

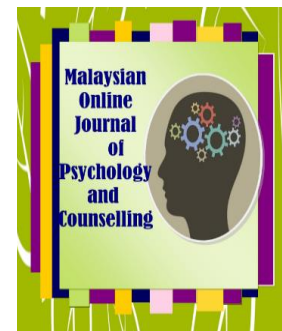
MIXED ATTITUDES TOWARDS ADHD AS A MITIGATING FACTOR IN CRIMINAL SENTENCING IN SINGAPORE: AN ARCHIVAL INVESTIGATION

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ABSTRACT

This study investigates how ADHD is deliberated in Singaporean criminal trial cases to consider what aspects of ADHD influenced trial outcomes. An archival search was conducted through Lawnet on criminal trial cases mentioning ADHD in Singapore from 1975 to 2021. 48 cases were included in the analysis. The exploratory descriptive analysis revealed that where cases accepted ADHD as a mitigating factor (n = 11), they considered the influence of impulsivity and susceptibility to social influence, henceforth selecting a rehabilitative-focused sentence. Where ADHD was not accepted as a mitigating factor (n = 37), the judge either did not see a causal link between ADHD and the act of offence or believe that ADHD did not substantially impact the defendant's mens rea.

Keywords: *Attention-Deficit/Hyperactivity Disorder; Singapore; Criminal Sentencing; Archival Investigation; Forensic Psychology*



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INTRODUCTION

Individuals with Attention-Deficit/Hyperactivity Disorder (ADHD) remain overrepresented globally in the prison system, with ADHD being identified as a risk factor for getting involved with the criminal justice system (e.g., being arrested, convicted, or incarcerated during adolescence and adulthood; Freckleton, 2020). However, most literature written on individuals with ADHD in the criminal justice system has been predominantly published in and about Western, Educated, Industrialised, Rich, and Democratic (WEIRD) communities. Specifically, there remains limited literature discussing the forensic implications of ADHD in Singapore. Through an archival analysis, this article aims to bridge this gap to investigate the extent which ADHD influences sentencing considerations in Singapore's judicial system.

ADHD and Involvement with the Criminal Justice System

ADHD has been found to be associated with greater involvement with the criminal justice system, especially when individuals with ADHD do not receive the necessary support and treatment in the long term. The atypical neurodevelopmental structure of the ADHD brain results in individuals with ADHD facing issues of impulsiveness, inattention, poor retention of information, and poorer abilities to rationalize (Eme, 2014; Freckleton, 2020). Furthermore, individuals with ADHD statistically encounter higher rates of developmental delays, learning difficulties, issues of poor social bonds and delinquent peer relations that result in antisocial behaviors (Gordon, Diehl & Anderson, 2012; van der Maas et al., 2018). When left untreated, ADHD has been found to increase rates of recidivism amongst individuals with previous offences (Gordon, Diehl & Anderson, 2012; Gonzalez et al., 2013).

In forensic circumstances, ADHD is discussed as part of deliberations on whether an accused is fit to stand trial, whether the diagnosis can be used as partial defence for diminished responsibility, and as an explanation for behaviors during judicial proceedings that may involve poor self-regulation and unusual conduct (Freckleton, 2020; Rouse & Goldstein, 1999). Experts have argued that ADHD should be considered as a mitigating factor given its biological basis in diminishing self-control (impulsivity), which compromises on the intentionality in relation to criminal offending (Eme, 2014; Freckleton, 2020).

Mental Health Considerations and Research Questions

This section aims to summarily explain how mental health considerations are accounted for in Singapore's context. In Singapore, three laws/policies are of particular interest as it relates to how the court accounts for mental health concerns influencing legal outcomes:

1. Section 84 of the Penal Code (Act of person of unsound mind): (1) Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is —
 - (a) incapable of knowing the nature of the act;
 - (b) incapable of knowing that what he is doing is wrong; or
 - (c) completely deprived of any power to control his actions.
2. Exception 7 of Section 300 of the Penal Code (Murder): Culpable homicide is not murder if at the time of the acts or omissions causing the death concerned, the offender was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development or any inherent causes or induced by disease or injury) as substantially —
 - (a) impaired the offender's capacity —

