical Paper 1 clearly show that preventive detention decisions were affected by attitudes towards sex offenders; specifically, the more punitive attitudes a perceiver held towards sexual offenders, the more severe their sanction recommendations. This finding generally aligns with past research assessing attitudes towards sex offenders (Altholz & Salerno, 2016; Brown, 1999; Stevenson et al., 2015; Valliant et al., 1994). For instance, Valliant et al. (1994) found that overall attitudes towards sex offenders were very negative, and their participants generally endorsed the suggestion that all sex offenders should receive a term of incarceration. Brown (1999) also documented similar attitudes, finding that people believed treatment should coincide with a form of punishment. The findings of Empirical Paper 1 extend this previous research, indicating that negative attitudes towards sex offenders also influence the desire to impose additional sanctions following an initial punishment.

6.2.2. Political Orientation

Empirical Paper 2 demonstrated some mixed effects of political orientation on preventive detention decision making. As expected, right-wing authoritarianism significantly increased length of detention orders; however, in contrast to our predictions, participants higher on liberalism were more likely to recommend a longer detention order.

Previous research has shown that individuals who score high on right-wing authoritarianism are more likely to endorse harsher punishment of transgressors (Gerber & Jackson, 2013). The mechanism underpinning this relationship was examined by Gerber and Jackson (2013), and showed that individuals high on right-wing authoritarianism were driven by retributive concerns when engaging in justice decision making. The significant effect of right-wing authoritarianism on length of detention orders suggests that these participants were using post-sentence detention as a means of retribution. This is a clear breach of the intended nature of preventive detention, and aligns with concerns raised by academics and jurists (Keyzer, 2009; McSherry, 2014a).

In the present research, participants high on liberalism recommended longer detention orders, in contrast to previous research showing that individuals who are more liberal favour more lenient punishments (e.g., Nemeth & Sosis, 1973). This tendency for more liberal participants to endorse longer detention orders may indicate that participants are not viewing ongoing detention as a form of punishment per se, rather perhaps they are endorsing detention as a means to ensure other outcomes of more benefit to offenders. This finding regarding liberalism and detention orders highlights the need for more, and more detailed, exploration of the effects of political orientation on justice decision making.

6.2.3. Additional Perceiver-specific Characteristics

In the second study of Empirical Paper 2, discrimination was the sole significant predictor of severity of sanction (i.e., detention order over supervision order), and contemptuous prejudice was the sole predictor of length of detention orders. That is, the more discriminatory participants' attitudes towards the offender, the more likely they were to recommend detention (over a supervision order), and the higher participants' contemptuous prejudice, the longer the detention order they assigned. These effects are consistent with previous research (e.g. Caprariello et al., 2009; Clow & Leach, 2015; MacLin & Herrera, 2006), but they highlight the importance of participant characteristics in driving preventive detention decisions; once these factors were controlled for, context-specific information (specifically, offence type and prior punishment information) no longer affected preventive detention decisions. These findings suggest that characteristics of the participants themselves are influencing preventive detention decisions, and highlight that more research is needed to fully understand the role of extra-legal factors in preventive detention decision making. While attitudes towards sex offenders, political orientation, discrimination, and contemptuous prejudice are perceiver-specific variables, there are also several variables specific to the offender, such as remorse and responsibility, which could also play a role in preventive detention decisions.

6.2.4. Responsibility

In Empirical Paper 1, responsibility was a significant predictor of sanction severity; specifically, when the offender was depicted as more responsible for his crimes, participants were more likely to recommend a detention order rather than a supervision order. This aligns with past research indicating that responsibility plays a role in justice decisions (Carlsmith et al.,

2002; Darley et al., 2000; Darley & Pittman, 2003), but this is among the first research to establish the role of responsibility on justice decisions in a preventive detention context.

Considering its relationship with deservingness (i.e., that it provides additional information about the deservingness of the offender for a positive or negative outcome), responsibility can be seen as a retributive prime. As such, when an offender is responsible for a crime, participants should feel a stronger impulse to punish the offender, thus giving the offender the outcome he deserves. This interpretation aligns with discussion by Carlsmith et al. (2002), who draw a parallel between responsibility of offenders and retributive motives to punish, and lends support to the notion that retributive motives play a role in preventive detention decisions.

However, in the present research, there was a confound involved in the manipulation of responsibility that qualifies this conclusion, as it means that our responsibility manipulation could have also served as a risk or utilitarian prime. The manipulation itself (derived from Darley et al., 2000) depicted the offender as either having a brain tumour (which would be removed) that increased his propensity to offend, or as not having a tumour, making him wholly responsible for his past crimes. As such, participants could have interpreted the responsibility manipulation not only as an indicator of past responsibility but also as an indicator of future risk. Specifically, the offender's risk of re-offence would be greater in the no-tumour condition, as opposed to the tumour-present condition (in which the offender's risk of re-offence can be eliminated by removal of his tumour). The conclusion then, that the impact of responsibility on preventive detention decisions lends support to the role of retributive motives in decision making, must be viewed with caution, and requires further investigation.

6.2.5. Remorse

The effect of remorse on punishment decisions is well established, with numerous studies demonstrating that expressions of remorse by an offender can increase favourability of perceivers' judgments of that offender, and thus decrease the desire to punish the remorseful transgressor (Gold & Weiner, 2000; Jehle et al., 2009; Kleinke et al., 1992; Pipes & Alessi, 1999; Proeve & Howells, 2006). However, the results of Empirical Paper 2 showed that as expression of remorse increased, so too did the recommended length of supervision order. As discussed in Empirical Paper 2, many participants who initially leaned towards a detention order may have been swayed towards a supervision order by the offender's expression of remorse, thus opting for a longer supervision order, which they viewed as a less severe sanction than a short detention order.

Again, considering its relationship with deservingness (i.e., that it provides additional information about the deservingness of the offender for a positive or negative outcome), remorse can be seen as a retributive prime. As such, when an offender expresses remorse for a transgression he committed, this should alleviate participants' impulses to punish the offender, thus giving the offender the more lenient outcome he deserves. As with responsibility, therefore, this finding lends support to the notion that retributive motives play a role in preventive detention decisions, in line with previous research suggesting that expressions of remorse decrease the desire to punish for a transgression (Proeve & Howells, 2006).

However, as with responsibility, participants could have also interpreted the remorse manipulation as an indicator of future risk. Specifically, if a perceiver interpreted remorse as an indicator of the offender's genuine acceptance of wrongdoing, they may be inclined to believe that the offender will not re-offend. Again, the conclusion that the impact of remorse on

preventive detention decisions indicates a role of retributive motives in decision making must be qualified by this potential confound, and thus requires further investigation.

6.2.6. Generalisability of Findings

In relation to the generalisability of these findings, Empirical Paper 3 did not produce any significant effects of training or preference for intuitive versus deliberative reasoning (PID) on preventive detention decisions. This is despite our prediction that exposing participants to training on the legislation and its purpose would affect preventive detention decision making. The lack of significant effects of training and PID speaks to the generalisability of our findings in actual preventive detention decision contexts. Specifically, this suggests that training in preventive detention legislation, as well as preference for deliberative (over intuitive) reasoning, has no impact preventive detention decision making. Furthermore, there was no significant effect of offence type on preventive detention decision in the second study of Empirical Paper 2, which indicates that participants did not distinguish between sexual and violent offenders in their preventive detention recommendations. This finding coincides with previous research (Francis et al., 2001), and again speaks to the generalisability of the present research findings beyond sexual offenders to other offender types.

6.3. Deviation from Previous Research Findings

As noted above, the findings of Carlsmith et al. (2007) indicated that both retributive and utilitarian motives drive preventive detention decision making. Across the five studies in this thesis, we found clear evidence supporting the contribution of utilitarian motives to preventive detention decision making. Overall, our studies indicated some support for the role of retribution

in preventive detention decisions, but we were unable to replicate these effects consistently across studies to align with the findings of Carlsmith et al. (2007).

Possible explanations for these discrepancies could lie in the differences between preventive detention legislation across different jurisdictions. For instance, Carlsmith et al. (2007) conducted his research in the context of civil commitment legislation, whereas we conducted our study examining the operation of preventive detention under the *Serious Sex Offenders (Detention and Supervision) Act 2009*. Although both of these mechanisms are preventive detention schemes, there are some fundamental differences between the two.

Civil commitment legislation falls within the civil domain and emphasises the rehabilitation of the offender as well as community protection. This legislation targets those considered to be ‘serious sexual predators’, and who have a “mental abnormality” (Carlsmith et al., 2007; Morse, 2004). Furthermore, following the completion of their sentence, those who are made subject to these laws are held indefinitely in secure rehabilitative settings (e.g., hospitals), and undergo regular treatment and assessments which dictate whether the order continues (Morse, 2004; Vess, 2009).

On the other hand, preventive detention legislation in Australia (e.g. *Serious Sex Offenders (Detention and Supervision) Act 2009*) falls within the criminal jurisdiction. Such legislation primarily emphasises community protection, with treatment and rehabilitation important but secondary. This legislation, like civil commitment, target serious sex offenders, however is not limited to those with psychological disorders. A key difference between the two schemes is that the Australian preventive detention legislation is not limited to the confinement of eligible offenders; rather, it can be implemented via two mechanisms – supervision or

detention. Also, detention under the Australian acts is carried out within a custodial setting (i.e., prison), and is for a set period of time.

Given that the difference in context involves a decrease in the legislative focus on rehabilitation, participants in the current research could be engaging in some compensatory mechanisms, placing more emphasis on utilitarian motives over other concerns (including rehabilitation, but perhaps also including retribution). Furthermore, the studies were conducted in different countries, which may have different societal norms regarding how to deal with sex offenders (i.e., the U.S. participants may have placed a stronger emphasis on retribution than Australian participants when dealing with sex offenders).

6.4. Sample/Participant Characteristics

A finding consistent across all studies was the punitive response of each sample. Specifically, in each study, a large majority of participants recommended some form of post-sentence intervention, either in the form of ongoing supervision or detention. Furthermore, across all studies, a substantial portion of those who recommended an ongoing (supervision or detention) order recommended lengths of those orders that were at the extreme end of the scale. This trend may reflect findings of previous studies examining outcomes recommended for sex offenders, which indicate that society sees, and thus treats, sex offenders as a homogenous outgroup and that, due to the nature of their offences, people are more likely to opt for harsher punishment of the entire sexual offending cohort (Brown, 1999; Ferguson & Ireland, 2006; Kernsmith et al., 2009; Levenson et al., 2007; Nelson et al., 2002; Tewksbury, 2004; Valliant et al., 1994; Willis, Malinen, & Johnston, 2013). Regardless of the mechanism underlying the punitive responses of our participants, the findings in this regard indicate that the participants tested in this research program did not share the reservations of academics and jurists regarding

the propriety of ongoing detention and supervision once an offender's initial sanction has been satisfied.

6.5. Original Contribution of the Research Findings

The debate surrounding the implementation of preventive detention schemes has highlighted the need for research examining the motivations that drive these decisions, and investigating how various factors might alter the balance of retributive and utilitarian motives. This program of research employed experimental psychology methods to shed light on motivations driving people to impose ongoing supervision and detention on offenders, addressing an important legal question from an empirical psychological perspective. The findings of this research program indicated that both utility and retribution drive people's preventive detention decisions.

There was a clear and consistent role of utilitarian motives, implying that people are implementing preventive detention in the manner in which it is intended. While findings regarding retributive motives were not as clear as those regarding utilitarian motives, some role of retributive motives in preventive detention decisions was demonstrated across several studies. These findings indicate that retribution has some influence over preventive detention decisions, despite the stipulation that preventive detention should not serve as a punitive mechanism. Furthermore, data indicate that extra-legal factors such as attitudes towards sexual offenders, political orientation, discrimination, and contemptuous prejudice impact decisions about ongoing supervision and detention, suggesting that characteristics of the participants themselves are influencing preventive detention decisions.

Collectively, these findings have significant practical implications for preventive detention legislation, informing the legal debate surrounding the implementation of these

schemes. The data suggest that, while participants are largely concerned with utilitarian principles, in line with the intent of the legislation, retribution and other extra-legal factors are influencing decisions, posing a risk to offenders whose liberty is restricted under these schemes. Policy makers who design such legislation, and the judiciary who implement it, should consider these findings when designing safeguards to protect against unintended and unlawful influences on preventive detention decisions.

The findings of this research project also have important theoretical implications for the psychology of justice reasoning. In particular, the varied but pervasive influence of retributive motives on preventive detention decisions established here answers several theoretical questions about the role of retribution in decisions regarding “second hand” punishment. First, the data established that there is an impulse to further punish offenders based on perceived insufficiency of an initial sanction. Second, the findings regarding retributive motives demonstrated that the deservingness model of procedural and distributive justice does apply to “second-hand” punishment contexts, in which an offender has already served an initial sanction for their transgression. While a comprehensive body of research has established the role of deservingness and retribution in initial sanction decisions, this research program is the first to investigate factors influencing decisions about ongoing detention and supervision.

6.6. Critical Reflection on Research Methodology

While the aims of the research program are novel, there are potential limitations in the research paradigm that must be considered when drawing conclusions from these results. The current paradigm (as used by Carlsmith et al., 2007) employed a vignette methodology, whereby participants were presented with limited background information, and were then administered the experimental manipulations; in this case, risk of re-offence, and the offender’s prior punishment.

Underlying this paradigm are the assumptions that participants will agree with the information that is presented to them; however, there is potential for participants to disagree. This could result in them crafting their recommendation in response to what they believe is correct, which would skew the results. For example, if a participant was presented with information stating that the offender's risk of re-offence was low (i.e., 4%), after reading the brief background of the offender, they may disagree and believe that the offender's risk is higher (e.g., 15% or 20%). As such, there is potential for the participant to make a recommendation in line with their perceived risk level, as opposed to the presented risk level. While categorical and continuous manipulation checks detect major and systematic deviations from the presented information, it is still possible that participants' beliefs deviate slightly from the presented information.

In addition, the nature of the punishment sufficiency measure may not be as clean as anticipated. For instance, the manner in which the manipulation was employed (i.e. via a vignette briefly describing the length, severity and nature of a prison sentence), may have a number of confounding factors including length, harshness of the sentence, facility in which the offender was held, as well as other privileges which were afforded. Despite Empirical Paper 2 attempting to understand the nature of punishment sufficiency in a general sense, no study in this project broke down the punishment sufficiency manipulation to account for these confounds. Future research may need to account for this to achieve a more pure measure of punishment sufficiency.

In terms of the variables examined within this paradigm, it is noted that perceived deservingness was not explicitly tested. Deservingness is a key factor when examining retributive motives, especially in the context of just deserts. Although not explicitly testing this variable, the underlying notion of deservingness is rooted within procedural justice

understanding and was intended to be a factor contributing to the retributive prime employed throughout this thesis. Regardless, the lack of explicit testing of this factor fails to render any reliable results depicting the role of perceived deservingness within preventive detention decision making. In light of this limitation, future research should account for this variable when utilising this, and similar, research paradigms.

More problematic, though, with vignette methodologies, is participants' knowledge that they are making a decision that lacks real-world consequences. The vignettes employed in Empirical Papers 1, 2 and 3 were adapted so that they accurately reflected the processes and sanctions legislated under the *Serious Sex Offenders (Detention and Supervision) Act 2009*. As such, the studies achieved high verisimilitude, immersing participants in a realistic scenario that accurately reflected the processes and consequences that occur in reality (Miller, 1974; Popper, 1976; Tichý, 1976). However, external validity relies not only on verisimilitude, but also consequentiality; regardless of the accuracy of the materials in reflecting the real-world process, the participant's knowledge that it is a simulation with no real consequences may influence their behaviour and thus the findings of the research (Vossler, Doyon, & Rondeau, 2012; Vossler & Watson, 2013). In vignette studies, real-world consequences are absent, which necessitates caution in generalising the findings to the real world.

In addition to potential issues raised about the overall generalisability of the studies, the instructions and legislative background presented to the participants across studies may have had a priming effect. Specifically, as participants were presented with information about the legislation, including its focus on risk of harm to the community, this may have primed them to respond in a particular manner (i.e. to focus their deliberation more on risk of future harm to the community), thus skewing our results. However, presenting this information to participants about

the nature of the legislation does align with real-world conditions, in that any judges making preventive detention decisions would be aware of this legislative purpose, thereby improving the generalisability of our findings.

