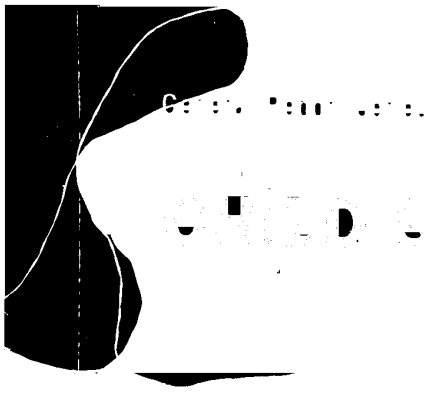

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CHILD SEXUAL ASSAULT: The Court Response

II

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PREFACE

This is the second of two studies which have been conducted by the Bureau on the court response to cases of alleged child sexual assault. It had originally been designed to form part of an analysis of the court process for child sexual assault cases before and after the passage of the Crimes (Child Assault) Amendment Act, the Oaths (Children) Amendment Act and the Evidence (Children) Amendment Act. These amendments, all proclaimed in 1985, were designed to facilitate the prosecution of child sexual assault offenders, while reducing the truama faced by children who are called to court to give evidence.

The passage of cases through the courts has not occurred at a rate which would have allowed early conclusion of the study. As a result it has been decided to publish the results of cases analysed in the period leading up to the legislative changes. These results, while obviously not allowing any basis for evaluating the effects of the evidentiary changes which were the original focus of the study, do provide quite valuable data on other aspects of the passage of child sexual assault cases through the court system. For this reason, alone, publication of the results is warranted.

The results confirm earlier research in showing the high conviction rate in cases of child sexual assault. Nearly 80% of cases involve a guilty plea, either at the committal stage of proceedings or at some point prior to trial. Defendents are aquitted of only about 13% of the charges laid against them. Moreover, in the vast majority of cases, defendants are convicted of the original charges laid. This is in marked contrast to the situation for cases involving the alleged sexual assault of adults, where a much higher proportion of cases involve some reduction in the seriousness of charges laid as the cases progress through the court process.

Of course, the number of child sexual assault cases reaching the courts each year represents only a small fraction of the number of reported instances of child sexual assault. It represents, perhaps, an even smaller component of the number of actual incidents of child sexual assault. The publicity given to the problem has increased both the rate of child sexual assault notification and the rate of prosecution for it but the difference between the two rates remains puzzlingly high. What needs to be examined now are the reasons lying behind this difference. This will be the focus of the final Bureau research study in this series.

Dr. Don Weatherburn
DIRECTOR.

ACKNOWLEDGEMENTS

There are many people to whom I owe thanks for contributing to the production of this report. In particular, I would like to express my appreciation to Dr. Tom Robb and Ms.Julie Stubbs who provided valuable assistance throughout the study. I would also like to thank Ms. Leslie Lesley who spent many painstaking hours collecting the required information fom higher court records. Others to whom I owe thanks include Mr. Bob McClelland and the staff of the District Court Registry as well as staff from the Prothonotary Office of the Supreme Court who provided access to answered questions on higher court records; to Mr. Roger Ralston from the office of the Director of Public Prosecutions who assisted in refining some of the legal issues raised within the report. Most importantly, however, I would like to thank Ms. Carmel Byrne who so efficiently transcribed into type my uniform but illegible handwriting.

MAIN FINDINGS

* Most children appearing in court to give evidence of alleged sexual assault are under the age of thirteen.

* The majority of defendants are single, divorced or permanently separated at the time of the alleged offence but are related to their alleged victims.

* Physical injury to the victim is recorded in only 6.2% of cases.

* The vast majority of cases studied involved no reduction in the severity of the charge from committal through to trial, however in 14 of the 21 cases where there was a reduction in charge severity there was also a change of plea by the defendant. This suggests that some form of charge bargaining may be occurring.

* Fifty-eight percent of cases involve a plea of guilty at the stage of committal. Of those cases committed for trial a further 50% change their plea to guilty before trial. Over 90% of defended charges result in a conviction.

* The majority of defendants convicted are given non-custodial penalties. Where custodial penalties are imposed, however, the median custodial sentence is over four years in length.

* It took, on average, 17 weeks for a case to progress from complaint to committal hearing, 19 weeks from committal hearing to sentence (where there was a plea of guilty) and 50 weeks from committal to trial (where there was a plea of not guilty).

* In 41% of trials the complainant was called to give evidence. About half of the time this evidence was given in open court. In the remaining cases the evidence was given in camera.

1. INTRODUCTION

The N.S.W. Bureau of Crime Statistics and Research published its first study on child sexual assault in 1987. The study was an examination of all indictable cases of sexual assault against persons aged under 18 finalised in the New South Wales District and Supreme Courts in 1982, and was designed to investigate the way in which these cases are dealt with in the criminal justice system. Primarily the research project was concerned with determining what proportion of child sexual assault cases which enter the criminal justice system proceed to conviction and sentence; what factors affect the passage of cases through the various stages of the system; and finally what major features of the way in which cases are dealt with affect the defendant and complainant. The findings of the study are detailed in the publication: Cashmore J., and Horsky M. (1987), Child Sexual Assault: The Court Response. N.S.W. Bureau of Crime Statistics and Research, Attorney General's Department, Sydney.

In November 1985, a comprehensive package of legislative reforms designed to "reduce the incidence of child sexual assault in our society and to give every possible assistance to the victims of child sexual assault" was introduced to Parliament (Hansard 12 November 1985, p. 9,323). Based on recommendations of the N.S.W. Child Sexual Assault Task Force, reforms to the pre-existing legislation concerning sexual offences against children and the appearance of children as witnesses in court were contained in the Crimes Oaths (Child Assault) Amendment Act, the (Children) Amendment Act and the Evidence (Children) Amendment Act. These Acts were assented to in November 1985. The Pre-Trial Diversion of Offenders Act designed to provide treatment for selected offenders and to encourage child victims to disclose sexual offences committed by family members is to be assented to once the programme is at the point of implementation.

With the introduction of this package of legislative reform, the Bureau of Crime Statistics and Research was requested to monitor and evaluate the effects of the amendments. To date, however, the implementation of an effective monitoring program has been hampered by current court delays in the District and Supreme Courts of N.S.W. As stated in a publication of the Attorney General's Department, in September 1987,

> "There [were] 3,700 cases outstanding in the District Courts statewide criminal jurisdiction... the average time throughout the state... between committal and trial in the District court [was] six to eight months for matters involving persons in custody and to 12 to 18 months for persons on bail."
> (NSW Attorney General's Department October 1987, p. 2)

The Bureau's research proposal for monitoring the legislative amendments was based on child sexual assault cases committed for trial or sentence in 1987 as compared with 1984.

Data was to be collected on a broad range of variables including final outcome. Data collection for the research project began in January 1987 with information on cases committed in that same year being coded on to a data collection sheet. In August 1987 it became apparent that, in the face of current court delay, substantial time will have lapsed before charges laid under the new legislation proceed from committal to final court outcome.

For this reason, the Bureau's monitoring project cannot be completed until a suitable number of cases are completed and available for study. As an interim measure it was decided that a report should be produced on the data collected on cases for which there was a committal hearing in 1984.

1.1. The criminal law relating to child sexual assault matters committed in 1984

The prosecution process for child sexual assault matters is detailed in the report Child Sexual Assault: The Court Response (Cashmore and Horsky 1987:4) and for this reason is not reproduced here. As indicated in that report, a case of child sexual assault may be dealt with as both a welfare matter and as a criminal matter. This report concerns only those cases dealt within the criminal justice system.

Sexual offences against children may be prosecuted under a number of sections of the Crimes Act varying according to the relationship between the complainant and suspect, the age of the victim and the nature of the offence. The following is a description of the provisions of the Crimes Act which apply to child sexual assault matters for which there was a committal hearing in 1984.

1.1.1 Sexual assault offences

In 1981 the Crimes Act was amended by the Crimes (Sexual Assault) Amendment Act resulting in the abolition of the common law offences of rape and attempted rape and the offence of indecent assault. These offences were effectively replaced by four categories of sexual assault (sections 61B, 61C, 61D and 61E) and corresponding categories of attempted sexual assault (under 61F). The aim of the 1981 amendments was to 'shift the emphasis from the sexual aspect of the old offence of rape to the violence associated with the assault' (Cashmore and Horsky, 1987:6). The legislation extended the definition of sexual intercourse to include penetration of the vagina or anus by any part of another person or a foreign object. The definition also includes fellatio and cunnilingus. The four categories of sexual assault may be described as:

(a) Category 1 (section 61B): maliciously inflict grievous bodily harm with intent to have sexual intercourse;

(b) Category 2 (section 61C): maliciously inflict actual bodily harm with intent to have sexual intercourse;

(c) Category 3 (section 61D): sexual intercourse without consent;

(d) Category 4 (section 61E): indecent assault and act of indecency.

The structure of these offences was based on a graduation of offence seriousness with distinct ranges of penalties. Categories 3 and 4 included provisions for offences committed against persons under the age of 16. Consequently a person who is convicted on either of these offences where the victim is under 16 faces a maximum penalty greater than that which may be imposed on a person similarly convicted where the victim is aged 16 or over.

1.1.2 Carnal knowledge offences

The second set of provisions under the Crimes Act for sexual offences against children relate to carnal knowledge and include :

(a) Carnal knowledge of a girl under 10 (section 67) and attempt (section 68).

(b) Carnal knowledge of a girl 10 and under 16 (section 71) and attempt or assault with intent to carnally know girl 10 and under 16 (section 72).

(c) Attempt or actually have carnal knowledge of imbecile or idiot (section 72A).

(d) Carnal knowledge of female under 17 by teacher, father or stepfather (section 73) and attempts (section 74).

(e) Carnal knowledge of a female 16 or over by grandfather, father, brother or son (section 78A) and attempts (section 78B).

Consent is no defence in cases of carnal knowledge except where the girl was over the age of fourteen at the time of the alleged offence and where the accused had reason to believe the girl was of or over the age of 16. Similarly, in offences involving incest (sections 78A and 78B) consent is also no defence. Consanguinity in incest cases is the essential issue: "a sufficient defence... [is] that the person charged did not know that the person with whom the offence is alleged to have been committed was related to him or her as alleged". Proceedings under sections 78A and 78B could not be initiated without the consent of the Attorney General.

1.1.3 Homosexual offences

The third set of provisions which relate to sexual offences against children are those involving homosexual intercourse. On the 31st May 1984, intercourse between consenting males above the age of 18 was decriminalised with the introduction of the Crimes (Amendment) Act. Prior to the commencement of this Act, homosexual offences committed against males under the age of 18 could be prosecuted under sections 79-81. These offences included buggery and attempt to commit buggery (section 79 and section 80) and indecent assault on male (section 81). With the decriminalisation of homosexuality, sections 79 and 80 were amended to refer only to bestiality and section 81 was abolished. A new range of homosexual offences against males under 18, complementing the offences of carnal knowledge of girls, replaced the pre-existing provisions. The amending legislation defined `homosexual intercourse' as the "sexual connection occasioned by the penetration of the anus of any male person by the penis of any person [and] sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another male person". The range of new offences can be summarised as follows:

(a) Homosexual intercourse with a male under 10 (section 78H) and attempt or assault with intent to have same (section 78I).

(b) Homosexual intercourse with a male 10 and under 18 (section 78K) and attempt or assault with intent to have same (section 78L).

(c) Attempt or actually have homosexual intercourse with a male person who is an idiot or imbecile (section 78M).

(d) Homosexual intercourse with a male 10 and under 18 by male teacher, step-father, father (section 78N) and attempt or assault with intent to have same (section 78O).

(e) Commit an act of indecency on male under 18 (section 78Q).

As in cases of carnal knowledge and incest, the consent of the complainant is no defence in the above offences involving homosexual intercourse with males under 18 (sections 78H-Q). In all cases of homosexual offences where the accused is under 18 proceedings may not be initiated without the consent of the Attorney General. Where the complainant is aged between 16 and 18 years the prosecution must be commenced within twelve months of the alleged offence.

Although the provisions for homosexual offences essentially complement those of carnal knowledge of females there is one notable difference. The age of consent for females is 16 whilst the age of consent to homosexual intercourse for males is 18 years of age.

1.1.4 The Crimes (Child Assault) Amendment Act 1985

Whilst the above discussion summarises those legislative provisions under the Crimes Act for sexual offences against children relevant to this study, these provisions have been further amended by legislation introduced on 28th November 1985 as the Crimes (Child Assault) Amendment Act.

These legislative amendments have resulted in major changes to the provisions described in sections 1.1.1 to 1.1.2. As stated in Hansard:

> "The range of sexual assault offences... takes the age of the victim as the primary consideration for the description of categories of offence. Thus the offences are categorised for offences against 10 year olds, 10 to 16 year olds and over 16 year olds.
>
> The new range of offences also gives special emphasis to the relationship of the offender to the victim. If the offender is found to be in a position of care, supervision or authority over the child, then harsher penalties apply... the new law will also extend the 1981 definition of sexual intercourse to offences against."
>
> (Hansard, 12 November 1985, p. 9,325)

With the introduction of this Act, a number of those carnal knowledge offences detailed in 1.1.2 were repealed, including sections 67 and 68 and sections 71 and 72, and subsequently replaced by a series of new and amended offences. The new range of child sexual assault offences can be summarised as follows:

(a) Sexual intercourse without consent where the person is under the age of 16 and under the authority of the offender (section 61D).

(b) Indecent assault or act of indecency where the person is under the age of 16 and under the authority of the offender (section 61E).

(c) Sexual intercourse with a person under 10 years of age (section 66A) and attempted sexual intercourse with a person under 10 years of age (section 66B).

(d) Sexual intercourse with a person aged 10 years and under the age of 16 and sexual intercourse with a person aged 10 years and under the age of 16 years where the person was under the authority of the offender (section 66C) and attempts to commit the aforementioned offences (section 66D).

Those offences not repealed include sections, 73, 74, 78A and 78B (carnal knowledge by teacher etc. and attempted carnal knowledge) which were amended so as to relate only to girls aged 16, and section

72A (carnal knowledge of idiot or imbecile) which remained unamended. Similarly, the range of homosexual offences introduced in 1984 with the decriminalisation of homosexuality between consenting adult males remained unchanged by the introduction of the Crimes (Child Assault) Amendment Act.[1]

A summary of the offences detailed above is provided in Table 1.1. The provisions contained in the Crimes (Amendment) Act 1984 and the Crimes (Child Assault) Amendment Act 1985 are provided in greater detail in Appendix 1.

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[1] It was, however, the intention of the NSW Child Sexual Assault Task Force that these offences be repealed and subsumed by the new laws on child sexual assault.

TABLE 1.1
Sexual offences in New South Wales
Crimes Act, 1900

Offence classification	Section of the Crimes Act	Maximum Penalty
(A) Sexual Assault Offences		
Sexual Assault Category 1	s. 61B	20 years
Sexual Assault Category 2	s. 61C	12 years
Sexual Assault Category 3		
(i) Complainant under 16 years	s. 61D	10 years
(ii) Complainant 16 years and over	s. 61D	7 years
Sexual Assault Category 4		
(i) Complainant under 16 years	s. 61E(1)	6 years
(ii) Complainant 16 years and over	s. 61E(1)	4 years
(iii) Complainant under 16 years	s. 61E(2)	2 years
(iv) Complainant 16 years and over	s. 61E(2)	2 years

TABLE 1.1 (continued)
Sexual offences in New South Wales
Crimes Act, 1900

Offence classification	Section of the Crimes Act	Maximum Penalty
(B) Carnal Knowledge Offences		
Carnal knowledge of girl under 10 years	s. 67	Life imprisonment
Attempt or assault with intent to carnally know girl under 10 years	s. 68	14 years
Carnal knowledge of girl 10 to 16 years	s. 71	10 years
Attempt or assault with intent to carnally know girl 10 to 16 years	s. 72	5 years
Carnal knowledge of girl 10 to 17 years by teacher, father, stepfather etc.	s. 73	14 years
Attempt carnal knowledge or assault with intent, of girl 10 to 17 years by teacher, father, stepfather etc. ...	s. 74	7 years
Incest	s. 78A	7 years
Incest - attempt	s. 78B	2 years

TABLE 1.1 (continued)
Sexual offences in New South Wales
Crimes Act, 1900

Offence classification	Section of the Crimes Act	Maximum Penalty
(C) Homosexual Offences		
(i) Pre Crimes (Amendment) Act 1984 -		
Buggery	s. 79	14 years
Attempt to commit buggery	s. 80	5 years
Indecent assault on male	s. 81	5 years
(ii) Post Crimes Amendment Act 1984 -		
Homosexual intercourse with male under 10	s. 78H	20 years
Attempt or assault with intent to have homosexual intercourse with male under 10	s. 78I	14 years
Homosexual intercourse with a male 10 and under 18	s. 78K	10 years
Attempt or assault with intent to have homosexual intercourse with male 10 and under 18	s. 78L	5 years

TABLE 1.1 (continued)
Sexual offences in New South Wales
Crimes Act, 1900

Offence classification	Section of the Crimes Act	Maximum Penalty
(ii) Post Crimes Amendment Act 1984 (continued) -		
Homosexual intercourse with male person who is an idiot or imbicile (including attempt)	s. 78M	5 years
Homosexual intercourse with male 10 and under 18 by male being a schoolmaster or other teacher, stepfather, father	s. 78N	14 years
Attempt or assault with intent to commit offence under section 78N	s. 78O	7 years
Commit act of indecency on male under 18	s. 78Q(1)	2 years
Solicit, procure, incite male under 18 years to commit homosexual intercourse or act of indecency with male	s. 78Q(2)	2 years

2. METHODOLOGY

This study examined all indictable cases of sexual assault for which there was a committal hearing in 1984 and where the victim was under the age of 18 at the time of the offence. A small number of cases were committed to the District and Supreme Courts but were later remitted to the Local Court for recommittal. These cases have been included in the study. Other child sexual assault matters commenced in 1984 and which did not proceed to a higher court but were finalised in a court of summary jurisdiction were excluded from the study.

In order to locate all child sexual assault matters for which there was a committal hearing in 1984, a hand search of all indictment files and court records held by the District Court Registry and the Prothonotary's Office was conducted. This process was necessary for two reasons. First, it was not possible to use the Case Tracking System (CTS) of the Office of Public Prosecutions to identify sexual assault offences involving complainants under the age of 18 by year of committal because the CTS, at the time of data collection, used principal offence at final outcome as its primary case selection criterion and not year of committal. Secondly, had it been possible to identify sexual assault matters through the CTS using committal date as the selection criteron, identifiction of those cases involving child victims would, in any event, still have been difficult. A charge of sexual assault does not always reflect the age of the victim and the CTS, again at the time of data collection, did not record victim characteristics on which further case selection could be based. A hand search of indictment files and court records would thus have been required to determine which sexual assault offences involved complainants under the age of 18.

The result of this search was to identify <u>all</u> sexual assault cases for which there was a committal hearing in 1984 involving complainants under the age of 18. This done, a coding sheet (see Appendix 2) was completed for each complainant/defendant pair. Information on each pair was obtained from court records held by the District Court Registry and the Office of the Solicitor of Public Prosecutions. The data sources contained within each record included: charge sheets; police facts sheets; police interviews with suspects, complainants and the parents of complainants; committal trial and sentence transcripts; pre-sentence reports; and finally the judge's summing up.

In 1984 there were 324 complainant/defendant pairs involved in committal hearings for child sexual assault offences in N.S.W. Specifically, there were 240 distinct suspects and 319 distinct complainants. The most common combination between suspects and complainants was one complainant – one suspect. As the number of defendants and complainants indicates, this combination did not hold true for all cases. In 54 cases defendants were charged with sexual offences against more than one victim and in 6 cases more than one defendant was charged with sexual offences relating to a single victim.

As indicated earlier, this report serves to supplement the findings of Cashmore and Horsky (1982). Differences between the two studies in the case selection criteria, however, precludes discussion on trends in the prosecution of child sexual assault matters between 1982 and 1984. Whilst the current study examined all cases of child sexual assault for which there was a committal hearing in 1984, the study by Cashmore and Horsky examined all indictable cases of child sexual assault finalised in the N.S.W. District and Supreme Courts in 1982. This difference in selection criteria results in a different sample of cases being drawn. The sample based on the committal hearings gives a picture of the number and type of cases coming to the notice of the court system in a given year, whereas the sample based on District and Supreme court finalisations provides a picture of the number and type of cases dealt with by those courts in a given year.

