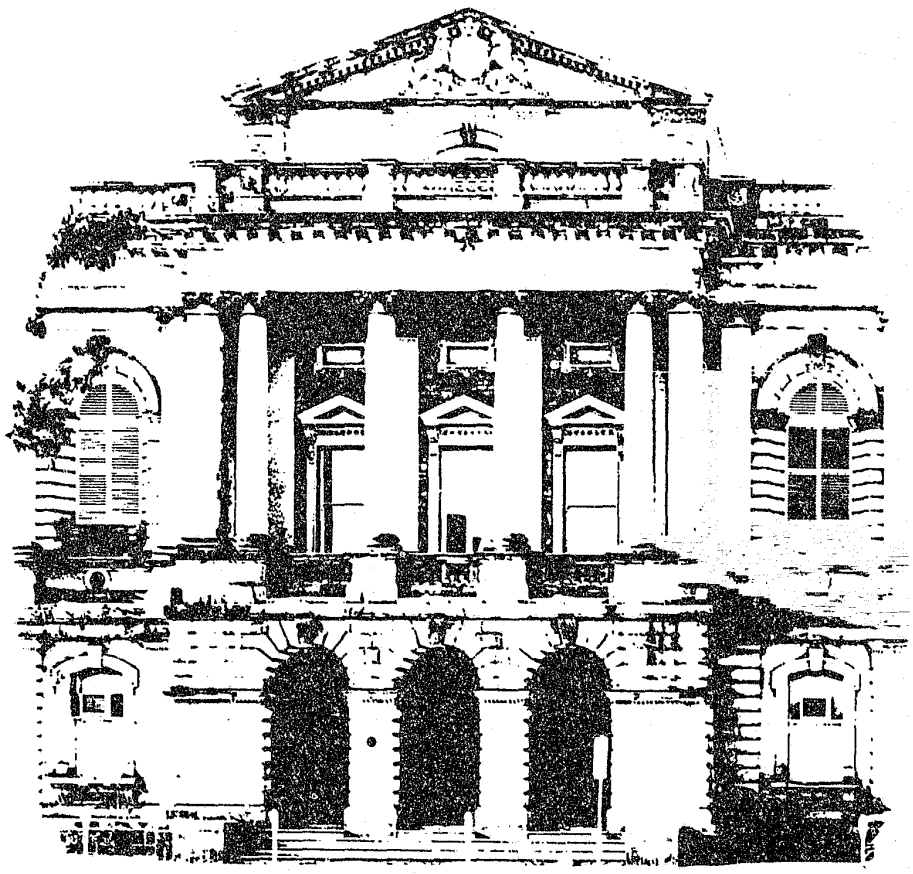
Decriminalising Drunkenness in South Australia



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Decriminalising Drunkenness in South Australia

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CONTENTS

PREFACE

This evaluation of the Public Intoxication Act (1984) is the fourth in an occasional series of Research Bulletins on issues relevant to the administration of criminal justice in South Australia. Like its predecessors it canvasses opinion as well as providing statistical information. It should be emphasised that views in this report do not necessarily reflect policies of the South Australian Government. The main purpose of these publications is to encourage discussion and facilitate the process of reform.

The report was written by the Director of the Office of Crime Statistics, on the basis of data collection and literature reviews undertaken by Ms Kate McIlwain. Thanks also are due to Mr. Adrian Barnett for undertaking the computer analysis, to the Word Processing Section of the Attorney-General's Department for preparation of the early drafts, to Ms Julie Gardner for proof-reading and checking and to Ms Lesley Bird for the typing and layout of the final report. We also are grateful to Mr. Graham Strathearn and Ms Jill Bungey of the Drug and Alcohol Services Council, whose grant of $5,885 made this research possible, and to Ms Deborah Haines for her generous assistance in providing and interpreting statistical tables on the operations of the new legislation.

A great deal of the information in this report derives from statistical forms supplied by Clerks of Court throughout South Australia. The Office is, as always, very appreciative of their support, and of the special assistance to this project provided by Mr. Richard Foster, Registrar of Subordinate Jurisdictions.

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SUMMARY

1. This Research Bulletin assesses the impact of the Public Intoxication Act from a justice perspective. The Act, which came into effect on 3 September 1984, represented the culmination of many years of attempts to decriminalise drunkenness in this State. Ever since 1976, South Australian statutes had specified that drunkenness should not be treated as an offence. However lack of appropriate welfare facilities had prevented the provisions being put into effect.

2. In reviewing the impact of the new law, the Bulletin gives particular attention to three issues:

- whether the Public Intoxication Act has been more, or less, discriminatory in its impact than previous legislation;
- whether South Australia has avoided pitfalls elsewhere associated with decriminalising drunkenness;
- how well the new Act fulfilled the objective of providing welfare and treatment facilities for people who are found intoxicated in public.

3. On the first question, this study does not provide a basis for belief that there has been improvement. Comparison of apprehensions for drunkenness during six-month periods before and after decriminalisation indicates that introduction of the new law increased the rate at which people came into contact with law enforcement agencies. Detentions under the Public Intoxication Act were forty-six percent higher than total apprehensions when drunkenness was a criminal offence. The increase particularly affected young people, Aboriginals and persons living outside Adelaide. Enforcement after decriminalisation was very intense in some country regions, with apprehensions in towns such as Ceduna, Coober Pedy and Port Augusta ranging from two to forty-two times the State average.

4. More positive findings were obtained on the second issue: whether South Australia has avoided other pitfalls associated with decriminalisation. In particular there is no indication that police in some regions tended to "boycott" the legislation (as had occurred in the Northern Territory), or that arrests for other minor offences rose when the charge of drunkenness no longer was available. South Australian police have not preferred to arrest people for a minor offence rather than simply taking them into custody for drunkenness - if anything the opposite has been the case.

5. A key indicator with respect to the final issue - whether the Act succeeded as a treatment and welfare measure - was the number of drunks admitted to designated drying out facilities. However the research does not show that this occurred. Of 2,831 detainees under the Public Intoxication Act between March and August 1985, just sixty-two spent time in a sobering-up centre or hospital. At least ninety-four percent of detainees throughout the State spent the entire sobering-up period in police cells. Other options countenanced by the legislation, such as taking intoxicated people home or putting them in the care of friends or relatives, also were rarely used.

6. The report concludes that the outcome of decriminalising drunkenness in South Australia has at best been ambivalent. Some concerns about the legislation have not been realised, but the new system retains strong residual ties with the criminal justice system. To ensure that this law reform is successful, policy makers will need to reassess and refine their objectives and make a more systematic attempt to ensure that they are achieved. In particular the "medical" approach, which has dominated discussion of this topic in South Australia, needs to be abandoned in favour of alternative strategies.