Finally, the samples tested must be considered; participants in this research program were students and community members, but preventive detention decisions are made by judges. While the findings of Empirical Paper 3 are encouraging in terms of generalisability, providing no indication that legal training and individual reasoning style impact the balance of utilitarian and retributive motives in the formulation of preventive detention decisions, further investigation is required before conclusions can be drawn about judicial decisions on preventive detention. The null findings could have been due to methodological or statistical limitations discussed in Empirical Paper 3 (e.g., a manipulation of legal training that was too weak), so future research should examine the motives underlying preventive detention decisions in a sample of real judges.

6.7. Future Directions

As noted by Borstein and McCabe (2004), experimental research paradigms allow for experimental control. This in turn allows for causal inferences, which is fundamental to allowing complex understanding of phenomena. As such, future research should maintain the use of experimental paradigms, but address the methodological limitations addressed above. In particular, researchers should expand the investigation of preventive detention decisions beyond vignette methodologies, to resolve the dearth of consequentiality in stimulus materials, and where possible, should also employ samples more representative of the populations actually making preventive detention decisions. Ideally, future research would conduct experimental research with judicial samples, thus maintaining the ability to comment on causal effects of

retributive and utilitarian primes on preventive detention decisions, while maximising generalisability to the target population.

Considering that experimental field research is rarely possible, a viable alternative may be the use of non-experimental methods (e.g., interviews) to prompt judicial populations to reflect on the factors driving their preventive detention decisions. Alternatively, experimental vignette methodologies (such as those employed in the present research program) could be administered to judicial samples, to draw conclusions with stronger generalisability than the current research, but also stronger internal validity than an interview study. Finally, experimental designs with higher consequentiality than vignette methodologies could be administered in deceptive laboratory paradigms; for example, participants could be deceived into believing that they are administering a sanction decision (which follows on from an initial sanction) that will actually impact another participant in the study. All of the methodologies suggested here would build on the comprehensive initial investigation already conducted in the present research program.

Future research should also examine other key drivers of just reasoning in preventive detention decision making. This study implemented the paradigm employed by Carlsmith et al. (2007), and as such, the variables examined were shaped by this previous research. However, a pivotal variable which was not explicitly tested within this thesis is perceived deservingness. As noted by Feather (1999) and Heuer et al. (1999), deservingness plays a key role in determining perceptions of procedural and distributive justice. Although the paradigm employed by Carlsmith et al. (2007) does indirectly incorporate the notion of deservingness via the retributive prime, future research should more directly and explicitly examine the deservingness construct.

Finally, it is possible that the scope of preventive detention schemes will continue to broaden to include more offending cohorts. For example, in Australia, preventive detention schemes began by exclusively targeting serious sexual offenders, but they have since expanded in scope to include serious violent offenders (D. Harper et al., 2015; C. Smith & Nolan, 2016). This expansion represents a shift in the focus of preventive detention schemes, from protecting the community from risk of serious sexual harm, to reforming the scheme to target more broadly the risk of serious interpersonal harm (D. Harper et al., 2015). In addition, federal politicians have called for the national expansion of preventive detention schemes to suspected and convicted terrorists who are perceived to continue to pose a threat to the community beyond the term of their original incarceration (C. Smith & Nolan, 2016).

As such, it is important to examine the nuances of the motivations driving preventive detention decision making, and to further examine motives underlying justice decision making for different offending populations. Future research should test whether utilitarian and retributive motives play a role across various offending types (e.g., terrorism-related offences), and whether the balance of utility and retribution differs across offences.

6.8. Concluding Remarks

The very nature of preventive detention has been flagged as problematic due to its requirement that offenders are subject to restrictive legal sanctions, on the basis of what they *might* do in the future (McSherry, 2014b). Despite advocates of preventive detention schemes citing community protection and highlighting its utilitarian intent, there is conflicting commentary from academics and jurists (Keyzer, 2009; McSherry, 2014a; McSherry & Keyzer, 2009). These commentators are concerned about the possible abuse of such schemes, as

individuals may attempt to enact this legislation in a retributive manner to fulfil intrinsic notions of “just deserts”.

This thesis examined the motives contributing to preventive detention decision making. Across three empirical research papers, data demonstrated that both retribution and utility play a role in the endorsement of preventive detention for serious sex offenders. Given that the legislation specifically cites community protection as its primary aim, and targets those who ‘pose an unacceptable risk of harm to the community’ (*Serious Sex Offenders (Detention and Supervision) Act 2009*), the finding that utility influences these decisions is expected and encouraging. All five studies in this research program demonstrated that participants were concerned with the offender’s risk of harm to the community, and made decisions aligned with this concern; that is, when the offender’s risk of harm increased, so too did the recommended sanction severity. This trend indicates that people are making preventive detention decision as they should, and are attending to the appropriate information when asked to make a preventive detention recommendation.

More troubling, however, were the varied but persistent findings (across several studies) that retribution also influenced participants’ recommendations about preventive detention measures. The retributive motive is not endorsed by the legislation (which endorses purely utilitarian intent), and coincides with concerns raised by jurists and academics who are debating the ethics of preventive detention schemes (Keyzer, 2009; McSherry, 2014a). Furthermore, the demonstrated impact of retribution runs counter to the ruling in *Fardon v Attorney-General (Qld)* (2004), in which the High Court of Australia cited the utilitarian nature of preventive detention schemes as key to their justifiability.

In light of the increasing reliance on preventive detention schemes to manage high-risk offenders, it is important that we clearly understand the basis on which people make preventive detention decisions. Given the potential for the miscarriage of justice when we further restrict the freedom of an offender who has already completed his sanction, we must make every effort to ensure that preventive detention decisions are actually made in line with the intent of the legislation.

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APPENDICES

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Appendix A: Literature Review – Authorship Indication Form



Swinburne Research

Authorship Indication Form For PhD (including associated papers) candidates

NOTE

This Authorship Indication form is a statement detailing the percentage of the contribution of each author in each associated 'paper'. This form must be signed by each co-author and the Principal Coordinating Supervisor. This form must be added to the publication of your final thesis as an appendix. Please fill out a separate form for each associated paper to be included in your thesis.

DECLARATION

We hereby declare our contribution to the publication of the 'paper' entitled:

A Psychological Perspective on Preventive Detention Decisions

First Author

Name: Mickael N Bojczenko

Signature: 

Percentage of contribution: 80 %

Date: 08/12/2017

Brief description of contribution to the 'paper' and your central responsibilities/role on project:

Reviewed literature, prepared manuscript

Second Author

Name: Dr Diane Sivasubramaniam

Signature: 

Percentage of contribution: 20 %

Date: 08/12/2017

Brief description of your contribution to the 'paper':

Advised on material, reviewed manuscript

Third Author

Name: _____

Signature: _____

Percentage of contribution: ____ %

Date: __/__/____

Brief description of your contribution to the 'paper':

Fourth Author

Name: _____

Signature: _____

Percentage of contribution: ____ %

Date: __/__/____

Brief description of your contribution to the 'paper':

Principal Coordinating Supervisor: Name: Dr Diane Sivasubramaniam

Signature: 

Date: 08/12/2017

In the case of more than four authors please attach another sheet with the names, signatures and contribution of the authors.

Appendix B: Empirical Paper 1 – Authorship Indication Form



Swinburne Research

Authorship Indication Form For PhD (including associated papers) candidates

NOTE

This Authorship Indication form is a statement detailing the percentage of the contribution of each author in each associated 'paper'. This form must be signed by each co-author and the Principal Coordinating Supervisor. This form must be added to the publication of your final thesis as an appendix. Please fill out a separate form for each associated paper to be included in your thesis.

DECLARATION

We hereby declare our contribution to the publication of the 'paper' entitled:

Motives Driving Preventive Detention Decision for Serious Sex Offenders

First Author

Name: Mickael N Bojczenko

Signature: 

Percentage of contribution: 60 %

Date: 08/12/2017

Brief description of contribution to the 'paper' and your central responsibilities/role on project:

Reviewed literature, obtained ethics approval, collected and coded data, analysed data, prepared manuscript

Second Author

Name: Olivia Campbell

Signature: 

Percentage of contribution: 25 %

Date: 08/12/2017

Brief description of your contribution to the 'paper':

Reviewed literature, obtained ethics approval, collected data

Third Author

Name: Dr Diane Sivasubramaniam

Signature: 

Percentage of contribution: 15 %

Date: 08/12/2017

Brief description of your contribution to the 'paper':

Assisted with conceptualisation of the study and manuscript, reviewed manuscript

Fourth Author

Name: _____

Signature: _____

Percentage of contribution: ____ %

Date: __/__/____

Brief description of your contribution to the 'paper':

Principal Coordinating Supervisor: Name: Dr Diane Sivasubramaniam Signature: 

Date: 08/12/2017

In the case of more than four authors please attach another sheet with the names, signatures and contribution of the authors.

SHR Project 2014/230 Ethics Clearance

Kaye Goldenberg

Thu 16/10/2014 3:52 PM

To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>; Mickael Bojczenko <mbojczenko@swin.edu.au>;

To: Dr Diane Sivasubramaniam, FHAD/Mr Mickael Bojczenko

Dear Dr Sivasubramaniam,

SHR Project 2014/230 The Role of Procedural Justice Reasoning in the Reintegration of Sexual Offenders into Australian Communities

Dr Diane Sivasubramaniam, FHAD/Mr Mickael Bojczenko

Approved Duration: 16/10/2014 to 16/03/2017 [Adjusted]

I refer to the ethical review of the above project protocol by a Subcommittee (SHESC1) of Swinburne's Human Research Ethics Committee (SUHREC) at a meeting held 19 September 2014. Your response to the review, as emailed on 7 October was reviewed by a SHESC1 delegate.

I am pleased to advise that, as submitted to date, the project may proceed in line with standard on-going ethics clearance conditions here outlined.

- All human research activity undertaken under Swinburne auspices must conform to Swinburne and external regulatory standards, including the current *National Statement on Ethical Conduct in Human Research* and with respect to secure data use, retention and disposal.
- The named Swinburne Chief Investigator/Supervisor remains responsible for any personnel appointed to or associated with the project being made aware of ethics clearance conditions, including research and consent procedures or instruments approved. Any change in chief investigator/supervisor requires timely notification and SUHREC endorsement.
- The above project has been approved as submitted for ethical review by or on behalf of SUHREC. Amendments to approved procedures or instruments ordinarily require prior ethical appraisal/clearance. SUHREC must be notified immediately or as soon as possible thereafter of (a) any serious or unexpected adverse effects on participants any redress measures; (b) proposed changes in protocols; and (c) unforeseen events which might affect continued ethical acceptability of the project.
- At a minimum, an annual report on the progress of the project is required as well as at the conclusion (or abandonment) of the project. Information on project monitoring, self-audits and progress reports can be found at: <http://www.research.swinburne.edu.au/ethics/human/monitoringReportingChanges/>
- A duly authorised external or internal audit of the project may be undertaken at any time.

Appendix C: Empirical Paper 1, Study 1 - Ethics Approval

Please contact the Research Ethics Office if you have any queries about on-going ethics clearance. The SHR project number should be quoted in communication. Researchers should retain a copy of this email as part of project recordkeeping.

Best wishes for the project.

Yours sincerely,

Kaye Goldenberg
Acting Secretary, SHESC1

Kaye Goldenberg
Research Ethics Executive Officer (Acting)
Swinburne Research (H68)
Swinburne University of Technology
Level 1, SPS, 24 Wakefield Street
Hawthorn, VIC 3122
Tel: +61 3 9214 5218
Fax: +61 3 9214 5267
Email: kgoldenberg@swin.edu.au

Appendix D: Empirical Paper 1, Study 1 - Ethics Final Report Receipt

From: resethics@swin.edu.au [<mailto:resethics@swin.edu.au>]
Sent: Tuesday, 29 September 2015 11:51 AM
To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>
Cc: RES Ethics <resethics@swin.edu.au>
Subject: Acknowledgement of Report for SUHREC Project - 2014/230

Dear Diane Sivasubramaniam,

Re: Final Report for the project (Report Date: 29-09-2015)

2014/230 'The Role of Procedural Justice Reasoning in the Reintegration of Sexual Offenders into Australian Communities'

The Final report for the above project (Report Date: 29-09-2015) has been processed and satisfies the reporting requirements set under the terms of ethics clearance.

Research Ethics Team

Swinburne Research (H68)
Swinburne University of Technology
PO Box 218
HAWTHORN VIC 3122
Tel: 03 9214 5218
Fax: 03 9214 5267
Email: resethics@swin.edu.au

Appendix E: Empirical Paper 1, Study 2 - Ethics Approval

On 1 Feb 2016, at 8:49 AM, Astrid Nordmann <anordmann@swin.edu.au> wrote:

To: Dr Diane Sivasubramaniam, FHAD

Dear Diane,

SHR Project 2016/004 – Process tracing and procedural justice reasoning in the reintegration of sexual offenders into Australian communities

Dr Diane Sivasubramaniam, Ms Olivia Campbell (Student), Dr Jennifer Beaudry - FHAD

Approved duration: 01-02-2016 to 31-01-2017 [adjusted]

I refer to the ethical review of the above project by a Subcommittee (SHESC1) of Swinburne's Human Research Ethics Committee (SUHREC). Your responses to the review as emailed on 30 January 2016 were put to the Subcommittee delegate for consideration.

I am pleased to advise that, as submitted to date, ethics clearance has been given for the above project to proceed in line with standard on-going ethics clearance conditions outlined below.

- All human research activity undertaken under Swinburne auspices must conform to Swinburne and external regulatory standards, including the *National Statement on Ethical Conduct in Human Research* and with respect to secure data use, retention and disposal.
- The named Swinburne Chief Investigator/Supervisor remains responsible for any personnel appointed to or associated with the project being made aware of ethics clearance conditions, including research and consent procedures or instruments approved. Any change in chief investigator/supervisor requires timely notification and SUHREC endorsement.
- The above project has been approved as submitted for ethical review by or on behalf of SUHREC. Amendments to approved procedures or instruments ordinarily require prior ethical appraisal/clearance. SUHREC must be notified immediately or as soon as possible thereafter of (a) any serious or unexpected adverse effects on participants and any redress measures; (b) proposed changes in protocols; and (c) unforeseen events which might affect continued ethical acceptability of the project.
- At a minimum, an annual report on the progress of the project is required as well as at the conclusion (or abandonment) of the project. Information on project monitoring and variations/additions, self-audits and progress reports can be found on the Research Intranet pages.
- A duly authorised external or internal audit of the project may be undertaken at any time.

Please contact the Research Ethics Office if you have any queries about on-going ethics clearance, citing the Swinburne project number. A copy of this email should be retained as part of project record-keeping.

Best wishes for the project.

Yours sincerely,
Astrid Nordmann
SHESC1 Secretary

Appendix F: Empirical Paper 1, Study 2 - Ethics Final Report Receipt

From: resethics@swin.edu.au <resethics@swin.edu.au>
Sent: Monday, 9 January 2017 3:18:42 PM
To: Diane Sivasubramaniam
Cc: RES Ethics
Subject: Acknowledgement of Report for SUHREC Project - 2016/004

Dear Diane Sivasubramaniam,

Re: End of Student Involvement Report for the project (Report Date: 09-01-2017)

2016/004 'Process tracing and procedural justice reasoning in the reintegration of sexual offenders into Australian communities'

The End of Student Involvement report for the above project (Report Date: 09-01-2017) has been processed and satisfies the reporting requirements set under the terms of ethics clearance.

Research Ethics Team

Swinburne Research (H68)
Swinburne University of Technology
PO Box 218
HAWTHORN VIC 3122
Tel: 03 9214 3845
Fax: 03 9214 5267
Email: resethics@swin.edu.au

Appendix G: Empirical Paper 2 – Authorship Indication Form



Swinburne Research

Authorship Indication Form For PhD (including associated papers) candidates

NOTE

This Authorship Indication form is a statement detailing the percentage of the contribution of each author in each associated 'paper'. This form must be signed by each co-author and the Principal Coordinating Supervisor. This form must be added to the publication of your final thesis as an appendix. Please fill out a separate form for each associated paper to be included in your thesis.