The difference is that, when court delays are appreciable (as was the case in 1984) then the makeup of cases dealt with may reflect court policy on case processing rather than providing an accurate picture of the type of cases arising. For example, trial matters may be expedited at the expense of sentence matters and this may inflate the proportion of trial matters heard in a given year although it may not affect the proportion of matters which eventually come to trial from a given year's matters. Since Cashmore and Horsky (1982) used the former measure, and the current study used the latter, the findings of the two studies cannot be directly compared. Put another way, the current study uses a sample based on the input to the higher courts system in a given year, whereas Cashmore and Horsky (1982) uses the output of that system in a given year and, as long as court delays exist, these two may differ by some degree in the number and types of cases covered.

It is important to remember that this is a study of matters that came to court in 1984 and for which there was a committal hearing in that year. It is, therefore, in no way representative of all sexual assaults. The numbers are `population figures' only if referring to the set of child sexual assault matters brought to court in 1984, but are not representative of all assaults.

2.1. The data sources

Whilst court records, in theory, provide a wealth of information and should enable detailed studies on the criminal justice process, in practice their utility varies markedly. The complex movements within the criminal justice system to which these records are subject, frequently means they are incomplete. Occasionally records are even lost within the system. Within the District Court Registry, administrative procedures established to track case file movements appear not to be rigorously enforced. Files are sometimes removed from the Registry without `tracer cards' being completed. Where `tracer cards' are completed, details are often insufficient to trace file movement and the file cannot be located. Thus, only limited information is available on some cases which have proceeded through the criminal justice system.

Perhaps more importantly for this study, however, has been the effects of resource limitations within the Court Reporting Branch. One important component of the current study has been the collection of information on evidentiary proceedings during trials of offenders charged with sexual offences against children. Collection of such information is reliant on the availability of trial transcripts. The Court Reporting Branch with whom responsibility lies for the transription of proceedings within the superior courts, was, however, highly under-resourced at the time of data collection. It was not possible to have cases transcribed specifically for the purpose of the study. Consequently, only information on already transcribed trial or sentence proceedings of child sexual assault cases for which there was a committal hearing in 1984, was available. Even where transcripts were available, readings of the text indicated that a complete transcript had not always been produced. Information on trial matters is, therefore, incomplete in some cases. This is important because not only is the information on trial matters incomplete, but the available information is unlikely to reflect practices in all trials since transcripts are most likely to be produced only if the matter is subject to an appeal. These are unlikely to be a representitive sample of all trials.

2.2. Terminology

Throughout the text of this report, the terms `defendant' and `complainant' have been used with greatest frequency. The author acknowledges that these terms are not used constantly throughout the criminal justice process. At committal, the `defendant' is usually referred to as the `accused' or `alleged offender'. During trial at proceedings the `defendant' is referred to as such, whilst during sentence proceedings and following a determination of guilt at trial, the `defendant' is referred to as the `offender'. In this context the `complainant' is referred to as the `victim'. Similarly in compensation proceedings the `defendant' is referred to as the `offender' and the `complainant' as `victim'. The report has adopted the terms `defendant' and `complainant' for ease of writing and readability. It should be noted, however, that in discussing the various stages of proceedings, the `correct terminology' is frequently used.

The terms "charges" and "counts" have also been used with great frequency throughout section 5. The terms do not have the same meaning. The term "count" relates to the number of alleged instances of a particular offence, thus an alleged offender may be charged with six counts of one offence. The term "charge" relates to both one and more than one kind of offence. Thus, an alleged offender may be indicted on six charges relating to two offences, four counts of, say, section 61D and two counts of section 61E.

3. COMPLAINANTS AND DEFENDANTS

3.1. Complainants

3.1.1 Sex of complainants

As already indicated there were 319 complainants involved in committal hearings for child sexual offences in 1984. In the current study, the majority of the 319 distinct complainants were female (241 or 75.5 per cent). Only 73 complainants (22.9 per cent) were male, and the sex of 5 complainants (1.6 per cent) was unknown.

3.1.2 Age of complainants

The age of complainants was recorded on the basis of age at the date of the first and last offence to which legal action related. Where legal action related to only one offence the same date was recorded for both first and last offence. Table 3.1 details the age and sex distribution of the complainants at the time of the last offence to which legal action related. The two youngest complainants were aged two at the time of the last offence whilst the eldest complainant (included because at the time of the first alleged offence she was under 18) was aged twenty two. The age of complainant was unknown in 0.6 per cent of cases.

Excluding those complainants where age was unknown, the majority (75.8 per cent) were aged 13 years and under at time of the last alleged offence. The average age of complainants was 10 years. (Obviously, the average age of complainants at the date of the last alleged offence is likely to be older than the average age at the time of the first alleged offence.) Not all complainants experienced isolated incidents. An examination of cases where criminal charges related to more than one offence indicates that the average age of distinct complainants at the time of the first alleged offence was 9.5 years.

Table 3.2 details the grouped ages of distinct complainants (at the date of last offence) by sex. Similar proportions of male and female complainants were aged 0 to 4 years and 10 to 14 years. Conversely, males were almost one and a half times more likely than females to be in the 5 to 9 years age group, whilst females were three times as likely as male complainants to be in the 15 years and over age group.

TABLE 3.1
Age and sex of distinct complainants

Age	Male	Female	No.	Total %	Cumulative %
1 year	0	0	0	0.0	0.0
2 years	0	1	1	0.3	0.3
3 years	2	4	6	1.9	2.2
4 years	2	9	11	3.5	5.7
5 years	6	18	24	7.8	13.5
6 years	4	13	17	5.5	19.0
7 years	4	11	15	4.9	23.9
8 years	12	16	28	9.1	33.0
9 years	8	20	28	9.1	42.1
10 years	3	10	13	4.2	46.3
11 years	8	16	24	7.8	54.1
12 years	6	24	30	9.7	63.8
13 years	8	29	37	12.0	75.8
14 years	5	22	27	8.7	84.5
15 years	0	30	30	9.7	94.2
16 years	3	11	14	4.5	98.7
17 years	1	2	3	1.0	99.7
Over 17	0	1	1	0.3	100.0
Total(1)	72	237	309	100.0	
Average age(2)	9.3	10.4	10.0		

(1) Ten complainants have been excluded from this table because their age and sex could not be determined.
(2) Average age excludes complainants where age is unknown.

TABLE 3.2
Proportion of distinct complainants by age and sex

Age	Male	Female
0 - 4 years	5.6	5.9
5 - 9 years	47.2	32.9
10 - 14 years	41.6	42.6
15 and over	5.6	18.6
TOTAL	100.0	100.0

(1) Excludes cases where the age of the complainant was unknown.

3.2. Defendants

3.2.1 Sex of defendants

Two hundred and forty distinct defendants were charged with sexual offences against the 319 distinct complainants. All were male with the exception of one female. In this case a couple were charged with sexual offences allegedly committed against children to whom they were known but not related.

3.2.2 Age of defendants

As with complainants, the age of defendants was calculated on the basis of age at the date of the last alleged offence to which legal action related. The age distribution of the defendants is shown in Table 3.3. Excluding those where age was unknown, the majority (70.2 per cent) of distinct defendants were under the age of forty at the time of the last alleged offence. The eldest defendant was 75 and the youngest 13 years old.

TABLE 3.3
Age of distinct defendants

Age	No.	%	Cumulative %
14 years and under	3	1.3	1.3
15 - 19 years	20	8.4	9.7
20 - 24 years	38	16.0	25.7
25 - 29 years	35	14.7	40.4
30 - 34 years	39	16.4	56.8
35 - 39 years	32	13.4	70.2
40 - 44 years	27	11.3	81.5
45 - 49 years	21	8.8	90.3
50 - 54 years	10	4.2	94.5
55 - 59 years	3	1.3	95.8
60 years and over	10	4.2	100.0
Total(1)	238	100.0	
Average age(2)	33.4		

(1) Two defendants have been excluded from the table because their age could not be determined.
(2) Average age excludes defendants where age is unknown.

The average age of defendants at the time of the last alleged offence was 33.4 years. This varied, however, according to the relationship between defendant and complainant.

TABLE 3.4
Average age of defendant at time of alleged offence
Complainant-defendant relationship by complainant sex

	Male	Female	Total
Parental	36.2	37.4	37.3
Other family member	39.8	39.8	39.8
Family friend	35.8	25.9	27.4
Authority figure	26.0	42.4	38.1
Acquaintance	32.3	36.2	34.7
Stranger	31.7	30.7	31.0
Relationship unknown	55.5	38.4	40.4

As shown in Table 3.4 the average age of defendants ranged between 27.4 years and 40.4 years when relationship was considered, with parental defendants averaging 37.3 years and defendants unknown to the complainant averaging 31.0 years. When the sex of the complainant was considered the greatest variations in the average age of the defendant were recorded within the relationship groupings "family friend" (35.8 years where the complainant was male and 25.9 years where the complainant was female) and "authority figure" (26.0 years where the complainant was male and 42.4 years where the complainant was female). A larger variation was also recorded where the relationship between complainant and defendant could not be determined.

3.2.3 Age of defendant and age of complainant

The age of complainants, and above, the age of defendants have been examined independently of each other. It is useful, however, to examine whether a relationship exists between the ages of complainants and the ages of defendants. From such a comparison we may then answer the question, are complainants of a particular age more at risk from defendants of a particular age?

Table 3.5 displays the age of defendants by the age of complainants. On initial examination it appears that as the age of the defendant increases, so too does the age of the complainant. Complainants aged between 5 and 9 years of age appear to be assaulted most frequently by persons aged between 20 and 34 years of age. Complainants aged between 10 and 14 years appear to be assaulted most often aged between 30 and 50 years of age. Statistical analysis, however, indicates that no significant relationship exists between the age of the defendant and the age of the complainant ($r = -0.03$, $df = 307$ $p > 0.05$).

TABLE 3.5

Complainant and defendant ages

(In number of complainant-defendant pairs)

	Complainants					
	0 - 4 years	5 - 9 years	10 - 14 years	15 years and over	Not known	Total
Defendants	%	%	%	%	%	%
Under 14 years	0.0	0.0	0.0	0.9	0.0	0.9
15 - 19 years	0.6	1.2	3.4	1.5	0.0	6.8
20 - 24 years	1.2	6.2	5.3	2.5	0.0	15.1
25 - 29 years	2.2	5.9	4.3	1.6	0.0	14.2
30 - 34 years	0.9	5.3	6.2	3.1	0.0	15.4
35 - 39 years	0.3	4.6	4.9	2.2	0.0	12.0
40 - 44 years	0.0	1.2	7.1	2.2	0.6	11.1
45 - 49 years	0.3	4.3	4.3	0.6	0.9	10.5
50 - 54 years	0.0	1.5	1.9	1.2	0.0	4.6
55 - 59 years	0.0	1.9	1.9	0.0	0.0	3.7
60 years and over	0.0	2.5	0.9	0.0	0.9	4.3
Unknown	0.0	0.0	0.3	0.3	0.6	1.2
TOTAL	5.6	34.6	40.4	16.4	3.0	100.0

3.2.4 Marital status of defendant

Marital status was recorded for all but 11 (4.9 per cent) defendants. The majority of defendants were either single (37.5 per cent), divorced (10 per cent) or permanently separated (7.5 per cent). A further 31.3 per cent of defendants were married and 8.8 per cent were in a de facto relationship.

3.2.5 Prior criminal record

An indication of the suspect's prior criminal record is also recorded on the police facts sheet. For each defendant, data was collected concerning whether or not they had been convicted of sexual offences as a juvenile, sexual offences against children or adults, other offences against the person, or other non-violent crimes.

(a) Sexual offences

A minority of defendants had previous convictions recorded against them for sexual offences. Forty one (17.1 per cent) distinct defendants had prior sexual assault convictions and 183, (76.2 per cent) had no such convictions. In the case of sixteen defendants (6.7 per cent) it was unknown whether they had any prior convictions, sexual or otherwise. Recent Australian studies have found similar results. Between 17 and 21 per cent of defendants in prosecuted cases of sexual assault have prior sexual offence convictions (Cashmore and Horsky, 1987:17).

It is not always possible to ascertain from a charge of sexual assault alone whether the complainant involved is under or above the age of 18. Thus, in recording for each defendant whether or not they had prior convictions for sexual assault against children, only a general indicator of those defendants with previous convictions of this nature can be provided. From the police antecedents sheets it was recorded that twenty three defendants (9.6 per cent) had prior convictions involving offences against children. Of these 17 had only one prior conviction, four had two prior convictions and two defendants had three and five prior convictions respectively.

Twenty-nine distinct defendants (12.1 per cent) had prior convictions for other sexual offences. The number of recorded convictions ranged from one in the case of eleven defendants to nine in the case of two defendants. The average number of convictions recorded against these defendants was 3.1.

Only two of the 240 distinct defendants had convictions of sexual assault recorded against them as juveniles.

(b) Offences against the person

Twenty-eight defendants (11.6 per cent) had prior convictions for offences against the person which were most typically assaults. The number of convictions recorded for these defendants ranged from one in the case of nine complainants and nine in the case of one complainant. The average number of convictions recorded against these twenty eight defendants was 2.6.

(c) Other offences

One hundred and thirty five defendants (56.3 per cent) had prior convictions for property and other offences (mostly serious driving offences). In the case of 89 defendants (37.1 per cent) no prior convictions were recorded for other offences and in the case of sixteen defendants (6.7 per cent) it was unknown whether they had committed property or other offences. The range for the number of prior convictions in the category "other offences" was much larger than in the case of sexual offences and offences against the person. Between one and fifty other prior convictions were recorded for these defendants with a mean of 8.8 prior convictions.

3.3. Relationship between complainant and defendant

For the purposes of this study the relationship between defendant and complainant is analysed for each complainant/defendant pair. Thus, where there was a single victim but multiple defendants, relationship was recorded for the complainant with each distinct defendant. Similarly, where a defendant was charged with sexual offences against more than one complainant, relationship was recorded for each pair.

Fourteen categories were used to describe the relationship of the defendant to the complainant: parent, step-parent, grandparent, uncle/aunt, de facto parent, sibling, other relative, friend of complainant, friend of parent, authority figure, neighbour, other acquaintance, stranger, or relationship unknown. The most commonly represented complainant/defendant pair (43 or 13.3 per cent), involved no prior relationship preceeding the alleged assault. The category into which the smallest proportion of pairs fell was `other relative' (2 or 0.6 per cent). These findings are shown in Appendix 3. It should be noted that when the three "parental" categories are merged, 23.4 per cent of complainant/defendant pairs involved defendants where the relationship to the complainant was a parental one.

A much clearer picture is painted of the relationship between complainants and defendants when the relationship categories are collapsed into five broad categories: family member, family friend, acquaintance, authority figure and stranger. As shown in Table 3.5 the greatest proportion of cases (30.5 per cent or 99

complainant/defendant pairs) involved persons in a familial relationship. The category into which the smallest proportion of cases fell (with the exception of those cases where the relationship was unknown) was authority figure.

Table 3.6 also details the sex of complainants by relationship to defendant. Female complainants were almost twice as likely as males to have been assaulted by a family member and one and a half times as likely as male complainants to have been assaulted by a family friend. Conversely, males were twice as likely to have been assaulted by an acquaintance than were female complainants.

TABLE 3.6
Sex of complainant by defendant/complainant relationship
(In numbers of defendant/complainant pairs = 324)

	Male		Female		Total	
Relationship	No.	%	No.	%	No.	%
Parental	6	8.2	70	28.3	76	23.5
Other family member	7	9.6	16	6.5	23	7.1
Family friend	9	12.3	48	19.4	57	17.6
Authority figure	10	13.7	29	11.7	39	12.0
Acquaintance	25	34.2	41	16.6	66	20.4
Stranger	12	16.4	31	12.6	43	13.3
Relationship unknown ...	4	5.5	12	4.8	20(1)	6.2
TOTAL	73	100.0	247	100.0	324	100.0

(1) Includes 4 complainant/defendant pairs where the sex of the complainant was unknown.
(2) Percentages may not add up to 100 due to rounding errors.

An examination of the ages of complainants by complainant/defendant relationship, as shown in Table 3.7, indicates that the likelihood of complainants being assaulted by someone known to them was also unevenly distributed across age groups.

Complainants in a familial relationship with the defendant were more likely to be above the age of ten at the time of the last alleged offence than between the ages of either 5 to 9 years or 0 to 4 years. Where the suspect was in a position of authority, the complainants were equally likely to be less than 10 years as 10 years or over. As shown in Table 3.8, the average age of complainants where the defendant/complainant relationship was parental was 11.5.

TABLE 3.7

Complainant-defendant relationship by age of complainant

(Defendant/complainant pairs)

Relationship	0 - 4 years		5 - 9 years		10 - 14 years		15 years and over		Not known	
	No.	%	No.	%	No.	%	No.	%	No.	%
Parental	2	11.1	18	16.1	40	30.5	15	28.3	1	10.0
Other family member	2	11.1	9	8.0	11	8.4	1	1.9	0	0.0
Family friend	2	11.1	12	10.7	25	19.1	18	33.9	0	0.0
Authority figure	1	5.6	23	20.5	12	9.2	3	5.7	0	0.0
Acquaintance	4	22.2	32	28.6	24	18.3	6	11.3	0	0.0
Stranger	5	27.8	13	11.6	17	12.9	8	15.1	0	0.0
Unknown	2	11.1	5	4.5	2	1.5	2	3.8	9	90.0
TOTAL(1)	18	100.0	112	100.0	131	100.0	53	100.0	10	100.0

(1) The complainant's age was unknown in 10 cases. In 9 of these the complainant-defendant relationship was unknown. In the remaining case the complainant was the child of the defendant.

Where the defendant was another family member the average age of complainants was 9.5., where a family friend, it was 11.6; and, where an authority figure, it was 8.9. Where the defendant and complainant were merely acquainted the average age was 9.5 and, finally, where no prior relationship could be established, the average age of complainants was 10.2.

TABLE 3.8
Average age of complainant at time of alleged offence: Complainant/defendant relationship by complainant sex

	Male	Female	Total
Parental	9.7	11.7	11.5
Other family	9.6	9.4	9.5
Family friend	10.7	11.7	11.6
Authority figure	7.9	9.3	8.9
Acquaintance	10.3	9.0	9.5
Stranger	8.5	10.9	10.2

3.4. Summary

In summary, then, the 324 child sexual assault matters for which there was a committal hearing in 1984 involved two hundred and forty distinct defendants and three hundred and nineteen complainants. The age of the complainants ranged from one to twenty two with a mean age of 10 years. As most frequently found in child sexual assault matters, females represented the largest proportion of complainants (75.5 per cent).

All of the defendants, with the exception of one, were male. The age of defendants ranged from thirteen to seventy-five with an average age of 33.4 years. There was no significant relationship between the age of complainants and the age of defendants. Forty-one (17.1 per cent) distinct defendants had prior convictions for sexual offences whilst twenty eight defendants (11.6 per cent) had convictions for offences against the person (e.g. assault) and one hundred and thirty five (56.3 per cent) defendants had prior convictions for property, other criminal offences.

In the majority of cases (80.6 per cent) there was a relationship of some type between defendant and complainant at the time of the last alleged offence. In 23.5 per cent of cases the relationship between defendant and complainant was parental, followed by 20.4 per cent of cases in which the defendant and complainant were acquainted. The smallest relationship category was authority figures making up 12.0 per cent of all cases. Male complainants were at the greatest risk from persons with whom they were acquainted or to whom they were

unknown particularly during the ages of five to fourteen. Female complainants, on the other hand, were at greatest risk from persons to whom they were related or from persons who were friends of the family.

4. INCIDENT CHARACTERISTICS

As suggested by the data on the differences between the ages of male and female complainants, and the varying relationships between them and the defendants, child sexual assaults involve a range of different types of incidents. This section attempts to describe some characteristics of the incidents themselves in order better to display the different types of occurrences which come under the heading of child sexual assault.