INTRODUCTION

On 3 September 1984 the Public Intoxication Act, which decriminalised drunkenness, became effective in South Australia. To many people, this represented a long overdue reform. Ever since 1976, South Australian statutes had specified that intoxication should not be treated as an offence, and that people found drunk in public places should be dealt with on a health and welfare basis. Lack of appropriate facilities, however, had meant extensive delays in putting the provisions into effect. Proclamation of the 1984 legislation finally seemed to rectify the anomaly, and ensure that what many perceived to be a victimless activity was put beyond the scope of criminal law.

Approval for the new laws was not, however, unreserved. In the eight years since South Australia first considered changes, drunkenness provisions had been modified in other States and Territories as well as overseas. Experience in these jurisdictions had indicated that decriminalisation could be more problematic than first anticipated. In at least one place, the Northern Territory, laws had been declared unworkable and rescinded. More commonly there had been criticism that although ostensibly oriented toward treatment or welfare, new approaches retained strong elements of social control. Such problems had been well documented in New South Wales, where patterns of detention under new provisions appeared in some places merely to have exacerbated inequalities previously apparent under the criminal law. This report will assess whether such concerns also have relevance for South Australia and monitor the decriminalisation of drunkenness from a justice perspective. No attempt will be made to assess the effectiveness of treatment programs - such evaluations are more appropriately carried out elsewhere*. The report will devote attention solely to how well the new laws have succeeded in removing the handling of drunkenness from the criminal justice system, and on assessing whether further improvements could be made. Before doing so, it is necessary to review the history of public policy on this issue, and explore philosophies behind changes to relevant legislation.

* The Drug and Alcohol Services Council has established a data system for monitoring detentions under the Public Intoxication Act and already has published one report on its operations (see Drug and Alcohol Services Council, 1986).

THE HISTORY OF LAW ON PUBLIC DRUNKENNESS

Laws prohibiting the excessive consumption of alcohol have long been part of Anglo-Australian criminal justice systems, with "an act for repressing the odious and loathsome sin of drunkenness" introduced in England in 1606. At that stage the charge was closely associated with concepts of vagrancy, and used to control what legislators perceived as "dangerous" classes. Poor Laws of 1630 recommended prosecution of "all those who live in idleness and will not work for reasonable wages or who spend what they have in taverns" (Murphy, 1977: 58). During the 17th, 18th and 19th centuries massive amounts of profit and tax revenue derived from the production of alcohol and from public houses, and this may well have inhibited governments from using strict licensing laws to control alcohol consumption. There were no such obstacles to prosecution of users of alcohol and the industrial revolution, with its rapid population growth and influx of unemployed people into cities, saw even greater use of the criminal law in this context.

From the second half of the 19th Century and onwards there was a change in approach. Contrary to impressions which may be gained from mass media, the incidence of riots and other serious public disturbances involving drunken mobs may well have declined in Western societies over the past one hundred years (see Tobias, 1982; Pearson, 1983; Roberts, 1969) and this has lessened perceptions of drunkenness as a threat to the social order. An alternative view, where drunkenness was portrayed as an individual sickness, began to emerge. Private institutions, catering mainly for middle-class people who could afford to pay for treatment, were set up in England and Australia. After 1860 legislative machinery was introduced in England, the United States and Australia to provide for such institutions to be licensed and for persons declared inebriate to be committed to them (Murphy, 1977: 61-62). By 1881 South Australia had an Inebriates Act, which relabelled some prisons as inebriate institutions and enabled judges and magistrates to commit repeated drunkenness offenders to them for extended periods. The Act and its successors remained in force in South Australia until 1961.

Strongest contemporary commitment to this medical or treatment approach is in the United States, where thirty-four jurisdictions now have adopted a Uniform Alcoholism and Intoxication Act. The Act's stated objectives include rehabilitating public inebriates through a continuum of health care services (Finn, 1985). Reviews of its effects, however, have highlighted a number of difficulties - the most notable being the need to establish that significant percentages of people apprehended actually are ill, and to show that chronic drinkers can be rehabilitated by compulsory programs. The fact that some detainees appear to become caught up in a revolving door of apprehension, detention, release and re-arrest has cast doubts on the feasibility of mass treatment schemes, but if many of those picked up are not suitable for treatment this raises questions about the justification for holding them. The dilemma is particularly acute, of course, in jurisdictions where persons found drunk on numerous occasions can be detained indefinitely until "cured".

Because of these problems, many commentators have argued that a treatment approach to public drunkenness is no more acceptable than reliance on criminal law. Instead a third philosophy based on concepts of social welfare should be adopted. Stated succinctly by Morris and Hawkins (1971) it puts emphasis on the extension of emergency hostel facilities. Rather than being picked up by police in paddy wagons, exhausted or insensible drunks should be assisted by community workers and taken to overnight accommodation. No attempt should be made to provide them with more than basic food and shelter, although referral services would be available for individuals requesting them. Advocates of the social welfare approach generally argue that the possibility that drunks will reject assistance has been exaggerated, and that if a drunk poses physical threat to others or commits offences he or she simply should be charged under criminal law.

In England, Australia and the United States, debates concerning alternatives to the criminal law generally have concentrated on whether emphasis should be on treatment or social welfare. As the preceding discussion shows, the objectives of each model are distinct, and may even conflict. In evaluating reforms it is essential first to identify which philosophy has been adopted. In the present context this means reviewing why South Australia changed its laws, and how the approach it has adopted compares with the other States and Territories.

CHANGES TO DRUNKENNESS LAWS IN AUSTRALIA

Within Australia, the Northern Territory and New South Wales were pioneers in decriminalising drunkenness. The Northern Territory changed its laws in 1974 and a welfare approach was taken. However strong ties remained with the criminal justice system. Police were empowered to pick up drunks and hold them for up to six hours, but as soon as people no longer were in need of assistance they were to be released. If a person's well being required detention for more than six hours he or she was to be brought before a magistrate as soon as possible. The magistrate could authorise further detention, but no-one was to be held for more than forty-eight hours after initial reception.

These provisions remained in force until 1981, when they were repealed. Non-enforcement by police in Alice Springs had led to public outcry against public drunkenness. Attempts had been made to resolve problems by instituting an Aboriginal pick-up team staffed by volunteers, but the measures were not seen as sufficient. Drunkenness again was made a criminal offence.

