行政院國家科學委員會專題研究計畫 期末報告

性犯罪量刑準據資料庫之設置

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公 開 資 訊 ：本計畫涉及專利或其他智慧財產權，2 年後可公開查詢

中 華 民 國 102 年 09 月 28 日

中文摘要： 本研究主要延伸先前國科會研究，並針對 DSM-IV 與刑事法上所聚焦之強制性交、強制猥褻與非營利公然猥褻等三種樣態等進行量刑準據系統之規劃。本研究採二年期計畫，主要以法學文獻探討與社會科學實證方式進行分析，並根據目前司法院僅有性侵害系統增設以上三種樣態之量刑準據資訊系統。本研究所達成之目的有三：其一、改善我國現有性侵害量刑系統僅有性侵害單一類型之量刑；其二、使得性犯罪量刑更為精確，並輔助法官量刑；其三、為我國本土性犯罪量刑準據開拓最新之系統。希冀由科技系統之設置，為我國刑事量刑得致一個精確性之結果，解決目前量刑所發生之問題。

中文關鍵詞： 性犯罪、量刑、資訊系統

英文摘要： This project extends our former study, focusing on the proper penalty measurement for rape, coercive indecency, and non-profit public indecency, all of which are stipulated in DSM-IV and Criminal Law. This two-year project adopts empirical research method and documentary analysis, seeking to add the above penalty measurement to the sex assault system of Judicial Yuan. This project aims to (1) avoid the traditional way of basing sex-crime-related penalty measurement upon only one mode of crime；(2) give more proper sex crime penalty measurement and make judge measurement relevant；(3) give a tech-system for sex crime penalty measurement.

英文關鍵詞： sexual offense, penalty measurement, information system

行政院國家科學委員會補助專題研究計畫　□期中進度報告
■期末報告

計畫名稱：性犯罪量刑準據資料庫之設置

計畫類別：■個別型計畫　　□整合型計畫
計畫編號：NSC 101-2629-H-194-002
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計畫主持人：陳慈幸
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中　華　民　國　１０２　年　７　月　１７　日

國 科 會 補 助 專 題 研 究 計 畫 成 果 報 告 自 評 表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現或其他有關價值等，作一綜合評估。

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1. 請就研究內容與原計畫相符程度、達成預期目標情況作一綜合評估

■達成目標

☐ 未達成目標（請說明，以 100 字為限）

　　☐ 實驗失敗

　　☐ 因故實驗中斷

　　☐ 其他原因

說明：

　　本研究預計完成之項目包括：其一、以官方文件為分析架構，並實際以檢察官與法官之深度訪談等實證方法探測檢察官與法官的個人特性、認知、性別等因素對性倒錯刑事處分之評量並實際研擬性犯罪量刑系統；其二、建置我國本土之性犯罪量刑系統以改良現階段僅有性侵害犯罪量刑系統之憾缺；其三、開創我國本土之性犯罪資料庫,並實際聯結國外性犯罪資料,以供我國法律實務參考；其四、提出結論。

　　而就實際研究內容發現，為平均化各法官因情感因素或其他可能影響判決之因素造成的裁決差異，台灣司法院目前雖有提供開放判決查詢系統，但僅提供法官、檢察官使用，並無針對台灣 2012 年起將進行人民觀審制而開放給一般民眾使用。由於，觀審員是一群對於法律認知與學習狀況不一致之民眾，若有量刑系統輔助其參與審判，將會使觀審員之法律認知，達致一個較為穩定之狀況。

　　因此，本研究符合計畫目標，主要為開發法官與觀審員之性侵犯量刑系統，此部量刑系統主要特點將傳統司法院量刑系統進行改良與修正，並有以下特點：

其一、提供法官與觀審員兩種不同權限之量刑準據系統。

其二、法官之量刑系統部分，主要是參考歷年類似案例的判決結果並加入創新的量刑評定加權計分以改善目前司法院量刑系統的準確度。

其三、觀審員之權限，將以簡潔易懂之系統介面呈現，其存在的主要目的為讓觀審員監督法官，使其能給予公正無離群誤差的判決建議，因此本研究除提供量刑準據算定外，也利用給予觀審員不同案件類型的專業建議，來達到法官審判的全面性。

2. 研究成果在學術期刊發表或申請專利等情形：

論文：■已發表 □未發表之文稿 □撰寫中 □無

專利：□已獲得 □申請中 ■無

技轉：□已技轉 □洽談中 ■無

其他：（以 100 字為限）

1) Cathy T. H. Chen（2012 年 12 月），「Q-GO: a Judge and Jury for the Sexual Assault Sentencing System」，2nd. International Conference on Applied and Theoretical Information Systems Research, December 27-29, 2012, Taipei, Taiwan.（有嚴格雙審制）。國科會補助：101-2629-H-194-002-、101-2410-H-194-048-MY2。

2) 陳慈幸（2013 年 5 月 25、26 日），性侵害犯罪量刑決策支援系統之建置，第 24 屆國際資訊管理學術研討會。國科會補助：101-2629-H-194-002-、101-2410-H-194-048-MY2。

3) 陳慈幸（2013 年 10 月預定），A Decision Support System for Sex-Crime Sentencing，資訊管理學報，頁碼未定。國科會補助：101-2629-H-194-002-。

4) 陳慈幸（審查中），A Multi-factor Decision Support System for Sentencing in Sexual Assault Cases in Taiwan，管理學報，頁碼未定。國科會補助：101-2629-H-194-002-。

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3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）（以 500 字為限）

　　台灣目前司法判決權皆至於法官手中，然而，法官雖擁有專業的法律知識，但有時卻因此而受限於法，當處理的案件未有相符之法條可作審判時，法官可能因此以無罪釋放來當作最終裁決，但此判決卻可能不是最佳的裁決，考慮到以上的狀況，未來台灣可能走向陪審制度，而本研究希冀能藉由開發觀審準據系統，提供較不具法律知識的一般民眾相關準據，以供未來陪審制度參考使用。