4.1. Type of incident

As indicated in the methodology section, not all complainants were allegedly assaulted by single defendants. As shown in Table 4.1, of the 319 complainants subject in committal hearings for child sexual assault matters in 1984, 176 (55.2 per cent) were lone victims for whom there were lone defendants, three complainants (0.9 per cent) were allegedly assaulted by more than one defendant, and 140 complainants (43.9 per cent) were involved in cases where a single alleged offender was charged with the sexual assault of more than victim.[1]

TABLE 4.1
Type of incident: number of distinct complainants

Number of distinct complainants	No.	%
One victim - one offender	176	55.2
One victim - two offenders	1	0.3
One victim - three offenders	2	0.6
Two victims - one offender	82	25.7
Three victims - one offender	15	4.7
Four victims - one offender	32	10.0
Five victims - one offender	5	1.6
Six victims - one offender	6	1.9
TOTAL	319	100.0

The greatest proportion (29.3 per cent) of incidents in which multiple complainants accused single defendants involved defendants

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[1]Note that the future incidence of cases involving one defendant and multiple complainants may be affected by the decision of the High Court in Hoch's case (5 October 1988; unreported at the time of publication of this report).

In this case it was held that the possibility of concoction of similar fact evidence by two or more witnesses serves to render the evidence inadmissible in relation to the other offences charged.

TABLE 4.2
Relationship between complainant and defendant by type of incident
(complainant-defendant pairs = 324)

	One victim/one offender		One victim-multiple offenders		Multiple victims-one offender	
	No.	%	No.	%	No.	%
Family	58	32.9	–	–	41	29.3
Friend	38	21.6	6	75.0	13	9.3
Authority figure	6	3.4	–	–	33	23.6
Acquaintance	38	21.6	–	–	28	20.0
Stranger	27	15.3	2	25.0	14	10.0
Unknown	9	5.1	–	–	11	7.9
TOTAL	176	100.0*	8	100.0	140	100.0*
	54.3		2.5		43.2	

TABLE 4.3
Relationship between complainant and defendant by type of incident
(complainant-defendant pairs = 324)

	Family		Friend		Authority figure		Acquaintance		Stranger		Unknown	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
One victim - one offender	58	58.6	38	66.7	6	15.4	38	57.6	27	62.8	9	45.0
One victim - multiple offenders	-	-	6	10.5	-	-	-	-	2	4.7	-	-
Multiple victims - one offender	41	41.4	13	22.8	33	84.6	28	42.4	14	32.6	11	55.0
TOTAL	99	100.0	57	100.0	39	100.0	66	100.0	43	100.0*	20	100.0

who were related to the victim, followed by defendants who were either in a position of authority to the victim (23.6 per cent), or an acquaintance (20.0 per cent). Similarly, where the incident involved single complainants and single defendants, the defendant was most frequently related to the complainant (32.9 per cent). These findings are detailed in Table 4.2.

Table 4.3 shows complainant-defendant relationship by type of incident. In all relationship categories, with the exception of defendants who were classed as authority figures and those cases where the relationship between complainant and defendant could not be determined, defendants were most frequently charged with offences relating to a single victim. Defendants in a position of authority to the complainant were five and a half times more likely to have allegedly assaulted a number of children than single complainants (84.6 per cent of cases versus 15.4 per cent of cases respectively). In those six percent of cases where the complainant-defendant relationship was unknown, 45.0 per cent of cases involved single complainant-defendant pairs whilst 55.0 per cent involved multiple complainants and single defendants.

When incident type is expressed as a proportion of distinct suspects, 73.3 per cent (176) were involved in incidents in which there was only one victim, 23.4 per cent of suspects (56) were involved in incidents with multiple victims and 3.3 per cent of suspects (8) were involved in incidents in which one victim was allegedly assaulted by a number of defendants.

TABLE 4.4

Number of complainant/defendant pairs with multiple assaults by period of time over which offences occurred

Duration	No.	%
0 - 6 months	39	12.0
7 - 12 months	28	8.6
1 - 2 years	27	8.3
2 - 3 years	6	1.9
3 - 4 years	3	0.9
4 - 5 years	2	0.6
Over five years	10	3.1
Unknown history	14	4.3
No history of sexual offences	195	60.2
TOTAL	324	100.0
Average period over which offences occurred*	1.7 years	

*Excluding those cases with no, or unknown, history.

4.2. Number of incidents

Table 4.4 details the number of complainant/defendant pairs where it was alleged that there had been a history of assaults by the defendant upon the complainant. For such a history to have been recorded it was not necessary for charges to have been laid against the defendant with respect to more than one incident. History and duration were recorded where these were referred to in statements made to the police by complainants, or the parent, or guardian of the child. As noted by Cashmore and Horsky "the period of time over which numerous offences occurred is not routinely or systematically recorded by the police" (p. 25). The data presented in Table 4.4, therefore, is at best, only an estimation of the period of time over which the offences occurred. It is likely to be an underestimate of both duration and extent of the offences.

In the majority of cases (60.2 per cent or 195) there was no history of alleged sexual assault between complainant defendant pairs. Where there was a history of alleged sexual assault (35.5 per cent of cases), the duration of the alleged offences ranged from one month in the case of nine complainant/defendant pairs, to eleven years in the case of one complainant/defendant pair. The average duration of alleged offences in the 115 cases where it was reported that the complaint had been subject to multiple assaults was 1.7 years.

Complainants in a familial relationship with the defendant were the group most likely to allege multiple assaults. In fact, in 67.7 per cent of familial cases there was a history of alleged sexual assault. In 58.3 per cent of cases where complainants reported having been assaulted on a number of occasions the relationship was familial. In 15.7 per cent of cases where there was a history of alleged sexual assault, the defendant was in a position of authority to the complainant. These findings are shown in Table 4.5.

From the court records it was possible to determine (in all but twenty-one cases) whether the defendant was resident with the complainant at the time of the offence to which legal action related. In the majority of cases (70.4 per cent) the defendant was not residing with the complainant at the time of the offence. In fifty-five of the seventy-five cases (73.3 per cent) where there was residency, a history of sexual assault was reported by the complainant. In three cases where multiple assaults were reported it was unknown whether the complainant and defendant resided together.

It should also be noted, however, that in fifty-seven of the one hundred and fifteen cases (49.6 per cent) where a history of sexual assault was recorded, the defendant was not living with the complainant at the time of the principal offence. The relationship between complainants and defendants in these cases was distributed as follows: family members (33.3 per cent; mainly either the child's grandfather or uncle), authority figure (26.3 per cent), other acquaintance (22.8 per cent), and family friend (14.0 per cent).

TABLE 4.5
History of sexual assault by complainant/defendant relationship
(Complainant/defendant pairs = 324)

	No history		History		Unknown	
Relationship	No.	%	No.	%	No.	%
Family member	30	15.4	67	58.3	2	14.3
Family friend	44	22.6	13	11.3	0	0.0
Authority figure	21	10.8	18	15.7	0	0.0
Acquaintance	53	27.2	13	11.3	0	0.0
Stranger	41	21.0	-	0.0	0	0.0
Unknown	6	3.1	4	3.4	12	85.7
TOTAL	195	100.0	115	100.0	14	100.0

4.3. Physical injury

Very few complainants were recorded as having sustained physical injury as a result of the incident(s) to which the legal action related. In only twenty (6.2 per cent) of the complainant/defendant pairs was there any indication of injury: in two of those cases the assaults resulted in grievous bodily harm to the complainants (both of whom were females), and in eighteen of the pairs the injury inflicted resulted in actual bodily harm.[2] In twenty cases it could not be ascertained whether or not physical injury had been inflicted at the time of the incident(s).

With respect to the twenty cases where complainants sustained actual physical injury, ten cases (50 per cent) involved complainants aged 15 and over, eight cases (40 per cent) involved complainants aged between 10 and 14 years, and in two cases (10 per cent) complainants were aged between 5 and 9 years. In only two cases where injury was sustained by the complainant were complainant and defendant in a familial relationship while in 8 cases the defendant was a family friend. As shown in Appendix 4, complainants aged fifteen and over were most likely to receive injuries as the result of an assault.

A greater proportion of complainants, however, reported that the alleged offender had threatened to inflict injury at the time of the offence (41 cases, 12.6 per cent) were said to have been threatened with physical injury. Just as females were more likely than males to be injured during the course of an assault (4.6 per cent of females; 1.5 per cent of males), so too were they more likely to report being

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[2] Grievous and actual bodily harm were reflected in both police charges and statements made to police.

threatened. On their own account, thirty-four female complainants (14.2 per cent) indicated that the alleged offender had threatened them with physical injury compared with seven males (9.5 per cent).

As shown in Table 4.6 of the forty-one cases where complainants were threatened with physical injury, five involved complainants between the ages of 5 to 9 years, twenty-one cases involved complainants between the ages of 10 to 14 years, and fifteen cases involved complainants between the ages of 15 and 22. Complainants most likely to be recipient of threats of physical injury were those aged 15 and over (28.3 per cent of all complainants aged 15 and over) followed by complainants aged between ten and fourteen (16 per cent).

An analysis of complainant/defendant relationship indicates that complainants in cases where the defendant was a stranger were most likely to be subject to threats of physical injury (23.3 per cent).

Complainants in cases where the defendant was classified as an authority figure were least likely to be subject to threats of physical injury (5.1 per cent).

4.4. Non-physical threats

Whilst alleged victims in child sexual assault matters do not usually sustain physical injury as a result of the offence, non-physical threats may be used to force the victim to comply with the offender or to prevent the reporting of the incident. For each complainant/defendant pair in this study, it was recorded whether threats, other than threats of physical injury, had been made by the alleged offender to the complainant at the time of the alleged offence(s).

In eighty cases (24.7 per cent) non-specific threats of harm (e.g. "don't tell or you'll be sorry") were made to the complainant at the time of the alleged offence(s). An examination of the age distribution of complainants subject to non-physical threats of harm indicate that complainants aged 15 and over were most likely to recipients of such threats (37.7 per cent) followed by complainants aged between ten and fourteen (28.2 per cent). As one would expect, complainants aged under five were least likely to report having been recipient of non-specific threats of harm (11.1 per cent). Appendix 5 shows these findings.

Unlike threatened physical injury, where complainants who were unknown to the defendant at the time of incident were most likely to be the recipients of such threats, complainants in a familial relationship with the defendant were most likely to be subject to non-specific threats of harm. In almost thirty-eight per cent of cases involving complainants and defendants in a familial relationship non-specific threats of harm were made to the complainant at the time of the offence(s). Where the defendant was a family friend, an acquaintance, an authority figure or a stranger, complainants were almost equally as likely to have received non-specific threats of harm.

TABLE 4.6
Threats of physical injury by age of complainant

Injury	Years of Age										Total	
	0 - 4		5 - 9		10 - 14		15 and over		Unknown			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Threats	0	0.0	5	4.5	21	16.0	15	28.3	1	10.0	42	12.9
No threats	17	94.4	104	92.8	106	80.9	36	67.9	0	0.0	263	81.2
Unknown	1	5.6	3	2.7	4	3.1	2	3.8	9	90.0	19	5.9
TOTAL	18	100.0	112	100.0	131	100.0	53	100.0	10	100.0	324	100.0

TABLE 4.7
Non-specific threats of harm by defendant-complainant relationship

	Threats		No threats		Unknown	
Relationship	No.	%	No.	%	No.	%
Family member	37	50.7	58	25.3	4	18.2
Family friend	11	15.1	46	20.1	0	0.0
Authority figure	8	10.9	31	13.5	0	0.0
Acquaintance	10	13.7	56	24.5	0	0.0
Stranger	7	9.6	36	15.7	0	0.0
Unknown	0	0.0	2	0.9	18	81.8
TOTAL	73	100.0	229	100.0	22	100.0

In very few cases were other types of threats made to the complainant. In three cases complainants were told that if they reported the incident they would be responsible for the break-up of the family or the alleged offenders imprisonment. In two cases complainants reported that at the time of the alleged incident the offender threatened to harm a third party and in another case the complainant reported that the offender threatened to have them placed in an institution should they report the alleged offence. In fourteen cases, twelve involving female complainants and two involving male, other threats of varying nature were made to the complainant.

4.5. Summary

Child sexual assault matters for which there was a committal hearing in 1984 involved a range of incident types. The majority of matters involved incidents where a single offender was charged with the sexual assault of a lone victim. In these cases the relationship between defendant and complainant was commonly a familial one. Similarly, in cases involving multiple victims and lone offenders the most common relationship between defendant and complainant was a familial one. Persons in a position of authority to a complainant were most likely to have assaulted a number of victims.

Most cases did not involve a history of sexual offences between the defendant and complainant. Where such a histoy was evident, however, the relationship between complainant and defendant was familial in the majority of cases. Complainants who had experienced multiple assaults were almost equally as likely to be resident with the complainant at the time of the last offence as not.

Finally, complainants were more likely to have reported that non-specific threats of harm were made at the time of the assaults than either threats of physical injury or actual injury. Female complainants were more likely than males to be the recipient of threats of physical harm, non-specific threats and actual injury. Threats of physical injury most often accompanied assaults committed by strangers whilst non-specific threats of harm accompanied assaults committed by offenders in a familial relationship with the complainant.

5. THE PROSECUTION PROCESS

Just as the nature of the incidents varied according to the characteristics of both the defendant and the complainant, the processing of the defendant through the criminal justice system varied according to the nature of the offence(s) with which the defendant was charged. The following section examines all charges laid in child sexual assault matters for which there was a committal hearing in 1984 as they proceeded through the criminal justice system from the time of committal to final court outcome. The unit of analysis is defendant-complainant pair.

5.1. Committal proceedings

At the committal phase of a case the available evidence is tested before a magistrate in the Local Courts. In 1984, when the committal proceedings covered by this report took place, the test to be applied was whether or not the Justice or Justices were "of the opinion" that the evidence was "sufficient to warrant the defendant being put on his trial for an indictable offence". The Justices Act (section 41(2) and 41(6) required this test be applied twice, once after the hearing of the prosecution's evidence and, if a prima facie case is found on this basis, again after having any evidence given by the defence. If the evidence is still considered sufficient to merit a trial, the defendant is then committed. If not, he is discharged.[1] At any time during the committal proceedings the accused may enter a guilty plea. If the plea is accepted the person is then committed to either the District or Supreme Court for sentencing.

Until the amendment of the Justices Act in 1985, persons charged with offences carrying a penalty of life imprisonment were precluded from entering a plea of guilty at committal. Consequently, those persons charged with sexual offences under sections 67 and 68 of the Crimes Act and whose committal occurred during 1984, could not enter a plea of guilty at committal. The seven cases in this study where the accused were charged with such offences five of the accused entered no plea at committal and two of the accused pleaded not guilty.

The following is an examination of all cases of child sexual assault committed to trial or sentence in 1984.

5.2. Committal charges

A total of 531 charges were laid against the 240 distinct defendants, an average of 2.2 charges being laid against each defendant. Table

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[1] These provisions were amended in 1985 such that the test to be applied is now: (a) whether or not the evidence is capable of satisfying a jury that the defendant committed an indictable offence (after hearing the prosecution evidence); and (b) whether, "on the evidence, a reasonable jury would not be likely to convict the defendant" (after having all evidence, including any defence). See Smail, Miles and Shadbolt; 1980:141, for more details.

TABLE 5.1
Number of defendant–complainant pairs by number of charges and number of offence types at committal

	Number of offences types									
	One offence		Two offences		Three offences		Four offences		Total	
Number of charges	No.	%	No.	%	No.	%	No.	%	No.	%
One	204	63.0	0	0.0	0	0.0	0	0.0	204	63.0
Two	26	8.0	42	13.0	0	0.0	0	0.0	68	21.0
Three	10	3.1	10	3.1	14	4.3	0	0.0	34	10.5
Four	6	1.8	1	0.3	0	0.0	1	0.3	8	2.5
Five	1	0.3	2	0.6	2	0.6	0	0.0	5	1.5
Six	2	0.6	1	0.3	0	0.0	1	0.3	4	1.2
Eight	0	0.0	0	0.0	1	0.3	0	0.0	1	0.3
TOTAL	249	76.8	56	17.3	17	5.2	2	0.6	324	100.0

(1) Average Number of charges per defendant–complainant pair = 1.6.
(2) Average number of charges per defendant = 2.2.

5.1 shows number of charges by number of offences categories laid against each defendant and brought before a magistrate at committal.

In the majority of cases, 63.0 per cent, the accused faced only one charge. In the remaining 37.0 per cent of cases the distribution of charges ranged between two and eight, with the distribution of offences ranging between two and four.

The distribution of charges according to offence type is shown in Table 5.2. Previous studies of sexual assault offences brought before the court, particularly child sexual offences, have indicated that in the majority of cases the accused has been charged with indecent assault (Cashmore and Horsky 1987; Office of Crime Statistics 1983; Conte and Berliner 1981). An examination of the offences to which the 531 charges relate indicate that the greatest proportion of charges were laid under section 61E (indecent assault or act of indecency), 47.3 per cent of all charges, with an additional 6.6 per cent of charges relating to indecent assault being laid under section 81 or section 78Q. Thus 53.9 per cent of all charges brought to committal in 1984 were for offences involving indecent assault.

In the introduction to this report, the range of sexual offences against a child with which an accused could be charged were grouped into three major classifications: (a) sexual assault offences (b) carnal knowledge offences (c) homosexual offences.[2] An examination of the charges brought to committal according to this system of classification indicates that the largest proportion, 70.4 per cent or 374 of the s.31 charges were laid under the category "sexual assault offences". Only 13.8 per cent of those charges brought to committal were for offences of "carnal knowledge" and 10.7 per cent were for "homosexual offences".

Twenty-seven charges (5.1 per cent) were laid under other sections of the Crimes Act. A breakdown of these charges indicates that a variety of other offences were allegedly committed by the accused including abduct with intent to carnally know (section 89); break and enter and commit a felony (section 112); aid and abet (section 345); assault and attempt murder (s. 27). Appendix 6 provides a detailed summary of these offences.

5.2.1 Principal offence charged at committal

Analysis of the principal offence at committal for each defendant-complainant pair shows little variation from the distribution of <u>all</u> charges on which defendants appeared.[3]

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[2]These three classifications were used by the NSW Task Force on Child Sexual Assault.

[3]The principal offence is the offence which carries the greatest maximum penalty upon conviction.

TABLE 5.2
Total number of counts of committal charges, number of defendants with at least one count number of defendants by principal offence

Offence category	No. of charges		No. of defendants with at least one charge		Principal offence	
	No.	%	No.	%	No.	%
Category 1 (section 61B)	-	-	-	-	-	-
Category 2 (section 61C)	6	1.1	6	1.5	3	0.9
Category 3 (section 61D)	117	22.0	91	22.4	76	23.5
Category 4 (section 61E)	251	47.3	196	48.3	150	46.3
Carnal knowledge of girl under 10 (sections 67 and 68)	7	1.3	7	1.7	7	2.2
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	38	7.2	31	7.6	25	7.7
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	28	5.3	17	4.2	17	5.3
Buggery (sections 79 and 80)	14	2.6	11	2.7	9	2.8
Indecent assault, male (section 81)	33	6.2	22	5.4	19	5.9
Homosexual offences (sections 78H-Q)	10(1)	1.9	5	1.2	5	1.5
Other	27	5.1	20	4.9	13	4.0
TOTAL(2)	531	100.0	406	100.0	324	100.0

(1) Includes two cases of act of gross indecency (section 78Q).
(2) Percentages may not total 100 due to rounding error.

As detailed in Table 5.2, 70.7 per cent of those principal offences charged were "sexual assault offences" and 25.4 per cent of principal offences charged were either "homosexual" or "carnal knowledge"

offences. The greatest proportion of offences charged principally fell into the category indecent assault (52.8 per cent). Of these, 150 were indecent assault charged under section 61E of the Crimes Act, and two were charged under section 78Q.

TABLE 5.3
Principal offence at committal by complainant's sex

	Complainant's sex					
	Male		Female		Unknown	
Offence category	No.	%	No.	%	No.	%
Category 1 (section 61B)	-	-	-	-	-	-
Category 2 (section 61C)	1	1.4	2	0.8	0	0.0
Category 3 (section 61D)	7	9.6	66	26.8	3	60.0
Category 4 (section 61E)	32	43.8	116	47.2	2	40.0
Carnal knowledge of girl under 10 (sections 67 and 68)	0	0.0	7	2.8	0	0.0
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	0	0.0	25	10.2	0	0.0
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	0	0.0	17	6.9	0	0.0
Buggery (sections 79 and 80)	9	12.3	0	0.0	0	0.0
Indecent assault, male (section 81)	19	26.0	0	0.0	0	0.0
Homosexual offences (sections 78H-Q)	5	6.9(1)	0	0.0	0	0.0
Other	0	0.0	13	5.3	0	0.0
TOTAL	73	100.0	246	100.0	5	100.0

(1) Includes two defendants charged with 78Q (gross indecency).