DECLARATION

We hereby declare our contribution to the publication of the 'paper' entitled:

The Role of Prior Punishment in Preventive Detention Decisions

First Author

Name: Mickael N Bojczenko

Signature: 

Percentage of contribution: 80 %

Date: 08/12/2017

Brief description of contribution to the 'paper' and your central responsibilities/role on project:

Literature review, development and design, collected data, data coding and analysis, prepared manuscript

Second Author

Name: Dr Diane Sivasubramaniam

Signature: 

Percentage of contribution: 20 %

Date: 08/12/2017

Brief description of your contribution to the 'paper':

Commented on design, advised on data analysis, reviewed manuscript

Third Author

Name: _____

Signature: _____

Percentage of contribution: ____ %

Date: __/__/____

Brief description of your contribution to the 'paper':

Fourth Author

Name: _____

Signature: _____

Percentage of contribution: ____ %

Date: __/__/____

Brief description of your contribution to the 'paper':

Principal Coordinating Supervisor: Name: Dr Diane Sivasubramaniam

Signature: 

Date: 08/12/2017

In the case of more than four authors please attach another sheet with the names, signatures and contribution of the authors.

SHR Project 2015/035 - Ethics clearance

Astrid Nordmann

Tue 10/03/2015 1:13 PM

To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>;

Cc: RES Ethics <resethics@swin.edu.au>; Mickael Bojczenko <mbojczenko@swin.edu.au>; Ann Knowles <aknowles@swin.edu.au>; James Ogloff <jogloff@swin.edu.au>;

To: Dr Diane Sivasubramaniam, FHAD

Dear Diane,

2015/035 – The role of procedural justice reasoning and remorse in ongoing supervision and detention decisions

Dr Diane Sivasubramaniam, Mickael Bojczenko (Student), A/Prof. Ann Knowles, Prof. James Ogloff - FHAD

Approved duration: 10-03-2015 to 30-04-2017 [adjusted]

I refer to the ethical review of the above project protocol by a Subcommittee (SHESC2) of Swinburne's Human Research Ethics Committee (SUHREC). Your responses to the review, as per the email sent by Mickael Bojczenko on 09 March 2015, were put to the Subcommittee delegate for consideration.

I am pleased to advise that, as submitted to date, the project may proceed in line with standard on-going ethics clearance conditions here outlined.

- All human research activity undertaken under Swinburne auspices must conform to Swinburne and external regulatory standards, including the current *National Statement on Ethical Conduct in Human Research* and with respect to secure data use, retention and disposal.
- The named Swinburne Chief Investigator/Supervisor remains responsible for any personnel appointed to or associated with the project being made aware of ethics clearance conditions, including research and consent procedures or instruments approved. Any change in chief investigator/supervisor requires timely notification and SUHREC endorsement.
- The above project has been approved as submitted for ethical review by or on behalf of SUHREC. Amendments to approved procedures or instruments ordinarily require prior ethical appraisal/clearance. SUHREC must be notified immediately or as soon as possible thereafter of (a) any serious or unexpected adverse effects on participants any redress measures; (b) proposed changes in protocols; and (c) unforeseen events which might affect continued ethical acceptability of the project.
- At a minimum, an annual report on the progress of the project is required as well as at the conclusion (or abandonment) of the project. Information on project monitoring, self-audits and progress reports can be found at:
<http://www.research.swinburne.edu.au/ethics/human/monitoringReportingChanges/>
- A duly authorised external or internal audit of the project may be undertaken at any time.

Appendix H: Empirical Paper 2, Study 1 - Ethics Approval

Please contact the Research Ethics Office if you have any queries about on-going ethics clearance. The SHR project number should be quoted in communication. Researchers should retain a copy of this email as part of project recordkeeping.

Best wishes for the project.

Yours sincerely,
Astrid Nordmann
SHESC2 Secretary

Dr Astrid Nordmann
Research Ethics Officer
Swinburne Research (H68)
Swinburne University of Technology
PO Box 218, Hawthorn, VIC 3122
Tel: +613 9214 3845
Fax: +613 9214 5267
Email: anordmann@swin.edu.au

Appendix I: Empirical Paper 2, Study 1 - Ethics Final Report Receipt

From: resethics@swin.edu.au [<mailto:resethics@swin.edu.au>]
Sent: Thursday, 10 March 2016 8:09 AM
To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>
Cc: RES Ethics <resethics@swin.edu.au>
Subject: Acknowledgement of Report for SUHREC Project - 2015/035

Dear Diane Sivasubramaniam,

Re: Final Report for the project (Report Date: 09-03-2016)

2015/035 'The role of procedural justice reasoning and remorse in ongoing supervision and detention decisions'

The Final report for the above project (Report Date: 09-03-2016) has been processed and satisfies the reporting requirements set under the terms of ethics clearance.

Research Ethics Team

Swinburne Research (H68)
Swinburne University of Technology
PO Box 218
HAWTHORN VIC 3122
Tel: 03 9214 5218
Fax: 03 9214 5267
Email: resethics@swin.edu.au

SHR Project 2016/007 Ethics Clearance

Keith Wilkins on behalf of RES Ethics

Thu 04/02/2016 5:13 PM

To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>; Mickael Bojczenko <mbojczenko@swin.edu.au>;

Cc: James Ogloff <jogloff@swin.edu.au>; RES Ethics <resethics@swin.edu.au>;

To: Dr Diane Sivasubramaniam/Mr Mickael Bojczenko, FHAD

Dear Diane and Mickael

SHR Project 2016/007 Exploring Perceptions of Punishment Sufficiency in Post-sentence Decisions

Dr Diane Sivasubramaniam, FHAD; Mr Mickael Bojczenko, Prof James Ogloff AM

Approved Duration: 29-01-2016 to 16-04-2017 [Adjusted]

Ethical review of the above project protocol was undertaken by Swinburne's Human Research Ethics Committee (SUHREC) at its Meeting 01/2016 held 29 January 2016.

I am pleased to advise that, as submitted, ethics clearance has been given for the above project to proceed in line with standard on-going ethics clearance conditions outlined below .

- All human research activity undertaken under Swinburne auspices must conform to Swinburne and external regulatory standards, including the *National Statement on Ethical Conduct in Human Research* and with respect to secure data use, retention and disposal.
- The named Swinburne Chief Investigator/Supervisor remains responsible for any personnel appointed to or associated with the project being made aware of ethics clearance conditions, including research and consent procedures or instruments approved. Any change in chief investigator/supervisor requires timely notification and SUHREC endorsement.
- The above project has been approved as submitted for ethical review by or on behalf of SUHREC. Amendments to approved procedures or instruments ordinarily require prior ethical appraisal/clearance. SUHREC must be notified immediately or as soon as possible thereafter of (a) any serious or unexpected adverse effects on participants and any redress measures; (b) proposed changes in protocols; and (c) unforeseen events which might affect continued ethical acceptability of the project.
- At a minimum, an annual report on the progress of the project is required as well as at the conclusion (or abandonment) of the project. Information on project monitoring and variations/additions, self-audits and progress reports can be found on the Research Intranet [pages](#).
- A duly authorised external or internal audit of the project may be undertaken at any time.

Please contact the Research Ethics Office if you have any queries about on-going ethics clearance, citing the Swinburne project number. A copy of this email should be retained as part of project record-keeping.

Best wishes for the project.

Keith

Keith Wilkins
Secretary, SUHREC & Research Ethics Officer
Swinburne Research (H68)
Swinburne University of Technology
P O Box 218
HAWTHORN VIC 3122
Tel +61 3 9214 5218
Fax +61 3 9214 5267

Appendix K: Empirical Paper 2, Study 2 - Ethics Final Report Receipt

From: resethics@swin.edu.au [<mailto:resethics@swin.edu.au>]
Sent: Monday, 20 March 2017 8:59 AM
To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>
Cc: RES Ethics <resethics@swin.edu.au>
Subject: Acknowledgement of Report for SUHREC Project - 2016/007

Dear Diane,

Re: Final Report for the project 2016/007

'Exploring Perceptions of Punishment Sufficiency in Post-sentence Decisions' (Report Date: 19-03-2017)

The Final report for the above project has been processed and satisfies the reporting requirements set under the terms of ethics clearance.

Thank you for your attention to this matter.

Regards
Research Ethics Team

Swinburne Research (H68)
Swinburne University of Technology
PO Box 218
HAWTHORN VIC 3122
Tel: 03 9214 3845
Fax: 03 9214 5267
Email: resethics@swin.edu.au

Appendix L: Empirical Paper 3 – Authorship Indication Form



Swinburne Research

Authorship Indication Form For PhD (including associated papers) candidates

NOTE

This Authorship Indication form is a statement detailing the percentage of the contribution of each author in each associated 'paper'. This form must be signed by each co-author and the Principal Coordinating Supervisor. This form must be added to the publication of your final thesis as an appendix. Please fill out a separate form for each associated paper to be included in your thesis.

DECLARATION

We hereby declare our contribution to the publication of the 'paper' entitled:

Examining the Effects of Legal Training and Reasoning Style on Preventive Detention Decisions

First Author

Name: Mickael N Bojczenko Signature: 

Percentage of contribution: 80 % Date: 08/12/2017

Brief description of contribution to the 'paper' and your central responsibilities/role on project:

Literature review, development and design, collected data, data coding and analysis, prepared manuscript

Second Author

Name: Dr Diane Sivasubramaniam Signature: 

Percentage of contribution: 20 % Date: 08/12/2017

Brief description of your contribution to the 'paper':

Commented on design, advised on data analysis, reviewed manuscript

Third Author

Name: _____ Signature: _____

Percentage of contribution: ____ % Date: __/__/____

Brief description of your contribution to the 'paper':

Fourth Author

Name: _____ Signature: _____

Percentage of contribution: ____ % Date: __/__/____

Brief description of your contribution to the 'paper':

Principal Coordinating Supervisor: Name: Dr Diane Sivasubramaniam Signature: 

Date: 08/12/2017

In the case of more than four authors please attach another sheet with the names, signatures and contribution of the authors.

SHR Project 2015/199 - Ethics clearance

Astrid Nordmann

Thu 06/08/2015 9:07 AM

To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>;

Cc: RES Ethics <resethics@swin.edu.au>; Ann Knowles <aknowles@swin.edu.au>; James Ogloff <jogloff@swin.edu.au>; Mickael Bojczenko <mbojczenko@swin.edu.au>;

To: Dr. Diane Sivasubramaniam, FHAD

Dear Diane,

SHR Project 2015/199 – The effect of legislation training on the role of procedural justice reasoning in the reintegration of sexual offenders into Australian communities

Dr. Diane Sivasubramaniam, A/Prof. Ann Knowles, Mr Mickael Bojczenko (Student), Prof. James Ogloff - FHAD

Approved duration: 06-08-2015 to 21-03-2017 [adjusted]

I refer to the ethical review of the above project protocol by a Subcommittee (SHESC3) of Swinburne's Human Research Ethics Committee (SUHREC). Your responses to the review, as per the email sent on 05 August 2015, were put to the Subcommittee delegate for consideration.

I am pleased to advise that, as submitted to date, the project may proceed in line with standard on-going ethics clearance conditions here outlined.

- All human research activity undertaken under Swinburne auspices must conform to Swinburne and external regulatory standards, including the current *National Statement on Ethical Conduct in Human Research* and with respect to secure data use, retention and disposal.
- The named Swinburne Chief Investigator/Supervisor remains responsible for any personnel appointed to or associated with the project being made aware of ethics clearance conditions, including research and consent procedures or instruments approved. Any change in chief investigator/supervisor requires timely notification and SUHREC endorsement.
- The above project has been approved as submitted for ethical review by or on behalf of SUHREC. Amendments to approved procedures or instruments ordinarily require prior ethical appraisal/clearance. SUHREC must be notified immediately or as soon as possible thereafter of (a) any serious or unexpected adverse effects on participants any redress measures; (b) proposed changes in protocols; and (c) unforeseen events which might affect continued ethical acceptability of the project.
- At a minimum, an annual report on the progress of the project is required as well as at the conclusion (or abandonment) of the project. Information on project monitoring, self-audits and progress reports can be found at:
<http://www.research.swinburne.edu.au/ethics/human/monitoringReportingChanges/>

Appendix M: Empirical Paper 3 - Ethics Approval

- A duly authorised external or internal audit of the project may be undertaken at any time.

Please contact the Research Ethics Office if you have any queries about on-going ethics clearance. The SHR project number should be quoted in communication. Researchers should retain a copy of this email as part of project recordkeeping.

Best wishes for the project.

Yours sincerely,
Astrid Nordmann
SHESC3 Secretary

Dr Astrid Nordmann
Research Ethics Officer
Swinburne Research (H68)
Swinburne University of Technology
PO Box 218, Hawthorn, VIC 3122
Tel: +613 9214 3845
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Email: anordmann@swin.edu.au

Appendix N: Empirical Paper 3 - Ethics Final Report Receipt

From: resethics@swin.edu.au [<mailto:resethics@swin.edu.au>]
Sent: Wednesday, 22 March 2017 3:20 PM
To: Diane Sivasubramaniam <dsivasubramaniam@swin.edu.au>
Cc: RES Ethics <resethics@swin.edu.au>
Subject: Acknowledgement of Report for SUHREC Project - 2015/199

Dear Diane,

Re: Final Report for the project 2015/199

'The effect of legislation training on the role of procedural justice reasoning in the reintegration of sexual offenders into Australian communities.' (Report Date: 22-03-2017)

The Final report for the above project has been processed and satisfies the reporting requirements set under the terms of ethics clearance.

Thank you for your attention to this matter.

Regards
Research Ethics Team

Swinburne Research (H68)
Swinburne University of Technology
PO Box 218
HAWTHORN VIC 3122
Tel: 03 9214 3845
Fax: 03 9214 5267
Email: resethics@swin.edu.au

Background

Serious Sex Offenders (Detention and Supervision) Act 2009

Victorian (Aus) law provides that an individual who is charged with a sexual offence can be subject to ongoing supervision or detention at the conclusion of their original sentence. This occurs when the individual is deemed to be an ‘unacceptable risk to society’ should they be released back into the community at the conclusion of their sentence.

Under the Serious Sex Offenders (Detention and Supervision) Act 2009, eligible offenders can be placed on a **supervision order** (which means that they are released into the community but are subject to certain conditions to restrict and/or monitor them, such as: not being present at any place, as directed by the Adult Parole Board; not leaving the state of Victoria; abiding by a curfew; abstaining from alcohol; or attending treatment/rehabilitation programs, for a period of up to 15 years. They may also be placed on an ongoing **detention order** (i.e. an additional prison term) of up to 3 years.

Once an individual is subject to an order under the Act (2009), they must undergo a review after a set period of time. For those placed on a supervision order, there must be a review no later than 3 years after the order was imposed, and there must be subsequent reviews at intervals not exceeding 3 years. For those subject to a detention order there must be a review no later than 1 year after the order was imposed, and there must be subsequent reviews at intervals not exceeding 1 year. It is noted that near the completion of an order under the Act (2009), the respondent can be subject to another application for an order (detention or supervision).

The main purpose of this legislation is to allow for the protection of the community, as well as achieving other goals of offender rehabilitation.

We will now ask you to read a case description, summarising the circumstances of an offender (Henderson) who is about to reach the end of his original prison term. The Director of Public Prosecutions has filed an application to the Supreme Court seeking a period of ongoing detention/supervision. A court will now decide whether this offender should be subject to further supervision and/or detention.

As you read the following case description, please imagine that you are a judge who will make a decision about whether a supervision or detention order is warranted.

History – Larry Henderson

The respondent holds an elaborate history of repeated child sexual molestation and abuse, beginning when he exposed his genitals to two young girls. At that time, he pleaded guilty to indecent exposure. In relation to a later incident, he was convicted of lewdness involving a young girl and received a brief jail sentence. A few months later he molested two young boys while he worked for a carnival. Shortly thereafter, Henderson sexually assaulted another young boy and girl—he performed oral sex on the 8-year-old girl and fondled the 11-year-old boy. He was again imprisoned, but refused to participate in a sex offender treatment program, and thus remained incarcerated until the completion of his sentence. Several months after his release, Henderson was convicted of sexually related crimes with two 13-year-old boys after he attempted to fondle them. As a result of that conviction, he was once again imprisoned, and is currently serving that sentence. In two months, he will reach his conditional release date, having not been eligible for parole until this date.

Prior Punishment Manipulation

Low Punishment

Victorian law stipulates that for sexual crimes of this nature, against a child (i.e. under the age of 16 years), the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 5 years in a minimum security prison. Henderson, like other inmates in this facility, is comfortably housed, with full access to sports, movies, libraries and visitors.