　　另一方面，本研究也希望能藉由提供司法官類似案件的歷年判刑準據(如:平均判決刑期區間、罰金區間等)，以平均化各法官因情感因素或其他可能影響判決之因素造成的裁決差異。其以法官觀點與觀審員觀點提供具專業字彙差異的查詢界面，而在另一方面，也提供不同需求的查詢結果，如針對法官將提供平均(與分配區間)判決刑期、罰金、判決條例等可輔助判決之準據，而觀審員除了上述之數據外將提供更多資訊，如相關法條內容、案件專業建議、歷年類似案例判決資料等，並希冀能藉由此類資訊，增加觀審員素質。

　　由於本研究以實證研究為基礎，因此主要的貢獻在於提供實務界具體個案審判之依據。將實證研究得出之結果結合概念解釋與社會背景，形成具有比較法特色之運用與解釋境。對概念與制度形成清晰、有體系之解釋方向，進而提供下一波條文立法、修法之參考。

一、 前言

The Judicial Yuan of Taiwan currently provides an open judgment information system to balance possible discrepancies in the rulings of judges because of their emotions or other factors [1]. This system is available for judges and prosecutors, but not to the public [3] despite the implementation of the jury system in [5] in Taiwan in 2012. Because juries are comprised of citizens with differing legal cognitions and backgrounds, a sentencing system that supplements the jury's participation in trials would stabilize the legal cognition of jurors. Therefore, the goal of this study was to develop a sentencing system for sexual assault cases for judges and juries to improve and remedy the traditional sentencing system established by the Judicial Yuan. The proposed system comprised the following traits:

1. It provides a sentencing guideline system with two authorization levels for judges and juries.

2. By referencing the verdict of similar cases and incorporating an innovative weighted scoring system for sentencing assessment, an accuracy-enhanced sentencing system can be provided for judges compared to the system established by the Judicial Yuan3. The juror's extent of authorization is presented using a concise and easy-to-understand system interface. This authorization interface allows jurors to monitor judges and provide judgment recommendations that do not differ from precedents. Therefore, this system not only provides jurors with calculated sentencing guidelines, but also professional recommendations from different case types to ensure the comprehensiveness of judge rulings.

二、 研究目的

With changing social conditions and advancements in technologies, people can acquire extensive critical information using information technologies. In recent years, Taiwan's newspapers and magazines have often reported cases involving sexual assault where the defendant typically received an excessively lenient sentence (or defendants who were acquitted, further inducing public controversy). Although the Judicial Yuan of Taiwan has an open judgment information system [1], the system is primarily used to reference verdicts and does not benefit the average person who is not accustomed to legal jargon. In addition, although the Judicial Yuan has established a sentencing system, the system is only available to judges and prosecutors, but not the public [3].

Since Taiwan implemented a jury system in 2012 [5], public involvement in the trial process is expected to generate a surge of innovation to Taiwan's judiciary system. However, because juries comprise citizens with differing legal cognitions and backgrounds, a sentencing system that supplements the jury's participation in the trial would stabilize the legal cognition of the jurors.

This study established an objective and fair guideline information system to improve the current domestic online system and facilitates its development into a critical foundation for judge rulings. This demonstrates the importance and motivations of this study.

First, regarding the critical keywords, we first defined "sexual assault" as any offense against sexual autonomy, as specified in Articles 221 to 229 of the Penal Code.

Regarding the other keyword of this study, "sentencing guidelines" refers to the sexual assault sentencing information system implemented in Taiwan in August 2011 [3]. By aggregating the theoretical information, we found that the system has the following main features:

1. The sentencing guidelines provided are only for sexual assault cases.

2. The system was designed by referencing a comparative study based on the sentencing guidelines for offenses against sexual autonomy used in the United Kingdom, the United States, Australia, and Hong Kong.

3. The system does not distinguish between the types of sexual assaults, such as whether pedophilic disorders should be codified to include sexual assaults committed by paraphilia patients with or without pedophilic disorders [6].

Based on the preceding summary, we found that only one type of sexual assault has been specified in the domestic sentencing guideline system, which is used by judges for sentencing calculations during sexual assault cases. However, this system has the following characteristics and problems:

1. The system is only available to judges and prosecutors.

2. The content of information queries is too complex, causing slow guideline calculations and affecting the accuracy of the results.

3. The system does not provide a suitable interface for citizen jurors that is simple to operate during the sentencing stage of sexual assault trials. This prevents jurors from attaining appropriate knowledge and, thus, obstructs them from providing judgment recommendations during trials.

Therefore, we developed a sentencing system for sexual assault cases that comprises the following characteristics to enable judges and juries to improve and remedy the traditional sentencing system established by the Judicial Yuan:

1. A sentencing calculation systems with two interfaces for judges and juries.

2. By referencing the verdict of similar cases and incorporating an innovative weighted scoring system for sentencing assessment, an accuracy-enhanced sentencing system can be provided for judges compared to the system established by the Judicial Yuan.

3. The juror's extent of authorization is presented using a concise and easy-to-understand system interface. This authorization interface allows jurors to monitor judges and provide judgment recommendations that do not differ from precedents. Therefore, this system not only provides jurors with calculated sentencing guidelines, but also professional recommendations from different case types to ensure the comprehensiveness of judge rulings.

三、 文獻探討

Regarding the research conditions proposed in this study, the Judicial Yuan of Taiwan has established a sexual assault sentencing information system. The goal of this study is to create a system that extends beyond the single sexual assault type mentioned previously. Users can select sentencing factors, such as patterns of criminal behavior, motives, means, the harm and damage experienced by the victims, post-crime attitudes, and whether the parties have reached an agreement, and the system would identify similar judgments, list the maximum, average, and minimum sentences, include sentencing opinions, and provide the full text of the verdict as a reference for sentencing [3].