As shown in Table 5.3 complainants were one and a half times more likely to be male in cases where the charge laid involved indecent assault (72.6 per cent of male complainants versus 47.2 per cent of female complainants). A number of these charges were laid under sections 81 and 78Q. Numerically, however, female complainants were three and a half times more likely than males to be complainants in cases involving charges of section 61E of the Crimes Act.

The presence of thirteen cases in which the principal offence charged was not specifically child sexual assault, as defined in the introduction to this report, should be explained. As detailed in Appendix 6, of the thirteen cases related to other offences, four involved section 112 offences (break and enter and commit felony), four involved section 89 offences (abduct with intent to carnally know), two involved section 345 offences (aid and abet), and one involved section 26 (conspiracy to murder), section 27 (attempt murder) and section 97 (armed robbery), respectively. With the exception of the section 112 and section 345 offences which were single charges against the defendant, each case also involved specific child sexual assault offences. The section 112 offences and the section 345 offences have been included because the offence description referred to sexual offences against children namely section 112/61E and section 345/61D.

5.3. Indicted offences

> "The original information which commenced proceedings in the Local Court is replaced by an indictment presented by the Crown Prosecutor in the name of the Director of Public Prosecutions. An indictment is a statement of the charge or charges the accused person is alleged to have committed". (B.C.S.R.: 1987)

The charges at committal will not always be the charges upon which an accused is indicted. The Crown Prosecutor is given responsibility for determining whether the case should proceed to trial and what the indictment should be. If it is decided that the case should proceed to trial then an indictment may be filed for the charge(s) on which the accused was committed. Alternatively, charges may be added or substituted for the original charge.

In any event, both the Crown and the defence may make an application to the Director of Public Prosecutions that "no bill" of indictment be found, either for a particular charge or for any offence. Where a bill has been found, an application may nonetheless be made seeking no further proceedings[4]. Where a magistrate decides not to commit a person for trial, the Director of Public Prosecutions may still proceed with the prosecution by filing an "ex officio" indictment.

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[4]The term "no bill" is generally used to refer both to applications made prior to the finding of a bill and to those seeking no further proceedings after a bill has been found.

Table 5.4, below, shows the outcome of all committal hearings for child sexual assault matters in 1984. Of the 324 complainant-defendant pairs, 319 cases involved defendants committed to trial or sentence. In five cases involving three distinct defendants, magistrates discharged the defendant. (All three were charged with offences against multiple complainants and were subsequently committed on other charges.) Those charges not proceeded with included five charges of indecent assault (section 61E), two charges of carnal knowledge of girl aged ten and under sixteen (section 71) and one charge of sexual assault without consent (section 61D).

TABLE 5.4
Total number of counts upon indictment, number of defendants with at least one count, number of defendants by principal offence

	No. of charges		No. of defendants with at least one charge		Principal offence	
Offence category	No.	%	No.	%	No.	%
Category 1 (section 61B)	-	-	-	-	-	-
Category 2 (section 61C)	4	0.8	4	1.0	2	0.6
Category 3 (section 61D)	93	18.1	73	19.0	60	18.8
Category 4 (section 61E)	263	51.2	202	52.5	166	52.0
Carnal knowledge of girl under 10 (sections 67 and 68)	7	1.4	7	1.8	7	2.2
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	40	7.8	32	8.3	24	7.5
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	28	5.4	17	4.4	17	5.3
Buggery (sections 79 and 80)	10	1.9	8	2.1	8	2.5
Indecent assault, male (section 81)	26	5.0	18	4.7	17	5.3
Homosexual offences (sections 78H-Q)	19	3.7	7	1.8	5	1.6
Other	24	4.7	17	4.4	13	4.1
TOTAL	514	100.0	385	100.0	319	100.0

As suggested above and as indicated in Table 5.4, not all defendants were indicted on the charges with which they entered committal. Whilst the 240 district defendants entered committal with a total

number of 531 charges, they were indicted upon 514 charges, a reduction of 17 charges (3.2 per cent). Moreover, the distribution of the total number of charges upon indictment and the distribution of principal offences upon indictment, in comparison to committal charges, shows that a greater proportion of defendants were indicted upon section 61E charges (51.2 per cent of all charges and 52.0 per cent of principal offences) than would have been expected on the basis of charges at committal (47.5 per cent of all charges and 46.3 per cent of principal offences were charged under section 61E). Similarly, a smaller proportion of indictment charges were for the offence of sexual assault without consent (section 61D) than would have been expected on the basis of committal charges. Only small variations in the proportion of other offence types from committal to indictment were recorded.

The reduction in the total number of charges from committal to indictment is partially explained by the eight charges for which no prima facie case was found. Table 5.5 gives a breakdown of the total number of charges at committal by the total number of charges at indictment. Excluding those five cases for which no prima facie case was found, twenty-two cases saw changes in the number of charges indicted. In six cases the number of charges indicted was increased and in the remaining sixteen cases, a reduction was recorded in the number of charges indicted. The result - a reduction of nine charges in total.

The changes in principal offence from committal to indictment are displayed in Table 5.6. In twenty-seven (8.5 per cent) of the 319 cases committed to trial, the defendant was not indicted upon the original charge. In twenty-one of these cases a reduction in the severity of the charge was recorded and in four cases an increase in the severity of the charge was recorded. In two cases the charge severity, (indexed by the maximum possible penalty upon conviction) remained the same: a change being recorded from section 61D of the Crimes Act to section 71.

It is important to note that section 61D of the Crimes Act, in fact, allows for alternative verdicts:

61D(2) "Where on the trial of a person for an offence under section 61D the jury is satisfied that the person upon whom the offence was alleged to have been committed was a girl under the age of 16 years, but above the age of 10 years, and that the accused had carnal knowledge of her but is not satisfied that carnal knowledge was had without her consent, it may find the accused not guilty of the offence charged but guilty of an offence under section 71, and the accused shall be liable to punishment accordingly."

TABLE 5.5

Number of charges at committal by number of charges upon indictment

Number of charges at committal	Number of charges upon indictment									
	No charges		One charge		Two charges		Three charges		Four charges	
	No.	%	No.	%	No.	%	No.	%	No.	%
One	2	0.6	199	61.4	3	0.9	0	0.0	0	0.0
Two	3	0.9	7	2.2	57	17.6	1	0.3	0	0.0
Three	0	0.0	2	0.6	6	1.9	26	8.0	0	0.0
Four	0	0.0	0	0.0	0	0.0	0	0.0	8	2.5
Five	0	0.0	0	0.0	0	0.0	0	0.0	1	0.3
Six	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Eight	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL	5	1.5	208	64.2	66	20.4	27	8.3	9	2.8

TABLE 5.5 (continued)
Number of charges at committal by number of charges upon indictment

Number of charges at committal	Number of charges upon indictment									
	Five charges		Six charges		Seven charges		Twelve charges		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
One	0	0.0	0	0.0	0	0.0	0	0.0	204	63.0
Two	0	0.0	0	0.0	0	0.0	0	0.0	68	21.0
Three	0	0.0	0	0.0	0	0.0	0	0.0	34	10.5
Four	0	0.0	0	0.0	0	0.0	0	0.0	8	2.5
Five	4	1.2	0	0.0	0	0.0	0	0.0	5	1.5
Six	0	0.0	3	0.9	1	0.3	0	0.0	4	1.2
Eight	0	0.0	0	0.0	0	0.0	1	0.3	1	0.3
TOTAL	4	1.2	3	0.9	1	0.3	1	0.3	324	100.0

TABLE 5.6

Principal offence at arrest by principal offence upon indictment

Principal offence at arrest	S.61B	S.61C	S.61D	S.61E	SS. 67/68	SS. 71/72	SS. 73/74	SS. 79/80	S. 81	SS. 78H-Q	Other	Total
Category 1	0	0	0	0	0	0	0	0	0	0	0	0
Category 2	0	2	1	0	0	0	0	0	0	0	0	3
Category 3	0	0	59	14	0	2	0	0	0	0	0	75
Category 4	0	0	0	147(1)	0	0	0	1	0	0	0	148
Carnal knowledge of girl under 10 (sections 67, 68)	0	0	0	0	7	0	0	0	0	0	0	7
Carnal knowledge of girl 10 and under 16 (sections 71, 72)	0	0	0	1	0	22	0	0	0	0	0	23
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A, 78B)	0	0	0	0	0	0	17	0	0	0	0	17
Buggery (sections 79, 80)	0	0	0	1	0	0	0	7	0	1	0	9
Indecent assault, male (section 81)	0	0	0	2	0	0	0	0	17	0	0	19
Homosexual offences (sections 78H-Q)	0	0	0	1	0	0	0	0	0	4	0	5
Other	0	0	0	0	0	0	0	0	0	0	13	13
TOTAL	0	2	60	166	7	24	17	8	17	5	13	319

(1) Includes three cases where there was a change from the original charge, in two cases the charge changed from section 61E(1) to section 61E(2) and in one case from section 61E(2) to section 61E(1).

(2) Excluded from the table are those cases which did not proceed beyond committal.

Thus it is possible that the change in charge in these two cases (both committed to trial), was simply a case of the Crown Prosecutor exercising his or her right to vary the charge on which the defendant is indicted based on the probable outcome of the trial. It also, however, raises the question of possible charge bargaining. In the case of one of the varied charges the defendant changed his plea prior to trial, in the second case the defendant chose not to vary his plea.

In discussing the issue of charge bargaining, however, it is more useful to examine those cases where the changed plea was entered to a charge carrying a lesser penalty than that which was originally charged. The greatest proportion (66.7 per cent) of the cases in which there was a reduction, involved changes from section 61D to section 61E of the Crimes Act. The remaining cases involved a varying array of offences with the exception of two charges of section 61E(1) involving complainants under the age of sixteen which were reduced to charges of section 61E(2). The change in penalty which may be imposed in such a reduction is from a maximum period of six years imprisonment to a maximum penalty of two years imprisonment.

Of those twenty one cases involving a reduction in the seriousness of the charge, an analysis of the change in plea recorded over the period prior to trial indicates that in two thirds (fourteen) of the cases a change in plea to guilty was entered by the defence.[5] Although this would appear to suggest more than just mere coincidence, it is not possible to say whether reduction in charges is an indication of charge bargaining or whether the Crown Prosecutor was simply exercising his or her discretion to vary the charges upon indictment. This issue is returned to below in section 5.4.

5.3.1 Nature of the indictment

For each case, information was collected on the nature of the offence upon which the defendant was indicted. The sources of this information included; records of interview, transcripts and, when available, medical documentation. The nature of the offence refers, in the case of sexual offences, to whether penetration occurred, whether this was penile-vaginal, penile-anal, penetration with an object, fellatio, cunnilingus or indecent assault. Where the principal offence was not sexual in nature, details of the offence were also recorded.

The following results should be treated with caution. Whilst they describe the nature of the offence, as stated in court records and implied by the offence principally charged, they cannot take into full consideration the whole quality of the evidence available to the

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[5] In 22 per cent of the 319 cases which proceeded beyond committal, defendants either changed their plea, or entered a plea after reserving their right to enter a plea at committal.

prosecution. For example, it may have been recorded in a record of interview that the assault involved penetration, however, the defendant may have been charged with indecent assault. Quite clearly this would not appear to reflect the actual nature of this offence to which the complainant was subjected. The prosecution, however, may have had insufficient evidence to proceed with a charge under section 61D. Consequently, in order to increase the chances of conviction the less severe offence was brought before the court.

Table 5.7 shows the number of cases by whether actual penetration was alleged, according to the principal offence recorded on the indictment. In by far the majority of cases the nature of the assault was reflected in the charge at indictment. In only 12.0 per cent of cases would it appear that the nature of the assault was not reflected in the principal offence upon which the defendant was indicted. In nineteen (11.4 per cent) of the cases charged under section 61E (indecent assault), evidence in the court records suggested that either actual penetration, fellatio, or cunnilingus had occurred at the time of the incident. In three cases (17.6 per cent) charged under section 81, evidence in the records again suggested penetration had occurred at the time of the incident.

There were, of course, cases in which the opposite occurred. Available evidence in the court records tended to suggest that the assault was not as severe as the offence charged reflected. In four cases, the evidence indicated that the offence had involved indecent assault but had been charged under a category which indicated penetration.

The available data do not permit any decision as to whether or not more or less severe charges were warranted in some cases. What is important, in this regard, is that the evidence available to the prosecution is judged by them to be of the quality and reliability necessary to secure a conviction. Assuming the prosecution was correct in their judgement then, by definition, in those cases where penetration was apparent but indecent assault was charged, the evidence was not of the quality or reliability necessary to secure a conviction for an offence of greater severity.

5.4. Case discontinued before trial or sentence

A number of cases lapsed prior to trial or sentence. These cases fell into four categories:

(i) Cases "no billed";
(ii) Cases where the accused died or absconded prior to trial or sentence;
(iii) Cases remitted to the Local Court for continuation of committal proceedings;
(iv) Cases where there were no further proceedings for reasons which could not always be determined.

TABLE 5.7

Number of cases by actual penetration and charge upon indictment by principal offence

	Nature of assault(1)											
	P-V		P-A		Other		Indecent assault		Unknown/ Not applicable		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Category 1 (section 61B)	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Category 2 (section 61C)	0	0.0	1	50.0	0	0.0	0	0.0	1	50.0	2	100.0
Category 3 (section 61D)	29	48.3	4	6.7	21	35.0	1	1.7	5	8.3	60	100.0
Category 4 (section 61E)	6	3.6	3	1.8	10	6.0	146	88.0	1	0.6	166	100.0
Carnal knowledge of girl under 10 (sections 67 and 68)	6	85.7	0	0.0	0	0.0	1	14.3	0	0.0	7	100.0
Carnal knowledge of girl 10 and under 16 (sections 71, 72)	23	95.8	0	0.0	0	0.0	1	4.2	0	0.0	24	100.0
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B) ...	17	100.0	0	0.0	0	0.0	0	0.0	0	0.0	17	100.0
Buggery (sections 79 and 80)	0	0.0	7	87.5	0	0.0	1	12.5	0	0.0	8	100.0
Indecent assault, male (section 81)	0	0.0	1	5.9	2	11.8	14	82.3	0	0.0	17	100.0
Homosexual offences(1) (sections 78H-Q)	0	0.0	3	60.0	0	0.0	2	40.0	0	0.0	5	100.0
Other	0	0.0	0	0.0	0	0.0	0	0.0	13	100.0	13	100.0
TOTAL	81	25.4	19	6.0	33	10.3	166	52.0	20	6.3	319	100.0

(1) P-V = penile-vaginal penetration.
P-A = penile-anal penetration.
Other = penetration of the vagina or anus by an object or other part of the body, fellatio, cunnilingus.

TABLE 5.8

Total number of charges lapsing before trial or sentence by reason for discontinuation

Offence	Reason for discontinuation				
	No bill entered	Died/abscond	Recommitted	No further proceedings	Total
Category 1 (section 61B)	0	0	0	0	0
Category 2 (section 61C)	0	0	0	0	0
Category 3 (section 61D)	4	2	6	3	15
Category 4 (section 61E)	13	8	1	0	22
Carnal knowledge of girl under 10 (sections 67 and 68)	1	0	0	1	2
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	3	1	0	0	5(1)
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	1	2	0	0	3
Buggery (sections 79 and 80)	0	0	0	0	0
Indecent assault, male (section 81)	0	0	4	0	4
Homosexual offences (sections 78H-Q)	0	0	2	0	2
Other	4	0	0	0	4
TOTAL	26	13	13	4	57

(1) Includes one case where the trial had not proceeded at the time of data collection.

Table 5.8 details the total number of charges and offences discontinued before trial or sentence, by reason for discontinuation. As discussed earlier, the Crown or the defence may make application that "no bill" or indictment be found in respect of one or more charges. In the case of twenty-six charges "no bill" of indictment was found by the Attorney General in committal matters involving child sexual assault offences in 1984. The majority of these charges involved indecent assault offences under section 61E (13 charges) and nine charges involved sexual intercourse offences, the remaining four were non-sexual offences. These charges related to seventeen defendants. In the case of ten defendants for whom one or more charges were "no billed", additional charges on which a bill of indictment was found proceeded for trial or sentence.

The second category of offences which lapsed before sentence or trial were those in which the accused died or absconded. Thirteen charges fell into this category. Again the majority of charges were for offences involving indecent assault. These thirteen charges related to five defendants.

The third category of offences which lapsed involved defendants who had pleaded guilty, but whose cases were remitted to the local court for continuation of committal proceedings following a change of plea. In matters where the accused wishes to change his or her plea prior to sentence:

> "[They] may request the presiding judge to order that the original proceedings for committal be continued, when the matter will be remitted to the magistrate for formal proceedings for committal for trial to continue... the judge may also make the same order on the request of counsel for the Crown or on his own motion for any other reason. The judge, instead of ordering the matter to be continued before the magistrate, may (unless the matter is punishable by life imprisonment) direct that the accused be put on trial for the offence charged..."
>
> (Smail, Miles, Shadbolt 1980: 142)

In respect of thirteen charges the accused was remitted to the Local Court for the continuation of committal proceedings. In these matters the committal proceedings were held in 1985, not 1984, and hence fell outside the selection criterion for inclusion in this study. These matters are, therefore, not further included as matters which proceeded. The charges involved in this category included six charges of sexual assault without consent (section 61D), four charges of indecent assault (section 81), one charge of indecent assault (section 61E) and two charges of acts of gross indecency (section 78Q). In all of these cases the outcome of criminal proceedings was available from the court records. The original thirteen charges were laid against defendants involved in ten cases. In seven of these cases the defendants were recommitted on two counts of section 61E.

Six were sentenced on these charges and one was found not guilty (he was, however, found guilty in respect of three other complainants). In one case the defendant was recommitted for sexual assault without consent (section 61D) and consequently found guilty. In the remaining two cases, the police did not appear at committal and the cases were dismissed.

The final set of charges not proceeded with were three counts of sexual assault without consent (section 61D) and one count of attempt carnal knowledge of girl under 10 (section 68). With respect to two of these charges the reason for not proceeding could not be determined (section 68 and section 61D). In the case of the remaining two charges of section 61D it was recorded that the defendant involved pleaded guilty to one count of section 61E and these two additional charges were not proceeded with. This incident, again, raises the question of charge bargaining.

Table 5.9 details the number of complainant-defendant pairs to whom the above charges relate and the number of distinct defendants involved in those cases where one or more charges lapsed before sentence or trial. In total, 40 defendant-complainant pairs and thirty-one distinct defendants had charges lapse following committal. The table is self explanatory. It does not, however, reflect the actual number of cases which did not proceed to trial or sentence, nor does it indicate the number of distinct defendants against whom criminal proceedings did not continue.

TABLE 5.9
Charges discontinued before trial or sentence(1)

Reason for discontinuation	No. of defendant-complainant pairs (Total = 319)		No. of defendants (Total = 240)	
	No.	%	No.	%
No bill entered	20	6.3	17	7.1
Died/absconded	6	1.9	5	2.1
Remitted to Local Court ...	10	3.1	5	2.1
No further proceedings	3	0.9	3	1.3
TOTAL(2)	40	12.5	31	13.0

(1) Percentage of all cases committed to trial or sentence.
(2) Includes one case where the trial had not proceeded at the time of data collection.

Of the thirty-one distinct defendants for whom one or more charges lapsed, only eleven still proceeded to trial or sentence for additional offences which they had allegedly committed. Twenty distinct defendants involved in twenty-six cases (8.7 per cent) failed to proceed to either sentence or trial. In the case of one distinct defendant committed on charges with respect to two complainants, proceedings continued for charges laid with respect to only one of those complainants.[6] Overall, 6.7 per cent of distinct defendants had proceedings lapse after the first committal hearing, although all defendants were committed on at least one charge at that hearing.

5.5. Matters committed for trial and sentence

Whether a person is committed to a higher court for trial or sentence is determined according to the plea entered at committal. Where the accused enters, and the magistrate accepts, a plea of guilty, committal for sentence will follow. If, however, the accused pleads not guilty or exercises their right not to enter a plea, then the accused will be committed for trial. The accused may change their plea at any time. As indicated in the above section, if the accused wishes to change their plea to "not guilty" at or preceding sentence, then the presiding judge may order that the case be remitted to the Local Court to enable proceedings for committal for trial to continue. Conversely, should the accused wish to change their plea prior to trial to one of guilty, then the case will usually proceed to sentence.