New South Wales' provision to decriminalise drunkenness came into force in 1980. The new Act was described in Parliament as a "welfare-management model, not primarily concerned with rehabilitation"

(Egger et al, 1983). People found intoxicated in public and behaving in ways which interfered with or provided a danger to other citizens or to themselves could be detained for up to eight hours, or until sober, in "proclaimed places". Such "places" encompassed New South Wales police stations and juvenile remand centres, but also included voluntary agencies. There are now seventeen proclaimed agencies in New South Wales, run by bodies such as St. Vincent de Paul, the Sydney City Mission, the Salvation Army, the Methodist Central Mission and district councils. In 1981 these accounted for about forty percent of all detentions under the Act, although it is not clear how many of those were self-referrals (ie. not picked up by police or welfare teams).

Evaluations of the New South Wales approach have been equivocal. While the involvement of non-government agencies has been seen as positive, commentators are concerned at the extent of residual ties with the criminal justice system and at discrepancies in procedures. Statistics indicate that people held in police cells for drunkenness have tended to be younger, while those going to voluntary agencies are more likely to be homeless men who had been detained on previous occasions. Aboriginal people are grossly over-represented among detainees - their rate being twenty-four times that of the New South Wales as a whole - and more than 60% have been held for more than eight hours. Almost all Aboriginals spent their drying out period at police stations. For all detentions there had been very few relocations from cells to voluntary agencies, even though this was allowed by the legislation (for full details see Milne, 1984).

Compared with the Northern Territory and New South Wales, South Australian initiatives relating to drunkenness always have had more of a treatment perspective (see Goode, 1980). Even though the Criminal Law and Penal Methods Reform Committee (the Mitchell Committee) accepted a welfare philosophy when it first considered this question in 1973, its recommendations did not follow Morris and Hawkins and make assistance for drunks the prerogative of non-government agencies. Instead the Committee envisaged a major role for law enforcement and other government authorities. Police as well as private welfare agencies should pick up drunks, and State owned sobering-up centres - five in the Adelaide metropolitan area and others in major country centres - should be built. While the centres were being prepared, police stations should be used as sobering-up centres - a function which they would continue to play in remote country regions. These recommendations formed the basis for legislation introduced in 1976. It provided for detentions at sobering-up centres and at approved premises, and for drunks to be transported home as a first preference. However the initial period a person could be held - eighteen hours - was far longer than required from a welfare perspective. Moreover drunks could be held for a further twelve hours if a medical practitioner certified that this was necessary, and Courts of Summary Jurisdiction could authorise an additional seventy-two hours' detention.

As mentioned earlier, lack of funds for the sobering-up centres meant that the Act was not proclaimed. In 1977 an interdepartmental committee was formed to advise on possible implementation and if necessary propose legislative amendments. The committee consisted of representatives of the Departments of Community Welfare, Health and Police and the Alcohol and Drug Addicts Treatment Board (now the Drug and Alcohol Services Council). It further entrenched a treatment approach and the involvement of law-enforcement and other public authorities. The Committee recommended that police assume primary responsibility for apprehension and detention for an initial four hours with drunks later transferred, where possible, to sobering-up centres. Osmond Terrace, a specialised clinic for treating alcohol and drug addiction, was nominated as the sole sobering-up centre in Adelaide. No centres were proposed for the country. The Committee's approach was accepted, and legislative amendments allowing police cells to become the main detention centres were introduced in 1978. Even with this scaling-down of the original concept finance remained a stumbling-block, and the laws were not proclaimed.

Not until September 3 1984 was the deadlock broken. When a new Government assumed power in 1982, the incoming Minister for Health had expressed considerable concern at the continuing delays, and a new committee was convened. Soon after, the Drug and Alcohol Services Council was allocated additional funds for staffing at Osmond Terrace and to provide pick-up facilities. With these facilities ready, new clauses under the Public Intoxication Act 1984 and the Police Offences Act (now the Summary Offences Act) became effective. Police officers were empowered to apprehend drunks and take them to their homes, to police stations or to Osmond Terrace. Detainees were to be released as soon as sober, and no one was to be held for more than ten hours (if in a police cell) or eighteen (if at Osmond Terrace). Even if a detainee was not sober, he or she could be released into the care of a friend, a relative or a solicitor, and there was provision for people who considered that they had been wrongly detained to apply to a Court of Summary Jurisdiction for declaration that they had not been intoxicated. Provision also was made for non-government authorities to be authorised to provide pick-up and sobering centre facilities, but no relevant proclamations have been made during the two years the new laws have been in operation.

EVALUATING THE PUBLIC INTOXICATION ACT, 1984

In assessing law reform, one of the most important criteria always must be whether the legislation has fulfilled its architects' intentions. However, evaluation should be able to take account of other, less obvious benefits and problems. Even though a change may have fallen short of expectations, it could nonetheless represent improvement on the situation that previously existed. Conversely, legislation which has gone a long way toward achieving stated goals might also have set off a chain of unintended consequences.

These factors considerably influenced the research design for assessing the Public Intoxication Act, 1984. Clearly, it was necessary to gather information on whether the operation of the Act had been consistent with philosophies articulated in the Mitchell Report and by other relevant committees. No less important, however, was being able to estimate whether, regardless of adherence to philosophy, decriminalising drunkenness had resulted in a fairer approach than the previous emphasis on arrests and court appearances, and whether South Australia had been able to avoid pitfalls experienced elsewhere.

To address these questions, a "before and after" approach was used. Arrests and scheduled court appearances during the six months January to June 1984, when drunkenness was a criminal offence, were compared with apprehensions between March and August 1985 under the new welfare provisions. Times closer to the actual changeover were avoided because of the possibility that criminal justice practices may have been modified in anticipation of decriminalisation, and to allow the new system time to settle down.

The data then were reviewed to assess:

- whether the new Public Intoxication Act has been more, or less, discriminatory in its impact than the previous legislation;
- whether South Australia has avoided pitfalls associated elsewhere with decriminalising drunkenness;
- how well the new Act fulfilled its objectives of providing welfare and treatment facilities for drunks in need.

IS THE PUBLIC INTOXICATION ACT MORE, OR LESS, DISCRIMINATORY IN ITS IMPACT THAN PREVIOUS LEGISLATION?