According to the Judicial Yuan's sexual assault sentencing system, the following opposing views based on practical theories have been proposed:

"Article 81 of the constitution specifies that 'judges shall transcend partisanship and conduct independent trials pursuant to the law and free from interference.'"

Interpretative text numbers 38, 137, and 216 also indicated that "the intent for Article 80 of the constitution is to ensure that independent judged trials are free from interference. 'Pursuant to the law' means that the law is the primary basis for trials; it does not mean that effective rules outside the law, which do not conflict with the constitution or the law, should be rejected. When exercising a county legislative mandate, a county council member shall not restrict the rights and freedom of the people without the constitution or other legal basis." "During trials, judges shall not reject executive orders, fact determination, or foundation serving as a basis of judgment regarding the various agencies' interpretations of relevant laws and regulations. An extensive range and number of executive orders based on regulatory interpretations exist; however, only those that contravene the regulatory intent or conflict with Article 172 of the constitution should be disregarded. Judges shall perform their duties and conduct independent trials pursuant to the law and in accordance with Article 80 of the constitution. Within the scope of their duties, if it is necessary to correctly expound on the disputes regarding the ascertained facts or the applicable law, judges shall provide a fair and impartial opinion of the appropriate legal interpretation." "Article 80 of the constitution clearly provides that judges shall conduct independent trials free from interference. Judges can reference the executive orders of various agencies under the interpretation of the relevant laws and regulations during trials; however, they are not bound by these executive orders and shall follow the law to issue appropriate opinions. This is the intent as interpreted in interpretative text number 137 of this court."

The "sentencing information system" is not a law; instead, it is merely a reference tool that is not binding for judges.

"Article 57 of the Penal Code also states that 'sentences shall be pronounced based on the culpability of the perpetrators and the consideration of all circumstances. The following items

shall be deemed the standard for determining the severity of sentences: (1) the motive and objective of the crime; (2) the stimulus of the crime; (3) the means of the crime; (4) the living conditions of the perpetrators; (5) the conduct of the perpetrators; (6) the education level of the perpetrators; (7) the relationships between the perpetrators and the victims; (8) the perpetrators' degree of obligation violation; (9) the danger or damage resulting from the crime; and (10) the perpetrators' attitude after the crime.' The Supreme Court's 1961 sentencing rule No. 1131 also provided that 'the prisoner's criminal situation shall be considered during the measurement of penalty, and general social matters can be referenced but shall not serve as the only consideration standard for determining the severity of sentences.' Regardless of how comprehensive a 'sentencing information system' is, it cannot provide consideration for all circumstances. Whether an inappropriate judgment determined by the system is an 'inappropriate judgment' remains debatable [7]."

Regarding the Judicial Yuan's sexual assault sentencing information system, the following figures are provided for reference:
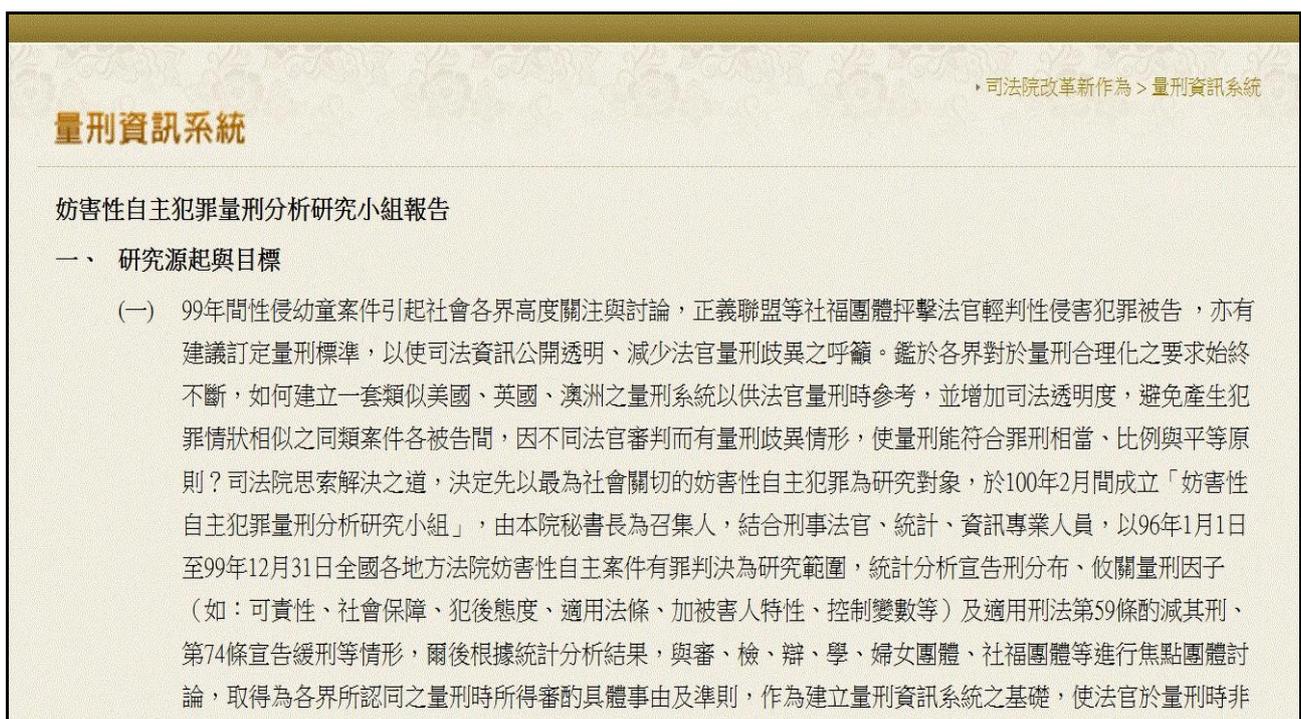

Figure 1.　Taiwan's Database for Empirical Legal Studies [2].

Figure 2.   The Judical Yuan's Sexual Assault Sentencing Information System [3].