High Punishment

Victorian law stipulates that for sexual crimes of this nature, against a child (i.e. under the age of 16 years), the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 25 years in a maximum security prison. Henderson, like other inmates in this facility, has been repeatedly confined to a solitary cell, and was admitted to the infirmary on numerous occasions for injuries consistent with having being violently assaulted by other inmates.

Responsibility Manipulation

High Responsibility

A recent medical examination shows that Henderson is in relatively good health and physical condition. The examiners concur that there are no physical health issues that could have contributed to his offending behaviour.

Low Responsibility

A recent medical examination revealed that Henderson has a large brain tumour. The tumour is benign, but it creates pressure on his orbitofrontal cortex, leading to deficiencies in response inhibition, impulse control, and social behaviour. The examining medical experts all agree that the tumour is a key cause of Henderson offending behaviour. New surgical developments allow doctors to operate to remove the tumour. A leading neurosurgeon and several consulting neurological experts have advised that removal of the tumour will eliminate most of the impulsivity and other behavioural issues that have contributed to Henderson's offending behaviour. Henderson has consented to the procedure, and will undergo surgery in approximately one month.

Risk of Re-offence Manipulation

0% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **0 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Despite his elaborate offending history, the panel of experts deem that due to Henderson's age, amount of time since his last offence, and numerous other factors, his risk of re-offense is non-existent.

4% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **4 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Despite his elaborate offending history, the panel of experts deem that due to Henderson's age, amount of time since his last offence, and numerous other factors, his risk of re-offense is minimal.

70% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **70 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Given his elaborate offending history, and his lack of compliance with treatment programs, the panel of experts deem that Henderson's risk of re-offense is high.

Community Attitudes Towards Sex Offenders Scale (CATSO)

Below are 18 statements about sex offenders and sex offenses. Please select the corresponding number from the rating scale given below for the answer that best describes the way you feel or what you believe. Most of the statements below are difficult to prove or verify in an absolute sense, and many are specifically about your opinion based on what you may have heard, read, or learned; thus, we are less interested in the “right” or “wrong” answers, and more interested in your beliefs and opinions regarding sex offenders. Even if you have no general knowledge about the issue, please provide an answer to each question.

Strongly Disagree	Disagree	Probably Disagree	Probably Agree	Agree	Strongly Agree
1	2	3	4	5	6

1. With support and therapy, someone who committed a sexual offense can learn to change their behavior.
2. People who commit sex offenses should lose their civil rights (e.g. voting and privacy).
3. People who commit sex offenses want to have sex more often than the average person.
4. Male sex offenders should be punished more severely than female sex offenders.
5. Sexual fondling (inappropriate unwarranted touch) is not as bad as rape.
6. Sex offenders prefer to stay home alone rather than be around lots of people.
7. Most sex offenders do not have close friends.
8. Sex offenders have difficulty making friends even if they try real hard.
9. The prison sentences sex offenders receive are much too long when compared to the sentence lengths for other crimes.
10. Sex offenders have high rates of sexual activity.
11. Trying to rehabilitate a sex offender is a waste of time.
12. Sex offenders should wear tracking devices so their location can be pinpointed at any time.
13. Only a few sex offenders are dangerous.
14. Most sex offenders are unmarried men.
15. Someone who uses emotional control when committing a sex offense is not as bad as someone who uses physical control when committing a sex offense.
16. Most sex offenders keep to themselves.
17. A sex offense committed against someone the perpetrator knows is less serious than a sex offense committed against a stranger.
18. Convicted sex offenders should never be released from prison.

Appendix P: Empirical Paper 1 (Study 1) Questionnaire

Answers are on a scale of 1 (Strongly disagree) to 9 (Strongly agree) except where otherwise indicated.

Please answer the following questions about the trial.

Verdict

Note: If participant selects a certain response (e.g. b), they will be presented with other questions in line with that response (e.g. b i).

Q1. Henderson should be:

- (a) released unconditionally
- (b) released with imposed conditions of a supervision order

(b i) Period of Supervision

3 months

6 months

1 year

3 years

5 years

10 years

15 years

More than 15 years

(c) be made subject to a detention order

(c i) Period of Detention

3 months

6 months

1 year

2 years

3 years

More than 3 years

Outcome Confidence

Q2. I am confident that the order I have determined is the correct one for this case

1-100% in 5 point increments

Manipulation Checks

MC1. (risk of re-offence) Upon release:

- (a) There is 0% chance that Henderson will reoffend.
- (b) There is 4% chance that Henderson will reoffend.
- (c) There is 70% chance that Henderson will reoffend.

MC2. (prior punishment) The punishment assigned (Henderson's current sentence) was:

- (a) a 5 year sentence in a minimum security prison
- (b) a 25 year sentence in a maximum security prison

MC3. (responsibility) Henderson is:

- (a) Has a health condition that contributed to his past offending behaviour.
- (b) Had no known health condition that contributed to his past offending behaviour.

MC4. The likelihood of Henderson reoffending is:

1(Very unlikely) - 9 (Very likely)

MC5. Henderson's original sentence was sufficient.

1(Very unlikely) - 9 (Very likely)

MC6. Henderson was responsible for his past offending behaviour.

1(Very unlikely) - 9 (Very likely)

Attention Checks

AC1. Henderson is a:

- (a) Thief.
- (b) Sex Offender
- (c) Murderer.

AC2. Henderson is subject to the:

- (a) Road Safety Act 1986
- (b) Building (Amendment) Act 2004
- (c) Serious Sex Offenders (Detention and Supervision) Act 2009

Dependent Variables and Mediators

Procedural Fairness

Q13. Henderson has been treated fairly in the process

Q3. The review process that Henderson was subject to was fair

Q34. The manner in which Henderson was treated during this review process was unfair

Procedural Satisfaction

Q26. I am satisfied with the manner in which Henderson was treated during the review process

Q16. I am satisfied with the treatment of Henderson in the review process

Q32. I am satisfied with the manner in which the review process was conducted

Outcome Fairness

Q35. This outcome of this review is fair

Q33. My sentencing recommendation is fair

Q10. This review has produced an unfair outcome

Outcome Satisfaction

Q40. I am satisfied with the outcome of Henderson' sentence review

Q4. I am pleased with the outcome that has resulted from this review:

Q14. I am unhappy with the sentencing recommendation that has resulted from this review.

Deservingness (Process)

Q25. In my review, I treated the defendant the way he deserved to be treated

Q38. Henderson deserves better treatment than I gave him

Q23. Henderson received the treatment he deserved during the sentence review

Deservingness (Outcome)

Q36. In my review, I gave the defendant the outcome he deserved

Q30. Henderson deserves the outcome I gave him

Q18. Henderson received the outcome he deserved, as a result of the sentence review

Deservingness (Process_Deserved)

Q39. Henderson deserves to be treated respectfully

Q20. Henderson deserves disrespectful treatment

Q37. Henderson deserves to present his version of events during the review process

Deservingness (Outcome_Deserved)

Q24. Henderson deserves a harsh outcome

Q29. Henderson deserves a lenient outcome

Q21. Henderson deserves a severe sanction

Threat

Q19. If Henderson is released, this would represent a threat to the welfare of the community

Q11. Releasing Henderson poses a threat to other people in the community

Q31. Henderson poses a serious threat to the members of the community:

Q28. If a supervision order is imposed on Henderson, the members of my community would be safer

Q7. If a detention order is imposed on Henderson, the members of my community would be safer

Emotion Scale

Select the number that best describes the GREATEST amount of this emotion that you felt at any time during this study.

On this scale, 1 means that you did not feel even the slightest bit of this emotion, and 9 is the most you have ever felt of this emotion in your life.

Select the number that best describes the greatest amount of emotion you felt at any time during this study. On this scale, 1 means you did not feel even the slightest bit of emotion and 9 is the most you have ever felt in your life.

☐ Amusement

☐ Anger

☐ Arousal

☐ Confusion

☐ Contempt

☐ Contentment

☐ Disgust

☐ Embarrassment

☐ Fear

☐ Happiness

☐ Hopelessness

☐ Interest

☐ Pain

☐ Relief

☐ Sadness

☐ Surprise

☐ Tension

Background

Serious Sex Offenders (Detention and Supervision) Act 2009

Victorian (Aus) law provides that an individual who is charged with a sexual offence can be subject to ongoing supervision or detention at the conclusion of their original sentence. This occurs when the individual is deemed to be an ‘unacceptable risk to society’ should they be released back into the community at the conclusion of their sentence.

Under the Serious Sex Offenders (Detention and Supervision) Act 2009, eligible offenders can be placed on a **supervision order** (which means that they are released into the community but are subject to certain conditions to restrict and/or monitor them, such as: not being present at any place, as directed by the Adult Parole Board; not leaving the state of Victoria; abiding by a curfew; abstaining from alcohol; or attending treatment/rehabilitation programs, for a period of up to 15 years. They may also be placed on an ongoing **detention order** (i.e. an additional prison term) of up to 3 years.

Once an individual is subject to an order under the Act (2009), they must undergo a review after a set period of time. For those placed on a supervision order, there must be a review no later than 3 years after the order was imposed, and there must be subsequent reviews at intervals not exceeding 3 years. For those subject to a detention order there must be a review no later than 1 year after the order was imposed, and there must be subsequent reviews at intervals not exceeding 1 year. It is noted that near the completion of an order under the Act (2009), the respondent can be subject to another application for an order (detention or supervision).

The main purpose of this legislation is to allow for the protection of the community, as well as achieving other goals of offender rehabilitation.

We will now ask you to read a case description, summarising the circumstances of an offender (Henderson) who is about to reach the end of his original prison term. The Director of Public Prosecutions has filed an application to the Supreme Court seeking a period of ongoing detention/supervision. A court will now decide whether this offender should be subject to further supervision and/or detention.

As you read the following case description, please imagine that you are a judge who will make a decision about whether a supervision or detention order is warranted.

History – Larry Henderson

The respondent holds an elaborate history of repeated child sexual molestation and abuse, beginning when he exposed his genitals to two young girls. At that time, he pleaded guilty to indecent exposure. In relation to a later incident, he was convicted of lewdness involving a young girl and received a brief jail sentence. A few months later he molested two young boys while he worked for a carnival. Shortly thereafter, Henderson sexually assaulted another young boy and girl—he performed oral sex on the 8-year-old girl and fondled the 11-year-old boy. He was again imprisoned, but refused to participate in a sex offender treatment program, and thus remained incarcerated until the completion of his sentence. Several months after his release, Henderson was convicted of sexually related crimes with two 13-year-old boys after he attempted to fondle them. As a result of that conviction, he was once again imprisoned, and is currently serving that sentence. In two months, he will reach his conditional release date, having not been eligible for parole until this date.

Prior Punishment Manipulation

Low Punishment

Victorian law stipulates that for sexual crimes of this nature, against a child (i.e. under the age of 16 years), the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 5 years in a minimum security prison. Henderson, like other inmates in this facility, is comfortably housed, with full access to sports, movies, libraries and visitors.

High Punishment

Victorian law stipulates that for sexual crimes of this nature, against a child (i.e. under the age of 16 years), the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 25 years in a maximum security prison. Henderson, like other inmates in this facility, has been repeatedly confined to a solitary cell, and was admitted to the infirmary on numerous occasions for injuries consistent with having being violently assaulted by other inmates.

Risk of Re-offence Manipulation

4% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **4 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Despite his elaborate offending history, the panel of experts deem that due to Henderson's age, amount of time since his last offence, and numerous other factors, his risk of re-offense is minimal.

70% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **70 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Given his elaborate offending history, and his lack of compliance with treatment programs, the panel of experts deem that Henderson's risk of re-offense is high.

Appendix R: Empirical Paper 1 (Study 2) Questionnaire

Answers are on a scale of 1 (Strongly disagree) to 9 (Strongly agree) except where otherwise indicated.

Please answer the following questions about the trial.

Verdict

Note: If participant selects a certain response (e.g. b), they will be presented with other questions in line with that response (e.g. b i).

Q1. Henderson should be:

- (a) released unconditionally
- (b) released with imposed conditions of a supervision order

(b i) Period of Supervision

3 months

6 months

1 year

3 years

5 years

10 years

15 years

More than 15 years

(c) be made subject to a detention order

(c i) Period of Detention

3 months

6 months

1 year

2 years

3 years

More than 3 years

Outcome Confidence

Q2. I am confident that the order I have determined is the correct one for this case

1-100% in 5 point increments

Manipulation Checks

MC1. (risk of re-offence) Upon release:

- (a) There is 0% chance that Henderson will reoffend.
- (b) There is 4% chance that Henderson will reoffend.
- (c) There is 70% chance that Henderson will reoffend.

MC2. (prior punishment) The punishment assigned (Henderson's current sentence) was:

- (a) a 5 year sentence in a minimum security prison
- (b) a 25 year sentence in a maximum security prison

MC3. The likelihood of Henderson reoffending is:

1(Very unlikely) - 9 (Very likely)

MC4. Henderson's original sentence was sufficient.

1(Very unlikely) - 9 (Very likely)

Attention Checks

AC1. Henderson is a:

- (a) Thief.
- (b) Sex Offender
- (c) Murderer.

AC2. Henderson is subject to the:

- (a) Road Safety Act 1986
- (b) Building (Amendment) Act 2004
- (c) Serious Sex Offenders (Detention and Supervision) Act 2009

Dependent Variables and Mediators

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Q13. Henderson has been treated fairly in the process

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Q34. The manner in which Henderson was treated during this review process was unfair

Procedural Satisfaction

Q26. I am satisfied with the manner in which Henderson was treated during the review process

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Outcome Fairness

Q35. This outcome of this review is fair

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Q10. This review has produced an unfair outcome

Outcome Satisfaction

Q40. I am satisfied with the outcome of Henderson' sentence review

Q4. I am pleased with the outcome that has resulted from this review:

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Deservingness (Process)

Q25. In my review, I treated the defendant the way he deserved to be treated

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Q21. Henderson deserves a severe sanction

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Background

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Victorian (Aus) law provides that an individual who is charged with a sexual offence can be subject to ongoing supervision or detention at the conclusion of their original sentence. This occurs when the individual is deemed to be an ‘unacceptable risk to society’ should they be released back into the community at the conclusion of their sentence.

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We will now ask you to read a case description, summarising the circumstances of an offender (Henderson) who is about to reach the end of his original prison term. The Director of Public Prosecutions has filed an application to the Supreme Court seeking a period of ongoing detention/supervision. A court will now decide whether this offender should be subject to further supervision and/or detention.

As you read the following case description, please imagine that you are a judge who will make a decision about whether a supervision or detention order is warranted.

History – Larry Henderson

The respondent holds an elaborate history of repeated child sexual molestation and abuse, beginning when he exposed his genitals to two young girls. At that time, he pleaded guilty to indecent exposure. In relation to a later incident, he was convicted of lewdness involving a young girl and received a brief jail sentence. A few months later he molested two young boys while he worked for a carnival. Shortly thereafter, Henderson sexually assaulted another young boy and girl—he performed oral sex on the 8-year-old girl and fondled the 11-year-old boy. He was again imprisoned, but refused to participate in a sex offender treatment program, and thus remained incarcerated until the completion of his sentence. Several months after his release, Henderson was convicted of sexually related crimes with two 13-year-old boys after he attempted to fondle them. As a result of that conviction, he was once again imprisoned, and is currently serving that sentence. In two months, he will reach his conditional release date, having not been eligible for parole until this date.

Prior Punishment Manipulation

Low Punishment

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Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 5 years in a minimum security prison. Henderson, like other inmates in this facility, is comfortably housed, with full access to sports, movies, libraries and visitors.

High Punishment

Victorian law stipulates that for sexual crimes of this nature, against a child (i.e. under the age of 16 years), the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 25 years in a maximum security prison. Henderson, like other inmates in this facility, has been repeatedly confined to a solitary cell, and was admitted to the infirmary on numerous occasions for injuries consistent with having being violently assaulted by other inmates.

Remorse Manipulation

Remorse

Before the review hearing took place, in a very emotional display, Henderson apologized for what he had done. He cried and cried and said how sorry he was for what he had done – sobbing, he said that he felt absolutely terrible about his behavior. It was clear that he truly felt tremendously remorseful for what he has done.

No Remorse

Throughout the entire review process, at no point did Henderson express any form of remorse for his actions. When asked during the review hearing, Henderson stated that he feels fine with what he has done. It is clear that he feels no remorse for what he has done.

Risk of Re-offence Manipulation

4% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **4 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Despite his elaborate offending history, the panel of experts deem that due to Henderson's age, amount of time since his last offence, and numerous other factors, his risk of re-offense is minimal.

70% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **70 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Given his elaborate offending history, and his lack of compliance with treatment programs, the panel of experts deem that Henderson's risk of re-offense is high.

Shortened Right Wing Authoritarianism Scale (sRWA)

Below are 15 statements about a variety of social issues. You will probably find that you agree with some of the statements and disagree with others, to varying extents. Please indicate your reaction to each statement according to the following scale.

Note: You may find that you sometimes have different reactions to different parts of a statement. For example, you might very strongly disagree (“1”) with one idea in a statement, but somewhat agree (“5”) with another idea in the same item. When this happens, please combine your reactions, and record how you feel on balance (a “3” in this case).

Strongly Disagree	Disagree	Somewhat Disagree	Neither Agree Nor Disagree	Somewhat Agree	Agree	Strongly Agree
1	2	3	4	5	6	7

19. Our country needs a powerful leader, in order to destroy the radical and immoral currents prevailing in society today.
20. Our country needs free thinkers, who will have the courage to stand up against traditional ways, even if this upsets many people.*
21. The “old-fashioned ways” and “old-fashioned values” still show the best way to live.
22. Our society would be better off if we showed tolerance and understanding for untraditional values and opinions.*
23. God’s laws about abortion, pornography and marriage must be strictly followed before it is too late, violations must be punished.
24. The society needs to show openness towards people thinking differently, rather than a strong leader, the world is not particularly evil or dangerous.*
25. It would be best if newspapers were censored so that people would not be able to get hold of destructive and disgusting material.
26. Many good people challenge the state, criticize the church and ignore “the normal way of living”.*
27. Our forefathers ought to be honored more for the way they have built our society, at the same time we ought to put an end to those forces destroying it.
28. People ought to put less attention to the Bible and religion, instead they ought to develop their own moral standards.*
29. There are many radical, immoral people trying to ruin things; the society ought to stop them.
30. It is better to accept bad literature than to censor it.*
31. Facts show that we have to be harder against crime and sexual immorality, in order to uphold law and order.
32. The situation in the society of today would be improved if troublemakers were treated with reason and humanity.*
33. If the society so wants, it is the duty of every true citizen to help eliminate the evil that poisons our country from within.

* denotes counter-balanced item

Political Orientation

Below are 6 statements about various social issues. Please select the corresponding number from the rating scale given below for the answer that best describes the way you feel. Even if you have no general knowledge about the issue, please provide an answer to each question.

Not at All Conservative			Neutral			Extremely Conservative
1	2	3	4	5	6	7

1. How conservative do you tend to be in general?
2. How conservative do you tend to be when it comes to economic policy?
3. How conservative do you tend to be when it comes to social policy?

Not at All Liberal			Neutral			Extremely Liberal
1	2	3	4	5	6	7

1. How liberal do you tend to be in general?
2. How liberal do you tend to be when it comes to economic policy?
3. How liberal do you tend to be when it comes to social policy?

Appendix T: Empirical Paper 2 (Study 1) Questionnaire

Answers are on a scale of 1 (Strongly disagree) to 9 (Strongly agree) except where otherwise indicated.

Please answer the following questions about the trial.

Verdict

Note: If participant selects a certain response (e.g. b), they will be presented with other questions in line with that response (e.g. b i).

Q1. Henderson should be:

- (a) released unconditionally
- (b) released with imposed conditions of a supervision order

(b i) Period of Supervision

3 months

6 months

1 year

3 years

5 years

10 years

15 years

More than 15 years

(c) be made subject to a detention order

(c i) Period of Detention

3 months

6 months

1 year

2 years

3 years

More than 3 years

Outcome Confidence

Q2. I am confident that the order I have determined is the correct one for this case

1-100% in 5 point increments

Manipulation Checks

MC1. (risk of re-offence) Upon release:

- (a) There is 0% chance that Henderson will reoffend.
- (b) There is 4% chance that Henderson will reoffend.
- (c) There is 70% chance that Henderson will reoffend.

MC2. (prior punishment) The punishment assigned (Henderson's current sentence) was:

- (a) a 5 year sentence in a minimum security prison
- (b) a 25 year sentence in a maximum security prison

MC3. (remorse) Henderson:

- (a) Is remorseful for what he has done.
- (b) Feels no remorse for what he has done.

MC4. The likelihood of Henderson reoffending is:

1(Very unlikely) - 9 (Very likely)

MC5. Henderson's original sentence was sufficient.

1(Very unlikely) - 9 (Very likely)

MC6. Henderson was remorseful for his past offending behaviour.

1(Very unlikely) - 9 (Very likely)

Attention Checks

AC1. Henderson is a:

- (a) Thief.
- (b) Sex Offender
- (c) Murderer.

AC2. Henderson is subject to the:

- (a) Road Safety Act 1986
- (b) Building (Amendment) Act 2004
- (c) Serious Sex Offenders (Detention and Supervision) Act 2009

Dependent Variables and Mediators

Procedural Fairness

Q13. Henderson has been treated fairly in the process

Q3. The review process that Henderson was subject to was fair

Q34. The manner in which Henderson was treated during this review process was unfair

Procedural Satisfaction

Q26. I am satisfied with the manner in which Henderson was treated during the review process

Q16. I am satisfied with the treatment of Henderson in the review process

Q32. I am satisfied with the manner in which the review process was conducted

Outcome Fairness

Q35. This outcome of this review is fair

Q33. My sentencing recommendation is fair

Q10. This review has produced an unfair outcome

Outcome Satisfaction

Q40. I am satisfied with the outcome of Henderson' sentence review

Q4. I am pleased with the outcome that has resulted from this review:

Q14. I am unhappy with the sentencing recommendation that has resulted from this review.

Deservingness (Process)

Q25. In my review, I treated the defendant the way he deserved to be treated

Q38. Henderson deserves better treatment than I gave him

Q23. Henderson received the treatment he deserved during the sentence review

Deservingness (Outcome)

Q36. In my review, I gave the defendant the outcome he deserved

Q30. Henderson deserves the outcome I gave him

Q18. Henderson received the outcome he deserved, as a result of the sentence review

Deservingness (Process_Deserved)

Q39. Henderson deserves to be treated respectfully

Q20. Henderson deserves disrespectful treatment

Q37. Henderson deserves to present his version of events during the review process

Deservingness (Outcome_Deserved)

Q24. Henderson deserves a harsh outcome

Q29. Henderson deserves a lenient outcome

Q21. Henderson deserves a severe sanction

Threat

Q19. If Henderson is released, this would represent a threat to the welfare of the community

Q11. Releasing Henderson poses a threat to other people in the community

Q31. Henderson poses a serious threat to the members of the community:

Q28. If a supervision order is imposed on Henderson, the members of my community would be safer

Q7. If a detention order is imposed on Henderson, the members of my community would be safer

Emotion Scale

Select the number that best describes the GREATEST amount of this emotion that you felt at any time during this study.

On this scale, 1 means that you did not feel even the slightest bit of this emotion, and 9 is the most you have ever felt of this emotion in your life.

Select the number that best describes the greatest amount of emotion you felt at any time during this study. On this scale, 1 means you did not feel even the slightest bit of emotion and 9 is the most you have ever felt in your life.

- ☐ () Amusement
- ☐ () Anger
- ☐ () Arousal
- ☐ () Confusion
- ☐ () Contempt
- ☐ () Contentment
- ☐ () Disgust
- ☐ () Embarrassment
- ☐ () Fear
- ☐ () Happiness
- ☐ () Hopelessness
- ☐ () Interest
- ☐ () Pain
- ☐ () Relief
- ☐ () Sadness
- ☐ () Surprise
- ☐ () Tension

Background

[**Sex Offence:** *Serious Sex Offenders (Detention and Supervision) Act 2009*
Violent Offence: *Serious Violent Offenders (Detention and Supervision) Act 2009*]

Victorian (Aus) law provides that an individual who is charged with a [**Sex Offence:** serious sexual offence; **Violent Offence:** serious violent offence] can be subject to ongoing supervision or detention at the conclusion of their original sentence. This occurs when the individual is deemed to be an ‘unacceptable risk to society’ should they be released back into the community at the conclusion of their sentence.

Under the [**Sex Offence:** *Serious Sex Offenders (Detention and Supervision) Act 2009*; **Violent Offence:** *Serious Violent Offenders (Detention and Supervision) Act 2009*], eligible offenders can be placed on a *supervision order* (which means that they are released into the community but are subject to certain conditions to restrict and/or monitor them, such as: not being present at any place, as directed by the Adult Parole Board; not leaving the state of Victoria; abiding by a curfew; abstaining from alcohol; or attending treatment/rehabilitation programs, for a period of up to 15 years. They may also be placed on an ongoing *detention order* (i.e. an additional prison term) of up to 3 years.

Once an individual is subject to an order under the Act (2009), they must undergo a review after a set period of time. For those placed on a supervision order, there must be a review no later than 3 years after the order was imposed, and there must be subsequent reviews at intervals not exceeding 3 years. For those subject to a detention order there must be a review no later than 1 year after the order was imposed, and there must be subsequent reviews at intervals not exceeding 1 year. It is noted that near the completion of an order under the Act (2009), the respondent can be subject to another application for an order (detention or supervision).

The main purpose of this legislation is to allow for the protection of the community, as well as achieving other goals of offender rehabilitation.

We will now ask you to read a case description, summarising the circumstances of an offender (Henderson) who is about to reach the end of his original prison term. The Director of Public Prosecutions has filed an application to the Supreme Court seeking a period of ongoing detention/supervision. A court will now decide whether this offender should be subject to further supervision and/or detention.

As you read the following case description, please imagine that you are a judge who will make a decision about whether a supervision or detention order is warranted.

History – Larry Henderson

The respondent holds an elaborate history of [**Sex Offence**: repeated child sexual molestation and abuse, beginning when he exposed his genitals to two young girls; **Violent Offence**: repeated violent offences against the elderly, beginning when he broke into a vacant home]. At that time, he pleaded guilty to [**Sex Offence**: indecent exposure; **Violent Offence**: breaking and entering]. In relation to a later incident, he was [**Sex Offence**: convicted of lewdness involving a young girl; **Violent Offence**: was convicted of attempted robbery of an elderly man] and received a brief jail sentence. A few months later [**Sex Offence**: he molested two young boys while he worked for a carnival; **Violent Offence**: held an elderly man at knife point while he took an amount of money]. Shortly thereafter, Henderson [**Sex Offence**: sexually assaulted another young boy and girl—he performed oral sex on the 8-year-old girl and fondled the 11-year-old boy; **Violent Offence**: broke into an elderly couple’s home and robbed them of jewelry and cash — assaulting the 81 year old women and threatening to kill the 86 year old male]. He was again imprisoned, but refused to participate in [**Sex Offence**: a sex offender treatment program; **Violent Offence**: a violent offender treatment program], and thus remained incarcerated until the completion of his sentence. Several months after his release, Henderson was convicted [**Sex Offence**: of sexually related crimes with two 13-year-old boys after he attempted to fondle them; **Violent Offence**: of armed robbery, after breaking into an elderly couple’s home with a machete, and robbing them of numerous items of considerable value]. As a result of that conviction, he was once again imprisoned, and is currently serving that sentence. In two months, he will reach his conditional release date, having not been eligible for parole until this date.

Punishment Manipulation (*punishment sufficiency*)

Low Punishment

Victorian law stipulates that for [**Sex Offence**: sexual crimes of this nature, against a child (i.e. under the age of 16 years); **Violent Offence**: violent crimes of this nature, against a vulnerable persons (i.e. elderly, disabled etc.)], the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 5 years in a minimum security prison. Henderson, like other inmates in this facility, is comfortably housed, with full access to sports, movies, libraries and visitors.

High Punishment

Victorian law stipulates that for [**Sex Offence**: sexual crimes of this nature, against a child (i.e. under the age of 16 years); **Violent Offence**: violent crimes of this nature, against a vulnerable persons (i.e. elderly, disabled etc.)], the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 25 years in a maximum security prison. Henderson, like other inmates in this facility, has been repeatedly confined to a solitary cell, and was admitted to the infirmary on numerous occasions for injuries consistent with having being violently assaulted by other inmates.

Appendix V: Empirical Paper 2 (Study 2) Questionnaire

Answers are on a scale of 1 (Strongly disagree) to 9 (Strongly agree) except where otherwise indicated.

Please answer the following questions about the trial.

Verdict

For the next question, you are presented with three options. Please note that all three options are **equally appropriate** according to the law, and it is up to you to choose whichever you think is best, based on the facts of the particular case.

Note: If participant selects a certain response (e.g. b), they will be presented with other questions in line with that response (e.g. b i).

Q1. Henderson should be:

- (a) released unconditionally
- (b) released with imposed conditions of a supervision order

(b i) Period of Supervision

3 months

6 months

1 year

3 years

5 years

10 years

15 years

More than 15 years

(c) be made subject to a detention order

(c i) Period of Detention

3 months

6 months

1 year

2 years

3 years

More than 3 years

Outcome Confidence

Q2. I am confident that the order I have determined is the correct one for this case

1-100% in 5 point increments

Manipulation Checks

MC1. (*Offence Type*) Henderson is a:

- (a) Sex Offender.
- (b) Violent Offender.

MC2. (*prior punishment*) The punishment assigned (Henderson's current sentence) was:

- (a) a 5 year sentence in a minimum security prison
- (b) a 25 year sentence in a maximum security prison

MC3. Henderson's most recent sentence was sufficient.

1(Very unlikely) - 9 (Very likely)

MC4. Henderson's original sentence was sufficient.

1(Very unlikely) - 9 (Very likely)

Attention Checks

AC1. Henderson is a:

- (a) Thief.
- (b) Sex Offender
- (c) Murderer.

AC2. Henderson is subject to the:

- (a) Road Safety Act 1986
- (b) Building (Amendment) Act 2004
- (c) Serious Sex Offenders (Detention and Supervision) Act 2009

Dependent Variables and Mediators

Procedural Fairness

Q13. Henderson has been treated fairly in the process

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Q34. The manner in which Henderson was treated during this review process was unfair

Procedural Satisfaction

Q26. I am satisfied with the manner in which Henderson was treated during the review process

Q16. I am satisfied with the treatment of Henderson in the review process

Q32. I am satisfied with the manner in which the review process was conducted

Outcome Fairness

Q35. This outcome of this review is fair

Q33. My sentencing recommendation is fair

Q10. This review has produced an unfair outcome

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Q40. I am satisfied with the outcome of Henderson' sentence review

Q4. I am pleased with the outcome that has resulted from this review:

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Q19. If Henderson is released, this would represent a threat to the welfare of the community

Q11. Releasing Henderson poses a threat to other people in the community

Q31. Henderson poses a serious threat to the members of the community:

Q28. If a supervision order is imposed on Henderson, the members of my community would be safer

Q7. If a detention order is imposed on Henderson, the members of my community would be safer

As you answer the following questions, think about the group to which Henderson belongs – i.e., offenders who have committed similar crimes to Henderson and who have, as a result, served similar sentences to the sentence Henderson has just served.

Stereotypes

Please rate each of the following items (1 not at all to 5 extremely), on the basis of how Henderson's offending group are viewed by Australian society. We are not interested in your personal beliefs, but in how you think they are viewed by others.

As viewed by society, how competent are members of this group?

As viewed by society, how confident are members of this group?

As viewed by society, how independent are members of this group?

As viewed by society, how competitive are members of this group?

As viewed by society, how intelligent are members of this group?

As viewed by society, how tolerant are members of this group?

As viewed by society, how warm are members of this group?

As viewed by society, how good natured are members of this group?

As viewed by society, how sincere are members of this group?

How prestigious are the jobs typically achieved by members of this group?

How economically successful have members of this group been?

How well educated are members of this group?

If members of this group get special breaks (such as preference in hiring decisions), this is likely to make things more difficult for people like me.

The more power members of this group have, the less power people like me are likely to have.

Resources that go to members of this group are likely to take away from the resources of people like me.

Prejudice

Please rate each of your emotional reactions (1 not at all to 5 extremely), in response to Henderson.

Anger ()
Disgust ()
Happiness ()
Fear ()
Pity ()
Surprise ()
Sadness ()

Discrimination

Please respond to the follow items (yes or no).

Do you believe that Henderson's offending group are entitled to any of the below forms of government assistance:

Career counselling
Job training
Psychological counselling
Monthly living expenses
Subsidised housing

Please respond (yes or no), whether would wish to be in any of the below situations with a member of Henderson's offending group:

I would marry this person.