This question was given high priority because research has shown that the enforcement impact of criminal laws on drunkenness can be extremely uneven. Wealthier people and those in older age-groups have much greater capacity to command "private space" - homes, clubs or other facilities - for recreational activity. Younger generations and the economically disadvantaged, on the other hand, often need to use public venues (parks, hotels, streets, etc.) and as a result are more likely to be arrested regardless of whether their actual consumption of alcohol is greater than the remainder of the population's. If such inequalities were evident in South Australia prior to decriminalisation and changes in the law significantly reduced them, this in itself could be regarded as a major benefit.

Table 1 contains data on enforcement prior to decriminalisation, and reveals that during the first six months of 1984, South Australia was far from exempt from the anomalies often associated with treating drunkenness as a criminal offence. On criteria such as age, sex, racial background and even area of residence within the State, some segments of society were far more vulnerable to apprehension than others.

TABLE 1 SCHEDULED APPEARANCES FOR DRUNKENNESS IN CRIMINAL COURTS OF SUMMARY JURISDICTION: 1 JANUARY - 30 JUNE 1984 ++

(a) By Age and Sex

Age At Apprehension	Males		Females		TOTAL+	
	Number	Rate*	Number	Rate*	Number	Rate
18 - 19	108	4.7	6	0.3	114	2.5
20 - 24	280	4.8	20	0.3	300	2.6
25 - 29	229	4.1	26	0.5	255	2.3
30 - 34	206	3.8	10	0.2	216	2.0
35 - 39	185	3.7	24	0.5	209	2.1
40 - 44	153	3.9	24	0.6	177	2.3
45 - 49	145	4.3	32	0.9	177	2.6*
50 - 59	174	2.5	43	0.6	217	1.6
60 & Over	204	2.1	8	0.1	212	1.0
TOTAL	1684	3.5	193	0.4	1877	1.9

(b) By Race and Sex

Sex	Aboriginal		Non-Aboriginal		TOTAL +	
	Number	Rate*	Number	Rate*	Number	Rate
Male	637	220.5	1050	2.3	1687	3.6
Female	154	52.0	43	0.0	197	0.4

(c) By Region Where Scheduled to Appear

Region	Number	Rate*
Adelaide Metropolitan Area	1181	1.3
Ceduna	91	32.6
Coober Pedy	58	27.9
Port Augusta	328	21.5
Whyalla	36	1.2
Rest of State	239	0.6

++ See Appendix 1 for notes to tables.

For South Australia as a whole, the rate of drunkenness arrests among adults was about 1.9 per thousand. Males in the eighteen to twenty-four age-group, however, had more than twice this ratio. Aboriginal people, who account for less than one percent of the State's adults, made up more than forty percent of scheduled court appearances, and among both males and females their rate of apprehensions was significantly higher than for other racial groups. Finally, people living in some country centres outside Adelaide were far more likely to have been arrested than those resident within the capital. For the Adelaide Metropolitan region, the rate of drunkenness appearances per head of population was about 1.3 per thousand. Some country towns, such as Coober Pedy and Port Augusta, had court appearance rates more than fifteen times greater.

These figures do not, of course, necessarily indicate that South Australian police were selective or discriminatory in their enforcement approach. As discussed earlier, people vary widely in lifestyles, resources and other factors which associate with drinking in public, and this can make particular sub-groups more liable to apprehension. Rates of arrests also can vary widely within sub-groups: the repeated apprehension of a handful of individuals may well have accounted for a significant proportion of arrests for Aboriginals and people in remote country regions. Even taking these factors into account, however, the data confirm that treating drunkenness as an offence invariably makes the criminal law far more intrusive into the lives of some minorities than of others, and raise the possibility that decriminalisation may be beneficial by reducing this level of interference. The point is brought even further into relief by information on what happened to defendants <u>after</u> apprehension. Again, statistics for the first half of 1984 help identify serious inequalities, and indeed suggest that anomalies first apparent in patterns of apprehensions were accentuated at each successive stage of the criminal justice process.

The initial, and in many respects most important, phase in this amplification of inequality was the bail decision. As Table 2 shows (opposite page), most people arrested for drunkenness had managed to obtain some type of pre-trial release by the time of their last scheduled court appearance. However a minority - about nine percent - had been in custody, for periods of up to six days. Of this "remanded in custody" group, disproportionate numbers lived in remoter country regions or were from Aboriginal backgrounds.

TABLE 2 PERCENTAGE OF CRIMINAL COURT OF SUMMARY JURISDICTION APPEARANCES FOR DRUNKENNESS WHERE DEFENDANT WAS IN CUSTODY ON REMAND: 1 JANUARY - 30 JUNE 1984

(a) By Age

	Age Group								
	18-19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60 & Over
In Custody On Remand (% of each age group)	4.4	8.6	8.2	4.6	11.0	9.6	9.0	7.3	17.9

(b) By Racial Background

	Aboriginal	Non-Aboriginal
In Custody On Remand (% of each racial group)	11.3	7.4

(c) By Region Where Apprehended

	Region					
	Adelaide Metro. Area	Ceduna	Coober Pedy	Port Augusta	Whyalla	Rest of State
In Custody On Remand (% in each region)	8.1	49.5	22.4	0.3	2.8	7.1

In contrast to these, one in four people apprehended for drunkenness during the first six months of 1984 not only were granted pre-trial release but were able entirely to avoid the necessity of a court appearance. This was achieved simply by forfeiting cash bail or a recognizance. Because of the difficulty and expense of locating people who failed to appear in court to answer a charge of drunkenness, the practice generally was not to chase these defaulters but to treat the surrender of the bail amount (generally no more than $20) as a "de facto" penalty. An unintended consequence was that access to finance, rather than the seriousness of the offence itself, become a determinant of whether a person ultimately would receive a criminal conviction or a further penalty. Thus higher percentages of cases involving non-Aboriginal than Aboriginal people were resolved by the bail forfeiture method, and this outcome occurred far less often in the country than in the city (Table 3, below).