According to these contradictory views, general legal opinion is based on the concept that judges shall conduct independent trials. However, incessant requests in favor of sentencing rationalization continue in all fields. The goal is to establish a sentencing system similar to that in the U.S., U.K., and Australia to provide a reference for judges during sentencing, increase judicial transparency to prevent cases where similar criminal circumstances receive incongruous sentences from different judges, and enable the sentencing system to achieve congruous, proportional, and equitable principles [3].

Although the Taiwanese legal system adopts the independent trial principle, according to the results of the National Science Council's plan mentioned previously, domestic sentencing are extremely inconsistent for sex crimes, especially public indecency. The sentences range from 6 months incarceration to compulsory treatment. This problem may not exist for forced intercourse or compulsory indecency crimes. However, the extreme sentencing inconsistencies for public indecency crimes may prevent perpetrators with high recidivate risks from receiving compulsory treatment, thereby resulting in recidivism. In addition, even for people convicted of forced intercourse or compulsory indecency who received sentences longer than 6 months, the researcher found, through visits to the National Science Council in the previous year, that significant sentence inconsistencies existed, and no studies had been conducted to determine whether paraphilia may be a cause of these crimes. Thus, this section can serve as a primary reference for the constituent elements of prosecutorial indictments, judge sentences, and moral

convictions based on evidence. However, establishing a related database of the psychological and physiological disorders of sexual crime perpetrators that can assist judges may improve the current discrepancies in sentencing. In addition, this system should be supplementary and should not affect the independence of judged trials.

In addition, literature regarding the establishment of a sentencing database besides the Judicial Yuan's system mentioned previously indicates that no large database exists domestically, only a number of general database compilations are available. Database studies reviewed through theoretical research provide the following perspective: "Scales (databases) are critical tools for social science research, as well as market research, performance evaluations, and organizational development. The topic of scale development and application has received increasing attention in numerous domestic and international academic studies, and increasing resources have been invested in related research. Although scale research has developed domestically and abroad for many years, related compilation Web sites, such as the MIS Survey Instruments, have been developed by foreign countries as a reference… [8]" Therefore, from this perspective, interpretation letter compilation has exceeded the traditional paper information production and printing method, and research data are now stored in databases. Currently, most of Taiwan's major research institutions use databases to compile relevant data and cases.

Regarding international research, an exploration of Japan's general sentencing statute databases showed the following:

Japan's practical data for 2009 indicated that Japanese databases have become an indispensable and critical source of data for practical and theoretical research. The selection and paper compilation of interpretative data is primarily from database Web site platforms. Generally, academic research institutions have been commissioned by practical institutions to successively establish database platforms for interpretative data. In addition to being updatable at any time, these network database platforms enable users to download interpretative information with extreme convenience. Generally, Japanese practical agencies have established network platforms to allow formulaic statistical data to be downloaded. Only statutes and court sentences require the confirmation of expert legal scholars to ensure the impartial nature of the formulaic data [9]. Japan's practical research data also indicated that these interpretative data platforms created by academic institutions possesses academic authority and accuracy and enable practical departments to conduct practical information queries, which is extremely convenient. This is the international trend for collaborative research between practical and academic institutions.

Currently, Japan's Supreme Court has established a sentencing retrieval system, as shown in Fig. 3.
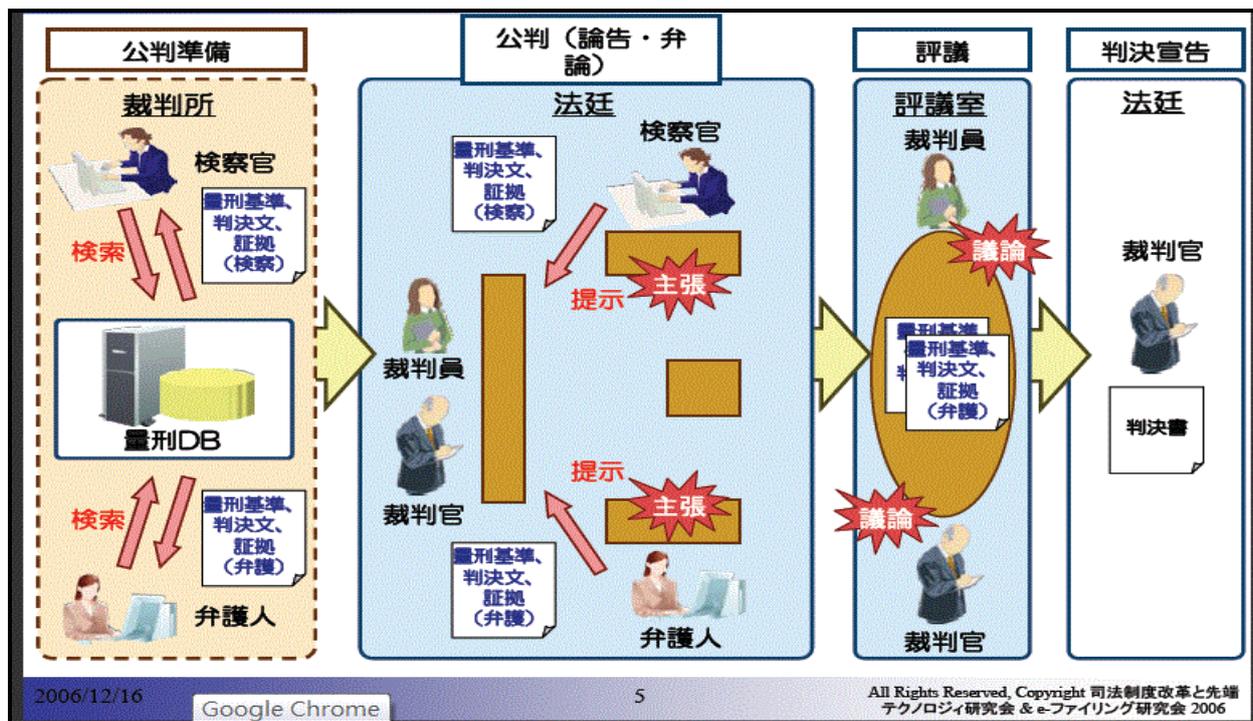
Figure 3. The Supreme Court and Jury Sentencing Retrieval System Developed by Fujitsu of Japan [4]

The Japanese sentencing retrieval system (DB) was established at Japan's Supreme Court. As explained previously, this system can provide sentencing references to prosecutors, the court, defendants, and jurors during public hearing proceedings (preparation stage). In addition to judgment transparency, the main purpose is to achieve fairness in sentencing. Although this system is regarded as the most important practical sentencing retrieval system in Japan, errors in recent years indicate that vigilant inspections are still required when establishing data retrieval systems.