- (i) to know the nature of the acts or omissions in causing the death or in being a party to causing the death; or
 - (ii) to know whether such acts or omissions are wrong; or
 - (b) impaired the offender's power to control his acts or omissions in causing the death or being a party to causing the death.
3. The Mandatory Treatment Order (MTO): introduced in 2011, the MTO sentencing option allows judges to mandate compulsory psychiatric treatment rather than serving a custodial sentence for the defendant. Such a sentencing option is given based on the evaluation of a court-appointed psychiatrist that a mental disorder significantly influenced the commission of the act of offence, and that the offender is amenable to treatment.

These three pieces of legislatures and policies primarily govern considerations of mental health considerations in the legal context. However, other areas of law (e.g., Mental Health (Care and Treatment) Act 2008), policies and institutional practices (e.g., pre-trial assessments conducted by psychiatrists and psychologists from the Institute of Mental Health, the state's psychiatric hospital; evaluations by the psychologists from the Ministry of Social and Family Development) also contribute to deliberations during criminal trials.

Since 2000, mental health professionals have increasingly provided expert opinions in Singapore's courts. Psychologists and psychiatrists have primarily offered opinions on criminal rather than civil or custody cases (making up more than half of the cases where mental health expert opinions are included), with expert opinions mostly being introduced at the sentencing stage. More explicit use of psychological tools can be observed in court judgments in recent years. Where expert opinions are sought, judges were found to be in full agreement with the mental health expert in 60-81% of the cases.

Literature on ADHD in Singapore

Presently, the known prevalence rate of Attention-Deficit/Hyperactivity Disorder (ADHD) in Singapore ranges from around 1.7% to 16% (Institute of Mental Health (Singapore), n.d.). In a separate review I conducted on existing literature written about ADHD in Singapore since 2000, my review of 84 scholarly publications found that 40.47% of the articles focused on interventions for ADHD, 9.52% on comorbidities with ADHD, 8.33% on the aetiology of ADHD, 8.33% on diagnostic tools for ADHD, 5.95% on the psychological characteristics of individuals with ADHD in Singapore, 5.95% on variables associated with ADHD, 3.57% on ADHD and the education system, 3.57% on family relations of children with ADHD, 3.57% on impairments that individuals with ADHD face, 3.57% on the psychological outcome of individuals with ADHD in different settings respectively, and 2.38% looking at medical institutions and professionals' expertise in supporting individuals with ADHD.¹ Little to no research has been published on individuals with ADHD and their involvement with the judicial system in Singapore. Gwee's (2017) article remains one of the only scholarly publications speaking to the prevalence of ADHD in forensic circumstances in Singapore: he identified that 2.3% of criminal cases highlighting defendant's psychiatric diagnoses were made up of individuals with developmental disorders (including ADHD and Autism Spectrum Disorder).

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Given how scholarly literature has identified ADHD as a risk factor for getting involved in the criminal justice system, this article seeks to delve deeper into the involvement of ADHD in forensic considerations in Singapore. Gwee (2017) highlighted how there remains a dearth of psycholegal literature in Singapore despite its relevance in court deliberations, and this article seeks to contribute to efforts filling that gap. Through an archival search of past criminal cases in Singapore, this article provides an exploratory, descriptive analysis of the criminal cases mentioning ADHD in Singapore to investigate the extent of which ADHD is considered a factor when sentencing a case.

METHODOLOGY

This study adapts Gwee's (2017) methods in analyzing how mental health concerns are considered in legal cases. I conducted a search through LawNet, Singapore's legal database of all court trial cases (Singapore Academy of Law, 2021). These court trial cases only include disputed cases that went to trial, rather than undisputed cases concluded without court deliberation. In my search through the criminal case judgments, I used the keywords, "ADHD," "Attention-Deficit Hyperactive Disorder" and "Hyperkinetic," and included 48 cases from 1975 to 2021 in my analysis. The cases were coded for the defendant's age, gender, ethnicity, whether it was the accused's first offence, whether the accused were diagnosed with comorbid psychiatric disorders, and whether ADHD was considered a mitigating factor when determining the sentencing outcome. After the codes were developed, a thematic analysis was conducted to identify trends and themes that appeared in the analyzed cases.