With the introduction of the Crimes (Sexual Assault) Amendment Act in 1981, it was anticipated that there would be a greater number of guilty pleas to offences covered by sections 61B-61E, than to the pre-existing common law offence of rape (Hansard 1981). The reasoning provided for this assumption was that offenders would be more likely to enter a guilty plea under the new legislation (as it was then) with its graduated penalties for sexual offences of differing seriousness, than for rape with its single maximum penalty of life imprisonment (Bonney 1986). The expectation was confirmed by the Bureau in two studies (Bonney 1985, 1987). The findings of Cashmore and Horsky for child sexual assault matters completed in 1982 also showed a higher proportion of cases proceeding to sentence (rather than trial) under the post-1981 legislation (90.9%) than under the pre-1981 legislation (48.5%).

Cashmore and Horsky (1987) also found that the proportion of guilty pleas increased from the more to the less serious offences within each category (pre- and post- 1981 amendments).

The following sections examine those cases for which there was a committal hearing in 1984 according to whether they were originally committed to trial or sentence (not guilty or guilty pleas) and whether the defendants changed their pleas to any charges.

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[6] It should be remembered that of the twenty distinct defendants for which cases lapsed at trial, five had their cases remitted to the Local Court in 1985 and were sentenced on all but four charges involving three complainants.

5.5.1 Matters committed for sentence

Table 5.10 shows the number of cases committed for trial and sentence in 1984 by principal offence.[7] Excluding those cases in which the defendant entered a plea of guilty following committal, defendants in 58.1 per cent of cases were committed for sentence after entering a guilty plea at committal.

TABLE 5.10
Number of cases committed to trial and sentence by principal offence(1)

	Trial		Sentence		Total	
Offence category	No.	%	No.	%	No.	%
Category 1 (section 61B)	0	0.0	0	0.0	0	0.0
Category 2 (section 61C)	0	0.0	2	100.0	2	100.0
Category 3 (section 61D)	29	60.4	19	39.6	48	100.0
Category 4 (section 61E)	57	35.4	104	64.6	161	100.0
Carnal knowledge of girl under 10 (sections 67 and 68)	5	100.0	0	0.0	5	100.0
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	13	52.0	12	48.0	25	100.0
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	6	42.9	8	57.1	14	100.0
Buggery (sections 79 and 80)	3	37.5	5	62.5	8	100.0
Indecent assault, male (section 81)	0	0.0	13	100.0	13	100.0
Homosexual offences (sections 78H-Q)	1	33.3	2	66.7	3	100.0
Other	8	66.7	4	33.3	12	100.0
TOTAL	122	41.9	169	58.1	291	100.0

(1) Based on principal offence proceeded with by outcome at sentence.

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[7] Those cases in which charges laid against the accused lapsed prior to sentence or trial are not included in this table.

5.5.2 Matters committed to trial

Defendants in 122 cases (41.9 per cent) were committed for trial after exercising their right to enter no plea or entering a plea of not guilty at committal. These cases include those matters in which the defendant changed their plea prior to or at the beginning of trial.

Table 5.11 details those cases in which the defendant was committed for trial and indicates that in sixty-one cases (50.0 per cent), defendants committed to trial changed their plea to guilty. Of these, forty-one (67.2 per cent) entered a plea of not guilty at committal with the remaining twenty reserving their right to enter no plea. Consequently, half of those cases originally committed to trial or 21.0 per cent of the 291 cases committed, actually proceeded by way of trial by jury.[8] Table 5.12 displays the number of cases in which the defendant actually proceeded to trial and sentence. As shown, the majority of cases (79 per cent) in this study were matters upon which the defendant was directly sentenced.

In total, 176 defendants proceeded to sentence and 45 defendants proceeded to trial. (One defendant proceeded to both trial and sentence for charges in respect of two complainants.)

TABLE 5.11
Number of cases committed to trial: plea at committal and at trial

	Plea at trial					
	Guilty		Not guilty		Total	
Plea at committal	No.	%	No.	%	No.	%
Not guilty	41	33.6	53	43.4	94	77.0
No plea	20	16.4	8	6.6	28	23.0
TOTAL	61	50.0	61	50.4	122	100.0

[8] In the case of one defendant who was committed to trial for offences committed against two complainants, after changing his plea to guilty for one defendant he proceeded directly to sentence. On the charges with respect to the second complainant he did not vary his plea and was tried by jury.

5.5.3 A comparison of cases committed for trial and sentence

As indicated above, a number of studies have found that the greater the severity of the offence (measured by maximum penalty) the more likely the defendant is to plead not guilty (Bonney 1986, Cashmore and Horsky 1987). The findings of the current study are more equivocal.

TABLE 5.12
Number of cases which actually proceeded to trial and sentence by principal offence

	Trial		Sentence		Total	
Offence category	No.	%	No.	%	No.	%
Category 1 (section 61B)	0	0.0	0	0.0	0	0.0
Category 2 (section 61C)	0	0.0	2	100.0	2	100.0
Category 3 (section 61D)	12	25.0	36	75.0	48	100.0
Category 4 (section 61E)	27	16.8	134	83.2	161	100.0
Carnal knowledge of girl under 10 (sections 67 and 68)	2	40.0	3	60.0	5	100.0
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	6	24.0	19	76.0	25	100.0
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	5	35.7	9	64.3	14	100.0
Buggery (sections 79, 80)	2	25.0	6	75.0	8	100.0
Indecent assault of male (section 81)	0	0.0	13	100.0	13	100.0
Homosexual offences (sections 78H-Q)	0	0.0	3	100.0	3	100.0
Other	7	58.3	5	41.7	12	100.0
TOTAL	61	21.0	230	79.0	291	100.0

Defendants involved in cases where the principal offence charged was section 61D or section 67 were more likely initially to plead not guilty[9] than guilty: 60.4 per cent and 100 per cent, respectively

[9] Defendants appearing at committal for offences attracting a maximum penalty of life imprisonment were unable to enter a plea of guilty at committal until the amendment of Section 51a of the Justices Act in 1985. Consequently, in the five cases where the defendant was charged under Section 62 of the Crimes Act, a committal hearing was automatic, and only after that could the defendant plead guilty.

(see Table 5.10). Both of these offences attract high maximum penalties. Conversely, in cases where the principal offence charged was section 61E or section 81, both of which attract lesser maximum penalties, the defendants were more likely to plead guilty at committal (64.6 per cent and 100.0 per cent, respectively) than not guilty. In those cases involving charges of section 71, section 73, section 78H, section 78K or section 78N, defendants were almost equally likely to plead guilty at committal as not guilty. On the other hand, the two defendants charged under section 61C and five of the seven defendants charged under section 79, pleaded guilty at committal. All of these offences, attract high penalties. Table 5.12 shows the proportions of cases for which a defendant finally entered a plea of guilty or not guilty and, thus, actually went to sentence or trial.

The picture painted above is muddied by the varying nature of the charges and their associated penalties. Clarification is provided by examining those cases which were committed to trial and those committed to sentence according to the severity of the offence. As shown in Table 5.13, in cases where the maximum penalty at conviction was under 7 years, the defendant was more likely to plead guilty at committal than in cases where the maximum penalty at conviction was 7 years or more. Chi-square analysis indicates that there is a significant relationship between the maximum penalty, and the defendant's plea ($x^2 = 16.81$, df = 2, $p < 0.001$). On the basis of previous findings, one would expect, however, a plea of not guilty to be entered more frequently by defendants in cases where the maximum penalty was over 12 years than in cases where the maximum sentence was between 7 and 12 years. In cases committed to trial in 1984 this was not the case. As Table 5.13 details, 46.2 per cent of defendants in cases involving a possible maximum penalty of 13 years and over entered a plea of guilty, compared with 42.1 per cent of defendants in cases where the maximum penalty at conviction was between 7 and 12 years.

TABLE 5.13
Number of cases committed to trial and sentence by severity of the offence

	Trial		Sentence		Total	
Maximum penalty	No.	%	No.	%	No.	%
Up to 6 years	57	32.4	119	67.6	176	100.0
7 - 12 years	44	57.9	32	42.1	76	100.0
13 years and over	21	53.8	18	46.2	39	100.0
TOTAL	122	41.9	169	58.1	291	100.0

The hypothesis that defendants are more likely to plead guilty to offences attracting a light penalty is confirmed, however, when a comparison is made of cases which actually proceeded by way of trial and cases which actually proceeded by way of sentence.[10] As displayed in Table 5.14, defendants are more likely to plead guilty to offences which attract a maximum penalty of up to six years (84.7 per cent) than to offences which attract a penalty of between seven and twelve years imprisonment (73.7 per cent), or over twelve years imprisonment (64.1 per cent). This relationship between maximum penalty and plea is a statistically significant one ($x^2 = 9.91$, df = 2, $p < 0.001$). Furthermore, defendants are least likely to change their plea where the offence attracts a high penalty. In 70 per cent of cases where the maximum penalty exceeded twelve years, defendants did not change their plea at or prior to trial. By comparison, in only 47.4 per cent of cases in which the principal offence attracted a maximum penalty of up to six years did the defendant not change their plea to guilty. This does not mean that the prospect of a longer gaol term is a disincentive to change of plea. It may mean that more serious charges tend to be laid on stronger evidence than that which prompts the laying of lesser charges.

TABLE 5.14
Number of cases which actually proceeded to trial and sentence by severity of the offence

	Trial		Sentence		Total	
Maximum penalty	No.	%	No.	%	No.	%
Up to 6 years	27	15.3	149	84.7	176	100.0
7 - 12 years	20	26.3	56	73.7	76	100.0
13 years and over	14	35.9	25	64.1	39	100.0
TOTAL	61	21.0	230	79.0	291	100.0

To summarise, the likelihood of a guilty plea increases as the potential maximum penalty decreases. This is not evident, however, from an examination of guilty pleas at committal. When one examines all cases involving a guilty plea, independent of the time when the plea was entered, however, it is apparent that defendants are most likely to enter a plea of guilty to offences with lesser penalties and a plea of not guilty to offences attracting a heavy penalty.

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[10] Those cases which actually proceed to sentence involve all cases where the defendant pleaded guilty at committal and those where the defendant changed their plea to guilty at or just preceding trial.

5.6. Outcome

Table 5.15 details the relationship between the total number of charges proceeded with, and the charge outcome. Of the 457 charges laid against defendants, 86.9 per cent resulted in a guilty outcome whether by way of guilty plea or guilty verdict. Only 13.1 per cent of charges which were proceeded against beyond committal saw an acquittal of that charge.

TABLE 5.15
Total number of charges proceeded with by outcome

	Proceeded with	Guilty		Acquitted	
	No.	No.	%	No.	%
Category 1 (section 61B)	0	0	0.0	0	0.0
Category 2 (section 61C)	4	2	50.0	2	50.0
Category 3 (section 61D)	76	63	82.9	13	17.1
Category 4 (section 61E)	241	216	89.6	25	10.4
Carnal knowledge of girl under 10 (sections 67 and 68)	5	4	80.0	1	20.0
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	37	30	81.1	7	18.9
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	25	23	92.0	2	8.0
Buggery (sections 79 and 80)	10	9	90.0	1	10.0
Indecent assault (section 81)	22	22	100.0	0	0.0
Homosexual offences (sections 78H-Q)	17	13	76.5	4	23.5
Other	20	15	75.0	5	25.0
TOTAL	457	397	86.9	60	13.1

5.6.1 Sentence matters

With the exception of five cases, the outcome for defendants who pleaded guilty to all charges at either committal or trial is obvious; they were convicted on all charges and sentenced. In the five cases where the defendant was not convicted of all charges, two defendants were indicted on section 61D (sexual intercourse without consent) but sentenced for offences under section 71 (carnal knowledge of girl ten and under sixteen). In the case of the three remaining defendants it was noted on the cover sheet of the court record (amongst other documentation) that, in the event that the defendant be acquitted of the principal offence, conviction on an alternative charge should be considered.

For example:

> "Sexual intercourse without consent (1 count); carnal knowledge of girl ten and under sixteen (alternative)."

In the first case (case A), a matter originally committed for sentence, the defendant was convicted of the principal offence - attempt sexual intercourse without consent (sections 61F/61D) - and not on the alternative charge of attempt to carnally know girl ten and under sixteen (section 72). In the second and third cases, the defendants were originally committed for trial but became sentence matters after a change of plea was entered. The second defendant (case B) was originally to be tried on one count of sexual intercourse without consent (section 61D) with an alternative charge of carnal knowledge of girl aged ten and under sixteen being recorded on the indictment. After changing his plea, the defendant was convicted and sentenced on the alternative charge of section 71. The third defendant (case C), who was not convicted of all charges despite proceeding directly to sentence, was charged with twelve counts of four offences: four counts of homosexual intercourse of male under ten (section 78H); four alternative counts of attempt homosexual intercourse of male under ten (section 78I); one count of attempt buggery (section 79); and three counts of act of gross indecency (section 78Q). The defendant was convicted and sentenced on all counts with the exception of the principal offence indicted (section 78M).

The sentencing of defendants in matters involving alternative charges warrants some comment as it again raises the question of charge bargaining. A bill of indictment may be filed against a defendant with "alternative" charges. In proceeding with such charges it is not necessary for a plea to be sought or entered, although in some cases this may happen.

In matters where the defendant is committed for trial but later changes his or her plea to guilty, the usual practice is to discontinue proceedings with respect to the alternative charge(s). No evidence will be offered, the case with respect to those charges will be dismissed and conviction and sentence will occur on the

principal offence indicted and any other offences not indicted as alternative charges. Where the defendant refrains from changing his or her plea and proceeds to trial, the jury may convict on the principal offence indicted or on the alternative charges entered on the bill of indictment.

The incidence of alternative charges occurred in only five cases committed in 1984: three sentence matters and two trial matters. The sentence matters are described above. The trial matters involved charges of section 61D and section 61E, with alternative charges of section 79 and section 61D, respectively. In both cases, the defendant was acquitted of both the principal offence and the alternative charges.

Sallman and Willis (1984:74) describe plea bargaining or charge bargaining as:

> "Agreements between the accused and the Crown, whereby the Crown agrees to withdraw some of the charges that have been laid in return for the accused pleading guilty to others... the major advantage for the Crown is... the fact that a conviction is obtained without the need for a trial and the risk of total acquittal which that involves. The major advantage for the defendant is that by pleading guilty to the lesser charge and not being liable to conviction on the more serious one, the sentence which is available to the court and the sentence which is actually likely to be imposed are less than they would otherwise be."

Court records, as stated in the introduction, do not always provide great detail on a case. Information may be missing or recorded incorrectly. In some matters it may be that the alternative charges have indeed been dismissed following a change in plea but incomplete notation failed to record this. This, however, would not appear to be so in either case B or case C, above. In both matters, a change of plea was accepted to "alternative" charges upon which the defendants were then convicted and sentenced. Had the "usual" procedure been followed in both of these cases, sentence and conviction would have occurred for the principal indicted offence and the alternative charges dismissed. Both case B and case C give weight, therefore, to the argument that charge bargaining exists within the criminal justice system at some level, although it would not appear to be very common amongst the matters covered in this study.

5.6.2 Trial matters

Whilst the outcomes of those cases which were direct sentence matters was mainly clear cut, the situation was more complex in cases where the defendant pleaded not guilty to one or more charges. Table 5.16 details the outcome of cases proceeded with by principal offence.

The columns "guilty verdict" and "acquittal" indicate the results for the principal offence of the sixty-one cases which proceeded to trial. Approximately forty-three per cent of those cases which proceeded to trial resulted in a guilty verdict in respect of the principal offence. The remaining fifty-seven per cent of cases resulted in acquittals. There were, however, three cases in which the defendant was acquitted on the principal offence but convicted on charges attracting a less severe penalty. Thus, 47.5 per cent of trial cases resulted in the conviction of the defendant on one or more of the indicted offences, whilst a majority of defendants were acquitted. In other words, 52.5 per cent of trial matters and 11.0 per cent of all cases which proceeded to trial or sentence resulted in an acquittal.

As Table 5.16 suggests, the outcome of trial cases fell into three categories:

(i) acquittal on all charges;
(ii) conviction on some charges and acquittal of some charges;
(iii) conviction on all charges.

A total of one hundred and one charges were recorded against defendants who proceeded to trial. In thirty-two cases (52.4 per cent) involving 24 defendants, the defendant was acquitted of all charges. The principal offences in these thirty-two charges were: six charges of section 61D; seventeen charges of section 61E; four charges of section 71, one charge of section 73; and four charges of other offences which included two charges of abduct with intent to carnally know (section 89).

Only six cases involved mixed outcomes where defendants were acquitted on one charge and convicted on one or more charges. The principal offences involved in these cases were as follows: two charges of section 61D where the defendant was indicted on a number of counts of this offence and consequently acquitted of one; one charge of section 67 on which the defendant was acquitted but convicted of indecent assault (section 61E); one charge of section 73 on which the defendant was acquitted but convicted on four counts of indecent assault (section 61E); and two charges involving other offences.

The final category into which cases fell was "convicted of all charges". Most commonly in these cases (10) the principal offence recorded was section 61E. In the remaining thirteen cases the principal offence charged was section 73 (three cases), section 67 (one case) and sections 61D, 71, 79 and those falling into the category "other" (two cases respectively). In total, twenty-one distinct defendants were convicted at trial on one or more charges.

TABLE 5.16

Outcome of cases proceeded with by principal offences

Offence	Guilty plea		Guilty verdict		Total Guilty		Acquittal		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
Category 1 (section 61B)	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Category 2 (section 61C)	2	100.0	0	0.0	2	100.0	0	0.0	2	100.0
Category 3 (section 61D)	34	70.8	6(1)	12.5	40	83.0	8	16.7	48	100.0
Category 4 (section 61E)	134	83.2	10(2)	6.2	149	89.4	17	10.6	161	100.0
Carnal knowledge of girl under 10 (sections 67 and 68) .	3	60.0	1	20.0	4	80.0	1	20.0	5	100.0
Carnal knowledge of girl 10 and under 16 (sections 71 and 72)	19(2)	76.0	2	8.0	21	84.0	4	16.0	25	100.0
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A and 78B)	9	64.3	3	21.4	12	84.0	2	14.3	14	100.0
Buggery (sections 79 and 80) ...	6	75.0	2	25.0	8	100.0	0	0.0	8	100.0
Indecent assault, male (section 81)	13	100.0	0	0.0	13	100.00	0	0.0	13	100.0
Homosexual offences (sections 78H-Q)	3	100.0	0	0.0	3	100.0	0	0.0	3	100.0
Other	5	41.7	2	16.6	7	58.3	5	41.7	12	100.0
Total principal offence only	228	78.4	26	8.9	254	87.3	37	12.7	291	100.0
Total principal and lesser offence	230	79.0	29	10.0	259	89.0	32	11.0	291	100.0

(1) Cases acquitted includes two sentence matters in which the defendant was sentenced on an alternative offence.

(2) Includes two sentence matters in which the defendant pleaded guilty and was indicted on section 61D but which was proceeded with under section 71.

Referring back to Table 5.16, in which the principal offence resulting in a conviction is shown, it is apparent that 89.0 per cent of all cases resulted in a conviction.[1] As shown in Table 5.16, the conviction rate for each sexual offence category as a proportion of those offences indicted according to principal charge, was high in all offence groupings, ranging from between approximately 80 per cent to 100 per cent. The exception to this was in those cases where the principal offence charged did not fall into the categories "sexual assault offences" or "carnal knowledge or homosexual offences". In these cases the conviction rate recorded was 58.3 per cent.

As one would expect, the majority of convictions were recorded for cases where the defendant pleaded guilty (79 per cent). Only 8.2 per cent of defendants convicted of the principal offence upon which they were indicted pleaded not guilty or entered no plea.

Among the sixty-one cases tried by a jury, there were also differences between categories in the likelihood of being convicted. With the exception of cases tried under sections 61D, 67, 73 and 79, defendants were acquitted of the principal offence more frequently than convicted, this was particularly true of defendants tried for indecent assault.[2]

5.7. Sentencing practices

The range of maximum penalties for sexual offences against children which are available to the sentencing judge are displayed in Table 1.1 (pp 9-12). The statutory maximum available to the sentencing judge reflects four factors: the incidence of actual or threatened violence, the relationship between complainant and defendant, the age of the child and penetration. These vary, however, across categories. Carnal knowledge and homosexual offences under section 78H to section 78Q have maximum penalties which reflect the age of the child and the occurrence or otherwise of penetration. The maximum imprisonment period for sexual offences charged under section 61B to section 61E are graduated and dependent on the level of associated violence, and in the case of section 61D and section 61E offences, the age of the complainant. Homosexual offences committed under sections 79, 80 and 81 have maximum penalties which reflect the occurrence or otherwise of penetration.