However, a review of the databases for Taiwan and Japan indicated that most sentencings done in these countries are purely calculated through data collection. Subsequently, without a supporting process, calculation errors in sentencing standards could occur. According to the example mentioned in this study, sexual violations in 2006 encountered significant amendment, subsequently effecting sentencing calculations. If these conditions are not calculated and included into the database, the feedback from the database regarding sentencing standards would present errors. In addition, the current sentencing rules consider the cumulative annual judgment statistical calculations. However, the Judicial Yuan has indicated that the reason the public was unsure about sentences for sexual assault crimes was primarily because, during sentencing, the judges did not thoroughly explore psychiatry-related empirical literature regarding causality and accountability. This study created two sentencing guideline standards. In addition to referencing current cumulative judgment calculations, we examined empirical research interviews, and invited psychiatry, law, and philosophy scholars to interpret the elements, causation, and accountability. We also supplemented the findings with psychiatric research literature to calculate

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an alternative sentencing and punishment system. These two punishment methods can prevent the stagnation of traditional judgments during trials, and provide an interpretation reference for more precise punishments. In addition, a database of sexual assault perpetrators' personal information allows database operators to precisely track their sexual assault and treatment course histories to further determine an appropriate sentence. Thus, this study is more precise compared to other recent domestic and foreign studies.

四、 研究方法

In addition to the research methodology, we provide an explanation of the system proposed in this study.

First, the research methodology primarily incorporated a literature analysis of the legal research method. The main research methods were divided into two types based on the research target. The first was the literature analysis method, which mainly involved searching the existing Judicial Yuan-related statute information platform and exploring and classifying the statutes. We referenced related foreign platforms and Japan's practical agencies to analyze and discuss their relatively newer and more comprehensive interpretation databases and published information. We also selected the specific information appropriate for the Department of Health to compile the publication content. The second was to create an electronic database and information system based on the content of the white book described previously.

We used domestic sexual assault-related cases from various courts between 2000 and 2011 as study samples. We first employed the official document content analysis research method to construct the sexual assault criminal sentencing guideline system.

Based on the research objective described previously, we explored the factors that influence criminal sanctions sexual assault and established a sentencing guideline system regarding forced intercourse offenses for Taiwan. The three study methods were as follows:

Research Method 1: Content analysis of official documents

To explore the characteristic distribution and influencing factors for domestic paraphilia offense sanctions, we analyzed the content of official documents, such as the prosecutorial indictments and district court judge sentencing transcripts from various district courts as samples.

Research Method 2: Constructing a sentencing guideline system and database

To explore the judges' and prosecutors' professional recognition of paraphilia and its effects on paraphilia-related criminal sanctions, we screened relevant cases using the content analysis of official documents, and then designed an interface by recruiting law professionals to simulate the judges and prosecutors and general citizens to simulate jurors. The goal was to obtain data from these "judges, prosecutors, and jurors" regarding the factors that influence their judgments, as well as the professional recognition of and data related to paraphilia.

Actual implementation method: To design a sentencing interface for judges, we used current Taiwanese regulations as the entry point to identify judgment-influencing factors. For example, Article 222 of the Criminal Code of the Republic of China states that offenders convicted of a crime shall receive a determinate sentence of no less than 7 years if any of the following had occurred: (1) the crime was committed by two or more cohorts; (2) the crime was committed against a minor under 14 years of age; (3) the crime was committed against a victim with

psychological or physical impairments, or other mental defects; and (4) the crime was committed using drugs or other chemical agents. Because these legal conditions are likely to become key elements that can affect a case, the judge sentencing interface would provide professional information according to this perspective.

Because the only reference basis for the juror simulation interface participants was court indictments, we used the indictment content as the enquiry factors for the juror interface, and used informal language to reduce the errors resulting from a misunderstanding of the technical terms.

We used possible variables obtained from in-depth interviews and a content analysis of official documents as a basis for developing the guideline system. A flowchart of the sentencing guideline system is shown below.
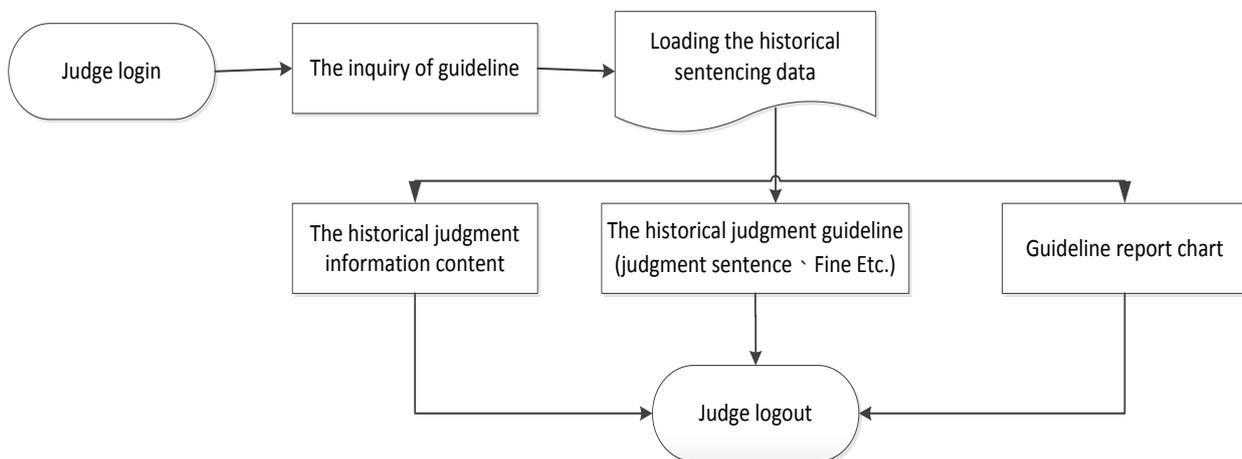

Figure 4.   Flowchart of the prosecutorial guideline system.

