

FOURTH REPORT OF THE POST-RELEASE SUPERVISION BOARD

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Chairman's Remarks

This is the fourth report published by the Post-Release Supervision Board since its establishment on 30 November 1996. During the past four and a half years, 19 quarterly meetings and 34 ad hoc meetings were held by the Board. We are happy to see that more and more discharged prisoners have benefited from the professional guidance and assistance provided under the post-release supervision scheme. As at 30 June 2001, 2,154 discharged prisoners have joined the scheme. Most of them have complied with the conditions of supervision and led a law-abiding life upon discharge. We also noted that in two recent judicial review cases, the court has affirmed the legality of the application of the scheme to prisoners who were sentenced before the commencement of the Post-Release Supervision of Prisoners Ordinance.

Through the support and assistance of the Security Bureau, the Correctional Services Department, the Hong Kong Police Force, the Social Welfare Department, the Department of Justice and other relevant bodies, our Board has been able to carry out its functions effectively. We are pleased to present to you this Fourth Report which gives an account of the Board's activities covering the period up to the end of June 2001. We hope you will find it useful in understanding the work of our Board. Any suggestions or opinions are most welcome, which can be sent to the Board Secretariat at Rooms 906-7, 9/F, Tower Two, Lippo Centre, 89 Queensway, Hong Kong.

(Neil Kaplan, C.B.E., S.C., J.P.)

Chairman

Post-Release Supervision Board

A. Establishment and Functions of the Board

The Post-Release Supervision Board (the Board) is an independent statutory board established on 30 November 1996 under the Post-Release Supervision of Prisoners Ordinance (the Ordinance) to administer the post-release supervision scheme. The main functions of the Board are to consider granting post-release supervision to eligible prisoners, to make supervision orders, and to consider applications for variation, suspension or discharge of these orders. In the discharge of its functions the Board shall have regard to the desirability of securing prisoners' rehabilitation and re-integration into society and the need to protect the public from serious harm from offenders.

B. Background and Objective

2. Over the years Hong Kong has developed a penal system which places increasing emphasis on rehabilitating offenders. In addition to a statutory post-release supervision scheme for discharged young offenders under section 109AA of the Criminal Procedure Ordinance, which has been operating for some years, the Post-Release Supervision of Prisoners Ordinance was passed on 31 May 1995 for discharged adult prisoners, and it took effect on 30 November 1996 after the necessary subsidiary legislation was made.

3. The primary objective of post-release supervision is to provide discharged adult prisoners with guidance and assistance to help them reintegrate into society and lead a normal and useful life, thus reducing recidivism. This scheme is needed because many prisoners, after serving long period of detention and with limited preparation for what to expect after their release, do not know how best to adapt to a law-abiding life upon their return to the community. Therefore, the scheme is rehabilitative in nature rather than punitive.

4. The prisoners eligible for post-release supervision include adult prisoners serving sentences of six years or more and those sentenced to two years or more for specific types of offences, e.g. triad-related offences, sexual offences and crimes of violence. Given the nature of their offences and the length of their imprisonment, these prisoners may need more attention and advice to help them to re-adjust to normal life in society. At present, prisoners falling under these categories constitute approximately 21% of the existing adult penal population.

C. Membership of the Board

Chairman

5. The Chairman of the Board is Mr. Neil Kaplan, C.B.E., S.C., J.P., a former Judge of the High Court. First appointed on 30 November 1996, he is now serving his second three-year term.

Deputy Chairman

6. The Deputy Chairman is Mr. Patrick Rattigan, a former District Judge. First appointed on 15 November 1997, he is now serving his second three-year term.

Non-Official Members

7. The following eleven non-official members are currently serving on the Board. All were appointed/re-appointed on three-year terms:

- Dr. Chen Char-nie, O.B.E., J.P.
(First appointed on 30 November 1996)
(Psychiatry)

- Mrs. Yip Ho Tsang-yue, Kathleen, J.P.
(First appointed on 30 November 1996)
(Rehabilitation of Offenders)
- Mr. Law Shiu-ming, Dennis, J.P.
(First appointed on 30 November 1996)
(Legal)
- Mrs. Leung Ngai Mou-yin, Justina, J.P.
(First appointed on 30 November 1996)
(Social Work)
- Mr. Yung Hin-kwong, Raymond, J.P.
(First appointed on 30 November 1996)
(Rehabilitation of Offenders)
- Prof. Lee Wing-ho, Peter
(First appointed on 30 November 1996)
(Psychology)
- Mr. Sammy Poone, M.B.E., J.P. (also known as Poon Kam-kwong)
(First appointed on 30 November 1999)
(Commerce)
- Mr. Cheng Po-hong, Stephen, J.P.
(First appointed on 30 November 1999)
(Vocational Training)
- Mrs. Lui Fung Mei-yee, Mabel
(First appointed on 30 November 1999)
(Legal)
- Dr. Lo Tit-wing
(First appointed on 30 November 1999)
(Academic)
- Dr. Chung Wai-sau
(First appointed on 30 November 1999)
(Criminology)

Official Members

8. In addition, the following two government officials serve as ex-officio members:

- a representative of the Commissioner of Correctional Services;
- a representative of the Commissioner of Police

9. The Secretary of the Board is an Executive Officer of the Security Bureau, Government Secretariat, Mr. Rudolf Cheung, who has been serving the Board since 13 July 1998.