I would accept this person as an intimate friend.

I would accept this person as close kin by marriage.

I would accept this person as a flatmate.

I would date this person.

I would accept this person as a personal friend in my club.

I would accept this person as a neighbour.

I would accept this person as my husband's or wife's friend.

I would live in the same apartment or house with this person.

I would accept this person as one of my speaking acquaintances.

I would rent property from this person.

I would give asylum to this person, if he were a refugee, but I would not grant him citizenship.*

I would not permit this person to live in my neighbourhood.*

I would not permit this person's attendance of our universities.*

I would exclude this person from my country.*

I would be willing to participate in the lynching of this person.*

*Note: * items indicate reverse scoring*

Attitudes Towards Prisoners scale (ATP)

The statements listed below describe different attitudes towards prisoners in prisons in Australia. There are no right or wrong answers, only opinion. You are asked to express *your* feelings about each statement by indicating whether you (1) Disagree Strongly, (2) Disagree, (3) Undecided, (4) Agree, or (5) Agree Strongly. Please answer *every* item.

Rating Scale				
1	2	3	4	5
Disagree Strongly	Disagree	Undecided	Agree	Agree Strongly

1. Prisoners are different from most people*
2. Only a few prisoners are really dangerous
3. Prisoners never change*
4. Most prisoners are victims of circumstance and deserve to be helped
5. Prisoners have feelings like the rest of us
6. It is not wise to trust a prisoner too far*
7. I think I would like a lot of prisoners
8. Bad prison conditions can make a prisoner more bitter
9. Give a prisoner an inch and he'll take a mile*
10. Most prisoners are stupid*
11. Prisoners need affection and praise just like anybody else
12. You should not expect too much from a prisoner*
13. Trying to rehabilitate prisoners is a waste of time and money*
14. You never know when a prisoner is telling the truth*
15. Prisoners are no better or worse than other people
16. You have to constantly be on your guard when with prisoners*
17. In general, prisoners think and act alike*
18. If you give a prisoner respect, he'll give you the same
19. Prisoners only think about themselves*
20. There are some prisoners I would trust with my life
21. Prisoners will listen to reason
22. Most prisoners are too lazy to earn an honest living*
23. I wouldn't mind living next door to an ex-prisoner
24. Prisoners are just plain mean at heart*
25. Prisoners are always trying to get something out of somebody*
26. The values of most prisoners are about the same as the rest of us
27. I would never want one of my children dating an ex-prisoner*
28. Most prisoners have the capacity for love
29. Prisoners are just plain immoral*
30. Prisoners should be under strict, harsh discipline*
31. In general, prisoners are basically bad people*
32. Most prisoners can be rehabilitated
33. Some prisoners are pretty nice people
34. I would like associating with some prisoners
35. Prisoners respect only brute force*
36. If a person does well in prison, he should be let out on parole

Note: * items indicate reverse scoring

Fear of Crime

On a scale of 0 to 10, how concerned are you about crime in general?

1	2	3	4	5	6	7	8	9	10
Not worried at all about crime in general									Very worried about crime in general

On a scale of 0 to 10, what do you think your chances are of being a victim of any type of crime during the next year?

1	2	3	4	5	6	7	8	9	10
I will not be a victim of crime									I will certainly be a victim of crime

On a scale of 0 to 10, what do you think the chances are of someone you know being a victim of any type of crime during the next year?

1	2	3	4	5	6	7	8	9	10
No chance of being a victim of crime									Definitely being a victim of crime

Overall, how worried are you about becoming a victim of a sexual offense during the next year?

1	2	3	4	5	6	7	8	9	10
Not worried at all									Very worried

Overall, how worried are you about someone you know becoming a victim of a sexual offense during the next year?

1	2	3	4	5	6	7	8	9	10
Not worried at all									Very worried

Appendix V: Empirical Paper 2 (Study 2) Questionnaire

Overall, how worried are you about becoming a victim of a violent offense during the next year?

1	2	3	4	5	6	7	8	9	10
Not worried at all									Very worried

Overall, how worried are you about someone you know becoming a victim of a violent offense during the next year?

1	2	3	4	5	6	7	8	9	10
Not worried at all									Very worried

Perceived Risk of Re-offence Measure

I believe that Henderson is likely to re-offend:

1 (Very unlikely) - 9 (Very likely)

The likelihood of Henderson reoffending is:

1 (Very unlikely) - 9 (Very likely)

If Henderson is released, he would present a high risk of re-offence

1 (Very unlikely) - 9 (Very likely)

If Henderson is released, he would not present a high risk of re-offence*

1 (Very unlikely) - 9 (Very likely)

Releasing Henderson poses an unacceptable risk to other people in the community

1 (Very unlikely) - 9 (Very likely)

If Henderson is released, some post-sentence intervention (i.e. supervision or detention order), is required to stop him from re-offending

1 (Very unlikely) - 9 (Very likely)

*Note: * items indicate reverse scoring*

Perceptions of Rehabilitation Measure

To what degree do you think Henderson is rehabilitated:

1	2	3	4	5	6	7	8	9
Not at all rehabilitated								Completely rehabilitated

In terms of rehabilitation, I believe Henderson is:

1	2	3	4	5	6	7	8	9
Not at all rehabilitated								Completely rehabilitated

Rate the degree to which you think Henderson is rehabilitated:

1	2	3	4	5	6	7	8	9
Not at all rehabilitated								Completely rehabilitated

Do you believe that Henderson requires further rehabilitation?

Yes – *move onto next question*

No – *move onto next section*

- i) How much longer do you believe it would take for Henderson to be fully rehabilitated?

[slider]

1 month – 25+ years

- ii) Intensive therapy is required in order for Henderson to be rehabilitated.

1	2	3	4	5	6	7	8	9
Strongly disagree								Strongly agree

- iii) Additional incarceration is required in order for Henderson to be rehabilitated.

1	2	3	4	5	6	7	8	9
Strongly disagree								Strongly agree

Appendix V: Empirical Paper 2 (Study 2) Questionnaire

- iv) Supervision on his release into the community is required in order for Henderson to be rehabilitated.

1	2	3	4	5	6	7	8	9
Strongly disagree								Strongly agree

Punishment Sufficiency Measure

Henderson's most recent punishment was sufficient:

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

Henderson's most recent punishment was fair:

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

Henderson's most recent punishment was unfair:*

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

I am satisfied with Henderson's most recent punishment:

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

I am unhappy with Henderson's most recent punishment:*

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

I am pleased with Henderson's most recent punishment:

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

*Note: * items indicate reverse scoring*

Appendix V: Empirical Paper 2 (Study 2) Questionnaire

Sentiment towards offender

I like Henderson

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

I feel close to Henderson

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

I have warm feelings about Henderson

1	2	3	4	5	6	7	8	9
Strongly Disagree								Strongly Agree

Appendix V: Empirical Paper 2 (Study 2) Questionnaire

Desire to punish

How much are you in favour of assigning an additional order to Henderson?

1	2	3	4	5	6	7	8	9
Not at all in favour								Extremely in favour

How satisfied would you be if Henderson was granted unconditional release?*

1	2	3	4	5	6	7	8	9
Not at all satisfied								Extremely satisfied

How severe do you believe Henderson's punishment should be?

1	2	3	4	5	6	7	8	9
Not at all severe								Extremely severe

*Note: * items indicate reverse scoring*

Emotion Scale

Select the number that best describes the GREATEST amount of this emotion that you felt at any time during this study.

On this scale, 1 means that you did not feel even the slightest bit of this emotion, and 9 is the most you have ever felt of this emotion in your life.

Select the number that best describes the greatest amount of emotion you felt at any time during this study. On this scale, 1 means you did not feel even the slightest bit of emotion and 9 is the most you have ever felt in your life.

- ☐ () Amusement
- ☐ () Anger
- ☐ () Arousal
- ☐ () Confusion
- ☐ () Contempt
- ☐ () Contentment
- ☐ () Disgust
- ☐ () Embarrassment
- ☐ () Fear
- ☐ () Happiness
- ☐ () Hopelessness
- ☐ () Interest
- ☐ () Pain
- ☐ () Relief
- ☐ () Sadness
- ☐ () Surprise
- ☐ () Tension

Legislation Training Module

You are about to read through a “training module”, in which you will be taught about the Serious Sex Offenders (Detention and Supervision) Act 2009 (SSO(DS)A 2009). It will take you about 20 minutes to read through the module, and at the end of the training, you should have a good understanding of the SSO(DS)A 2009.

Please pay careful attention to the material you are about to read. After the module, you will complete a quiz about the content of the module, and you will need to answer all of the questions in that quiz correctly in order to proceed to the next stage of the study today.

Purpose of Serious Sex Offenders (Detention and Supervision) Act 2009

The Serious Sex Offenders (Detention and Supervision) Act 2009 is a “preventive detention” scheme. Preventive detention schemes involve post-sentence detention and supervision – that is, they seek to impose further conditions (of supervision in the community, or an additional custodial sentence) on an offender, even after the offender has served the original sentence for their offence. However, the Victorian model of post-sentence detention and supervision is not intended as a punishment-oriented model. Rather, as it is supposed to be concerned with the safety and welfare of victims and the community, as well as with treatment of the offender.

The Serious Sex Offenders (Detention and Supervision) Act 2009 has two stated purposes. Its first and main purpose is to ‘enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision’. Its secondary purpose is to facilitate the treatment and rehabilitation of such offenders.

Section 1 – Purposes and outline

(1) The main purpose of this Act is to enhance the protection of the community by requiring offenders who have served custodial sentences for certain sexual offences and who present an unacceptable risk of harm to the community to be subject to ongoing detention or supervision.

(2) The secondary purpose of this Act is to facilitate the treatment and rehabilitation of such offenders.



Supervision and detention orders can be made only in respect of ‘eligible offenders’. An eligible offender is one who is at least 18 years of age and who is serving a custodial sentence for a ‘relevant offence’. Relevant offences include a wide range of serious sexual offences against both adults and children.

When considering the appropriateness of a supervision or detention order, the court must consider the protection of the community, as well as the rights to liberty of the offender. As the primary purpose of the Act is to protect the community, the court must be satisfied that the offender poses an unacceptable risk of committing a relevant offence *if the offender is released into the community without a detention or supervision order being made*. In determining whether the offender is likely to commit a relevant offence, the court must consider:

- a) any assessment report or progress report filed in the court; and
- b) any other report made, or evidence given, in relation to the application; and
- c) anything else the court considers appropriate.

Furthermore, in determining whether or not the offender poses an unacceptable risk, the court must not consider the likely impact of a supervision or detention order on the offender.

If issuing a supervision order, the court must ensure that:

- a) the order and any of its conditions constitute the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary in the circumstances to ensure the purposes of the order; and
- b) the order and any of its conditions are reasonably related to the gravity of the risk of the offender re-offending.

Sometimes a balance needs to be struck between competing rights because the rights of one person may represent a threat to another. The protection of the community must be balanced against the maintenance of individual rights, such as the offender's right to liberty.

Legal scholars argue that preventive detention schemes are justified on the basis that they consider the rights of potential future victims, and the protection of the community should outweigh the rights of offenders.



Serious Sex Offenders (Detention and Supervision) Act 2009

In Australia, Victorian law provides that a person who is charged with a sexual offence can be subject to **ongoing supervision or detention** at the conclusion of their original sentence. This occurs when the individual is deemed to be an 'unacceptable risk to society' should they be released back into the community at the conclusion of their sentence.



Supervision Order

Under the Serious Sex Offenders (Detention and Supervision) Act 2009, eligible offenders can be placed on a **supervision order**, which means that they are **released into the community but are subject to certain conditions to restrict and/or monitor them**, for a period of up to 15 years.

Section 12 – Period of supervision order

- (1) Unless sooner revoked, the period of a supervision order is the period (not exceeding 15 years) determined by the court and specified in the order.
- (2) If an offender who is subject to a supervision order commences to serve a custodial sentence, or is taken into custody on remand after the commencement of the order, the time spent in serving that sentence or in custody on remand is to be taken into account in calculating the remaining period of the order.
- (3) However the offender is not subject to the conditions of the order while the offender is serving that sentence or is in custody on remand.
- (4) The offender becomes subject to the conditions of the supervision order again on the offender's release on parole or at the end of the custodial sentence, whichever is earlier.
- (5) If an offender is subject to a supervision order and is sentenced to a community-based disposition, the community-based disposition is to be served concurrently with the operation of the supervision order.

An application for a supervision order can be made by the Secretary to the Department of Justice (the most senior person of the Victorian Justice Executive Group, Department of Justice and Regulation), if he or she is satisfied that the order should be made. The application must be made to the court in which the offender was originally sentenced for the relevant offence, unless the offender was originally sentenced in the Magistrates Court. If the offender was sentenced for the relevant offence by the Magistrates Court, then the application must be made to the County Court.

Section 7 - Secretary may apply for a supervision order

(1) This section applies if the Secretary has determined that an application should be made for a supervision order.

(3) The court to which an application may be made is—

(a) the court that sentenced the offender for the relevant offence, if that court was the Supreme Court or the County Court; or

(b) the County Court, if the Magistrates' Court sentenced the offender for the relevant offence.



The application must be accompanied by at least one assessment report by a 'medical expert' (identified in the Act as psychiatrist, a psychologist, or other health service provider). The assessment report should include the following points:

- a) whether or not the offender has a propensity to commit a relevant offence in the future
- b) the pattern or progression of any previous sexual offending behaviour and an indication of the nature of any likelihood of future sexual offending
- c) efforts made by the offender to address his or her sexual offending (e.g. participation in rehabilitation programs or treatment regimes)
- d) the background of the offender (specifically any developmental and social factors relevant to the offending behaviour)
- e) factors that may increase or decrease any identified



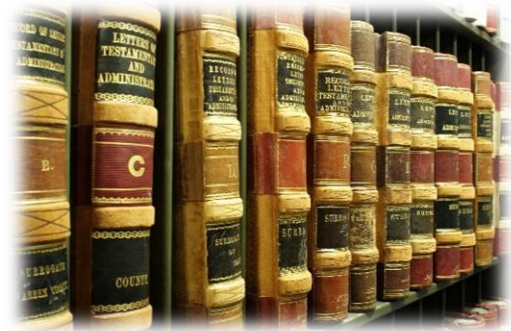
risks

Note: the term 'relevant offence' in the context of the SSO(DS)A, refers to any sexual offence perpetrated by the offender.

Whilst on a supervision order, the offender must adhere to a set of lawful conditions. Some of these conditions are mandated by the Act for all offenders (core conditions), whereas others are suggested conditions, and are imposed at the court's discretion. The primary purpose of the conditions is to reduce the risk or re-offence. Their secondary purpose is to address the reasonable safety and welfare concerns of the offender's victim(s).

Section 15 – Conditions of supervision order

- (1) A supervision order is subject to conditions imposed by the court.
- (2) The conditions are—
 - (a) core conditions imposed under section 16; and
 - (b) any other conditions imposed.
- (3) The primary purpose of the conditions is to reduce the risk of re-offending by the offender.
- (4) The secondary purpose of the conditions is to provide for the reasonable concerns of the victim or victims of the offender in relation to their own safety and welfare.
- (5) In order to reduce the risk of re-offending by the offender, the conditions may promote the rehabilitation and treatment of the offender.
- (6) The court must ensure that any conditions of a supervision order (other than the core conditions)—
 - (a) constitute the minimum interference with the offender's liberty, privacy or freedom of movement that is necessary in the circumstances to ensure the purposes of the conditions; and
 - (b) are reasonably related to the gravity of the risk of the offender re-offending.



Section 16 of the Act details the core conditions required under this legislation. Core conditions include (but are not limited to):

- a) The offender must not commit a relevant offence in Victoria or elsewhere;
- b) The offender must attend at any place as directed by the Adult Parole Board so that the conditions of the order can be administered;
- c) The offender must attend at any place directed by the Adult Parole Board for the purpose of making any assessments required by the court, the Secretary or the Director of Public prosecutions for the purposes of this Act. (This could include a personal examination by a medical expert for the purpose of providing the court with a report to assist it to determine the need for, or form of, any of the conditions of the order);
- d) The offender must not leave Victoria except with the permission of the Adult Parole Board.