The majority of convicted offenders in this study did not receive a custodial sentence. One hundred and fifteen (58.4 per cent) offenders received non-custodial sentences. One offender was sentenced to the rising-of-the-court. Custodial sentences were imposed upon eighty-two offenders (42.6 per cent).

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[1]This includes those matters where the defendant was not convicted on the principal but some other offence. Note that this figure relates to cases not all charges, as described in section 5.6 i.e. since there may be more than one charge per case, the proportion of guilty findings is slightly different to that given here.

[2]This includes those cases indicted on section 61D but convicted and sentenced on section 71, as well as the defendant sentenced on section 78T.

Table 5.17 displays the total head sentence imposed with respect to each defendant-complainant or, strictly speaking, offender-victim pair. Tables 5.18 and 5.19 provides detail of the length and conditions of recognizances imposed upon defendants. Based upon offender-victim pairs, offenders involved in one hundred and thirteen cases were sentenced to imprisonment. Offenders in one hundred and twenty-one cases received good behaviour bonds (recognizance). In thirteen cases the offender received a community service order ranging from 120 hours to 300 hours in length and in eleven cases the offender received a good behaviour bond with a fine attached.

TABLE 5.17

Total head sentence imposed with respect to each complainant-defendant pair

Sentence	No.	%
Non-custodial sentence		
Rising of the court	1	0.4
Recognizance	121	46.7
Recognizance and fine	11	4.2
Community service order(1)	13	5.0
Total Non-custodial	146	56.3
Custodial sentence		
Periodic detention	6	2.3
Less than 12 months	6	2.3
12 months to less than 2 years	14	5.4
2 years to less than 3 years	17	6.6
3 years to less than 4 years	12	4.6
4 years to less than 5 years	16	6.2
5 years to less than 6 years	8	3.1
6 years to less than 7 years	10	3.9
7 years to less than 8 years	4	1.5
8 years to less than 9 years	9	3.5
9 years to less than 10 years	7	2.7
10 years and over	4	1.5
Total custodial	113	43.6
TOTAL SENTENCED	259	100.0(2)

(1) Includes two defendants who were sentenced to CSO with a recognizance period also.

(2) Percentages may not add up to 100 due to rounding error.

Offenders entering a recognizance must sign an agreement which stipulates a time period during which the offender must be of good behaviour and/or a set of conditions which they must satisfy. On breach of the agreement, he or she may be brought back before the court on the breach and re-sentenced for the original offence.

TABLE 5.18
Conditions of recognizance for offenders receiving a recognizance (complainant-defendant pairs = 134)

Conditions of recognizance(1)	No.	%
Probation and parole	93	69.4
Treatment and therapy	54	40.3
Not to reside with complainant	8	6.0
Not to approach complainant	15	11.2
Other conditions	24	17.9

(1) Includes all persons with a recognizance as the head sentence and the two defendants who were also sentenced CSO's. Percentages add up to more than 100.

TABLE 5.19
Length of recognizance for offenders receiving a recognizance (complainant-defendant pairs = 134)

Length of recognizance(1)	No.	%
No time period stated	2	1.5
Less than 12 months	1	0.7
12 months to less than 2 years	10	7.5
2 years to less than 3 years	29	21.6
3 years to less than 4 years	65	48.5
4 years to less than 5 years	7	5.2
5 years to less than 6 years	18	13.4
6 years and over	2	1.5

(1) Includes two defendants who were sentenced to CSO with a recognizance period also. Percentages add up to more than 100.

The length of time for which offenders were to be of good behaviour ranged from six months to eighty-four months. The majority of offenders were to be of good behaviour for periods not exceeding 48 months (78.3) per cent). The average length of time for which

offenders were to be of good behaviour was 35.4 months. In 104 cases (77.6 per cent) conditions were stipulated for the recognizance period. The majority of cases involved supervision by the Probation and Parole Service (69.4 per cent) and a smaller proportion of cases involved a condition stating that the offender was either not to reside with the complainant (6.0 per cent) or not to approach the complainant (11.2 per cent).

Based on offender-victim pairs, the majority of custodial sentences were between one and five years (52.2 per cent). The median length of the total or aggregate head sentence was 52.1 months.[3] In the majority of cases in which the defendant received a custodial sentence for more than one offence, the sentences were to be served concurrently: 43 of the 54 cases receiving a custodial sentence for multiple offences.

In eleven cases, however, the sentences imposed were to be served cumulatively. The non probation/parole periods specified for the eighty-three distinct offenders ranged from zero to one hundred and eight months with an average of 25.6 months. In the case of one offender sentenced to life imprisonment for attempted murder, the sentencing judge declined to specify a non-parole period.

As Table 5.20 shows, in some cases the non probation/parole period exceeded the actual sentence length. In these cases the offender was sentenced in respect of more than one complainant and the imprisonment periods were to be served concurrently or the offender was to serve the sentence concurrently with sentences for non-sexual offences on which they had previously been imprisoned.

5.7.1 Custodial verses non-custodial sentences by principal offence

The likelihood of a person receiving a custodial sentence rather than a non-custodial sentence is dependent on a number of factors including the seriousness of the offence, (as defined by the maximum possible penalty) prior criminal record, and victim-offender relationship. As indicated earlier, the factors which determine seriousness vary across offence types. In some offence groupings the primary determinant of seriousness is the age of the victim whilst in other offence groupings (e.g. "sexual assault offences") the primary determinant of seriousness is the amount of violence inflicted. In the category "sexual assault offences," seriousness of offence is also determined by the age of the victim. Thus, a person who indecently assaults a person aged under sixteen is liable to six years penal servitude, but only four years if the victim is aged sixteen or over. Seriousness is independent of neither age nor injury.

In the study by Cashmore and Horsky (1987), a number of factors were seen to influence the likelihood of an offender receiving a custodial

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[3] The median is used because of the incidence of one offender who received life imprisonment.

TABLE 5.20

Total head sentence by length of non-probation/parole period

Head sentence	Non-probation/parole period (in years)											
	N.P.P.		< 12		12 < 2		2 < 3		3 < 4		4 < 5	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Less than 12 months	2	1.9	2	1.9	1	0.9	1	0.9	0	0.0	0	0.0
12 months to less than 2 years ...	0	0.0	11	10.3	3	2.8	0	0.0	0	0.0	0	0.0
2 years to less than 3 years	0	0.0	8	7.5	4	3.7	3	2.8	2	1.9	0	0.0
3 years to less than 4 years	0	0.0	6	5.6	6	5.6	0	0.0	0	0.0	0	0.0
4 years to less than 5 years	0	0.0	3	2.8	4	3.7	5	4.7	2	1.9	1	0.9
5 years to less than 6 years	0	0.0	0	0.0	2	1.9	1	0.9	4	3.7	0	0.0
6 years to less than 7 years	0	0.0	1	0.9	0	0.0	3	2.8	5	4.7	0	0.0
7 years to less than 8 years	0	0.0	0	0.0	1	0.9	0	0.0	3	2.8	0	0.0
8 years to less than 9 years	0	0.0	0	0.0	0	0.0	1	0.9	6	5.6	1	0.9
9 years to less than 10 years	0	0.0	0	0.0	0	0.0	0	0.0	4	3.7	3	2.8
10 years and over	1	0.9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL	3	2.8	31	29.0	21	19.5	14	13.0	26	24.3	5	4.6

TABLE 5.20 (continued)
Total head sentence by length of non-probation/parole period

Head sentence	Non-probation/parole period (in years)										Total	
	5 < 6		6 < 7		7 < 8		8 < 9		9			
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Less than 12 months	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	6	5.6
12 months to less than 2 years ...	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	14	13.1
2 years to less than 3 years	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	17	15.9
3 years to less than 4 years	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	12	11.2
4 years to less than 5 years	0	0.0	1	0.9	0	0.0	0	0.0	0	0.0	16	15.0
5 years to less than 6 years	0	0.0	0	0.0	0	0.0	0	0.0	1	0.9	8	7.5
6 years to less than 7 years	0	0.0	0	0.0	1	0.9	0	0.0	0	0.0	10	9.3
7 years to less than 8 years	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	3.7
8 years to less than 9 years	1	0.9	0	0.0	0	0.0	0	0.0	0	0.0	9	8.4
9 years to less than 10 years	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	7	6.5
10 years and over	1	0.9	1	0.9	0	0.0	1	0.9	0	0.0	4	3.7
TOTAL	2	1.8	2	1.8	1	0.9	1	0.9	1	0.9	107	100.0

sentence including relationship between defendant and complainant, age of the victim, the infliction of physical injury and prior criminal record. As already indicated above, the degree to which any of these factors influence sentence outcome cannot be simply determined. Age and physical injury are not independent in determining maximum penalty, as Cashmore and Horsky note:

> "In fact, a custodial sentence was more likely than a good behaviour bond only in cases in which the victim was 16 or older. As indicated earlier, both guilty pleas and convictions following trial... were less common in cases involving older than younger victims, but it seems that when a conviction involving an older victim was secured, it was more likely to result in a custodial sentence than in a good behaviour bond. This is probably because these cases involved more serious offences than those involving younger victims, thereby making a custodial sentence more likely."
>
> (Cashmore and Horsky 1987:59)

In addition, not all cases are independent of each other. As the section on incident characteristics indicated, a number of the cases for which there was a committal hearing in 1984 involved single offenders and multiple victims or multiple offenders and single victims. The penalty imposed in cases where single offenders were sentenced for offences involving multiple victims cannot, therefore, be said to be independent of each other. Nor are penalties imposed on different offenders involved in the same case. The outcome (head sentence) for each complainant-defendant pair involved in such cases are interdependent. This further complicates any statistical analyses of the result and care should be taken to bear this interdependence in mind when interpreting Table 5.21.

Table 5.21 depicts the distribution of sentences imposed by principal offence. Although in a small majority of cases a non-custodial penalty was imposed, this was not reflected across all offence categories. In fact, for the majority of offence categories, custodial penalties were imposed upon the offender more frequently than were non-custodial penalties. The exceptions were in cases involving indecent assault, and carnal knowledge of girl ten and under sixteen (section 71). Of those offenders convicted where the principal offence was indecent assault charged under section 61E, 67.1 per cent received a non-custodial sentence.

An even greater proportion of convicted offenders (92.3 per cent) received a non-custodial sentence where the principal offence was section 81 (indecent assault), although the numbers are small. Offenders convicted in cases where the principal offence was section 71 received a non-custodial sentence in 60.9 per cent of cases and a custodial sentence in 39.1 per cent of cases.

TABLE 5.21

Type of sentence by
principal offence at sentence and average length of custodial sentence
(offender-victim pairs)

Offence	Mean length custodial sentence (in months)	Custodial No.	Custodial %	Non-custodial No.	Non-custodial %	Total sentenced No.	Total sentenced %
Category 1	0.0	0	0.0	0	0.0	0	0.0
Category 2	90.0	2	100.0	0	0.0	2	100.0
Category 3	55.3	24	58.5	17	41.5	41	100.0
Category 4(1)	33.0	48	32.9	98	67.1	146	100.0
Carnal knowledge of girl under 10 (sections 67, 68)	78.0	4	100.0	0	0.0	4	100.0
Carnal knowledge of girl 10 and under 16 (sections 71, 72)	60.0	9	39.1	14	60.9	23	100.0
Carnal knowledge of girl 10 - 16 by father, step-father (sections 73, 74, 78A, 78B)	58.0	9	75.0	3	25.0	12	100.0
Buggery (sections 79, 80)	92.0	6	75.0	2	25.0	8	100.0
Indecent assault, male (section 81)	48.0	1	7.7	12	92.3	13	100.0
Homosexual offences (sections 78H-Q)	72.7	3	100.0	0	0.0	3	100.0
Other(2)	65.0	7	100.0	0	0.0	7	100.0
TOTAL(2)	51.6	113	43.6	146	53.4	259	100.0

(1) Although the total number of custodial sentences includes 6 cases where the custodial sentence was to be served periodically, these cases have been excluded in determining the mean sentence length.

(2) The one sentence of life imprisonment has been excluded in determining the mean.

Also shown in Table 5.21 is the mean length of custodial sentences by principal offence. The offence for which the mean custodial sentence was greatest (92 months) was buggery (section 79 and 80), whilst the offence for which the mean custodial sentence was smallest (33 months) was indecent assault (section 61E). The mean custodial sentence imposed for all offences was 51.6 months (excluding the one case of a life sentence).

TABLE 5.22
Type of sentence and average length of custodial sentence by seriousness of offence

	Mean(1)	Custodial		Non-custodial		Total	
Maximum penalty		No.	%	No.	%	No.	%
Up to 6 years	33.3	49	30.4	112	69.6	161	100.0
7 - 12 years	56.7	34	52.3	31	47.7	65	100.0
13 years and over ...	72.8	30	90.9	3	9.1	33	100.0
TOTAL	51.6	113	43.6	146	56.4	259	100.0

(1) The mean for cases where the maximum penalty for the principal offence was up to six years includes six cases where the custodial sentence was to be served periodically. These have been excluded from determination of the mean. In the cases where the maximum penalty for the principal offence exceeded twelve years, the case in which the penalty imposed was life has been excluded in determining the mean sentence length.

The mean length for custodial sentences increased as maximum possible penalty increased. As shown in Table 5.22, persons receiving a custodial sentence for offences with a statutory maximum of up to six years, on average were sentenced for 33.3 months whilst persons receiving a custodial sentence for offences with a statutory maximum exceeding twelve years, on average were sentenced for 72.8 months. Similarly, the likelihood of receiving a custodial sentence increased accordingly. Defendants convicted in cases where the principal offence attracted a maximum penalty not exceeding six years were least likely to receive a custodial sentence (30.4 per cent) whilst defendants convicted in cases where the principal offence attracted a maximum penalty in excess of twelve years were most likely to receive a custodial sentence (90.9 per cent). The relationship between length of maximum penalty and the imposition of a custodial sentence was a statistically significant one ($x^2 = 43.35$, df = 2, $p < 0.001$).

Plea may be an important determinant of the likelihood of receiving a custodial or non-custodial sentence. As already pointed out, however, plea is affected by the type of offence involved in a matter and its effect (if any) cannot presently be treated independently of the effect of offence type upon the likelihood of a custodial sentence.

TABLE 5.23
Type of sentence by defendant-complainant relationship

	Custodial		Non-custodial		Total	
	No.	%	No.	%	No.	%
Parent	16	59.3	11	40.7	27	100.0
Step parent	14	63.6	8	36.4	22	100.0
Grandparent	0	0.0	5	100.0	5	100.0
Uncle/Aunt	5	38.5	8	61.5	13	100.0
Defacto	7	70.0	3	30.0	10	100.0
Other relative	1	50.0	1	50.0	2	100.0
Friend of complainant ...	1	3.7	26	96.3	27	100.0
Friend of parent	7	41.2	10	58.8	17	100.0
Authority figure	25	83.3	5	16.7	30	100.0
Neighbour	5	16.7	20	83.3	25	100.0
Other acquaintance	10	38.5	16	61.5	26	100.0
Stranger	16	40.0	24	60.0	40	100.0
Not known	6	40.0	9	60.0	15	100.0
TOTAL	113	43.6	146	56.4	259	100.0

The final factor relating to sentence type is the relationship of defendant to complainant in convicted cases. Table 5.23 shows defendant-complainant relationship by sentence type. In the majority of cases, offenders in a parental relationship (including step-parents), and offenders in a position of authority to the offender received a custodial sentence, 62.7 per cent and 83.3 per cent respectively. Conversely, the majority of offenders whose relationship was neither familial nor one of authority received a non-custodial sentence: 96.3 per cent of defendants who were a friend of the complainant and 58.8 per cent of defendants who were friends of the complainant's parent, 61.5 per cent of defendants acquainted with the complainant and 60.0 per cent of defendants unknown to the complainant at the time of the incident received non-custodial sentences. This data does not, in itself, show the

effect of relationship on the likelihood of custodial sentence. As already pointed out, the factors influencing these decisions are numerous and intertwined. "Seriousness of offence" is likely to affect sentencing and "relationship" may be confounded with this variable.[4]

Summary

To summarise the outcome of matters committed for trial or sentence in 1984, in 259 cases (89.0 per cent) involving 197 distinct offenders, the offence was proven and a conviction was recorded against the defendant. The majority of offenders (118 or 58.7 per cent), received a non-custodial sentence with 82 offenders receiving a custodial sentence. In 11 per cent of matters proceeded with (involving twenty-three distinct defendants) the defendant was acquitted of all charges. The flow chart in Appendix II depicts the prosecution of the 240 distinct defendants in child sexual assault matters involving committal hearings in 1984.

5.8. Compensation awards

Under the Criminal Injuries Compensation Act[5], a person who is the victim of a violent crime is entitled to claim for criminal injuries compensation provided they have reported the incident to the police. The successful conviction of the offender is not necessary for an award to be made to the victim and in cases of emergency or in the event that the matter fails to reach the courts an ex gratia payment may be made.

Where an application for compensations is made by a victim assaulted by multiple offenders a single award is made to the victim against the offenders concerned. The statutory maximum award is $20,000.

Compensation applications were made by fifty-two complainants involved in fifty-four cases (complainant-defendant pairs). The remaining two hundred and sixty-seven complainants (83.7 per cent) were not recorded as having made an application for compensation. With the exception of one complainant allegedly assaulted by three defendants all applications were made against single defendants.

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[4]Note that this problem also bedevilled the study by Cashmore and Horsky, as the quote in section 5-7-2 above shows. Under the circumstances, it is not advisable to follow Cashmore and Horsky's methods of making assessment of the relative importance of various factors to the sentence imposed.

[5]The Criminal Injuries Compensation Act 1967 was repealed and replaced by the Victim Compensation Act 1987 in February 1988.

TABLE 5.24
Number of application for criminal injuries compensation and the amounts awarded by defendant-complainant pair and distinct complainant

Amount	Defendant-complainant pair		Distinct complainant	
	No.	%	No.	Cum. %
$ 0	10	3.1	10	3.1
800	1	3.4	1	3.4
1,000	2	4.0	2	4.0
1,500	1	4.3	1	4.3
2,000	1	4.6	1	4.6
2,500	3	5.6	1	4.9
4,000	2	6.2	2	5.5
5,000	2	6.8	1	5.8
7,500	1	7.1	1	6.1
8,000	2	7.7	2	6.7
9,000	1	8.0	1	7.0
9,500	1	8.3	1	7.3
10,000	6	10.2	7	9.5
12,000	2	10.8	2	10.1
14,000	1	11.1	1	10.4
15,000	5	12.7	5	11.9
20,000	12	16.4	12	15.7
40,000	1	16.7	1	16.0
No application	270	84.0	267	100.0
TOTAL	324	100.0	319	

The distribution of compensation awards is shown in Table 5.24. Awards made to victims ranged from $800 in one case to $40,000 also in one case. The mean compensation payment for the fifty-two applicants was $10,621. In the case of ten applicants the sentencing judge or awarding judge, where the application was made after the matter had been finalised, returned to make an award.

The awarding of 40,000 dollars to a single complainant warrants explanation. As already indicated, the statutory limit for criminal injuries compensation is 20,000 dollars. The only exception to this limit (under the old legislation) is where two incidents are treated as unrelated. The complainant in this incident was subject of three different offences committed by one offender. As no compensation transcripts were available at the time of data collection, however, it could not be determined whether the incidents were treated as unrelated and, consequently, two separate awards made.

6. FEATURES OF THE PROSECUTION PROCESS

> "The court hearing is the central and most public part of the criminal process. It is the showcase of justice where the community can see whether the individual defendant is being treated with both justice and fairness and whether the police as investigators of crime have performed their task efficiently..."
>
> "The court hearing performs two major functions: the first is to determine the guilt or innocence of the accused person, and the second to determine the appropriate sentence for those persons who have been found guilty of the offence or offences."
>
> (Sallman and Willis 1984:87)

The preceding section focussed on the functions identified by Sallman and Willis - the determination of guilt or innocence and the determination of sentence. A number of features of the prosecution process, however, including evidentiary aspects, the question of bail and the issue of court delay, each have an impact not only upon the offender but also on the welfare of the victim.