FINDINGS

Table 1 includes a breakdown of the aggregated demographic information for all analyzed cases, as well as specifically for cases where an ADHD diagnosis influenced the defendant's sentencing outcome. As shown in **Figure 1**, out of the 48 relevant cases, 10 cases were sentenced before 2011, while 38 cases occurred 2011 and onwards, after the Mandatory Treatment Order (MTO) was implemented (Gwee, 2017). Especially amongst the cases where ADHD influenced the sentencing outcome, ten cases occurred from 2011 onwards, while only one case took place pre-2011. While the MTO was never explicitly indicated in any of the judgment as a factor of consideration, as suggested by Gwee (2017), the implementation of the MTO (which permits the court to sentence a defendant to receive psychiatric treatment at a psychiatric institution, instead of serving jailtime) may have motivated the judicial system to better account for influences of psychiatric disorders for criminal cases when contemplating sentencing outcomes in Singapore.

Past research observed that most defendants raising ADHD as a defence tends to be men, have comorbid psychiatric disorders, and are repeat offenders (Gordon, Diehl & Anderson, 2012; Gonzalez et al., 2013; Gudjonsson, Wells & Young, 2011; Scully, Young & Bramham, 2014; Young & Cocallis, 2019; Young et al., 2015). Aligning with these research findings, over 95% of the cases that raised ADHD as a potential mitigating factor involved male defendants, about 77% of the defendants had comorbid psychiatric disorders highlighted in their cases, and over 40% of judgments explicitly highlighted that the defendants were repeat offenders. Specific to the gender breakdown of defendants raising ADHD diagnosis as a point of mitigation, the trend observed may reflect gender bias in ADHD diagnosis (i.e., men being diagnosed with ADHD more frequently than women) rather than an accurate representation of the gender distribution of individuals with ADHD caught within the criminal justice system (Gordon, Diehl & Anderson, 2012; Young & Cocallis, 2019).

ADHD is often raised as a point of concern during judicial trials given the impacts of impulsivity and influence from social circumstances (e.g., peer pressure) in influencing the individual when deciding

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to commit the crime. In such situations where rehabilitation may be better suited than incarceration, researchers have noted that the prison system may not best achieve the rehabilitative goals helpful for individuals with ADHD (Eme, 2014; Freckleton, 2020; Gordon, Diehl & Anderson, 2012; van der Maas et al., 2018). Echoing these concerns, in the 11 cases where an ADHD diagnosis influenced judicial outcomes in Singapore, a vast majority of the cases highlight the judge's recognition of ADHD's influence on impulsivity and susceptibility to social influence, impacting the defendant's "criminality" during the act of offense (Public Prosecutor v. Lee Han Fong Lyon, 2013, para. 6). Recognising past research vis-à-vis the negative impact of incarceration on individuals with ADHD, the judges have offered rehabilitation-focused sentences because of the ADHD diagnosis. For example, in the Ng Teng Yi Melvin v. Public Prosecutor (2013), the judge noted that "...[given] the appellant's impulsivity and misguided sense of peer loyalty linked to his ADHD, the longer he served in prison the higher the risk that he would be corrupted, rendering him particularly vulnerable... (para. 5)." Interestingly, despite the wide age range of cases highlighting ADHD as a diagnosis (as suggested in **Table 1**), it was predominantly cases involving young adults (age range 16 to 26) where the judge did accept ADHD as a mitigating factor.

While scientific research calls for an increase attention paid towards ADHD diagnoses in judicial cases, the findings suggest that in most cases in Singapore, ADHD remain overlooked or dismissed as an area of consideration in sentencing outcomes. In contrast to the 11 cases where ADHD contributed to evaluation outcomes, there were 37 cases where ADHD was raised as a diagnosis but did not influence sentencing outcome, some of the judges questioned the validity of the ADHD diagnosis (e.g., Public Prosecutor v. Pathip Selvan s/o Sugumaran, 2011; Public Prosecutor v Azlin bte Arujunah and another, 2020). Even when the judge did agree with the ADHD diagnosis, in cases where ADHD was not included in sentencing consideration, the judge had highlighted that there was no causal link between ADHD and the act of offence, or that it did not substantially impair the defendant's mental capacity to waive them of their responsibility for committing the act of offense (e.g., Public Prosecutor v Lorenzo Chia, 2012; Pathip Selvan s/o Sugumaran v Public Prosecutor, 2012; Public Prosecutor v Chen Weilong, Adrian, 2017). There were four reasons typically cited for believing that the ADHD diagnosis was not a significant contributor to the act of offense.