Other, suggested conditions can include (but are not limited to):

- a) where the offender may reside (including whether he or she may reside at a residential facility);
- b) times at which the offender must be at his or her place of residence;
- c) places or areas that the offender must not visit or may only visit at specified times (e.g., school playgrounds, the victim's place of work);
- d) treatment or rehabilitation programs or activities that the offender must attend and participate in;
- e) requiring that the offender must not consume alcohol;
- f) requiring that the offender must not use prohibited drugs, obtain drugs unlawfully or abuse drugs of any kind;
- g) requiring that the offender must submit, as required by the order, to breath testing, urinalysis or other test procedures (other than blood tests) approved by the Secretary for detecting alcohol or drug use;
- h) the types of employment in which the offender must not engage;
- i) persons (or classes of person, e.g., children) with whom the offender must not have contact;
- j) forms of monitoring (including electronic monitoring) to which the offender must submit



Once an individual has been placed under a supervision order under the Act (2009), they must undergo a review after a set period of time. For those placed on a supervision order, there must be a review *no later than 3 years* after the order was imposed, and there must be subsequent reviews *at intervals not exceeding 3 years*. Near the completion of a supervision order, the respondent can be placed under another, new order (detention or supervision).

Section 65 – Periodic reviews of supervision orders

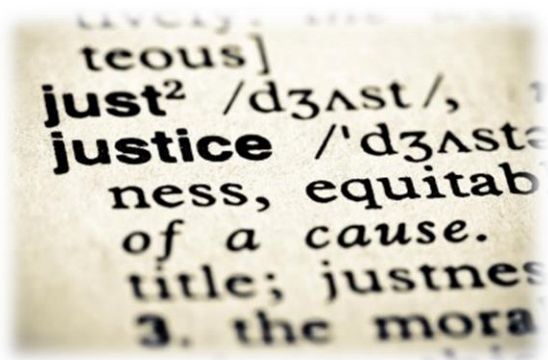
- (1) The Secretary must apply to the court that made a supervision order for review of that order—
 - (a) no later than 3 years after it was first made; and
 - (b) after that, at intervals of no more than 3 years (or any shorter intervals specified in the order).
- (2) An application does not have to be made under this section if the offender has already been placed on a new detention order.



Detention Order

Under the Serious Sex Offenders (Detention and Supervision) Act 2009, eligible offenders can also be placed on a **detention order**, which means that they **remain in custody** for a period of up to 3 years.

Section 39 – Commencement of detention order



(1) If (at the time a detention order is made) the offender is serving a custodial sentence, the order commences on the day on which he or she completes the original custodial sentence (or any consecutive custodial sentence).

(2) If (at the time a detention order is made) the offender is *not* serving a custodial sentence, the order will

commence on the commencement date specified in the order.

Section 40 – Period of detention order

(1) Unless it is revoked earlier, the period of a detention order is the period (not exceeding 3 years) determined by the Supreme Court and specified in the order.

(2) If an offender is subject to a detention order and is also sentenced to a community-based disposition, the community-based disposition commences on the expiry of the detention order.

Section 42 – Effect of detention order

The effect of a detention order is to commit the offender to detention in a prison for the period of the order.

An application for a detention order can be made by the Director of Public Prosecutions, if he or she is satisfied that the order should be made. The application for a detention order can **only** be made to the Supreme Court.

Section 33 – Director of Public Prosecutions may apply for a detention order

(1) This section applies if the Director of Public Prosecutions has determined that an application should be made for a detention order.

(2) The Director of Public Prosecutions must apply to the Supreme Court to make a detention order.

The application must be accompanied by at least one assessment report by a ‘medical expert’ (identified in the Act as psychiatrist, a psychologist, or other health service provider). The assessment report should include the following points:

- a) whether or not the offender has a propensity to commit a relevant offence in the future
- b) the pattern or progression of any previous sexual offending behaviour and an indication of the nature of any likelihood of future sexual offending
- c) efforts made by the offender to address his or her sexual offending (e.g. participation in rehabilitation programs or treatment regimes)
- d) the background of the offender (specifically any developmental and social factors relevant to the offending behaviour)
- e) factors that may increase or decrease any identified risks

Once an individual has been placed under a detention order under the Act (2009), they must undergo a review after a set period of time. For those placed on a detention order, there must be a review *no later than 12 months* after the order was imposed, and there must be subsequent reviews *at intervals not exceeding 1 year*. Near the completion of a detention order, the respondent can be placed under another, new order (detention or supervision).



Section 65 – Periodic reviews of supervision orders

The Director of Public Prosecutions must apply to the Supreme Court for review of a detention order—

- (a) no later than 1 year after it was first made; and
- (b) after that, at intervals of no more than 1 year (or any shorter intervals specified in the order).

Legislation and Sentencing Guidelines Training Module

Please note that this module will comprise of the previous module (Legislation Training Module), as well as the following material.

In a few moments (after completing the quiz on the SSO(DS)A 2009), you will be asked to read about a case and make a decision about whether the offender in that case should be subject to a supervision or detention order. It is VERY important that you make that decision according to the legislation you have just read about. Please read the following extract from the Victorian Sentencing Manual, and consider this when you are making your decision.

Importance of Remaining within the Confines of the Law

Preventive sentencing is a complex task. It is probably one the most difficult functions members of the Judiciary are required to perform.

Of all the responsibilities which an Australian judge can be called upon to discharge, probably the heaviest is that of determining the appropriate preventive sentence to be passed upon his fellow citizen.

Because of its complexity, a sentencer is vested with a broad discretion in dealing with offenders. However, the exercise of this discretion is often the subject of public comment, and leads to criticism of perceived disparity in sentences imposed.

The most frequent complaint is that preventive sentences imposed on offenders for the same offence in similar circumstances are not uniform. Uniformity in preventive sentencing is not a realistic objective. Because circumstances pertaining to an offence and an offender are infinitely variable, the implementation of uniform preventive sentences for all instances of the same crime is plainly unjust. Such injustice extends not only to the individual offender, but also to the very community that the sentencing law is designed to protect.

“Just as consistency in punishment - a reflection of the notion of equal justice - is a fundamental element in any rational and fair system of criminal justice ...inconsistency in punishment ...[will] lead to an erosion of public confidence in the integrity of the administration of justice. It is for this reason that the avoidance and elimination of unjustifiable discrepancy in sentencing is a matter of abiding importance to the administration of justice and to the community.”

Mason J (as he then was) in *Lowe* (1984) 154 CLR 606



Preventive sentencing is not a mechanical process. It requires the exercise of discretion. There is no single 'right' answer which can be determined by the application of principle. Different minds will attribute different weight to various facts, which takes account of the various purposes for which preventive sentences are imposed - protection of the community and rehabilitation of the offender.



When considering the application for a supervision order or a detention order, the Judiciary must primarily rely on the guidelines set out within the Act (*Serious Sex Offenders (Detentions and Supervision) Act 2009*), and the purposes of the Act. Of crucial importance, **the reasoning behind whether to impose a preventive order on an offender must lie within the guidelines set out in the Act, and**

not be influenced by personal attitudes or public commentary.

“No Training” Module

You are about to read through a “training module”, in which you will be taught about courtroom etiquette. It will take you about 20 minutes to read through the module, and at the end of the training, you should have a good understanding of courtroom etiquette.

Please pay careful attention to the material you are about to read. After the module, you will complete a quiz about the content of the module, and you will need to answer all of the questions in that quiz correctly in order to proceed to the next stage of the study today.

Courtroom Etiquette

Etiquette is essential for making a good impression. This is especially true for the courtroom advocate (lawyer) and attendees.

Many etiquette mistakes involve mannerisms, tone, talking, dress, presentation, and electronic devices being used in court. Good manners and proper courtroom etiquette may determine whether a judge has a favourable disposition to your case. Courtroom etiquette is also good ethical conduct.

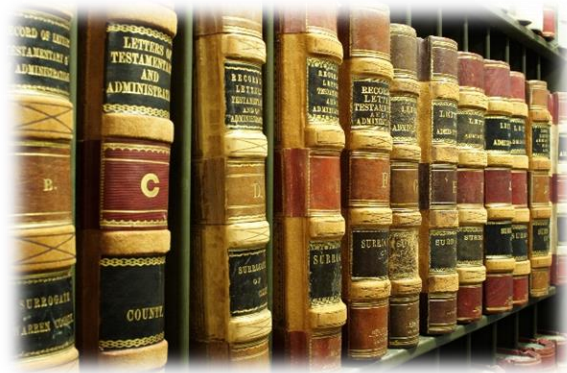
Below are some guidelines about how to behave in and for the courtroom, including the time before you enter the court, when you are addressing the court, when you are in court otherwise, after court, and outside court.

Before Entering

Being prepared for your court appearance and preparation is of utmost importance. This does not just mean knowing your facts and law, but you must also prepare for your actual performance. Take time to plan how you will deliver your case and perform your advocacy.

Be punctual and arrive on time. Timeliness is a basic courtesy. Make sure you arrive well before your hearing time. Have your appearance slips prepared or noted. If you anticipate that you are likely to be late, then get a message to the judge's associate and your opponent. Plan to arrive 15 minutes early. And allow flexibility for possible delays in traffic or taking a wrong turn. Arriving early is much better than arriving late, and a late arrival will be seen as being utterly disrespectful.

Clean and tidy appearance is appropriate, like for most business and formal occasions. Be clean, neat and tidy in your appearance and grooming. Expressions of 'out of the ordinary' individualism via hairstyles, facial hair, make up, piercings and exposed tattoos are less appreciated in the conservative setting of the court. Put simply, appropriate grooming will make you look 'the part'.



Appendix W: Empirical Paper 3 Training Modules

Dress appropriately. Court proceedings are formal occasions. Excepting for the robe, you should dress as the judge dresses. You are holding yourself out as an organised, prepared professional – look the part! Wear clothing that would be appropriate for business.

Barristers may need to be formally robed in certain hearings. Wear them correctly. No hair should be shown at the forehead under wigs. Under garments (pants or skirt) should be dark to match the robes. Robes etc. should be pressed. Never wear dirty or stained jabots and bibs. Old and tattered robes do not display wisdom, but rather, a shabby advocate. Ill-fitting robes should be tossed and replaced.



For applications and solicitors' attire - While it is not strictly necessary to wear a suit (especially for women), you should always wear a jacket. Colours should be conservative, and generally subdued. Court is not a fashion parade and bright colours and patterns can be distracting for the judge. Short sleeved shirts or blouses, stringy or strapless tops, and loose ties are a definite “No No”. You should remove your sunglasses and/or hat before entering the court. That is, remove them completely – don't rest sunglasses on your head.

Turn off mobile phones and electronic devices before entering the courtroom. At least switch phones and electronic devices to silent mode. Remember vibrations can be audible and annoying, especially when the phone or device is resting on the bar table.

No eating or chewing. Gum chewing, lollies (even cough lozenges or mints), medication, food, beverages, or newspapers are NOT allowed. If you require a throat soother or medication, seek permission from the judge first.

Provide an order of witnesses and glossary of terms. Give the associate a list of the full names of the witnesses and any technical terms that may be used by (expert) witnesses. Spelling out names and terms will disrupt the flow of evidence and may annoy or distract the judge.

Be honourable, candid and trustworthy when dealing with your opponent. You will rapidly and deservingly gain a poor reputation if you say one thing to your opponent out of court, but do or say something different in court.

Entering Court

Be silent on entering. If there is a hearing in progress, those parties are entitled to have the judge's full attention without distraction by your bustling entry. Besides, the courtroom is likely to be 'live' and any remark you make will be digitally recorded.

Bow respectfully. If the judge is already in the court when you enter, stop and bow respectfully to the judge from the doorway of the court before proceeding to your seat. The bow is by a respectful and measured nod of your head (and shoulders). It is neither amusing nor respectful to bow too low and deep, or too quick and shallow.

While you are waiting, you can sit in the public seating area at the back of the courtroom. Reduce conversation to the bare minimum, speaking quietly and only when necessary. Joking, sniggering, laughing, gesticulating, facial reactions etc. must be avoided at all cost. The judge can see and hear you! Go outside the court if you need to talk, etc.

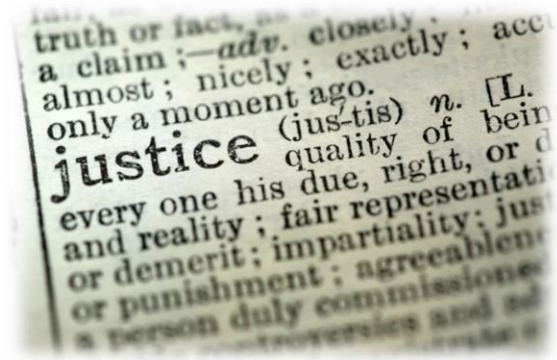


Move directly and quickly to the bar table when your case is called and sit at the bar table in order of seniority from right to left.

Seniority will generally be determined by the advocate's date of admission, but remember Queen's Counsel/Senior Counsel are more senior than junior Barristers, who have seniority of Solicitors, who have seniority of clerks and self-represented parties. Representatives of the Crown (e.g., Director of Public Prosecutions, the Attorney General or Solicitor General) trump all, and are entitled to the most senior place at the bar table.

Addressing the Court

The judge is the main focal point. The judge not only represents the ultimate authority in the court, but also the law. Rise immediately when the judge enters and leaves the courtroom, remain absolutely silent, with complete attention until the judge take his/her place. Bow to the judge and do not sit down until the judge is seated.



Announce your appearance in a clear and respectfully loud voice, and in accordance with the court protocol. For example: A barrister might say: “May it please the court, my name is [surname] initials [say your initials], of counsel, I appear for the [party] instructed by [instructing solicitor] solicitors.”

A solicitor might say: “May it please the court, my name is [surname] initials [say your initials], solicitor of [practice name] and I appear for the [party].” Avoid familiar introductions like “Good morning Your Honour ...”.

Address the judge politely and respectfully as “Your Honour”, for example, on “Your Honour ordered that ...”. Never address the court in second person, i.e. “As You said a moment ago ...”. You should frame any request or question to the judge indirectly.



For example:

(a) Being aware of the judge’s preferred time for breaks and luncheon adjournment, you may ask: Is that a convenient time, your Honour?”.

(b) Directing the judge to a page of the transcript or bundle of documents, you may ask: “Might I invite your Honour to turn to document 45 of the bundle of documents, and then to page 20 of that document?”.

Appendix W: Empirical Paper 3 Training Modules

Remain respectful and courteous to the judge at all times, even if you feel unfairly victimized or you disagree with the judge's ruling on an objection or motion. Once a ruling or order has been made, it should be accepted respectfully and graciously. It is rude and discourteous to vocalise or act out some form of discontent, anger or disagreement with the ruling, for example – swearing or remarking under your breath, banging the bar table, packing up loudly, or shoving the chair. Don't continue any argument when the case is over. Once the issue or case has been determined, you do not have a right of rebuttal or 'second bite of the cherry'.



Present your argument to the judge, but never ever argue with the judge. There is a significant difference. You are there to advance a proposition and develop or argue your point by way of submissions in support of that proposition accurately, concisely and courteously.

Make submissions but don't talk at, or be rude to, the judge. Not one of us, especially judges, react well to rudeness.

Forms of rudeness include: using a raised voice or aggressive tone, arrogance in stand, tone and delivery, being inconsiderate, insensitive, deliberately offensive, impolite, using obscenity or profanity, violating taboos, and deviance.

In some cases, an act of rudeness can amount to criminal or contemptuous behaviour. No judge likes being told what to do or think about the case, but judges are receptive to being guided about how to think about the case. Avoid catchphrases like – “I hear what Your Honour is saying” which conveys to the court that you disagree, and you will press on regardless. Or commencing “With respect ...” which forewarns that you are about to be disrespectful and insulting to the judge. Judges hate it.

Appendix W: Empirical Paper 3 Training Modules

Use an appropriate oratory tone, pace and volume. The tone and volume of your voice may be perceived as disrespectful if you fail to conform to the court convention and etiquette vis-à-vis communication with the judge, or witnesses. Don't speak too rapidly. Your speech will become blurred and indistinct at above 200 words per minute. Practice in front of a mirror, or record yourself by video or do an audio recording.

Self-review your oratory skills, for example:

Are you too soft and quiet, or too loud? Are you talking too quickly? Or frustratingly slow? Or in a dull and boring monotone? Are you too melodic (you are not in an opera)? Or do you have appropriate fluctuation? Do you pause enough and at the right places? Are you pronouncing words correctly and clearly? Are you too 'whingy whiny'?