D. Procedures for Making and Reviewing Supervision Orders

10. Before the Board considers the cases of prisoners for the making of supervision orders, the Board Secretary compiles the following documents as stipulated in the Ordinance:

- (a) A report and recommendation by the Commissioner of Correctional Services concerning the prisoner and a report on the prisoner's rehabilitation plan after release;
- (b) A report and recommendation by the Commissioner of Police;
- (c) Any report that was prepared for the court of trial to assist the trial judge or magistrate, as the case may be, in determining sentence;
- (d) Any recorded observations of the trial judge or magistrate, as the case may be, in passing sentence; and
- (e) Any medical reports on the prisoner that are available to the Board, which may include reports from psychiatrists and psychologists.

11. All the reports on each prisoner produced by the relevant authorities are sent to the Board Secretary, usually three months prior to the relevant Board meeting. The Board Secretary compiles these reports into a case file which is printed in the form of a Discussion Paper and prepares a synopsis of all the Discussion Papers so printed. All these are circulated to members about four weeks prior to the meeting. Written representations submitted by the prisoners are sent to members once received. The material submitted to the members of the Board for each meeting runs to between 2,000 and 3,000 pages.

12. To allow the prisoner concerned to appreciate the nature of his case being considered by the Board, he is provided, in his preferred official language and not less than 14 days before the Board's deliberation of his case, with a copy of all relevant materials to be considered by the Board in connection with the possible making of a supervision order. The prisoner is also informed of his right to make written representations which the Board would consider in addition to those materials mentioned in paragraph 10.

13. At the Board meeting, each prisoner's case file is perused before the Board reaches a decision on the making of a supervision order. A supervision order made by the Board is signed by the Chairman of the Board and served on the Commissioner of Correctional Services, who endorses the order and serves it on the prisoner. The prisoner has the right to make not more than one request to the Board for varying or discharging the order, by applying in writing for review at any time upon or after the making of the order. In handling such an application, the Board peruses again the prisoner's case file and reconsiders its previous decision. The Board also carefully considers any valid grounds provided by the prisoner in the letter of application.

E. Length and Conditions of Supervision Order

14. In determining the length of post-release supervision, the Board considers each case on its own merits. According to section 7(1)(c) of the Ordinance, the supervision period will be no longer than the remitted part of the prisoner's sentence. Depending on the circumstances of individual prisoners, the length of supervision will normally range from a minimum of six months to a maximum of two years, although where the Board considers necessary a longer period may be imposed. It is necessary to provide for a minimum supervision period of six months to provide for adequate time for the supervising officers to guide and assist the supervisees to reintegrate into society as law-abiding citizens. In accordance with section 24 of the Ordinance, supervision imposed on prisoners sentenced before the commencement date of the Ordinance, i.e. 30 November 1996, shall not exceed a period equal to half the period from the commencement date to the date of release, or six months, whichever is greater.

15. A prisoner who is subject to post-release supervision has to comply with the conditions set out in the supervision order, including the conditions that he shall be of good behaviour, reside at an address approved by his supervising officer, undertake only such employment as approved by his supervising officer and meet with his supervising officer at least once a month. A sample supervision order is in Annex I. Additionally, the Board may impose further conditions of supervision depending on individual circumstances, such as the requirement for attending psychiatric or psychological follow-up treatment and refraining from making contact with the victims of the offence for which the prisoner was sentenced.

F. Temporary Recall of Prisoner and Suspension of Supervision Order

16. When a prisoner has been released from prison under a supervision order, it is possible for the order to be suspended under section 13 of the Ordinance, and for him to be returned to prison. There are two circumstances which could cause this to happen. Firstly, if it appears that the supervisee has without lawful authority or reasonable excuse failed to comply with any term or condition of the supervision order or is likely to commit an arrestable offence, the Chairman or Deputy Chairman of the Board may order his temporary recall to prison. Secondly, where the Commissioner of Correctional Services believes that there are grounds upon which the supervision order may be suspended under section 13 and that he considers it to be in the public interest that a supervisee be detained in custody immediately, the Commissioner may recall him to prison and detain him for a period not exceeding 72 hours pending the issue of a temporary recall order by the Board. In either case, while the supervisee is re-imprisoned in the first instance, the Board must convene, within 14 days from the detention of the supervisee, to decide whether the supervision order should be suspended, and if so, for how long. The Board is however not authorized to suspend the order for a period exceeding the unexpired term of the order.

17. Not less than seven days before the Board meets to decide on the suspension, the supervisee is provided, in his preferred official language, with a copy of all relevant material to be considered by the Board. The supervisee also has the right of attending a hearing of the Board in which he may be assisted by a person of his choice.