TABLE 3 PERCENTAGE OF SCHEDULED APPEARANCES FOR DRUNKENNESS IN CRIMINAL COURTS OF SUMMARY JURISDICTION WHERE DEFENDANT FAILED TO APPEAR AND FORFEITED CASH BAIL OR A RECOGNIZANCE: 1 JANUARY - 30 JUNE 1984

(a) By Age

	Age Group								
	18-19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60 & Over
Forfeiting Bail (% of each age group)	14.0	23.9	21.2	21.3	33.3	22.0	22.5	23.9	41.5

(b) By Racial Background

	Racial Background	
	Aboriginal	Non-Aboriginal
Forfeiting Bail (% of each racial group)	18.0	30.9

(c) By Region Where Apprehended

	Region					
	Adelaide Metro. Area	Ceduna	Coober Pedy	Port Augusta	Whyalla	Rest of State
Forfeiting Bail (% in each region)	34.9	0.0	3.4	0.0	0.0	28.0

Final evidence of inequality in the criminal law's treatment of drunkenness offenders is provided by data on case outcomes and penalties. As Table 4 shows (below), there was significant variation in the ways

TABLE 4 COURT OUTCOMES AND PENALTIES FOR DRUNKENNESS IN CRIMINAL COURTS OF SUMMARY JURISDICTION: 1 JANUARY - 30 JUNE 1984

(a) By Age

Age At Apprehension	Convicted (% of age group)	Guilty Without Conviction (% of age group)	Fined (% of age group convicted)
18 - 19	74.6	6.1	62.4
20 - 24	69.1	3.3	66.8
25 - 29	69.8	5.5	60.7
30 - 34	69.4	6.9	60.0
35 - 39	61.0	4.8	64.8
40 - 44	68.9	6.8	58.2
45 - 49	70.8	1.7	41.3
50 - 59	67.9	5.0	54.7
60 & Over	53.8	1.9	64.0
TOTAL	66.9	4.6	59.6

(b) By Racial Background

Racial Background	Convicted (% of racial group)	Guilty Without Conviction (% of racial group)	Fined (% of racial group convicted)
Aboriginal	76.2	3.2	48.7
Non-Aboriginal	60.3	5.6	68.6

(c) By Region Where Apprehended

Region	Convicted (% of defendants in region)	Guilty Without Conviction (% of defendants in region)	Fined (% of those convicted in region)
Adelaide Metro. Area	57.7	4.1	72.4
Ceduna	97.8	2.2	66.3
Coober Pedy	94.8	1.7	49.1
Port Augusta	92.1	2.1	13.6
Whyalla	63.9	33.3	91.3
Rest of State	63.6	6.3	78.9
TOTAL	67.4	4.4	58.5

courts dealt with people found guilty of drunkenness: variation not just in penalties received but in whether a person would have a conviction recorded against them. Once again, some minorities appeared to be at a particular disadvantage. Aboriginal people and defendants in country areas were more likely to have been convicted, and of the forty-five drunkenness offenders receiving prison sentences in the two years to 30 June 1984, twenty-eight were Aboriginal. A further dimension of punishment which could not be measured from the present data was the numbers who went to gaol because they were unable to pay fines imposed. Correctional Services figures, however, suggest that prior to decriminalisation defaulters on fines for drunkenness were received at a rate of about 560 per year.*

Information on arrests and court appearances before the system was reformed leave little doubt, then, that use of criminal law to control drunkenness in South Australia was associated with some major anomalies. Some groups were far more vulnerable to apprehension for this victimless offence, and the differential treatment was maintained as cases progressed through the system. On the face of it, decriminalisation had the potential to resolve these anomalies by reducing involvement of justice agencies and ensuring that people were detained only if there was a genuine welfare need. It is now time to assess whether the changes in fact succeeded in this respect.

Initial review of the figures does not provide grounds for optimism. Rather than reducing the number of people coming into contact with law enforcement agencies, the new laws appear to have led to a significant increase. Between 1 March and 31 August 1985, the times for which data on the operations of the Public Intoxication Act were collated, there were 2,831 detentions of people deemed to be under the influence (Table 5, opposite). This was forty-six percent more than total apprehensions during the comparable period when drunkenness was an offence. The increase particularly affected young males and females+, Aboriginals and persons living outside the Adelaide Metropolitan Area. Enforcement after decriminalisation in some country regions was particularly intense. During March-August 1985, apprehensions for drunkenness in towns such as Ceduna, Coober Pedy and Port Augusta ranged from two to forty-two times the State average.

Almost all (94%) the people picked up under the Public Intoxication Act were detained in police cells and there were very few taken home or relocated to hospitals and sobering-up centres. This, and the fact that the new provisions made police responsible for the decision to apprehend, suggests strongly that decriminalisation may have increased, rather than dimished, day-to-day contact between justice officials and some minorities.

* In its report on Fine Default in South Australia (1984) the Department of Correctional Services estimates that drunkenness and related offences accounted for about eighteen percent of all offences for which fine defaulters were received in gaol. During February 1984, 258 distinct prisoners were received in default of fines.

+ Decriminalisation saw a 150% increase in detentions of young women aged 18-19, although females still only accounted for a small percentage of persons apprehended.

TABLE 5 DETENTIONS UNDER THE PUBLIC INTOXICATION ACT BETWEEN 1 MARCH AND 31 AUGUST 1985 ++

(a) By Age and Sex of Person Detained

Age At Detention	Males		Females		TOTAL +	
	Number	Rate*	Number	Rate*	Number	Rate*
17 & Under	94	**	30	**	124	**
18 - 19	205	8.8	15	0.7	220	4.8
20 - 24	350	5.9	42	0.7	392	3.3
25 - 29	305	5.4	49	0.9	354	3.2
30 - 34	258	4.8	24	0.5	282	2.6
35 - 39	234	4.6	23	0.5	257	2.5
40 - 44	199	5.1	18	0.5	217	2.8
45 - 49	195	5.8	36	1.1	231	3.4
50 - 59	250	3.6	53	0.8	303	2.2
60 & Over	283	3.0	7	0.1	290	1.3

(b) By Race and Sex of Person Detained

Sex	Aboriginal		Non-Aboriginal		TOTAL+
	Number	Rate*	Number	Rate*	
Male	921	318.9	1366	3.0	2287
Female	218	73.7	82	0.2	300

(c) By Region Where Detained

Region	Number	Rate*
Adelade Metropolitan Area	1464	1.7
Ceduna	245	87.7
Coober Pedy	185	89.0
Port Augusta	210	13.8
Whyalla	100	3.3
Rest of State	627	1.8
TOTAL	2831	2.1

++ See Appendix 1 for notes to tables.

The new laws did limit the time that an intoxicated person could be held and ensured that those taken into custody would not become liable for additional penalties. Nonetheless, there still were some significant variations in detention periods (Table 6, below). Persons apprehended outside the Adelaide Metropolitan Area were more likely to have been detained either for very short times (less than one hour) or for closer to the maximum. Detoxification periods for Aboriginal people also tended to be longer than for non-Aboriginals. In some respects, these variations were analogous to differences in bail, conviction and penalty decisions under the former criminal law provisions. They suggest that although decriminalisation may have attenuated the differential treatment that can occur after a drunk has been taken into custody, the problem has by no means been eliminated.