Annotate your notes to prompt you to “slow down” or “speak up”. No need to be theatrical. The judge is not interested in an academy winning acting performance that may (but usually doesn't) impress a client or a jury.

Make submissions, do not proffer your opinion or comment. You may preface a submission with “I submit ...” or “It is my submission that ...” or “I respectfully submit etc ...” but never use “I think ...” or “In my view ...”. There is no royal “we” in court. Unless you are Senior Counsel or Queen’s Counsel, it is inappropriate to say “we” as a reference to your team or firm. The court is not interested, and may be insulted, if you purport to impose your personal view rather than make an appropriate submission.



Know and be confident using court terminology. Improper use of court terminology will expose you as either inexperienced, clumsy or flippant. Never seek permission to tender an admissible document saying: “I seek to tender ...” Rather, when you are entitled to tender (subject to objections), then say “I tender...”. When referring to a case, you should do so carefully and precisely, saying the case name and its citation. Whenever citing cases, always refer to the authorised reports where available. When referring to a judge in a case, do so respectfully and properly.



Forewarn the bailiff and court officer about the preferred declaration of your witness. Know whether your witness prefers an oath or affirmation or some other religious declaration.

Use good, plain English. In Australia we are trilingual. We speak slang, formal English (taught in schools), and the Queen’s English. You should communicate with the court using formal English. Educate yourself in written and oral communication in plain English.

Never use a long word where a short one will do.

Never use a complex and long-winded sentence structure when simplicity makes the point. Never use an unusual, scientific word or jargon when an ordinary everyday word or phrase will do. Avoid unnecessary length in written submissions. There is no need to reproduce quotations from documentary evidence, transcripts and judgments. An accurate reference to the source will suffice. Use headings, sub-headings, page and paragraph numbers, and good grammar. The aim is to be clearly understood, not to appear aristocratically clever or learned.

Be yourself, be at ease, but always proper. You can set the tone for a calm, polite, and credible exchange with the court, which may calm an agitated or busy judge. This is not a license to be a slouch or slothful advocate. Also, do not put on a pompous 'plum in the mouth' act. You will come across as being arrogant, fake and inexperienced. If you are prepared, calm and confident, the judge will most likely reflect your behaviour (subject to the merits of your case and behaviour of your client).

Stand with good posture behind the lectern. Never rest a knee or foot on the chair, and never drape yourself over the lectern. Use minimal and appropriate hand gestures. And keep your hands out of pockets. Stand still, do not leave the bar table, and never approach a witness or the judge without permission (e.g. to hand over a document in the absence of a court officer). Lose the theatrics.

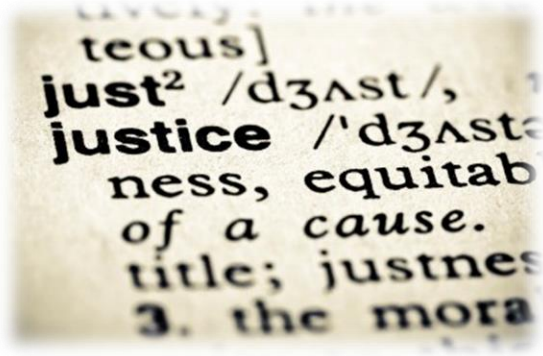
Cross examine fairly, effectively and properly. Cross examination is a natural and learned art. The most effective cross examination techniques are often surgical and calm. Know your obligations as a cross examiner. Know when to STOP ... and sit down, resist asking the one question too many. Leave the point for submissions.



Be familiar with court technology required. Check the DVD player is working and ready, in consultation with the court officer and judge's associate. If you are calling telephone or video evidence, ensure the court officer knows the contact details and the mode of affirmation. At the other end, ensure the witness is ready with an operational telephone or video link, and form of affirmation, or a bible.

In Court

Observe courteous and orderly behaviour. The judge has a bird's eye view of the court, and can see and hear mostly everything happening in the courtroom. You should yourself, and you should admonish clients and witnesses to, never show any overt reaction to anything said or done in the courtroom. Facial expressions and body language must be kept in check.



A witness is entitled to be sworn to give evidence in absolute silence. Likewise, the delivery of judgment or taking of a verdict, commands absolute silence. Do not move about or leave the courtroom when judgment is being delivered or reasons are given. Nodding or shaking your head, talking to others, reading, or otherwise distracting yourself or others is a grave discourtesy. If a witness is lying through his teeth, you will get your

opportunity to present the truth later.

Sit up straight with good posture. Do not slouch, rock or lounge at the bar table. There is nothing impressive about looking disinterested, lazy and recalcitrant.

Appendix W: Empirical Paper 3 Training Modules

When your opponent is addressing the court, when s/he has the floor, s/he is entitled to be fully and fairly heard. No side remarks, do not interrupt, and do not object unnecessarily. Give your opponent the respect and courtesy that you wish to be accorded.

Avoid disparaging remarks and acrimony toward counsel, and discourage ill will between the litigants. Counsel must abstain from unnecessary references to opposing counsel, especially peculiarities.

Move papers and take notes quietly. It is acceptable to take notes when another is talking. But be judicious with your notes, you do not need to record every word like a transcription service and become noisy and exasperated while attempting to do so. Further, noisy paper flipping and movement of books etc. at the bar table is discourteous and will display an affront to the judge, witness and your opponent. It is rude.

Remain in attendance until excused. The bar table must never be left unoccupied during the hearing of a court list. You should remain at the bar table until excused by the judge, or until the next matter is called, or until the court adjourns.

Don't pass notes, whisper or sleeve tug on counsel. Work this out in advance. It distracts the examiner. It distracts the judge. It gives the appearance that you lack confidence in the examiner.



Stand promptly when making an evidentiary objection. This will draw the court's attention to you, prompts your opponent to sit, and alert the witness to stop. But do not object unless it really matters.

Never ever pack up before the case is finished, especially during the judge's final words, ruling or ex tempore decision. Give the judge the respectful attention deserving of the office. There is plenty of time to pack up your books and papers after the case is finished. But then, do so quickly, quietly and efficiently so the next matter can proceed without undue delay and noise.

Training Module Quiz

Note: - Participants will be presented with one question at a time.

- Participants will need to correctly answer the question before they are presented with the next question.

Video clip feedback script

Each question will be followed with a brief video clip. The presented video clip will be dependent on whether the participant answered the question correctly or incorrectly.

Correct Response:

“Well done. You correctly answered the question, please proceed to the next question.”

Incorrect response:

“Unfortunately you answered this question incorrectly. You will now be presented with the relevant extract of the training module. Please read through the material and try again.”

Note:

*- The participant will be given three trials to answer the question correctly. If all three trials are incorrectly answered, the participant will see the following message in the video clip:
“Unfortunately you have answered this question incorrectly three times. Let’s move on to the next question.”*

Background

Serious Sex Offenders (Detention and Supervision) Act 2009

Victorian (Aus) law provides that an individual who is charged with a sexual offence can be subject to ongoing supervision or detention at the conclusion of their original sentence. This occurs when the individual is deemed to be an ‘unacceptable risk to society’ should they be released back into the community at the conclusion of their sentence.

Under the Serious Sex Offenders (Detention and Supervision) Act 2009, eligible offenders can be placed on a **supervision order** (which means that they are released into the community but are subject to certain conditions to restrict and/or monitor them, such as: not being present at any place, as directed by the Adult Parole Board; not leaving the state of Victoria; abiding by a curfew; abstaining from alcohol; or attending treatment/rehabilitation programs, for a period of up to 15 years. They may also be placed on an ongoing **detention order** (i.e. an additional prison term) of up to 3 years.

Once an individual is subject to an order under the Act (2009), they must undergo a review after a set period of time. For those placed on a supervision order, there must be a review no later than 3 years after the order was imposed, and there must be subsequent reviews at intervals not exceeding 3 years. For those subject to a detention order there must be a review no later than 1 year after the order was imposed, and there must be subsequent reviews at intervals not exceeding 1 year. It is noted that near the completion of an order under the Act (2009), the respondent can be subject to another application for an order (detention or supervision).

The main purpose of this legislation is to allow for the protection of the community, as well as achieving other goals of offender rehabilitation.

We will now ask you to read a case description, summarising the circumstances of an offender (Henderson) who is about to reach the end of his original prison term. The Director of Public Prosecutions has filed an application to the Supreme Court seeking a period of ongoing detention/supervision. A court will now decide whether this offender should be subject to further supervision and/or detention.

As you read the following case description, please imagine that you are a judge who will make a decision about whether a supervision or detention order is warranted.

History – Larry Henderson

The respondent holds an elaborate history of repeated child sexual molestation and abuse, beginning when he exposed his genitals to two young girls. At that time, he pleaded guilty to indecent exposure. In relation to a later incident, he was convicted of lewdness involving a young girl and received a brief jail sentence. A few months later he molested two young boys while he worked for a carnival. Shortly thereafter, Henderson sexually assaulted another young boy and girl—he performed oral sex on the 8-year-old girl and fondled the 11-year-old boy. He was again imprisoned, but refused to participate in a sex offender treatment program, and thus remained incarcerated until the completion of his sentence. Several months after his release, Henderson was convicted of sexually related crimes with two 13-year-old boys after he attempted to fondle them. As a result of that conviction, he was once again imprisoned, and is currently serving that sentence. In two months, he will reach his conditional release date, having not been eligible for parole until this date.

Prior Punishment Manipulation

Low Punishment

Victorian law stipulates that for sexual crimes of this nature, against a child (i.e. under the age of 16 years), the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 5 years in a minimum security prison. Henderson, like other inmates in this facility, is comfortably housed, with full access to sports, movies, libraries and visitors.

High Punishment

Victorian law stipulates that for sexual crimes of this nature, against a child (i.e. under the age of 16 years), the courts must assign a term of incarceration within the following guidelines:

Minimum term of imprisonment (without parole) – 5 years

Maximum term of imprisonment – 25 years

For his crimes, Henderson is serving 25 years in a maximum security prison. Henderson, like other inmates in this facility, has been repeatedly confined to a solitary cell, and was admitted to the infirmary on numerous occasions for injuries consistent with having being violently assaulted by other inmates.

Risk of Re-offence Manipulation

4% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **4 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Despite his elaborate offending history, the panel of experts deem that due to Henderson's age, amount of time since his last offence, and numerous other factors, his risk of re-offense is minimal.

70% risk of re-offence

During the application submission by the Director of Public Prosecutions, a panel of four experienced psychiatrists, with expertise on paedophilic recidivism, estimated that upon release, there would be a **70 percent** likelihood that Henderson would offend again if released into the community. Their assessment was based on a wide variety of converging evidence, including his record of participation in several treatment programs during his most recent sentence, clinical observation, the perpetrator's physical condition, age and education, and extensive examination of long-term studies on paedophilic recidivism. Given his elaborate offending history, and his lack of compliance with treatment programs, the panel of experts deem that Henderson's risk of re-offense is high.

Preference for Intuition and Deliberation (PID) scale

Below are 18 statements about the way you think. You will probably find that you agree with some of the statements and disagree with others, to varying extents. Please indicate your reaction to each statement according to the following scale.

Strongly Disagree	Disagree	Neither Agree Nor Disagree	Agree	Strongly Agree
1	2	3	4	5

1. Before making decisions I first think them through
2. I listen carefully to my deepest feelings
3. Before making decisions I usually think about the goals I want to achieve
4. With most decisions, it makes sense to completely rely on your feelings
5. I do not like situations that require me to rely on my intuition*
6. I think about myself
7. I prefer making detailed plans rather than leaving things to chance
8. I prefer drawing conclusions based on my feelings, my knowledge of human nature, and my experience of life
9. My feelings play an important role in my decisions
10. I am a perfectionist
11. I think about a decision particularly carefully if I have to justify it
12. When it comes to trusting people, I can usually rely on my gut feelings
13. When I have a problem I first analyse the facts and details before I decide
14. I think before I act
15. I prefer emotional people
16. I think more about my plans and goals than other people do
17. I am a very intuitive person
18. I like emotional situations, discussions, and movies

* denotes counter-balanced item

Appendix Y: Empirical Paper 3 Questionnaire

Answers are on a scale of 1 (Strongly disagree) to 9 (Strongly agree) except where otherwise indicated.

Please answer the following questions about the trial.

Verdict

Note: If participant selects a certain response (e.g. b), they will be presented with other questions in line with that response (e.g. b i).

Q1. Henderson should be:

- (a) released unconditionally
- (b) released with imposed conditions of a supervision order

(b i) Period of Supervision

3 months

6 months

1 year

3 years

5 years

10 years

15 years

More than 15 years

(c) be made subject to a detention order

(c i) Period of Detention

3 months

6 months

1 year

2 years

3 years

More than 3 years

Outcome Confidence

Q2. I am confident that the order I have determined is the correct one for this case

1-100% in 5 point increments

Manipulation Checks

MC1. (risk of re-offence) Upon release:

- (a) There is 0% chance that Henderson will reoffend.
- (b) There is 4% chance that Henderson will reoffend.
- (c) There is 70% chance that Henderson will reoffend.

MC2. (prior punishment) The punishment assigned (Henderson's current sentence) was:

- (a) a 5 year sentence in a minimum security prison
- (b) a 25 year sentence in a maximum security prison

MC3. The likelihood of Henderson reoffending is:

1(Very unlikely) - 9 (Very likely)

MC4. Henderson's original sentence was sufficient.

1(Very unlikely) - 9 (Very likely)

Attention Checks

AC1. Henderson is a:

- (a) Thief.
- (b) Sex Offender
- (c) Murderer.

AC2. Henderson is subject to the:

- (a) Road Safety Act 1986
- (b) Building (Amendment) Act 2004
- (c) Serious Sex Offenders (Detention and Supervision) Act 2009

Dependent Variables and Mediators

Procedural Fairness

Q13. Henderson has been treated fairly in the process

Q3. The review process that Henderson was subject to was fair

Q34. The manner in which Henderson was treated during this review process was unfair

Procedural Satisfaction

Q26. I am satisfied with the manner in which Henderson was treated during the review process

Q16. I am satisfied with the treatment of Henderson in the review process

Q32. I am satisfied with the manner in which the review process was conducted

Outcome Fairness

Q35. This outcome of this review is fair

Q33. My sentencing recommendation is fair

Q10. This review has produced an unfair outcome

Outcome Satisfaction

Q40. I am satisfied with the outcome of Henderson' sentence review

Q4. I am pleased with the outcome that has resulted from this review:

Q14. I am unhappy with the sentencing recommendation that has resulted from this review.

Deservingness (Process)

Q25. In my review, I treated the defendant the way he deserved to be treated

Q38. Henderson deserves better treatment than I gave him

Q23. Henderson received the treatment he deserved during the sentence review

Deservingness (Outcome)

Q36. In my review, I gave the defendant the outcome he deserved

Q30. Henderson deserves the outcome I gave him

Q18. Henderson received the outcome he deserved, as a result of the sentence review

Deservingness (Process_Deserved)

Q39. Henderson deserves to be treated respectfully

Q20. Henderson deserves disrespectful treatment

Q37. Henderson deserves to present his version of events during the review process

Deservingness (Outcome_Deserved)

Q24. Henderson deserves a harsh outcome

Q29. Henderson deserves a lenient outcome

Q21. Henderson deserves a severe sanction

Threat

Q19. If Henderson is released, this would represent a threat to the welfare of the community

Q11. Releasing Henderson poses a threat to other people in the community

Q31. Henderson poses a serious threat to the members of the community:

Q28. If a supervision order is imposed on Henderson, the members of my community would be safer

Q7. If a detention order is imposed on Henderson, the members of my community would be safer

Emotion Scale

Select the number that best describes the GREATEST amount of this emotion that you felt at any time during this study.

On this scale, 1 means that you did not feel even the slightest bit of this emotion, and 9 is the most you have ever felt of this emotion in your life.

Select the number that best describes the greatest amount of emotion you felt at any time during this study. On this scale, 1 means you did not feel even the slightest bit of emotion and 9 is the most you have ever felt in your life.

- ☐ () Amusement
- ☐ () Anger
- ☐ () Arousal
- ☐ () Confusion
- ☐ () Contempt
- ☐ () Contentment
- ☐ () Disgust
- ☐ () Embarrassment
- ☐ () Fear
- ☐ () Happiness
- ☐ () Hopelessness
- ☐ () Interest
- ☐ () Pain
- ☐ () Relief
- ☐ () Sadness
- ☐ () Surprise
- ☐ () Tension