G. Meetings and the Case Load of the Board

18. The Board convenes quarterly, usually in the months of March, June, September and December. Besides, the Board convenes ad hoc meetings to consider cases requiring suspension of supervision order. For the period from 30 November 1996 to 30 June 2001, the Board has conducted a total of 19 quarterly meetings and 34 ad hoc meetings. At three of these quarterly meetings and 15 of these ad hoc meetings, oral hearings were conducted in which 23 supervisees exercised their right by appearing before the Board to give oral representations in connection with the proposed suspension of their supervision orders. A total of 2,315 cases of prisoners were considered and a total of 2,284 supervision orders were issued, representing 98.7% of the total number of cases considered. The length of supervision periods ranged from a minimum of 6 months to a maximum of 27 months. On average, about 122 cases were considered at a quarterly meeting. During the same period, 14 applications for discharging/varying supervision orders and 3 applications for varying suspension of supervision order were made. After careful consideration, the Board decided that all the applications should be rejected.

19. Since the operation of the Board, the Chairman or Deputy Chairman have signed a total of 71 temporary recall orders, on application from the Commissioner of Correctional Services on the grounds that the supervisees concerned either have failed to comply with the condition(s) of their supervision orders or are likely to commit an arrestable offence. As a result, 61 supervisees have been successfully recalled. Among them, 58 were imprisoned after the Board ordered suspension of their supervision orders or the court convicted them of new offences and passed new sentences and three were released after the Board considered their representations at the oral hearings. The whereabouts of 10 supervisees were unknown and they could not be arrested prior to the expiration of their supervision orders. In addition, the Board has made 18 suspension of supervision orders to supervisees who had been sentenced to imprisonment by

court during their supervision periods. A breakdown of the number of cases of prisoners considered and the number of supervision orders, temporary recall orders and suspension of supervision orders made by the Board from November 1996 to June 2001 are shown at the chart in Annex II.

20. Statistics in terms of the sex, age and education level of 2,315 prisoners at the time when their cases were considered by the Board for imposition of supervision orders during the period from 30 November 1996 to 30 June 2001 are provided in Annex III.

21. A breakdown of offences for which these 2,315 prisoners were convicted, as shown in the chart in Annex IV, is as follows :

| <i>Offences convicted *</i> | <i>No. of prisoners</i> | <i>%</i> |
|--|-----------------------------|----------|
| (a) Offences against property, such as robbery and aggravated burglary on premises, and street, taxi or lift robbery, etc. (further breakdown of these offences is in <u>Annex V</u>) | 1,018 | 44.0 |
| (b) Possession of, or trafficking in, dangerous drugs | 552 | 23.8 |
| (c) Offences against the person, such as murder, manslaughter, wounding and assault, etc. | 306 | 13.2 |
| (d) Triad-related offences such as triad membership, blackmail, criminal intimidation, keeping a vice establishment, etc. | 202 | 8.7 |
| (e) Sexual offences | 115 | 5.0 |
| (f) Offences involving the use of firearms or explosives | 74 | 3.2 |
| (g) Other offences, such as deception, criminal damage, arson, etc. | 48 | 2.1 |
| | ----- | ----- |
| Total | 2,315 | 100 |
| | ===== | ===== |

* In cases where a prisoner was convicted of more than one count of offence, only the offence receiving the heaviest sentence will be included in the statistics.

H. After-care Services

22. Each supervisee is assigned to a supervising team comprising two Correctional Services Officers and one Social Work Officer. Before a prisoner is released from prison, the supervising officers have discussions with him with a view to assisting him to prepare for his return to the community. After release, the supervising officers visit the supervisee regularly at his home, workplace or any other places as designated to help him deal with any adjustment problems encountered. They also offer other assistance such as provision of temporary hostel accommodation, employment referral, application for the Comprehensive Social Security Assistance, and medical or psychological services where required. The supervisee is encouraged to contact his supervising officers at any time if he needs any assistance or advice.

23. Over the past four and a half years since the operation of the post-release supervision scheme, the workload of the supervising team has steadily increased due to an increasing number of discharged prisoners joining the scheme. Accordingly, the number of supervising teams undertaking the after-care and supervision work has increased from five to ten (each responsible for about 50 cases). A breakdown of the after-care services provided by the supervising teams for the period from November 1996 to June 2001 is in Annex VI.

24. As at 30 June 2001, 367 supervisees, or 75.7% of a total of 485, were in employment. On the other hand, 46 supervisees, or 9.5%, were living on Comprehensive Social Security Assistance provided by the Social Welfare Department.

I. Success Rate and Re-conviction

25. During the period from November 1996 to June 2001, 2,154 discharged prisoners have joined the post-release supervision scheme. As at 30 June 2001, out of 1,630 supervisees whose supervision periods have expired, 1,518 have successfully completed their supervision without re-conviction during the supervision period (although 70 of them were later convicted of offences committed during the supervision period) and 112 were re-convicted during their supervision periods, representing an overall success rate of 93.1%. The high success rate reflects the result of the close monitoring of the post-release supervision scheme by the Board and the professional after-care services carried out by the supervising teams. The Board considers that the scheme has contributed to the reduction of recidivism and has been beneficial to the supervisees and the community as a whole.

J. Judicial Reviews of the Post-Release Supervision Order/Suspension of Supervision Order as imposed by the Board

26. In December 1999, a supervisee applied for a judicial review against the decision of the Board to place him under a period of 12-month post-release supervision. His ground was that the order was unlawful in that it imposed upon him a heavier penalty than the one that was applicable at the time when he committed the criminal offence for which he was sentenced.