- (i) The judges had highlighted that the act of criminal offense was pre-planned and goal-directed rather than an act of impulse (e.g., Public Prosecutor v Chong Shih Wai and Another, 2006; Public Prosecutor v Ong Yong Hui Bryan, 2018).
- (ii) The judges believed that the defendant had underlying tendencies towards violence and aggression on top of ADHD and comorbidities (e.g., Public Prosecutor v Sumanthiran s/o Selvarajoo, 2016, 2017).
- (iii) The judges have believed that ADHD was not an impulse-control disorder and did not impact one's self-control (e.g., Public Prosecutor v Derek Teo Zhi Wei, 2016).
- (iv) The judges had believed that reoffending behavior was a proof of unwillingness to change (e.g., Public Prosecutor v Ong Yong Hui Bryan, 2018)

There are three notable observations regarding the reasons cited above in believing that ADHD was not a significant contributor to the act of offense that deviated from existing research's findings and recommendations. Firstly, existing evidence of ADHD suggests that the disorder has biological origins and is associated with impulsivity, contradicting the beliefs of judges from point (iii). Secondly, in reference to point (iv), rather than attributing it to the individual, researchers have raised questions about the high rates of reoffending amongst individuals with ADHD, on whether it might be a result of insufficient structural support for these individuals to improve their conditions or the individual's

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genuine unwillingness to change (Gordon, Diehl & Anderson, 2012; Gonzalez et al., 2013). Thirdly – and more specifically to individuals who committed drug-related offenses –, there were multiple instances where the court had emphasized that they did not see any clear associations between ADHD and substance use (e.g., Public Prosecutor v Derek Teo Zhi Wei, 2016; Rosman bin Abdullah v Public Prosecutor, 2017). The judges' evaluation on this front contradicted existing evidence suggesting stronger associations between substance use disorder and ADHD as comorbid outcomes (Gudjonsson, Wells & Young, 2011; Scully, Young & Bramham, 2014; Young et al., 2015).

LIMITATIONS

The number of cases included within this study is small, either because the keywords searched were not broad enough, because cases involving ADHD simply did not get disputed or reach the stage of being trialled in court, or because many individuals were simply not diagnosed of their ADHD prior to being sentenced. With the possibility of missed diagnoses resulting in the small number of cases coming up, there may be concerns about whether ADHD might be worsening criminal justice outcomes for defendants without the judicial system recognizing the influence of ADHD in these missed cases (Avant, 2019; Young & Concallis, 2021). Furthermore, the search was limited to studies up until 2021; given the increased awareness and understanding towards mental health with the introduction of the COVID-19 pandemic, changes in general attitudes towards mental health may influence sentencing outcomes since 2021.

This study is also limited in that not all the demographic information of interest can be identified through the court judgments. Oftentimes, information regarding the defendant's income level, highest educational status, as well as marital status (as a sign of available relationship and social support) are not indicated within the judgments. Past research has highlighted the importance of intersectionality in interacting with ADHD in increasing rates of offending amongst individuals with ADHD (Goel, 2009; Hamzeloo, Mashhadi & Fadardi, 2012; Savolainen et al., 2010; von Polier, Vloet & Herpertz-Dahlmann, 2012). However, the lack of this information within the archived judgment limits my ability to consider questions of whether intersectionality contributed to law-breaking behaviors amongst the defendants who were diagnosed with ADHD prior to or during the judicial sentencing process.