In recognition of the need to protect victims of crime, particularly sexual assault victims, in their contact with the criminal justice system legislative reform has been introduced, most notably reform to the laws of evidence in N.S.W. In addition, The Bail Act, which took effect in 1978, attempts to balance the rights of the accused with the community's concern for safety. Finally, an implicit principle of the criminal justice system is the right to a fair and speedy trial, a right, which when applied, should serve to benefit both victim and offender.

The following is an analysis of these substantive features of the prosecution process as they apply to child sexual assault matters for which there was a committal hearing in 1984. In some sections detailed analysis has been precluded by incomplete documentation. What little information we do have, however, can only serve to assist in our understanding of the prosecution processes of child sexual assault matters.

6.1. Length of proceedings

In the introduction to this report it was stated that considerable delay in higher court matters is currently being experienced in N.S.W. In Cashmore and Horsky's report on child sexual assault matters finalised in 1982, it was also found that there was a substantial time period "from the time a case first entered the criminal justice system at arrest to the time the case was finalised" (1987:65). In sentence matters, the average interval between committal and final outcome was 24.8 weeks, whilst for trial matters the interval was more than twice this time, averaging 63.6 weeks.

Table 6.1 displays the average time intervals between stages of the prosecution process for child sexual assault matters committed in 1984. Appendices 7-10 show the frequency distribution for each of these intervals.

As one would expect, the shortest time period occurred between the time the complaint was made to the police and the time of committal, with an average of 17.6 weeks.

According to the Attorney General's Department (1987), the time delay in 1987, between committal and trial for matters generally in the District Court in 1987 was between twelve and eighteen months for persons on bail. In 1984, the average time period between committal and trial for persons appearing in child sexual matters was just under one year (50.1 weeks). Where the defendant was committed directly to sentence the time between committal and sentence was substantially shorter with an average length of 19.2 weeks. Thus matters in which the defendant pleaded guilty and were committed directly to sentence proceeded through the criminal justice process in a much shorter time frame (29.6 weeks on average), than matters in which the defendant pleaded not guilty or did not enter a plea (79.4 weeks on average).

TABLE 6.1
Average time intervals between each stage of the prosecution process

Complaint and committal	17.6 weeks
Committal and sentence following guilty plea at committal	19.2 weeks
Committal and trial following no plea/plea of not guilty at committal	50.1 weeks
Trial and sentence(1)	2.8 weeks

(1) Includes those cases where the defendant proceeded to trial and then entered a plea of guilty.

6.2. Evidenciary aspects of the prosecution process

There is little doubt that one of the most difficult aspects of the criminal justice process for victims of crime is the requirement to give evidence. There are a number of provisions within the Justices Act (e.g. section 51A, or section 48 on paper committals) which do not require the victim to give verbal evidence. When utilised, these provisions reduce the frequency with which complainants are required to give evidence.

Nevertheless, there will always be some victims who will be required to provide evidence, if not at committal, then in cases where the alleged offender pleads not guilty, at trial. From committal and trial transcripts it was possible to determine whether a child gave evidence, whether the child was cross-examined by counsel representing the accused, and whether prior sexual reputation or experience was raised by the defence, prosecution, record of interview or otherwise. As identified in the section on Data Sources, access to committal and trial transcripts was limited by recording procedures. The following, therefore, is a summary of those cases where transcripts were available. The unit of analysis is complainant-defendant pairs.

6.3. Evidence at committal

The purpose of committal proceedings "is to determine whether there is sufficient evidence of an indictable offence to warrant a defendant be placed on trial before the District or Supreme Court." (Smail, Miles and Shadbolt, p. 141). Evidence may be taken from witnesses either orally or by way of written statement (deposition). Committal proceedings, where evidence is taken by way of deposition and admitted under section 48A of the Justices Act, are known as paper committals. Evidence given by way of deposition can only be admitted if the defendant has been served a copy of the statement within a reasonable time before the hearing and if the defendant consents to the statement being admitted. In addition, section 48c of the Justices Act requires, inter alia, that a written statement is not admissible as evidence unless certain endorsements[1] appear at the beginning and conclusion of the statement. The requirement for such endorsements may in fact limit the extent to which written statements can be used in cases involving young children who may not understand the meaning of such an endorsement.

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[1]Under section 48C(1)(a) and (b) a written statement is not admissible as evidence under section 48A in any committal if:

(a) the statement does not contain an endorsement at its commencement in or to the effect of the following form:-

> I am aware that if I sign this statement and any part of this statement is untrue to my knowledge, I may be liable to punishment.

(b) the statement does not contain an endorsement at its conclusion in or to the effect of the following form:-

> I declare that no part of this statement is untrue to my knowledge. I know that it may be used in legal proceedings. It accurately sets out the evidence which I would be prepared, if necessary, to give in court as a witness.

Of the 324 cases for which there was a committal hearing in 1984, eighty-eight (27.2 per cent) proceeded to trial or sentence by way of paper committal and in another five cases the committal hearing was part paper.

At committal, complainants gave evidence in a total of ninety-eight cases (30.3 per cent of all complainant-defendant pairs) and in another three cases, evidence from the complainant was taken by way of deposition. In seventeen of the one hundred and forty-three cases for which there was a complete committal hearing, the complainant was not required to give evidence. In the ninety-eight cases where complainants appeared as witnesses, eighty-three (84.6 per cent) were cross-examined. In addition, one complainant who gave evidence by way of deposition was also cross examined by counsel appearing for the accused.

TABLE 6.2

Number and percentage of children* required to give evidence at committal by age (101 complainant-defendant pairs)

	Oral		Deposition	
	No.	%	No.	%
0 - 4 years	1	5.6	0	0.0
5 - 9 years	18	16.1	0	0.0
10 - 14 years	49	37.4	1	0.8
15 years and over	30	56.6	2	3.8
TOTAL	98	30.3	3	0.9

*Percentage of children in each age group.

Tables 6.2 and 6.3 show the age distribution of children who gave evidence and were subsequently cross examined by counsel representing the accused. As found by Cashmore and Horsky (1987), the proportion of complainants who gave evidence and were cross examined increased with age. In 56.6 per cent of cases where the complainant was aged over 15 they were required to give evidence whilst in only 14.6 per cent of cases where the child was under 10 years was evidence given. The age distribution of complainants in cases where the child was cross examined is not dissimilar, as indicated in Table 6.3.

TABLE 6.3
Number and percentage of children* cross examined at committal by age (84 complainant-defendant pairs)

	No.	%
0 - 4 years	1	100.0
5 - 9 years	13	72.2
10 - 14 years	41	82.0
15 years and over	28	87.5
Age unknown	0	0.0
TOTAL	84	83.2

*Percentage of children who gave evidence. Includes one child who gave evidence by way of deposition but later cross examined.

TABLE 6.4
Number and percentage of cases where children required to give evidence by complainant-defendant relationship

	Oral		Deposition	
	No.	%	No.	%
Family member	35	35.4	1	1.0
Family friend	31	53.4	0	0.0
Authority figure	8	20.5	0	0.0
Acquaintance	14	21.2	2	3.0
Stranger	10	23.3	0	0.0
Unknown	0	0.0	0	0.0
TOTAL	98	30.2	3	0.9

6.3.1 Evidence at trial

Complete transcripts were available in only twenty-five of the sixty-one trial matters and these 25 matters do not constitute a random sample of trials. Thus the following information cannot be considered as a complete analysis of the prosecution process for trial cases of child sexual assault, and the results cannot be generalised past the 25 cases covered.

In twenty-five of the sixty-one trial matters (41.0 per cent) complainants were called to give oral evidence at trial. In five cases the complainant was not required to give evidence. In 31 of the 61 trial cases it could not be determined whether the complainant had given evidence.

In the majority of cases where it could be determined the child had given evidence at trial (23 of 25) the child had been cross examined by the defence. In the remaining two cases it could not be determined whether the child was cross examined.

No breakdown is provided on the ages of complainants nor complainant-defendant relationship for trial matters because as already indicated, in 50.8 per cent of these matters it could not be determined whether the child had been required to give evidence.

6.4. Oaths and corroboration

Prior to the introduction of the Crimes (Oaths) Act 1986, children were able to give evidence by oath or affirmation pursuant to section 13(1) of the Oaths Act, 1900. In addition, section 418 of the Crimes Act 1900 (relating to offences charged under section 67 to 78B, sections 78H to 78Q and sections 79 to 81B of the Crimes Act) provided for the court to accept the unsworn evidence from a child of tender years where the child, in the opinion of the court "is possessed of sufficient intelligence to justify the reception of evidence and understands the duty of speaking the truth".

Section 418(2), however, provided that:

> "no person shall be convicted of the offence charged, unless the testimony admitted by virtue of this section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused."

Provisions regarding the corroboration of sworn evidence in matters of sexual assault generally, were amended by the introduction in 1981, of section 405C of the Crimes Act. This section provides that a judge <u>may</u> warn a jury that it is unsafe to convict on the basis of the uncorroborated evidence of the complainant - the judge is not obliged to do so. The common law rule requiring a judge to give the same warning concerning the sworn evidence of a child, however, was left unchanged (see Report of the NSW Child Sexual Assault Taskforce, 1985). As the current report demonstrates, many child victims of sexual assault fall into both categories, and thus their position remained unclear, in this regard, in 1984.

6.4.1 Evidence under oath at committal

Of the 98 cases where children gave evidence at committal, sixty-nine cases (70.4 per cent) involved children giving evidence under oath, 13 cases (13.3 per cent) involved children giving evidence by way of declaration, and 9 cases (9.2 per cent) involved children giving evidence by way of affirmation. In only six cases (6.1 per cent) did children give unsworn evidence.

6.4.2 Evidence under oath at trial

In the twenty-five matters at trial where it was known the child had been required to give evidence, twenty complainants were required to give evidence under oaths. In the remaining five cases, evidence was given by way of declaration (four cases) and by way of affirmation (one case).

6.5. Evidence heard in camera

Section 77A of the Crimes Act enables the court to direct that any proceedings or any part of any proceedings concerning sexual offences against children be held "in camera". In other words, the judge or magistrate may direct that the court be closed to the public. Of the 98 cases in which complainants gave evidence at committal, 47 cases (47.9 per cent) were held "in camera", and in 46 cases (46.9 per cent) the court was not closed. In five cases it could not be determined whether it was directed that the proceedings be held "in camera". In the one case where the child gave evidence by way of deposition and was subsequently cross-examined, the proceedings were not held "in camera".

Only six of the complainants known to have given evidence at trial did so "in camera". In seventeen cases the complainants evidence was not taken "in camera". In two cases it could not be determined whether or not the court was closed to the public.

6.6. Nature of the evidence

With the introduction of the Crimes (Sexual Assault) Amendment Act in 1981, a total prohibition was placed on raising the sexual reputation of the complainant in evidence of sexual offences under sections 61B-61E. At the same time, restrictions were imposed upon the admission of any evidence of sexual experience, or lack of experience, in evidence presented in cases of sexual assault under these same sections. Section 409B of the Crimes Act prescribes the conditions which must be satisified before evidence of sexual experience or lack of experience can be admitted. These provisions apply equally to committal and trial proceedings. They do not apply, however, to offences of carnal knowledge, nor were they extended in their application to homosexual offences with the introduction of the Crimes (Amendment) Act 1984.

6.6.1 At committal

There was no case (at either committal or trial) in which a judge ruled material to be inadmissable on the grounds that it went to the complainant's sexual reputation. Prior sexual experience of the complainant, however, was in raised in 19 cases (5.9 per cent) at committal and admitted in eleven (3.2 per cent) cases. In eighteen cases sexual experience was raised by the defence but admitted in only ten cases. In each case where it was raised by the prosecution (once only), in record of interview (once only) and by some other means (once only) during committal proceedings, evidence of sexual experience or lack there of was allowed and admitted.

As already indicated, section 409B(3) dictates those conditions which must be satisfied before evidence of this nature may be admitted. In six cases, the sexual experience or activity of the complainant "at or about the time of the commission of the alleged prescribed sexual offence" was the means by which evidence of this nature was admitted: section 409B(3)(a)(i). In three cases, experience was admitted on the basis "of events which [were] alleged to form part of a connected set of circumstances in which the alleged prescribed sexual offence was committed": section 409B(3)(a)(ii). In four cases sexual experience was admitted without challenge or justification and, in one case, sexual experience was admitted on the basis that the police prosecutor did not intend to call the complainant "thereby putting the defendant naturally at a disadvantage": section 409B(5).

6.6.2 At trial

Prior sexual experience was raised in ten of the twenty-five trial matters and admitted in seven of these cases. In seven cases it was raised by counsel representing the accused, in three cases it was raised by the prosecution, and in one case it was raised through a record of interview. With the exception of four cases (where it was raised by the defence), evidence of prior sexual experience was admitted when raised by the defence, prosecution and in record of interview. In thirty-seven cases it was unknown whether or not evidence of this nature was raised at trial and in fourteen cases it was not raised at all.

In the seven cases where evidence of prior sexual experience was raised and admitted in trial matters the bases for admission were as follows:

(a) evidence of sexual experience or activity at or about the time of the commission of the alleged sexual offence (one case): section 409B(3)(a)(i);

(b) evidence of events which allegedly formed part of a connected set of circumstances in which the alleged offence was committed (one case): section 409B(3)(a)(ii);

(c) where sexual intercourse was consented to and where it was evidence relevant to whether the presence of semen, disease or injury is attributable to the sexual intercourse alleged to have been had by the accused person (one case): section 409B(c);

(d) allowed without challenge (three cases);

(e) where the prosecution argued that the complainant had a certain sexual experience or activity or lack there of (one case): section 409B(5);

(f) other bases (three cases).

6.7. Delay or absence of complainant

One of the reforms introduced in 1981 was the provision protecting victims who delayed bringing the sexual offence to the notice of the police. Delay or absence of complaint does not necessarily indicate that allegations of sexual assault are false. Indeed, as stated in the Crimes Act, section 405B(2) "...there may be good reasons why a victim of sexual assault may hesitate in making or may refrain from making a complaint about the assault." Where evidence of delay or absence of complaint is raised in trial proceedngs for offences under sections 61B-61E of the Crimes Act, it is the responsibility of the judge to:

> "(a) give a warning to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
>
> (b) inform the jury that there may be good reasons why a victim of a sexual assault may hesitate, or may refrain from making a complaint about the assault."

At committal, delay or absence of complaint was known to be raised in thirty-seven cases: in thirty-four cases delay was raised by counsel representing the accused and in three cases delay was raised by the prosecution.

In the 25 trial matters for which transcripts have been available, delay was raised in eight cases and was known not to have been raised in seventeen trial matters. In three of the cases where delay was raised the judge issued the warning prescribed in section 405B(2) of the Crimes Act. No warning was issued in four cases where delay was raised. In one case it could not be determined whether the judge issued the prescribed warning. In thirty-six of the sixty-one trial matters (63.9 per cent) it could not be determined whether delay was raised due to the lack of, or incomplete, transcripts.

6.8. Bases of the defence

In the monitoring of the Crimes (Sexual Assault) Amendment Act conducted by Bonney, the bases of the defence case were recorded. As Bonney states:

> "To talk about the defence offered by the accused is not technically quite correct. The onus of proof rests with the Crown. In all contested cases it is the Crown who must prove the elements of the offences charged."
>
> (Bonney 1987: 64)

Nevertheless, the study recorded, for 25 cases committed to trial (i.e. those in which there was sufficient documentation), the bases of the defence as inferred from the cross-examination adopted by counsel appearing for the accused and from other documents before the court including the defendants record of interview with the police. Table 6.5 below shows the defence offered in those trial matters where transcripts were available for examination.

TABLE 6.5

Bases of defence (No. of complainant-defendant pairs = 24)

Basis of defence	No.
Alibi-accused not present/elsewhere	2
Fabrication or error - accused present but no intercourse with him - intercourse with another	2
Fabrication - no intercourse at all	8
Fabrication - mistaken belief in consent	7
Fabrication - conspiracy/fantasy	7
Section 77(2)[2]	3
Duress/Intoxication	4
Other	10

Note: Numbers do not add to 24 because of multiple bases in some cases.

*Insufficient documentation or no transcripts in 37 cases

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[2]Relates to charges under section 76 or section 76A, where the girl was over 14 years at the time of the alleged offence, and she consented to the commission of the offence, and the accused had reasonable cause to believe, and in fact did believe that she was of, or above the age of 16 years.

One belief about child sexual assault is that children fabricate the incident. As claimed in the Report of the NSW Child Sexual Assault Task Force:

> "one common reaction among researchers, therapists and other professionals to the disclosure of incest by victims, has been denial and disbelief. They were dismissed as childhood fantasies."

In most trial matters where information was available on the bases of the defence, fabrication featured prominently. In seven cases the defence argued fabrication on the basis of conspiracy or fantasy by the child; in eight cases it was argued that the assault had never taken place and was thus fabricated; and in another seven cases it was argued that whilst sexual intercourse had taken place the accused had understood the complainant to have consented to intercourse.

Where "other" defences were offered by counsel representing the accused these also frequently centred on fabrication of the incident. In four cases (involving a single defendant) where counsel successfully defended the accused it was argued that the children concerned fabricated the assaults for fear that they would get into trouble for visiting the defendant's home for money and sweets. In a second, and also successful defence case, it was argued that the alleged assault was fabricated by the parents of the complainant who were in debt to the defendant.

6.9. Unsworn statements from the dock

The accused person in any trial has the right to decline to say anything; to give sworn evidence, to make an unsworn statement, or to make an unsworn statement and then give sworn evidence. In her study on the Crimes (Sexual Assault) Amendment Act, Bonney found that most defendants both in the control and study populations, made unsworn statements and did not give sworn evidence at their trial: 85.8 per cent and 87.3 per cent respectively (Bonney 1985). Whether defendants made unsworn statements or gave sworn evidence at trial could only be determined in twenty-seven of the sixty-one trial matters in this study. Defendants made unsworn statements from the dock and gave sworn evidence in thirteen and fourteen of these cases, respectively.

6.10. Publication of proceedings

The Crimes Act as amended in 1981 imposes restrictions on the publication of proceedings for certain offences. Section 578 of the Crimes Act states that publication of evidence may be forbidden in cases of sexual assault, carnal knowledge or homosexual offences.

Discretion in using this provision rests with the presiding judges, "subject only to the right of the accused or the Crown to request publication" (1985:180). As stated in the report of the NSW Task Force on Child Sexual Assault, there is no reference to the interests of the child victim in this context except, of course, in so far as those interests are represented by the Crown.

Table 6.6 shows the number and percentage of cases where publication of evidence was forbidden.

TABLE 6.6
Publication of evidence

	Committal		Trial/Sentence	
	No.	%	No.	%
Publication forbidden	59	18.2	38	13.1
Publication not forbidden	76	23.5	70	24.0
Unknown	189	58.3	183	62.9
TOTAL	324	100.0	291	100.0

In the majority of cases for which there was a committal hearing (58.3 per cent) and in the majority of cases committed to trial or sentence (62.9 per cent), it could not be determined whether an order restricting the publication of identifying information had been made by the Court. In fifty-nine cases at committal (18.2 per cent) and thirty-eight trial/sentence matters (13.1 per cent) publication of details of the proceedings was forbidden by the presiding judge or magistrate.

6.11. Bail

In N.S.W. at the time of this study there was a presumption in favour of bail for all offences with the exception of armed robbery, failure to appear in accordance with a bail undertaking and supply of a commercial quantity of a prohibited drug. Where there is a presumption of bail, the Bail Act, 1978 (section 32), specifies those factors to be considered in the determination including the probability of whether the person will appear in court, the interests of the accused person and the protection and welfare of the community. Information on bail determinations for defendants in this study was available from police and courts bail forms and bail continuation forms.

6.11.1 Police bail

Bail is first determined after the accused is arrested and charged. Responsibility for the determination rests with the authorising officer at the police station. Of the 324 defendant-complainant pairs, bail was granted in 258 cases (79.6 per cent) and refused in 60 cases (18.5 per cent). In six cases it was unknown whether bail was granted by the police. In those cases where bail was granted, 109 (33.6 per cent) were granted unconditional bail and in 126 cases (38.9 per cent) conditional bail was granted. In the case of 23 defendant-complainant pairs it could not be determined whether bail was granted subject to specified conditions.