27. The application for judicial review was heard in July 2000 before the Court of First Instance of the High Court. The application was dismissed as the court held that the making of a supervision order is essentially a rehabilitative measure and is not a penalty. The court ruled that the powers conferred on the Board by the Ordinance to impose supervision orders, and to recall a prisoner to

prison under the circumstances prescribed by the Ordinance, do not constitute a heavier penalty within the meaning of Article 15 of the International Covenant on Civil and Political Rights (or of Article 12(1) of the Bill of Rights Ordinance), and the provisions of the Ordinance accordingly do not contravene Article 39 of the Basic Law. The court also confirmed the legality of the application of the post-release supervision scheme to prisoners who were sentenced before the commencement of the Ordinance.

28. In May 2000, another supervisee applied for leave to apply for a judicial review against the decisions of the Board to impose on him a 18-month supervision order and a 10-month suspension of the supervision order. His grounds were that the supervision order was unlawful since he was sentenced before the commencement date of the Ordinance and that the suspension period so ordered by the Board was too heavy. The application for leave was heard in August 2000 before the Court of First Instance of the High Court. The application was subsequently dismissed as the court re-affirmed the legality of the making of the supervision order to a prisoner sentenced before the commencement of the Ordinance. The court also ruled that due process has been complied with in making the suspension of the supervision order under the Ordinance.

29. The Board noted the decisions of the court in accepting that the post-release supervision scheme is rehabilitative in nature and that the control element contained in the scheme is not a penalty as such for the original offence. The Board also noted that the court has accepted that the rights of a prisoner have been fully observed in accordance with the Ordinance when the Board decides whether a supervision order should be suspended.

K. Retention of Records of Prisoners

30. With the commencement of the Personal Data (Privacy) Ordinance, the Board has sought advice from the Privacy Commissioner for Personal Data

regarding the retention of personal data of prisoners as provided to the Board by other government departments. The Board has taken appropriate steps to ensure that such data are not kept longer than necessary for the fulfillment of the purpose for which they are to be used.

L. Assistance from Government Departments

31. The Board is grateful to the following government departments for their support and assistance at all times without which the Board would not have been able to perform its duties effectively:

Security Bureau
Correctional Services Department
Social Welfare Department
Hong Kong Police Force
Department of Justice
Independent Commission Against Corruption
Customs and Excise Department
Immigration Department
Judiciary (for providing court records)

Note: Wherever reference is made to male prisoners or supervisees, the reference applies equally to female prisoners or supervisees.

30 June 2001

POST-RELEASE SUPERVISION OF PRISONERS ORDINANCE
監 管 釋 囚 條 例

(CHAPTER 475)
(第475章)

SUPERVISION ORDER
監 管 令

To(1)
致

I HEREBY ORDER that you be subject to supervision upon your release from imprisonment with the following requirements :

現命令你從監獄獲釋後,須按照下列規定接受監管:

- (a) The remitted part of your sentence shall be
你的刑期獲減免部分是
- (b) The period for which this supervision order shall remain in force:
監管令的有效期為
- (c) The conditions which you shall comply with :
你須遵守的條件是
- (1) You shall place yourself under the supervision of a supervising officer nominated for this purpose and any other officer replacing him from time to time.
你須接受為此而指派的監管人員或其他不時替代後者的人員的監管。
 - (2) You shall meet with your supervising officer in accordance with that officer's instructions.
你須依照監管人員的指示與該人員會面。
 - (3) You shall inform your supervising officer at once of any changes in your home and office address or any employment particulars including dismissals.
你的家居及辦事處地址或就業情況如有改變,包括遭解僱,須即通知監管人員。
 - (4) You shall be of good behaviour and keep the peace.
你須行為良好,奉公守法。
 - (5) You shall inform your supervising officer of the intention to leave Hong Kong for a specified period or of the intention to take up residence abroad.
如果你打算離開香港一段指定時間或在外國定居,須通知監管人員。
 - (6) You shall reside at an address approved by your supervising officer.
你須居住在監管人員認可的地址。
 - (7) You shall undertake only such employment as approved by your supervising officer.
你只准從事監管人員認可的工作。
 - (8) You must meet with your supervising officer at least once a month.
你必須每月至少會見監管人員一次。
 - (9) You shall not, without reasonable excuse, fail to engage yourself in gainful employment in accordance with the instructions of your supervising officer.
除非你有合理辯解,否則你須依照監管人員的指示,從事正當的工作。
 - (10) You shall not commit any offence against the laws of Hong Kong.
你不得觸犯香港法例內的任何罪行。

Dated this day of
日期:

.....
Chairman
Post-Release Supervision Board
監管釋囚委員會主席

To (1)
致

I HEREBY ORDER that upon your release on the day of from
現命令你於(日期) 從
..... you be subject to supervision by Officers on aftercare duties of the
獲釋後,須接受香港法例第 475 章第 8 條監
管

Post-Release Supervision of Prisoners Scheme, Section 8 of Cap. 475 refers, until the day of
釋囚計劃內所指執行善後輔導職務的人員的監管,直至(日期)

..... During such period, you shall comply with the conditions stipulated on the overleaf of this order.
在監管期間,你須遵守本命令背頁指明的條件。

Dated this day of
日期:

.....
for Commissioner of Correctional Services
懲教署署長
(..... 代行)

I, hereby certify that this supervision order was served by me on
本人 現證明監管令經由本人送達

(1) and the conditions fully explained to *him/her byme.....
,而令內的條件亦經由 本人

in Punti dialect.
以 本地話向後者全部解釋清楚。

.....
Superintendent
懲教事務監督

.....
Witness
見證人

Date :
日期:

I fully understand the conditions with which I should comply during the supervision period, and I hereby
acknowledge receipt of a copy of this supervision order.