TABLE 6 DETENTIONS UNDER THE PUBLIC INTOXICATION ACT BETWEEN 1 MARCH AND 31 AUGUST 1985, AND TIME HELD

Period Detained	Where Detained		Racial Background	
	Adelaide Metropolitan Area (N=1463) Percentage	Rest Of State (N=1367) Percentage	Aboriginal (N=1139) Percentage	Non-Aboriginal (N=1447) Percentage
Less Than 1 Hour	5.4	13.3	10.4	8.1
1 Hour, Less Than 2 Hours	3.8	3.5	3.2	4.1
2 - 3 Hours	4.4	2.9	1.9	5.0
3 - 4 Hours	13.3	4.7	7.5	10.6
4 - 5 Hours	22.6	6.3	9.4	19.0
5 - 6 Hours	18.6	10.2	12.5	16.2
6 - 7 Hours	12.7	11.8	12.4	12.2
7 - 8 Hours	6.8	11.0	10.2	7.7
8 - 9 Hours	4.4	11.2	9.7	5.7
9 - 10 Hours	4.8	15.9	14.8	6.8
10 - 11 Hours	1.8	6.7	6.0	2.9
11 Hours Or More	1.4	2.5	1.8	1.7

Such findings lead unavoidably to the conclusion that although ostensibly a welfare measure, decriminalising drunkenness in South Australia has not reduced criminal justice involvement, nor has it eliminated the inequalities formerly associated with applying the criminal law in this context. Despite the welfare orientation of the new legislation, drunks continued to be picked up by the police, and the vast majority spend their sobering up time in cells. The new laws put a ceiling on maximum periods of detention - a restriction which in a high percentage of cases has been observed. To offset this, however, there has been a significant rise in the rate of apprehensions, and this increase mainly has affected minority groups already subject to more intensive policing.

Failure to make inroads against the less even-handed aspect of the former legislation will be a disappointment to those who saw removal of the public drunkenness from the criminal statutes as an important step forward in the protection and enhancement of civil liberties. However, as long as law-enforcement bodies are expected to be involved in such a thoroughgoing way in administering the system it is difficult to see how this optimistic projection could have been achieved. In the authors' views only a non-compulsory system of pick-ups and admissions, completely divorced from criminal justice, can be assured of keeping social control and welfare separate. Neither the Mitchell Committee nor its successors envisaged such an approach for South Australia.

At least the Public Intoxication Act has removed some stigma from the way drunks are treated and ensured that although still liable to deprivation of liberty they do not become exposed to additional punishment. It also, of course, has considerably reduced the bureaucratic overheads associated with formally charging drunks and processing them through the court (and sometimes the prison) system. Having acknowledged its deficiencies as a civil liberties measure, then, perhaps now it is appropriate to consider decriminalisation's advantages and disadvantages in other respects. In particular, how well has it avoided pitfalls associated with similar initiatives in other jurisdictions, and how does it measure up in terms of its own ideals of providing a treatment option for inebriates?

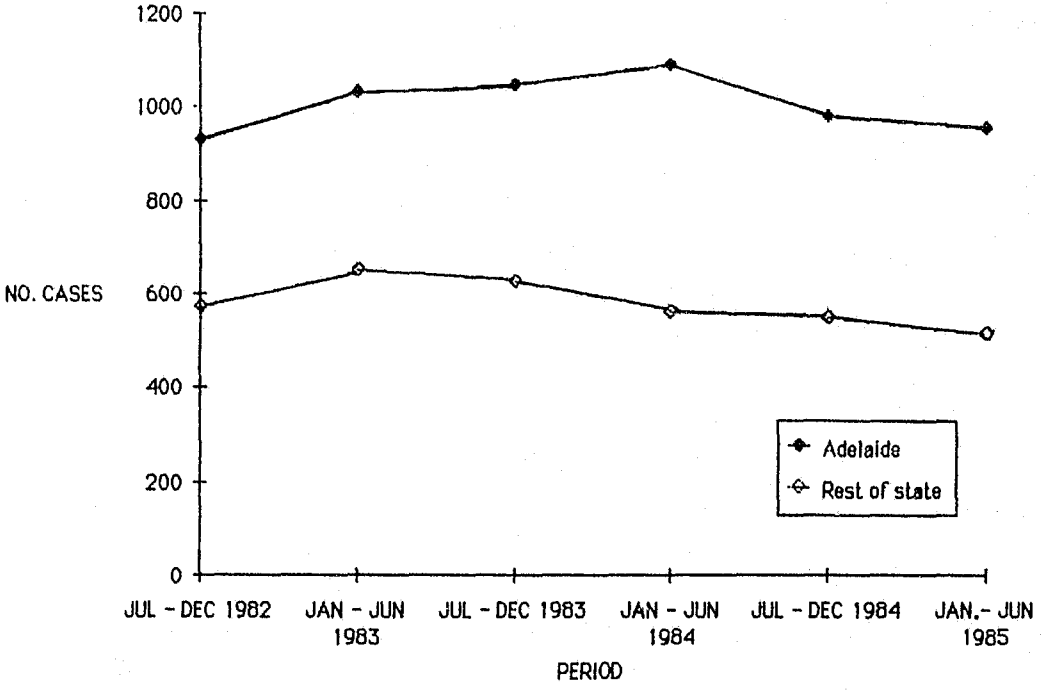
HOW WELL DID SOUTH AUSTRALIA AVOID THE PITFALLS ASSOCIATED ELSEWHERE WITH DECRIMINALISING DRUNKENNESS?

Research on the decriminalising of drunkenness elsewhere in Australia and overseas has identified at least three potential problems associated with such a move. One, that it can in fact intensify law enforcement impact on some groups, already has been discussed. The others are that the legislation may be boycotted by relevant authorities (as occurred in parts of the Northern Territory), or that police may intensify arrests for other minor offences to "compensate" for the removal of drunkenness from criminal statutes.

Neither of the last two problems appear to have eventuated in South Australia. Statistics on detentions after the new Act was proclaimed indicate that police in this State continued to pick up intoxicated people, even though this could no longer be seen as direct enforcement of the criminal law. Moreover, although some areas of the State embraced the new system more enthusiastically than others, there is no evidence of reluctance to enforce the Public Intoxication Act in any specific geographical region.

Nor is there any reason to believe that arrests for other minor offences, such as offensive language or behaviour, rose when the charge of drunkenness no longer was available. Indeed court statistics suggest that appearances for minor street offences tended to decrease following decriminalisation (Figure 1, below), and that these falls also occurred in country regions where detention rates under the Public Intoxication Act are highest. South Australian police have not preferred to charge people for a minor offence rather than simply taking them into custody for drunkenness - if anything the opposite has been the case.