CONCLUSION

Overall, my archival search through Lawnet on cases raising ADHD as a factor of consideration in criminal sentencing trials revealed that most of the demographic trends are consistent with past research: men dominated many of these cases, and many of the defendants had comorbid psychiatric disorders diagnosed and were being trialled as a repeat offender. Where cases accepted ADHD as a mitigating factor, they tend to address young adults, and highlight the defendant's reduced criminality given the influence of impulsivity and susceptibility to social influence, henceforth choosing to take on a rehabilitative-focused sentence rather than a punitive sentence. In contrast, where ADHD was not accepted as a factor for mitigation, the judge either did not see a causal link between ADHD and the act of offence, or believed that ADHD did not substantially impact the defendant enough to result in the act of offence.

The findings from this study highlights a key implication with respect to psychological diagnoses in Singapore's judicial system. While some judges have begun acknowledging how ADHD could be an implicating factor in acts of criminal offence, the majority remained unwilling or unable to see the

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associations between ADHD and higher rates of criminal offending despite scientific evidence suggesting such a relationship because of impulse control concerns. Beyond contributing to the higher numbers of individuals living with ADHD being incarcerated, the inability to acknowledge the contribution of ADHD to acts of criminal offence may also mean that rehabilitation processes may not account for support that the convicted may require to manage their psychiatric condition during and after completing their sentence, increasing the possibility of recidivism. While preliminary and exploratory in nature, this study contributes to existing conversations regarding how ADHD continues influencing judicial outcomes in different jurisdictions, especially in non-WEIRD contexts. The study also extends the discussion of psychiatric disorders (specifically ADHD) and its influences on Singapore's criminal justice system especially in Singapore since the Mandatory Treatment Order was implemented in 2011. To uncover a better understanding of how psychological concerns may influence legal considerations, future researchers may consider expanding on this study, to consider how other specific psychiatric disorders may influence court trial judgments, and the associated deliberations that take place in Singapore.

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Table 1.

Overall Demographics Information of Defendants, Nature of Alleged Crimes, and Information of Cases where ADHD Successfully Influenced Sentencing Outcomes

Characteristic	No. of Cases	
	<i>n</i>	%
All Cases where ADHD was Raised in the Judgment (N = 48)		
Gender		
Male	46	95.83
Female	2	4.16
Ethnicity		
Chinese	26	54.17
Malay	7	14.58
Indian	11	22.92
Others	3	6.25
No information found	1	2.08
Comorbidities		
Disruptive Behavior Disorders (Conduct Disorder and Oppositional Defiant Disorder)	9	18.75

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Mood Disorder (Major Depressive Disorder and Persistent Depressive Disorder)	9	18.75
Substance Use Disorder (Including alcohol, cannabinoids, stimulants, etc.)	8	16.67
Borderline Intellectual Functioning	8	16.67
Personality Disorder	3	6.25
Anxiety Disorder (including OCD)	3	6.25
Adjustment Disorder	2	4.17
Post-Traumatic Stress Disorder	2	4.17
Insomnia Disorder	2	4.17
Intermittent Explosive Disorder	1	2.08
No comorbidities indicated	11	22.92
First Time Offender?		
Yes	20	41.67
No	19	39.58
No information	9	18.75
Nature of Crimesa		
Drug related	21	43.75

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Consumption	7	14.58
Possession	7	14.58
Trafficking	7	14.58
Violent Crimes	20	41.67
Fight/Abuse	7	14.58
Murder/Homicide	5	10.42
Robbery	3	6.25
Rioting; Unlawful Assembly with Intention to Cause Hurt	3	6.25
Possession of Weapon	2	4.17
Property Crime	16	33.33
Theft	9	18.75
Cheating	4	8.33
Assisting in the Business of Unlicensed Moneylending	3	6.25
Sex Crimes		
Sex with Minor	2	4.17
Outrage of Modesty	1	2.08

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Others

Trespassing	3	6.25
Unlicensed Driving	2	4.17
False Impersonation	2	4.17
Providing False Information to Public Servant	1	2.08
Vandalism	1	2.08
Dishonest Misappropriation	1	2.08
Mischief	1	2.08
Use of Insulting Words	1	2.08

Cases where ADHD Influenced the Sentencing Outcome (N = 11)