本人完全明白本人於監管期間應遵守的條件,並承認收到上述監管令乙份。

I certify that my place of residence on discharge is :
本人證明本人於釋放後的居住地址為

Signature
簽署

Prisoner's Name :
犯人姓名 :

Registered No. :
登記編號 :

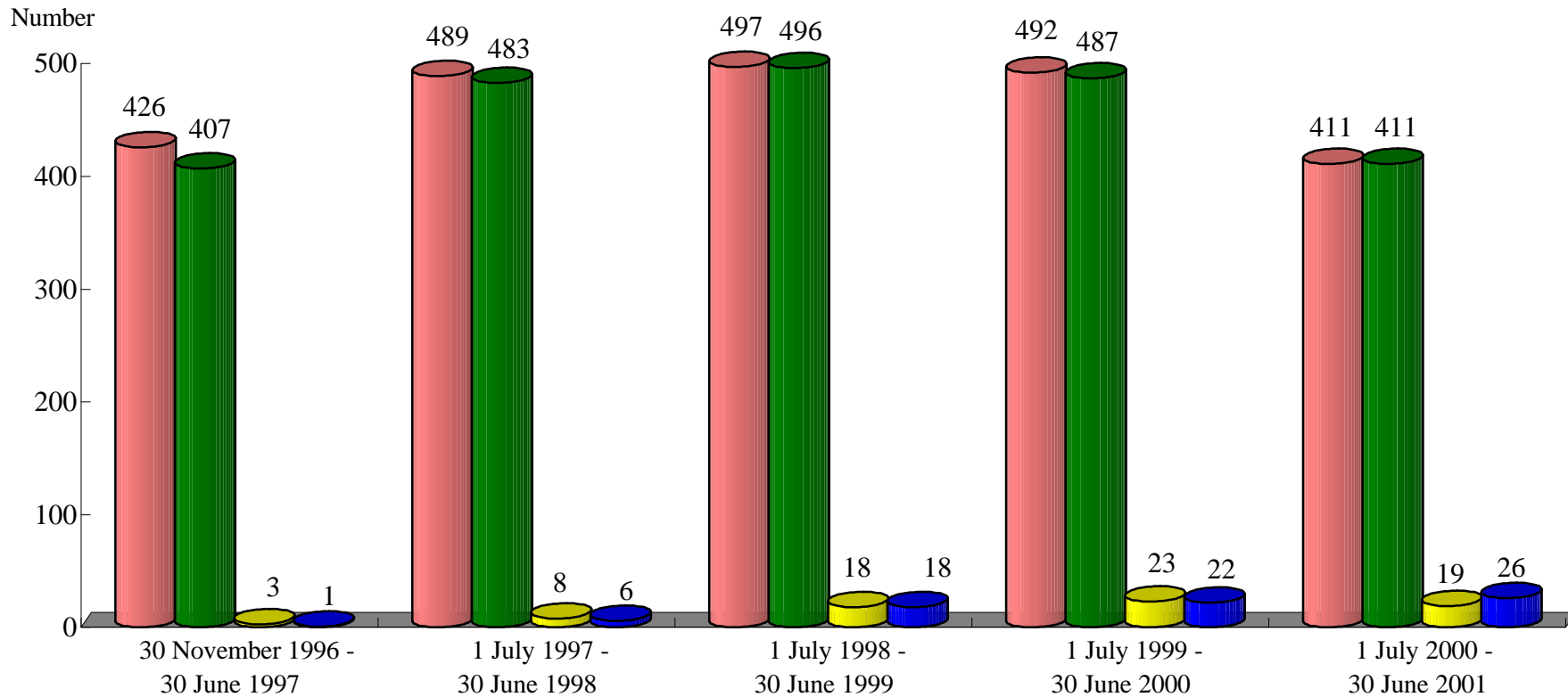
Date :
日期:

Note: (1) Name of person placed under supervision

註: (1) 受監管人姓名

* Delete as appropriate
將不適用者刪去

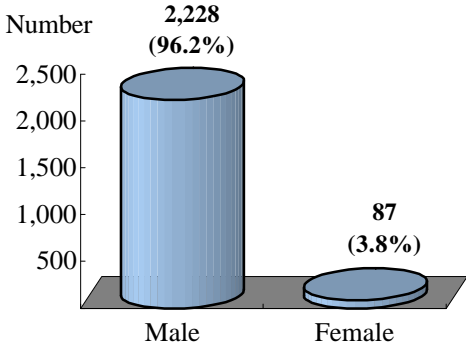
Breakdown of the Number of Cases of Prisoners considered and Number of Supervision Orders/Temporary Recall Orders/Suspension of Supervision Orders made by the Post-Release Supervision Board during the period from 30 November 1996 to 30 June 2001