The calculation guideline method system for judges primarily used statistical calculations. First, data from different calendar years were divided into various categories. Then, the severity of the offenses was determined and used to determine the confidence interval for the sentencing judgment calculations. Finally, the data were presented with the guideline and chart methods. Additionally, to improve the system's guideline quality, we employed the weighted scoring method to add and subtract weight scores based on varying types, offense circumstances, and the average prison time and fines received over the years. After the final results were calculated, they were compared to the placement range for the average prison time and fines received over the years.
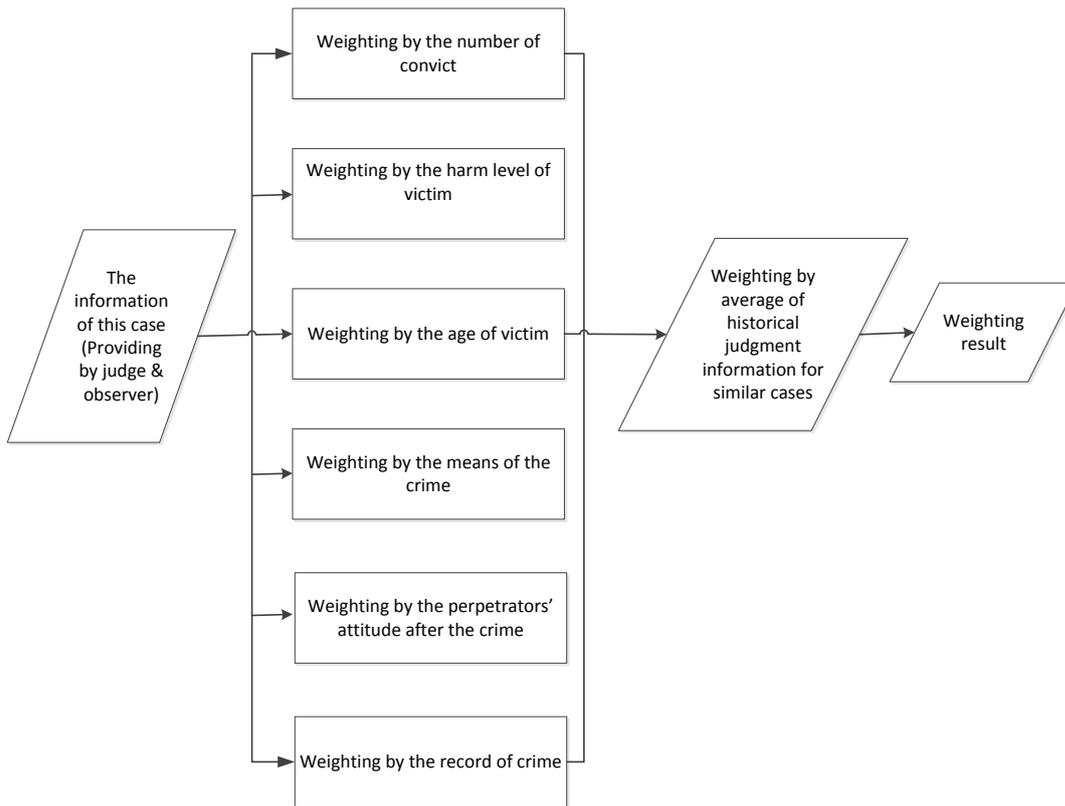
Figure 5. Weighted process flowchart.

The purpose of a jury system is to monitor and ensure judgment impartiality and objectivity. Therefore, in addition to the features described previously, we provided professional advice (such as post-offense counseling recommendations) and established legal terminologies.

The system results are fully described in the Conclusion section.

五、 結果與討論（含結論與建議）

Currently, Taiwan's judicial judgment authority is allocated to judges. However, although judges have professional legal knowledge, they are occasionally limited by the law. When presiding over a case, judges are frequently forced to announce an acquittal as the final ruling if no congruous statues exist to provide a basis for the judgment. However, acquittal judgments cannot possibly be the best rulings. Considering these situations and that Taiwan may adopt a jury system, this study endeavored to develop a jury trial guideline system to provide relevant guidelines for citizens with less legal knowledge, and to serve as a reference for the jury system in the future.

Additionally, by providing the historical sentencing guidelines of similar cases to prosecutors (such as the average judgment sentence and fine range), we aim to prevent ruling discrepancies by equalizing the emotional factors or other aspect that may affect judges.