FIGURE 1 APPEARANCES IN SOUTH AUSTRALIAN COURTS OF SUMMARY JURISDICTION FOR MINOR STREET OFFENCES*, 1 JULY 1982 - 30 JUNE 1985



* The category "minor street offences" includes indecent behaviour, disorderly behaviour, offensive or indecent language, urinate in public place, loitering and other related offences.

HOW WELL HAS THE ACT FULFILLED ITS OBJECTIVES OF PROVIDING WELFARE AND TREATMENT FOR DRUNKS IN NEED?

In assessing the final question, whether the Public Intoxication Act succeeded on its own terms as a treatment or welfare measure, one of the key indicators must be the number of drunks admitted to designated "drying out" facilities. From the Mitchell Committee onwards, relevant bodies have seen the establishment of specialised sobering-up centres as the foundation-stone for a new policy on drunkenness, and considered that any attempt to decriminalise without first providing such institutions would be detrimental to the wellbeing of inebriates. Had it not been for these assumptions, South Australia could have proceeded immediately with the 1976 provisions, and drunkenness would have ceased to be a criminal offence a decade ago.

It is significant, then, that of the 2,831 detainees under the Act between March and August 1985, just sixty-two spent time in a sobering-up centre or hospital. Almost all these admissions were in the Adelaide Metropolitan region: less than one percent of those picked up in other locations went to such facilities. In other words, at least ninety-four percent of detainees throughout the State spent the entire sobering-up period in police cells (Table 7, below). Other options countenanced by the legislation, such as taking intoxicated persons home or putting them in the care of friends or relatives, also were rarely used.

TABLE 7 DETENTIONS UNDER THE PUBLIC INTOXICATION ACT; 1 MARCH - 31 AUGUST 1985, BY HOW ENDED PERIOD IN POLICE CUSTODY

How Released	Where Detained				TOTAL	
	Adelaide Metropolitan Area		Rest Of State			
	No.	%	No.	%	No.	%
Released into own care	1286	87.9	1102	80.6	2388	84.4
Released to care of relative	42	2.9	47	3.4	89	3.1
Released to care of friend	22	1.5	82	6.0	104	3.7
Released to care of solicitor	-	-	-	-	0	-
Taken home by police	26	1.8	95	6.9	121	4.3
Taken to sobering-up centre by police	45	3.1	1	0.1	46	1.6
Taken to hospital by police	9	0.6	7	0.5	16	0.6
Arrested by police	27	1.8	18	1.3	45	1.6
Other	6	0.4	15	1.1	21	0.7
TOTAL	1463	100.0	1367	100.0	2830	100.0

These figures suggest strongly that the compromise inherent in the Public Intoxication Act, whereby police were assigned initial responsibility for picking up drunks but had the option of subsequently transferring them to other care, has not been successful. Such a procedure may well have been too cumbersome and potentially disruptive, not just to law-enforcement bodies but to drunks themselves whose greatest need was to "sleep off" their condition. From the minimal admissions to Osmond Terrace, it also seems clear that this treatment clinic was too specialised to be appropriate for most people found drunk in the streets. Indeed shortly after data collection for this research there was a change and police were encouraged to refer drunks, on a voluntary basis, to Salvation Army facilities.

Admissions to the Salvation Army's hostels, however, have been almost as infrequent as to Osmond Terrace. Clearly the philosophy of detoxification centres and the treatment approach need fundamental reassessment. A starting point would be to review what categories of people are being picked up under relevant provisions and what types of help, if any, they need. From much of the literature on this topic, and because of their conspicuousness, it would be easy to assume that the majority of detainees are homeless alcoholic men in need of specialised attention. The Drug and Alcohol Services Council's records indicate a more complex picture. While a minority of the people picked up under the Public Intoxication Act have a history of repeated apprehensions, most appear to have been involved in "one off" incidents.* Contrary to stereotypes, moreover, detainees ranged across all age-groups, with four out of ten being less than thirty (see Table 5, earlier).

Such findings suggest that the provisions of the Public Intoxication Act encompass a wide range of people, with a diversity of needs. While a proportion of the people picked up undoubtedly are chronic alcoholics for whom special facilities may be appropriate, even higher percentages show little evidence of a medical problem and need no more than help in finding their way home or to emergency shelter. Moreover it seems that in many instances the State was paternalistic in intervening - if left alone the intoxicated person would not pose a threat to others or to himself.

This explains why the single-minded "treatment" approach enshrined in the legislation has not worked, and fresh strategies are needed. Within the scope of this study, it is not possible to specify in detail what these should be but the broad policy options do seem apparent. After drawing together the main research findings, the following paragraphs touch briefly on some possible new directions for handling drunkenness in South Australia.

* During a two-year period 1 September 1984 to 1 August 1986 there were 12,200 apprehensions, involving 5,850 distinct individuals, under the Public Intoxication Act. Some of these people had been apprehended hundreds of times (eg. one person had 225 detentions, another in Adelaide had 145). This suggests that a high proportion of the 5,850 detainees would have been picked up just once.

CONCLUSIONS

From the 'before and after' data presented in this report it seems that results of decriminalising drunkenness in South Australia have at best been ambivalent. Some concerns about the new legislation - for example that police would be reluctant to apply the new laws or that there may have been increases in arrests for minor offences - have not been realised. Removal of the "criminal" aspect also has eliminated some inequalities in bail decisions and penalties which were in evidence when drunks were arrested and appeared before the Summary Courts. Against this, however, the new system retains strong residual ties with the justice system. All persons detained under the Public Intoxication Act are picked up by police, and almost all spent their "drying out" time in cells. Welfare options countenanced by the Act, such as admissions to detoxification centres and hospitals or release to friends and relatives, have rarely been used. Instead of reducing contact between the justice system and disadvantaged minorities, the new legislation has intensified it, with rates of detention increasing markedly for Aboriginal people and those living in remoter regions.

In light of these problems, some commentators may be tempted to argue that decriminalisation of drunkenness in South Australia has been a mistake, and that Courts of Criminal Jurisdiction again should be assigned a role in dealing with these matters. In the researchers' opinion, such a conclusion would be premature. Before deciding that reform is impossible, policy makers should at least try to define appropriate objectives, and make systematic attempts to ensure that they are achieved. In particular the "medical" approach, which has dominated discussion of this topic in South Australia, must be abandoned in favour of strategies more attuned to intoxicated peoples' real welfare needs. During the early 1970's, when the Mitchell Committee and its successors addressed the problem, very little was known about the extent and nature of the relevant "client" populations. As a result, experts could do little more than guess what measures best would safeguard the intoxicated person's interests. Data systems developed by the Police Department and the Drug and Alcohol Services Council during the past few years have done a great deal to eliminate this ignorance. Now is the time to exploit more fully their potential for guiding the development of policy.