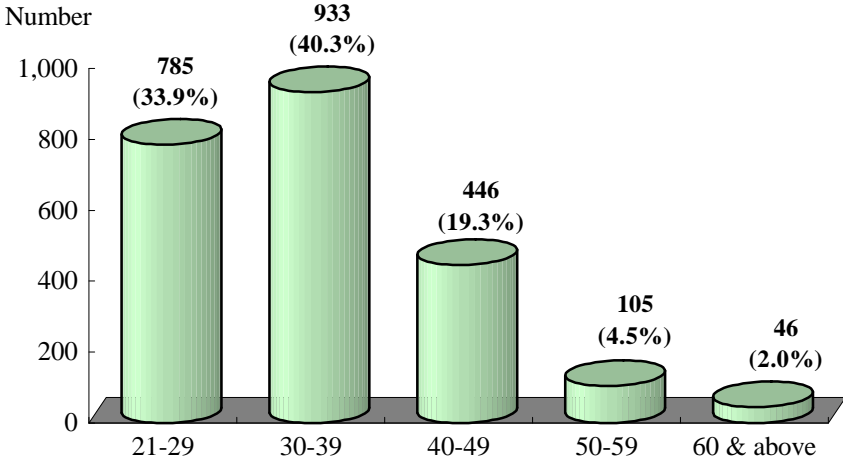
- Cases considered for making of supervision orders (2,315 cases in total)
- Supervision orders issued (2,284 orders in total)
- Temporary recall orders issued (71 orders in total)
- Suspension of supervision orders issued (73 orders in total)

**Breakdown of Sex, Age and Education Level in respect of
2,315 Prisoners considered by the Post-Release Supervision Board
during the period from 30 November 1996 to 30 June 2001**