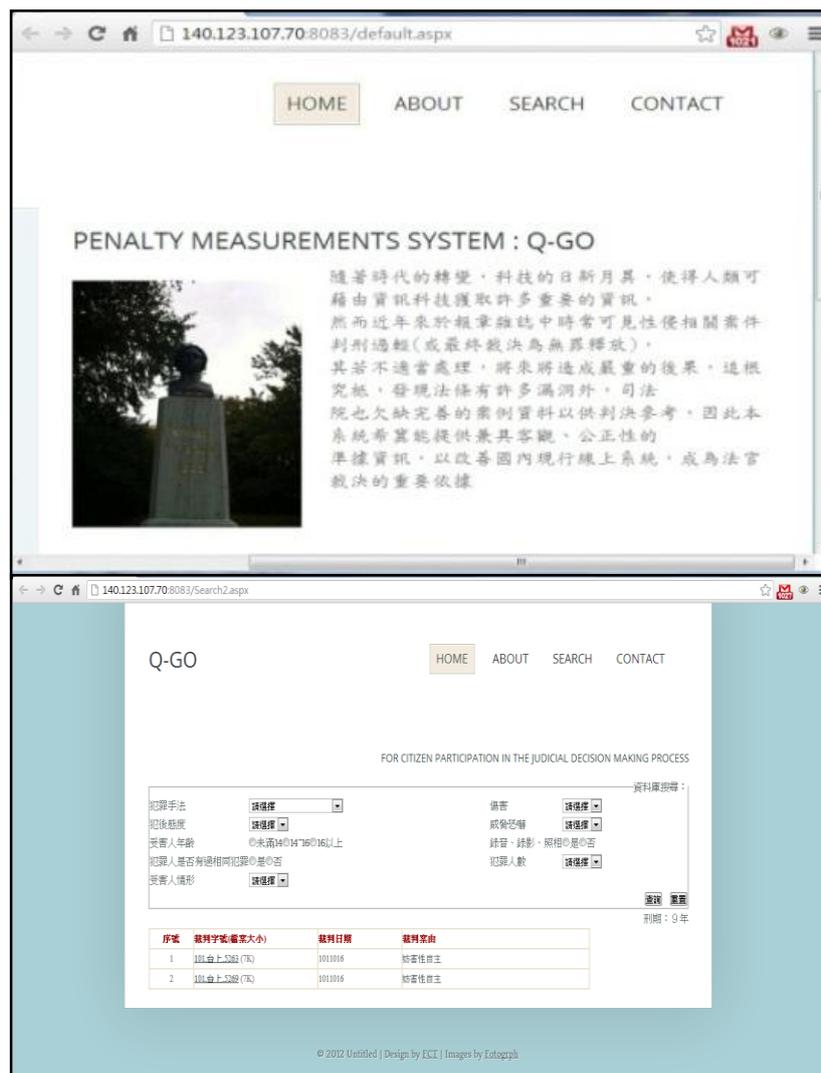The system constructed in this study is shown below.

Figure 6. Sentence guideline system for prosecutors and jurors.

We provided query interfaces that considered differences in technical terms from the perspectives of the judges and jurors. We also provided search results based on various needs. Supplemental judgment guidelines, such as the average (and distribution interval) judgment sentence, fine amount, and statutes underling these judgments, can be provided to judges. Besides these guidelines, additional information, such as the content of related statutes, professional advice for the case, and historical judgment information for similar cases can be provided to jurors to increase the quality of their contribution.

Because this study was based on empirical research, the main contribution was the provision of a basis for specific case trials for practitioners. The goal was to combine the results of empirical research, concept explanations, and social backgrounds to establish a utilization and interpretation environment with additional comparative law characteristics, develop clear and systematic interpretative directions for concepts and institutions, and provide a reference for subsequent statutory laws and amendments.   [11-94]

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國科會補助計畫衍生研發成果推廣資料表

國科會補助計畫	計畫名稱: 性犯罪量刑準據資料庫之設置	
	計畫主持人: 陳慈幸	
	計畫編號: 101-2629-H-194-002-	學門領域: 性別研究

<div>

無研發成果推廣資料

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國科會補助計畫	計畫名稱: 性犯罪量刑準據資料庫之設置	
	計畫主持人: 陳慈幸	
	計畫編號: 101-2629-H-194-002-	學門領域: 性別研究

101 年度專題研究計畫研究成果彙整表

計畫主持人：陳慈幸　　　計畫編號：101-2629-H-194-002-

計畫名稱：性犯罪量刑準據資料庫之設置

成果項目			量化			單位	備註（質化說明：如數個計畫共同成果、成果列為該期刊之封面故事...等）
			實際已達成數（被接受或已發表）	預期總達成數(含實際已達成數)	本計畫實際貢獻百分比		
國內	論文著作	期刊論文	1	1	100%	篇	陳慈幸（2013 年 10 月預定刊登），A Decision Support System for Sex-Crime Sentencing，資訊管理學報，頁碼未定。國科會補助：101-2629-H-194-002-。 陳慈幸（已投稿審查中），A Multi-factor Decision Support System for Sentencing in Sexual Assault Cases in Taiwan，管理學報，頁碼未定。國科會補助：101-2629-H-194-002-。
		研究報告/技術報告	0	0	100%		
		研討會論文	2	0	100%		1.Cathy T. H. Chen（2012 年 12 月），「Q-GO: a Judge and Jury for the Sexual Assault Sentencing System」，2nd. International Conference on Applied and Theoretical Information Systems Research, December 27-29, 2012, Taipei, Taiwan.（有嚴格雙審制）。國科會補助：101-2629-H-194-002- 、101-2410-H-194-048-MY2。 2.陳慈幸（2013 年 5 月 25、26 日），性侵害犯罪量刑決策支援系統之建置，第 24 屆國際資訊管理學術研討會。國科會補助：101-2629-H-194-002- 、101-2410-H-194-048-MY2。
		專書	0	0	100%		