The starting point for the new approach must be to use these systems, complemented where necessary by small-scale qualitative studies, to develop more detailed profiles of the various categories of public inebriates. On the basis of these profiles it should be relatively easy to take the next step: assessing which non-government bodies, if any, are best suited to provide assistance. In all likelihood the research will identify some organisations which already are catering for many of the relevant peoples' needs. One example is the Aboriginal Sobriety Group, which has been attempting to provide a service but has been hampered by a lack of resources. Providing such bodies with a support service to pick up drunks should not involve major expenditure.

Such costs would be more than offset, moreover, if determined effort were made to achieve the final objective: phasing out police involvement as private agencies become more active in this field.

Of course, the new strategy will not be without obstacles. From the very earliest years of settlement, Government has dominated the delivery of welfare in South Australia (see Dickey, 1986), and encouraging private organisations to assist such an "undeserving" group as public inebriates may not be easy. Whatever the changes to the law, moreover, there can be little doubt that in the public mind, welfare and 'preservation of order' rationales for responding to drunkenness still are confused. Nevertheless these challenges must be confronted, if reform is to be effective. Despite the Public Intoxication Act 1984, the great majority of intoxicated people in South Australia continue to be picked up by police and to spend time in cells. As long as this situation persists, there will be grounds for suspicion that decriminalisation has been more of a legal and verbal nicety than a real change to criminal justice or welfare procedure.

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APPENDICES

APPENDIX 1 - NOTES ON TABLES

Table 1 (a)

+ Table excludes 56 cases where age or sex of defendant not recorded.

* Rates per 1,000 based on estimated resident population of South Australia at 30 June 1984 (see Australian Bureau of Statistics, South Australian Year Book 1986, P. 196).

Table 1 (b)

+ Table excludes 49 cases where race or sex of defendant not recorded.

* Rate per 1,000 for Aboriginals and Non-Aboriginals based on number of people aged 15 and over of Aboriginal and Torres Strait Island as opposed to other racial background in South Australian population as at 30 June 1981 (see Australian Bureau of Statistics, Cross-Classified Characteristics of Persons and Dwellings, 1981 Census of Population and Housing, Catalogue No. 2447.0, Table 45).

Table 1 (c)

* Rates per 1,000 for geographical regions based on resident population of South Australia at 30 June 1981 (see Australian Bureau of Statistics, South Australian Year Book 1986, P. 199).

Note
Tables 1 (a), (b) and (c) do not include apprehensions of persons under 18 for public drunkenness. Police statistics indicate that there were 27 such apprehensions in the Adelaide metropolitan area. The number in other regions is not known.

Table 5 (a)

+ Table excludes 161 cases where age or sex of person detained was not stated.

* Rates per 1,000 based on estimated resident population of South Australia at 30 June 1984 (see Australian Bureau of Statistics, South Australian Yearbook 1986, P. 196).

** Rate of detentions for persons aged 17 and under not calculated due to problems in estimated lower-boundary of age-group at risk.

Table 5 (b)

+ Table excludes 244 cases where racial background or sex of person detained was not recorded.

* Rates per 1,000 for Aboriginals and Non-Aboriginals based on number of people aged 15 or over of Aboriginal and Torres Strait as opposed to other racial backgrounds in South Australian population as at 30 June 1981 (see Australian Bureau of Statistics, Catalogue No. 2447.0, Table 45).

Table 5 (c)

+ Rates per 1,000 for geographical regions based on resident population of South Australia at 30 June 1981 (see Australian Bureau of Statistics, South Australian Yearbook 1986, p. 199).

APPENDIX 2 – PUBLICATIONS OF THE SOUTH AUSTRALIAN OFFICE OF CRIME STATISTICS (November, 1986)

Series I Crime and Justice in South Australia – Quarterly Reports*

Vol. 1 No.'s 1-3 Quarterly Reports for the Period 1 October 1978 – 30 June 1979

Vol. 2 No.'s 1-4 Quarterly Reports for the Period 1 July 1979 – 30 June 1980

Vol. 3 No.'s 1-4 Quarterly Reports for the Period 1 July 1980 – 30 June 1981

* Note: Series I quarterly reports were discontinued in January 1982, and replaced by the six-monthly Crime and Justice reports (see Series A: Statistical Reports).

Series II Summary Jurisdiction and Special Reports*

No. 1 Homicide in South Australia: Rates and Trends in Comparative Perspective (July, 1979)

No. 2 Law and Order in South Australia: An Introduction to Crime and Criminal Justice Policy (1st Edition, September, 1979)

No. 3 Robbery in South Australia (February, 1980)

No. 4 Statistics from Courts of Summary Jurisdiction: Selected Returns from Adelaide Magistrates' Court, 1 January – 30 June 1979 (March, 1980)

No.'s 5-7 Statistics from Courts of Summary Jurisdiction: Selected Returns from South Australian Courts (Six Monthly Reports covering the period 1 July 1979 – 31 December 1980)

No. 8 Statistics from Supreme and District Criminal Courts: 1 July 1980 – 30 June 1981 (November, 1981)

No. 9 Homicide and Serious Assault in South Australia (November, 1981)

** Note: Series II was discontinued in January 1982 and replaced by Series A, B, C and D reports.

Series A Statistical Reports

Odd numbered reports (1-17): Statistics from Criminal Courts of Summary Jurisdiction (covering six-monthly periods from 1 January, 1981 through to 30 June 1985).

Even numbered reports (2-16): Crime and Justice in South Australia (Police, Corrections, Higher Criminal Court and Juvenile Offender statistics) (covering six-monthly periods from 1 July 1981 through to 30 June 1985).

Series B Research Bulletins

No. 1 Shoplifting in South Australia (September, 1982)

No. 2 Law and Order in South Australia (2nd Edition, November, 1985)

No. 3 Bail Reform in South Australia (July, 1986)

Series C Research Reports

No. 1 Sexual Assault in South Australia (July, 1983)

No. 2 Evaluating Rehabilitation: Community Service Orders in South Australia (May, 1984)

Series D Social Issues Series

No. 1 Random Breath Tests and the Drinking Driver (November, 1983)