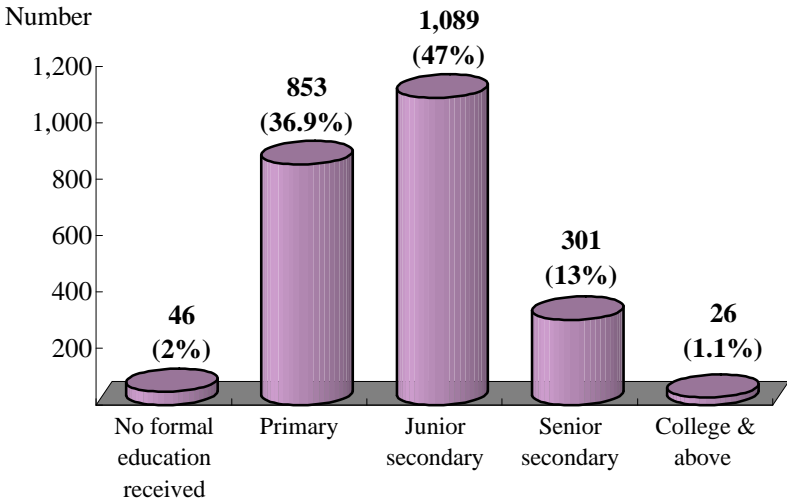
Sex



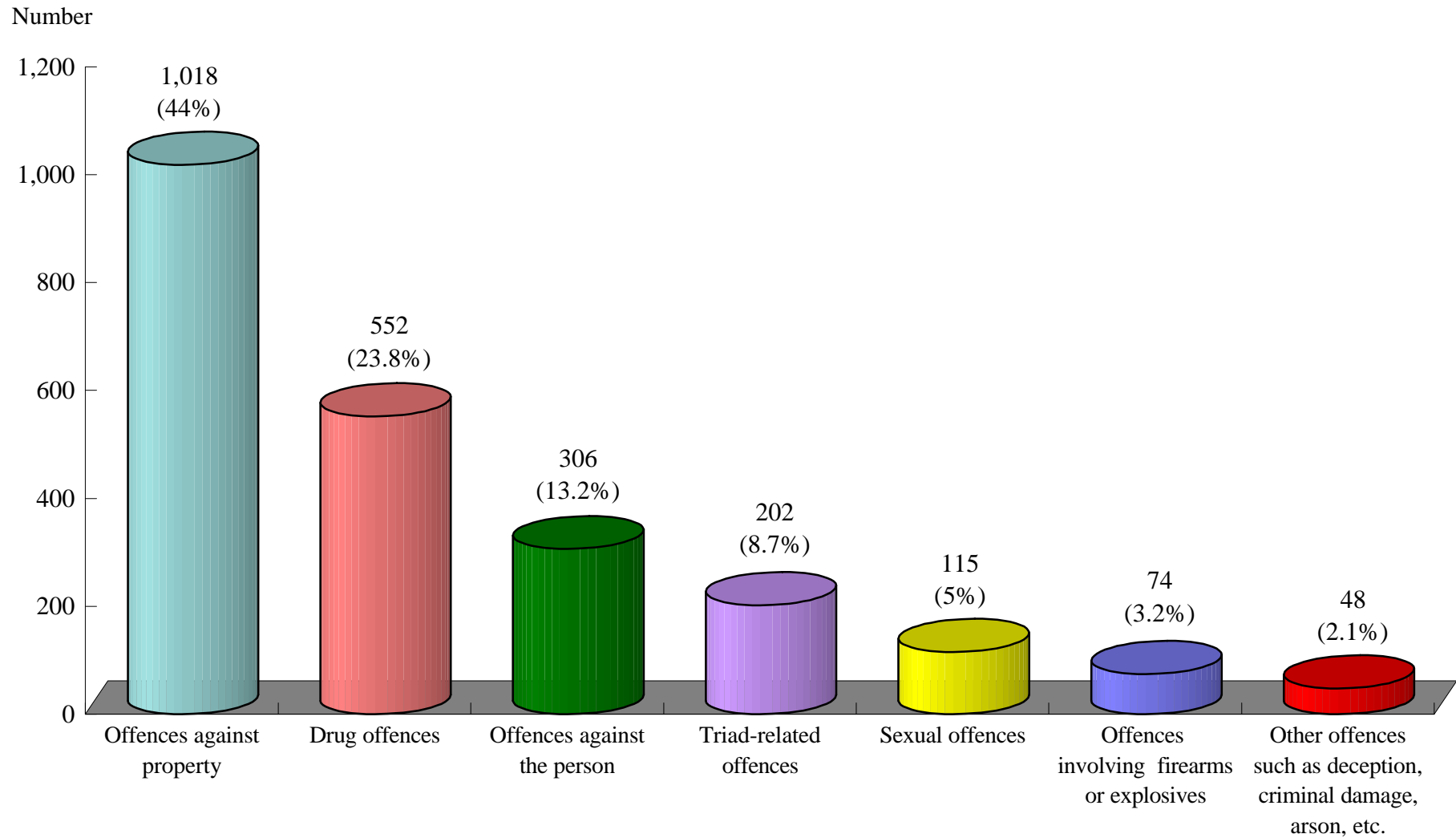
Age



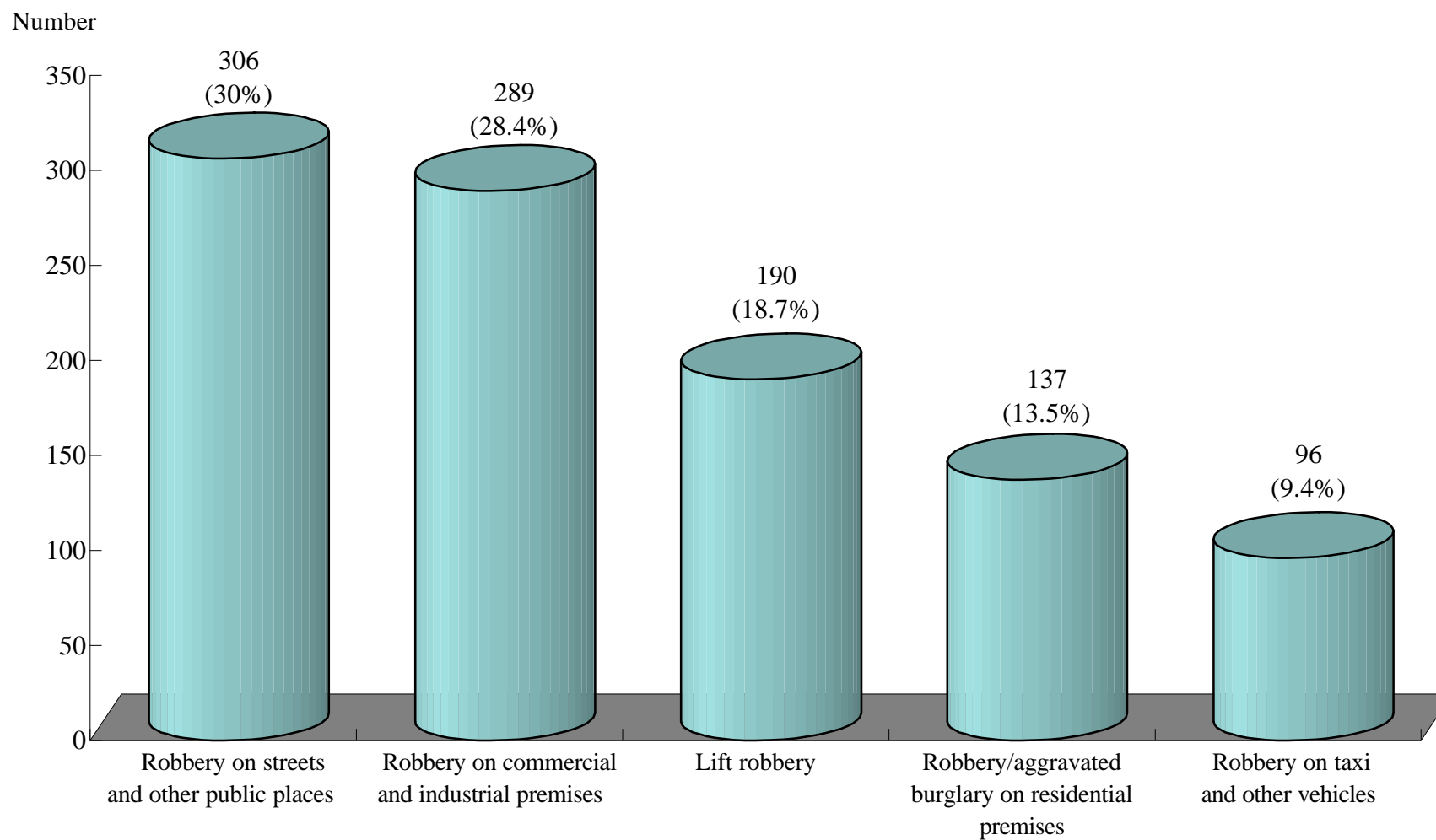
Education Level



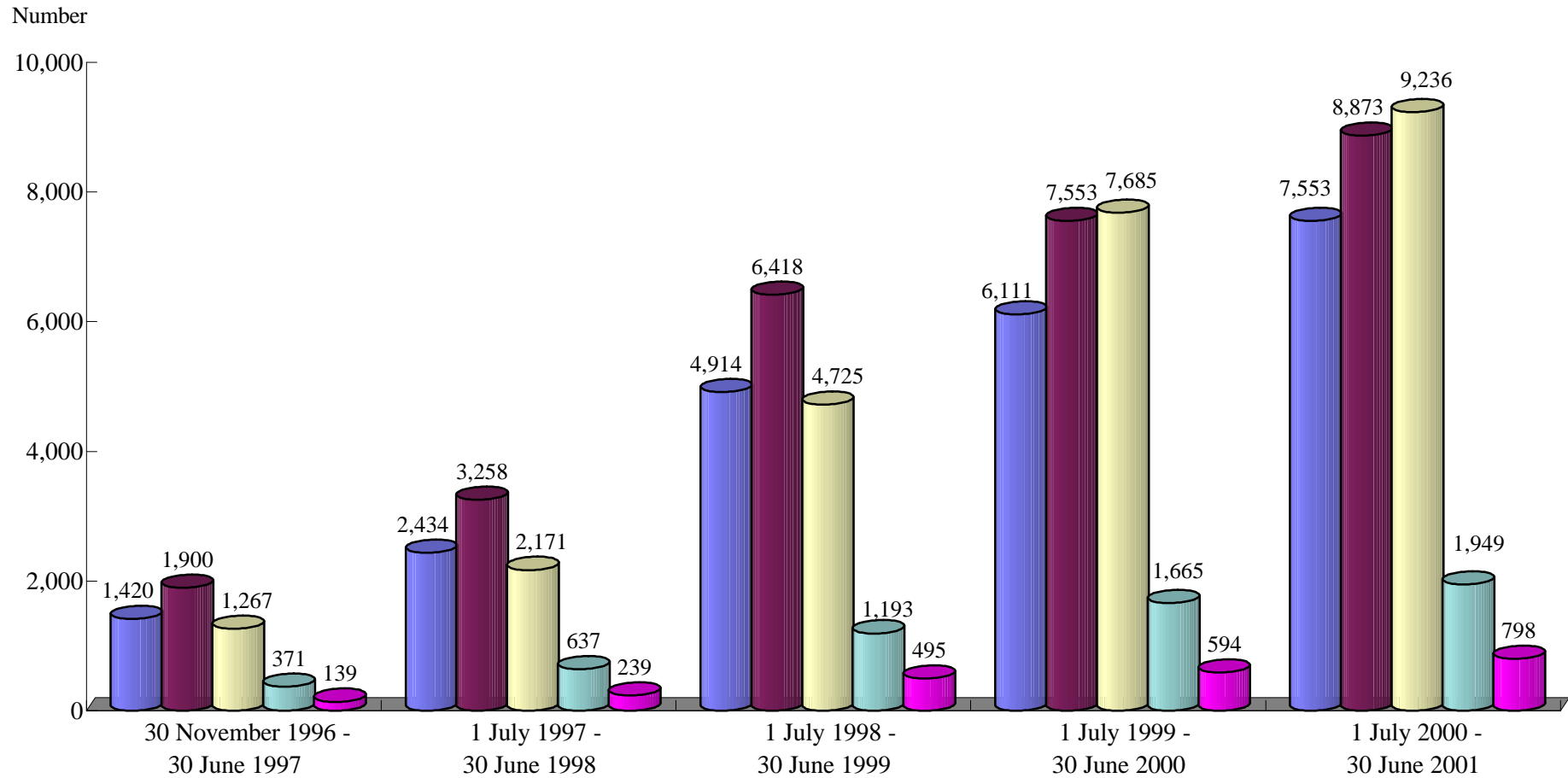
**Breakdown of Convicted Offences in respect of 2,315 Prisoners
considered by the Post-Release Supervision Board during
the period from 30 November 1996 to 30 June 2001**



**Breakdown of Cases of Offences against Property
considered by the Post-Release Supervision Board during
the period from 30 November 1996 to 30 June 2001**



Breakdown of After-care Services provided by the Supervising Teams during the period from 30 November 1996 to 30 June 2001



- Interviews with supervisees
- Visits at home or workplace
- Telephone contacts with supervisees
- Contacts with a third party regarding supervisees
- Referrals to government departments or voluntary agencies for assistance