	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		
	技術移轉	件數	0	0	100%	件	
		權利金	0	0	100%	千元	
	參與計畫人力（本國籍）	碩士生	4	2	100%	人次	本計畫參與人員：碩士生有蔡育融、李柏均、張昱棠、李姵璇等四人；學士生有柯杏如一人。 培養協助計畫執行助理對於比較實證研究之能力、研究方案計畫擬定與執行能力、對特定法學概念與制度所應有之解釋與運用能力、對相關文獻見解之分析、歸納能力、協助學生形成碩博士論文之部分內容
		博士生	0	0	100%		
		博士後研究員	0	0	100%		
		專任助理	0	0	100%		
國外	論文著作	期刊論文	0	0	100%		
		研究報告/技術報告	0	0	100%		
		研討會論文	2	0	100%	篇	1.Cathy T. H. Chen（2012年12月），「Q-GO: a Judge and Jury for the Sexual Assault Sentencing System」，2nd. International Conference on Applied and Theoretical Information Systems Research, December 27-29, 2012, Taipei, Taiwan.（有嚴格雙審制）。國科會補助：101-2629-H-194-002-、101-2410-H-194-048-MY2。 2.陳慈幸（2013年5月25、26日），性侵害犯罪量刑決策支援系統之建置，第24屆國際資訊管理學術研討會。國科會補助：101-2629-H-194-002-、101-2410-H-194-048-MY2。 說明：此二研討會皆為國際研討會，皆對外發表本計畫之研究成果。

		專書	0	0	100%	章/本	
	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		
	技術移轉	件數	0	0	100%	件	
		權利金	0	0	100%	千元	
參與計畫人力 （外國籍）		碩士生	0	0	100%	人次	
		博士生	0	0	100%		
		博士後研究員	0	0	100%		
		專任助理	0	0	100%		

其他成果 (無法以量化表達之成果如辦理學術活動、獲得獎項、重要國際合作、研究成果國際影響力及其他協助產業技術發展之具體效益事項等,請以文字敘述填列。)	本研究預計完成之項目包括：其一、以官方文件為分析架構,並實際以檢察官與法官之深度訪談等實證方法探測檢察官與法官的個人特性、認知、性別等因素對性倒錯刑事處分之評量並實際研擬性犯罪量刑系統；其二、建置我國本土之性犯罪量刑系統以改良現階段僅有性侵害犯罪量刑系統之憾缺；其三、開創我國本土之性犯罪資料庫,並實際聯結國外性犯罪資料,以供我國法律實務參考；其四、提出結論。 而就實際研究內容發現,為平均化各法官因情感因素或其他可能影響判決之因素造成的裁決差異,台灣司法院目前雖有提供開放判決查詢系統,但僅提供法官、檢察官使用,並無針對台灣 2012 年起將進行人民觀審制而開放給一般民眾使用。由於,觀審員是一群對於法律認知與學習狀況不一致之民眾,若有量刑系統輔助其參與審判,將會使觀審員之法律認知,達致一個較為穩定之狀況。 因此,本研究符合計畫目標,主要為開發法官與觀審員之性侵犯量刑系統,此部量刑系統主要特點將傳統司法院量刑系統進行改良與修正,並有以下特點： 其一、提供法官與觀審員兩種不同權限之量刑準據系統。 其二、法官之量刑系統部分,主要是參考歷年類似案例的判決結果並加入創新的量刑評定加權計分以改善目前司法院量刑系統的準確度。 其三、觀審員之權限,將以簡潔易懂之系統介面呈現,其存在的主要目的為讓觀審員監督法官,使其能給予公正無離群誤差的判決建議,因此本研究除提供量刑準據算定外,也利用給予觀審員不同案件類型的專業建議,來達到法官審判的全面性。

	成果項目	量化	名稱或內容性質簡述
科教處計畫加填項目	測驗工具(含質性與量性)	0	
	課程/模組	0	
	電腦及網路系統或工具	0	
	教材	0	
	舉辦之活動/競賽	0	
	研討會/工作坊	0	
	電子報、網站	0	
	計畫成果推廣之參與（閱聽）人數	0	

國科會補助專題研究計畫成果報告自評表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現或其他有關價值等，作一綜合評估。

---

1. 請就研究內容與原計畫相符程度、達成預期目標情況作一綜合評估
   ■達成目標
   □未達成目標（請說明，以 100 字為限）
   　　□實驗失敗
   　　□因故實驗中斷
   　　□其他原因
   說明：

2. 研究成果在學術期刊發表或申請專利等情形：
   論文：■已發表 □未發表之文稿 □撰寫中 □無
   專利：□已獲得 □申請中 ■無
   技轉：□已技轉 □洽談中 ■無
   其他：（以 100 字為限）
   1.Cathy T.H.Chen(2012/12)，「Q-GO: a Judge and Jury for the Sexual Assault Sentencing System」，2nd. International Conference on Applied and Theoretical Information Systems Research.
   2.陳慈幸(2013/5)，性侵害犯罪量刑決策支援系統之建置，第 24 屆國際資訊管理學術研討會。
   3.陳慈幸(2013/10 預定)，A Decision Support System for Sex-Crime Sentencing，資訊管理學報，頁碼未定。

3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）（以 500 字為限）

   台灣目前司法判決權皆至於法官手中，然而，法官雖擁有專業的法律知識，但有時卻因此而受限於法，當處理的案件未有相符之法條可作審判時，法官可能因此以無罪釋放來當作最終裁決，但此判決卻可能不是最佳的裁決，考慮到以上的狀況，未來台灣可能走向陪審制度，而本研究希冀能藉由開發觀審準據系統，提供較不具法律知識的一般民眾相關準據，以供未來陪審制度參考使用。

   另一方面，本研究也希望能藉由提供司法官類似案件的歷年判刑準據(如:平均判決刑期區間、罰金區間等)，以平均化各法官因情感因素或其他可能影響判決之因素造成的裁決差異。其以法官觀點與觀審員觀點提供具專業字彙差異的查詢界面，而在另一方面，也提供不同需求的查詢結果，如針對法官將提供平均(與分配區間)判決刑期、罰金、判決條例等可輔助判決之準據，而觀審員除了上述之數據外將提供更多資訊，如相關法條內容、案件專業建議、歷年類似案例判決資料等，並希冀能藉由此類資訊，增加觀審員素質。

由於本研究以實證研究為基礎，因此主要的貢獻在於提供實務界具體個案審判之依據。將實證研究得出之結果結合概念解釋與社會背景，形成具有比較法特色之運用與解釋境。對概念與制度形成清晰、有體系之解釋方向，進而提供下一波條文立法、修法之參考。