Gender

Male	10	90.91
Female	1	9.09

Ethnicity

Chinese	9	81.82
Malay	1	9.09

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Indian	1	9.09
Others	0	0
Comorbiditiesa		
Borderline Intellectual Functioning	3	27.27
Disruptive behavior Disorders (Conduct Disorder and Oppositional Defiant Disorder)	3	27.27
Mood Disorders (Major Depressive Disorder and Persistent Depressive Disorder)	2	18.18
Anxiety Disorder	1	9.09
Post-Traumatic Stress Disorder	1	9.09
Substance Use Disorder (including alcohol, cannabinoids, stimulants, etc.)	1	9.09
No comorbidities indicated	2	18.18
First Time Offender?		
Yes	6	54.55
No	5	45.45
Nature of Crimea		
Drug related	5	45.45

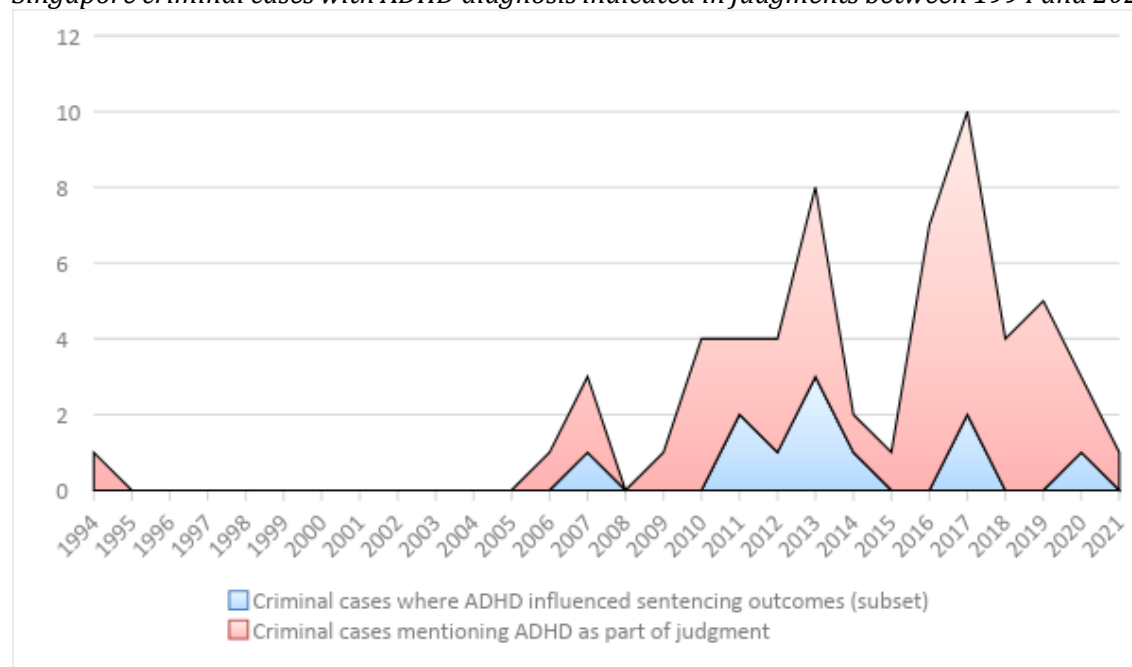
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Consumption	5	45.45
Violent Crimes	3	27.27
Robbery	1	9.09
Rioting; Unlawful Assembly with Intention to Cause Hurt	1	9.09
Possession of Weapon	1	9.09
Property Crime	5	45.45
Theft	2	18.18
Cheating	1	9.09
Assisting in the Business of Unlicensed Moneylending	2	18.18
Others	5	45.45
False Impersonation	2	18.18
Use of Insulting Words	1	9.09
Unlicensed Driving	2	18.18

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Figure 1.

Singapore criminal cases with ADHD diagnosis indicated in judgments between 1994 and 2021 (N = 48)



Note. The graph begins in 1994 as no results were found prior to 1994 based on the keyword searched. Please note that the line “ADHD influencing sentencing outcome” is a subset of the line “cases mentioning ADHD as part of judgment”. For example, in 2012, there are total of 3 criminal cases mentioning ADHD in the judgment, and 1 out of 3 of them were criminal cases influenced sentencing outcome.