The nature of the conditions imposed upon defendants was recorded in all cases where conditional bail was granted. In 107 cases (84.9 per cent of conditional bails) defendants were granted bail subject to their agreement not to approach the complainant and in 37 cases (29.4 per cent) defendants were granted bail conditional upon them not residing with the complainant. The nature of other conditions imposed upon the defendants are displayed in Table 6.7 and included agreement to reside at a specified place (14.3 per cent) and agreement to report to the police (16.7 per cent). In 29 cases (23.0 per cent) other conditions were imposed upon the defendant. These conditions ranged from agreement by the defendant to surrender their passport, not to approach other witnesses or the mother of the complainant, and agreement to seek counselling or medical treatment.

6.11.2 Bail at committal

For each defendant it was also recorded whether they appeared "off bail" at committal and trial or sentence. Table 6.7 shows the number of cases in which the defendant appeared "off bail" at each stage of the court process and the conditions subject to which bail was granted.

Whilst in sixty cases defendants were refused bail at the time of arrest, in only fifty-one cases were defendants in police custody at the committal hearing.[3] Bail was granted in 270 cases (83.3 per cent). In 139 cases (42.9 per cent) bail was granted conditionally and in 108 cases bail was granted unconditionally (33.3 per cent). It could not be determined whether bail was granted in three cases.

The nature of the conditions imposed upon defendants is also shown in Table 6.7 and shows that defendants were most likely to receive conditions forbidding contact with the complainant (36.4 per cent) and least likely to receive conditions directing them to reside at a given place (6.5 per cent).

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[3] Where police refuse bail, the accused must be brought before a court as soon as possible. The Justice may grant bail although the Police have refused it at the time of arrest. This, presumably, is the reason for the appearance of 9 fewer cases of bail at committal, than were granted police bail.

TABLE 6.7
Defendants granted bail and conditions(1)

	Police bail		Bail at Committal		Bail at trial/sentence	
	No.	%	No.	%	No.	%
Bail refused	60	18.5	51	15.7	64	22.0
Bail granted conditionally	126	38.9	139	42.9	115	39.5
Bail granted unconditionally	109	33.6	108	33.3	91	31.3
Unknown if bail conditional	23	7.1	23	7.1	19	6.5
Bail conditions(2)						
Not to approach complainant	107	33.0	118	36.4	96	32.9
Not to reside with complainant	37	11.4	42	13.0	35	12.0
Defendant to reside at a given place	18	5.6	21	6.5	25	8.6
Reporting conditions	21	6.5	30	9.3	21	7.2
Other	29	8.9	34	10.5	27	9.3
Unknown if bail granted	6	1.9	3	0.9	1	0.3
TOTAL	324	100.0	324	100.0	291(3)	100.0

(1) Percentages may not add up to 100 due to rounding errors.

(2) Percentages do not total 100.0 because for each defendant-complainant pair there may have been more than one bail condition.

(3) Includes a defendant for whom bail was dispensed with.

6.11.3 Bail at trial or sentence

In those matters where the defendant proceeded to trial or sentence, information was collected on bail status at the time of outcome, that is, the date of sentence in sentence matters and the date on which the verdict was handed down in trial matters.

Defendants were granted bail in 226 cases (77.7 per cent), in one of which bail was returned. In 64 cases (22.0 per cent) bail was dispensed with. In those cases where bail was granted, 115 defendants (39.5 per cent) were granted conditional bail and 91 were granted unconditional bail (31.3 per cent). As with conditional bail at committal, defendants were most likely to receive conditions which forbade contact with the complainant (32.9 per cent). In 12.0 per cent of cases defendants were granted bail conditional upon agreement not to reside with the complainant. In 19 cases (6.5 per cent) it was unknown whether or not bail was unconditional.

7. SUMMARY AND CONCLUSION

In 1986 the N.S.W. Bureau of Crime Statistics and Research was requested by the Government to monitor the legislative reforms to the Crimes Act for offences involving the sexual assault of children under the age of eighteen. The monitoring programme designed by the Bureau consists of two components, a comparison of pre-legislative change matters (1984) with post-legislative change matters (1987). The current interim report has focused on those child sexual assault matters for which there was a committal hearing in 1984. A further report will be produced by the Bureau examining the differences in child sexual assault cases for which there was a committal hearing in 1987 compared with the 1984 cases, once data collection can be completed. The following is a summary of the findings of the first component of the Child Sexual Assault monitoring programme. Detailed comment on the findings is not included but will be left until the second stage of the programme is completed since the primary purpose of the study is comparative.

7.1. Defendant, complainant and incident characteristics

In 1984, committal hearings were held in the Local Courts of New South Wales for 324 child sexual assault matters involving 240 distinct defendants and 319 distinct complainants. As indicated by the proportion of defendants and complainants, these cases of child sexual assault included a range of different incident types. The majority of incidents (55.2 per cent) involved single complainants and single defendants. A large proportion (43.9 per cent) of incidents, however, involved single defendants charged with the assault of multiple complainants.

The incidence of previous alleged assaults was recorded where evident. In the majority of cases (60.2 per cent) there was no history of sexual assault recorded between the defendant and complainant. Where a history of repeated alleged assaults was recorded the average period of time over which these occurred was 1.7 years. Just as a small proportion of complainants alleged being subject to on-going assaults, a small proportion of complainants alleged having been injured at the time of the alleged offence(s) (6.2 per cent), or being threatened with physical injury (12.6 per cent). In fact, complainants were more likely to have alleged being subject to non-specific threats of harm (22.5 per cent).

The nature of the alleged incidents varied according to the demographic characteristics of the complainant and the defendant. As shown in section 3, the majority of complainants were thirteen and under at the age of the last alleged offence, with an average age of 10.0 years whilst defendants were more likely to be aged under forty than over, with an average age of 33.4 years. There was no significant relationship between the age of complainant and the age of defendant. The greatest proportion of cases (28.4 per cent)

involved complainants who were allegedly assaulted by a parental figure (natural, step or de facto). Whilst the smallest proportion of complainants were allegedly assaulted by some other relative or an authority figure. Variations were recorded in the relationship between defendant and complainant when age and sex of the complainant were taken into consideration. Female complainants were more likely than males to have been allegedly assaulted by a family member or a friend of the family. On the other hand males were more likely than females to allege an assault by an acquaintance. When age was considered, it was found that the older the complainant the more likely they were to have been allegedly assaulted by a family member, and the younger the complainant the more likely they were to have been allegedly assaulted by a person in a position of authority.

The incidence of alleged on-going assaults, physical injury and threats to the complainant at the time of the alleged assault(s) also varied accordingly with sex and age of the complainant and the relationship to the defendant. As one would expect, complainants in a familial relationship with the defendant were more likely to experience multiple alleged assaults than complainants in any other relationship category. In almost half (49.6 per cent) of those cases in which a history of sexual assault was recorded the defendant was not resident with the complainant at the time of the last alleged offence.

In those matters where threats of physical injury or actual injury were alleged, females were more likely to have been subject to such threats than males. Threats of physical injury tended to accompany alleged assaults by strangers whilst non-specific threats of harm tended to accompany alleged assaults by defendants in a familial relationship with the complainant.

Perhaps one of the more important features of the child sexual assault matters for which there was a committal hearing in 1984 was the relative likelihood of defendants being involved in the alleged assault of single or multiple victims. As already noted, a greater proportion of incidents involved single offenders and single complainants. Defendants whose relationship with the complainant was described as familial, friend, acquaintance or stranger were, in each case, more likely to have assaulted single complainants than multiple complainants. Defendants in a position of authority to the complainant, on the other hand, were most likely to have been involved in incidents involving multiple victims (84.6 per cent).

7.2. The prosecution process

Section 5 describes the range of offences with which the defendants were charged and their progression through the criminal justice process. The range of offences on which each defendant appeared at committal, sentence or trial and final outcome were examined as were any changes in the nature and number of offences charged and any respective changes in the nature of the plea entered.

7.2.1 Committal proceedings

Defendants in child sexual assault matters for which there was a committal hearing in 1984 were charged with and appeared at committal for a total of 531 charges, with an average of 2.1 charges per defendant. The greatest proportion of offences were charged under sections 61B - 61E (70.4 per cent) with 46.3 per cent of offences charged principally being laid under section 61E. In total, twenty distinct defendants (8.3 per cent) did not proceed to trial or sentence following successful committal. All defendants were committed for trial or sentence on at lease one charge.

Just as the Attorney General (and, since 1987, the Director of Public Prosecutions) may choose not to further proceed with a matter, the Crown Prosecutor, who has the responsibility for reviewing a case following a successful committal, may decide to vary the charges on which any particular defendant is to proceed to either sentence or trial. An examination of the principal indicted offence with the principal offence at committal, indicates that twenty-seven cases (8.5 per cent) were not indicted upon the original committal charge. In twenty-one of these cases a reduction in the severity, determined by the maximum possible penalty upon conviction, of the offence was recorded, in four cases the severity of the offence increased, and in two cases the severity remained the same with only the nature of the offence changing.

7.2.2 Committal to trial or sentence

Two hundred and twenty defendants proceeded to trial or sentence following committal hearings in 1984. Of these, one hundred and seventy-six distinct defendants proceeded to sentence, whilst forty-five distinct defendants proceeded by way of trial. One defendant proceeded both by way of sentence and trial having entered no plea at committal for offences charged against two complainants and changing his plea with respect to offences against one complainant only. Not all of those defendants who proceeded to sentence were actually committed to sentence. Defendants appearing in sixty-one cases (21.0 per cent) changed their plea prior to trial and thus proceeded by way of sentence.

The likelihood of a person entering a guilty plea either at committal or at trial varied according to the maximum penalty of the offence on which they were indicted. Defendants indicted on offences for which the maximum possible penalty exceeded twelve years were less likely to enter a plea of guilty (64.1 per cent) than persons indicted for offences which attracted a penalty not exceeding six years imprisonment (84.7 per cent). Generally, however, defendants were more likely to proceed by way of sentence (79.0 per cent) than by way of trial (21.0 per cent).

The point of the criminal justice process at which the defendant enters a guilty plea, has important implications for the time period

between committal and sentence. Defendants who pleaded guilty at committal (58.1 per cent of cases) proceeded throughout the criminal justice process in a substantially shorter period of time than those who did not. The time period between committal and sentence in direct sentence matters was 29.6 weeks whilst the time period in matters where the defendant pleaded not guilty was 79.4 weeks (committal to trial).

7.3. Court outcome

Section 5.2. discusses the outcome of all cases which proceeded to trial or sentence. In all matters where the defendant pleaded guilty a conviction was recorded and the defendant was sentenced accordingly. In five cases, however, the defendant was not sentenced on either the principal indicted offence or on all offences charged.

With trial matters, defendants were acquitted in thirty-two (52.4 per cent) of the sixty-one cases. In twenty-three cases the defendant was convicted of all offences, whilst in six cases the defendant was convicted on some offences and acquitted of others. The more serious the offence (in terms of maximum penalty possible) the more likely the defendant was of being convicted of the principal indicted offence.

In total, the greater proportion of cases for which there was a committal hearing in 1984 resulted in the conviction of the defendant (89.0 per cent). Of the 220 distinct defendants who proceeded beyond committal, 197 (89.5 per cent) were convicted of one or more offences on which they were indicted. Twenty-three defendants were acquitted of all charges upon which they were indicted.

7.4. Sentencing practices

Non-custodial sentences were imposed by the sentencing judge in the majority of cases (56.7 per cent) in which the defendant was convicted of sexual offences against children. The majority of these non-custodial sentences were bonds (121 cases). In thirteen cases the sentence imposed was a community service order and in one case the offender was sentenced to the rising of the court. In all cases where a good behaviour bond was imposed on the offender the conditions attached to the sentence was recorded. In only eight cases (6.0 per cent) was the defendant sentenced to be of good behaviour conditional upon their agreement not to reside with the complainant. In fifteen cases (11.2 per cent) the defendant was sentenced to be of good behaviour on the condition that they not approach the complainant. Substantially more cases involved the defendant being sentenced to be of good behaviour subject to the supervision of the Probation and Parole Service (69.4 per cent) or conditional upon the defendant entering treatment or therapy (40.3 per cent).

Custodial sentences were imposed upon defendants in 113 cases (41.3 per cent) in which the offence was proved. The median sentence length was 52.1 months. In six cases (3.5 per cent) the defendant was sentenced to periodic detention and in all but three cases was a non-probation/parole period was set. In only one of these cases did the sentencing judge decline to set a non-parole period.

The likelihood of a defendant being given a custodial sentence rather than a non-custodial sentence varied with maximum penalty of the offence. Defendants in cases where the maximum penalty possible upon conviction exceeded thirteen years imprisonment were least likely to be given a non-custodial sentence whilst defendants in cases where the maximum possible penalty did not exceed six years were least likely to be given a custodial sentence.

7.5. Compensation

Very few complainants were recorded as having made an application to the court for a compensation award. In fact in only 16.7 per cent (52 distinct complainants) of cases was an application for compensation made. In ten cases, involving 10 distinct complainants, unsuccessful applications for compensation were made to the court, the remainder being successful.

7.6. Conclusion

Of the 324 cases for which there was a committal hearing in 1984, 319 were committed to trial or sentence. Of these 319, twenty-eight cases did not proceed to trial or sentence either because the case was "no billed", the defendant died or absconded, the case was remitted to the local court, or simply because there were no further proceedings for undetermined reasons. Thus of the original 324 cases for which there was a committal hearing in 1984, 291 actually proceeded beyond committal.

Successful convictions were reached in 259 cases with acquittals as a result of trial by jury occurring in 32 cases. Custodial sentences were imposed in 113 cases and non-custodial sentences were imposed in 146 cases.

Stated in terms of distinct defendants, 240 distinct defendants were committed to trial or sentence in 1984 for child sexual assault offences. Of these defendants, twenty did not proceed to trial/sentence following the discontinuation of their matter. In total then 220 defendants proceeded beyond committal. Successful convictions were secured against 197 distinct defendants. One hundred and fifteen defendants were sentenced with non-custodial penalties with the remaining 82 receiving custodial sentences.

APPENDIX 1

CRIMES (AMENDMENT) ACT, 1984, No. 7

New South Wales

ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

* *

Act No. 7, 1984.

An Act to amend the Crimes Act, 1900, in relation to certain sexual offences. [Assented to, 31st May, 1984.]

P 40612—0962 (50c)

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Crimes (Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Amendment of Act No. 40, 1900.

3. The Crimes Act, 1900, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE CRIMES ACT, 1900.

(1) (a) Section 1, matter relating to Part III—

(i) Omit "78F", insert instead "80".

(ii) Omit "(10) *Unnatural offences.—ss.* 79–81B.".

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(b) Section 1, matter relating to Part XVI—

Omit "579", insert instead "580".

(2) Section 4 (4)—

After section 4 (3), insert:—

(4) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to an offence mentioned in a specified provision of this Act that has been amended or repealed is, or includes, a reference to an offence mentioned in the provision as in force before its amendment or repeal.

(3) Section 62 (2)—

At the end of section 62, insert:—

(2) In this Act, "carnal knowledge" includes sexual connection occasioned by the penetration of the anus of a female by the penis of any person, or the continuation of that sexual connection.

(4) Sections 78G–78T—

After section 78F, insert:—

Definition of "homosexual intercourse" for sections 78H–78O.

78G. In sections 78H–78O, "homosexual intercourse" means—

(a) sexual connection occasioned by the penetration of the anus of any male person by the penis of any person;

(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another male person; or

(c) the continuation of homosexual intercourse as defined in paragraph (a) or (b).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

Homosexual intercourse with male under 10 (cf. s. 67).

78H. A male person who has homosexual intercourse with a male person under the age of 10 years shall be liable to penal servitude for life.

Attempt, or assault with intent, to have homosexual intercourse with male under 10 (cf. s. 68).

78I. A male person who attempts to have homosexual intercourse with a male person under the age of 10 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 14 years.

Trial for homosexual intercourse offence—male in fact between 10 and 18 (cf. ss. 69, 70).

78J. (1) Where on the trial of a male person for having homosexual intercourse with a male person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, and that the accused had homosexual intercourse with that person, it may acquit him of the offence charged and find him guilty of an offence under section 78K, and he shall be liable to punishment accordingly.

(2) Where on the trial of a male person for having homosexual intercourse with a male person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, but is not satisfied that the accused had homosexual intercourse with that person, and is satisfied that he was guilty of an offence under section 78L, it may acquit him of the offence charged and find him guilty of an offence under section 78L, and he shall be liable to punishment accordingly.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

Homosexual intercourse with male between 10 and 18 (cf. s. 71).

78K. A male person who has homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, shall be liable to penal servitude for 10 years.

Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18 (cf. s. 72).

78L. A male person who attempts to have homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 5 years.

Homosexual intercourse with idiot or imbecile (cf. s. 72A).

78M. A male person who, knowing a male person to be an idiot or imbecile, has or attempts to have homosexual intercourse with him shall be liable to penal servitude for 5 years.

Homosexual intercourse by teacher, &c. (cf. s. 73).

78N. A male person who, being a schoolmaster or other teacher, or a father, or step-father, has homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 14 years.

Attempt, or assault with intent, to have homosexual intercourse with pupil, &c. (cf. s. 74).

78O. A male person who, being a schoolmaster or other teacher, or a father, or step-father, by any means attempts to have homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 7 years.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

Alternative charge (cf. s. 75).

78P. Nothing in section 78N or 78O prevents a schoolmaster, teacher, father or step-father from being prosecuted under section 78K or 78L.

Acts of gross indecency (cf. s. 81A).

78Q. (1) Any male person who commits, or is a party to the commission of, an act of gross indecency with a male person under the age of 18 years shall be liable to imprisonment for 2 years.

(2) Any person who solicits, procures, incites or advises any male person under the age of 18 years to commit or to be a party to the commission of an act of homosexual intercourse, or an act of gross indecency, with a male person shall be liable to imprisonment for 2 years.

Consent no defence in certain cases (cf. s. 77).

78R. The consent of a male person the subject of the charge shall be no defence to any charge under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q.

Proceedings in camera in certain cases (cf. s. 77A).

78S. Any proceedings or any part of any proceedings in respect of an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or of an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the Court so directs, be held in camera.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

Limitations (cf. ss. 78, 78F).

78T. (1) No prosecution in respect of any offence under section 78K or 78L. shall, if the person upon whom the offence is alleged to have been committed was at the time of the alleged offence over the age of 16 years and under the age of 18 years, be commenced after the expiration of 12 months from the time of the alleged offence.

(2) No prosecution for an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or for an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the accused was at the time of the alleged offence under the age of 18 years, be commenced without the sanction of the Attorney General.

(5) Italicised heading before section 79—

Omit the heading.

(6) Section 79—

Omit "Whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with any animal, shall", insert instead "Any person who commits an act of bestiality with any animal shall"

(7) Section 80—

Omit "Whosoever attempts to commit the said abominable crime, or assaults any person with intent to commit the same with or without the consent of such person, shall", insert instead "Any person who attempts to commit an act of bestiality with any animal shall".

(8) Sections 81–81B—

Omit the sections.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE CRIMES ACT, 1900—*continued.*

(9) Section 418 (1)—

After "inclusive,", insert "or under sections 78H to 78Q inclusive,".

(10) Section 476 (6) (d)—

After "61,", insert "78Q,".

(11) Section 578 (1)—

After "78B,", insert "78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q,".

(12) Section 580—

After section 579, insert:—

Certain charges not to be brought at common law.

580. A person may not be charged with any common law offence in respect of any act committed upon or in relation to another person, being an act which could, but for the amendment of sections 79 and 80 and the repeal of sections 81, 81A and 81B by the Crimes (Amendment) Act, 1984, have been the subject of a charge for an offence under any of those sections.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 31st May, 1984.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

CRIMES (CHILD ASSAULT) AMENDMENT BILL 1985

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Community Welfare (Child Assault) Amendment Bill 1985;

Oaths (Children) Amendment Bill 1985;

Evidence (Children) Amendment Bill 1985;

Pre-Trial Diversion of Offenders Bill 1985.

The objects of this Bill are—

(a) to make it an offence to have sexual intercourse (in its broadest sense) with any child under the age of 16 years, instead of the offence currently relating only to carnal knowledge of a girl under that age;

(b) to omit provisions in the Principal Act relating to the giving of evidence by children in cases such as carnal knowledge, which provisions will be unnecessary upon the insertion into the Oaths Act 1900 of provisions relating to evidence by children;

(c) to extend the application of certain procedural and evidentiary provisions in the Principal Act (which presently apply to cases of sexual assault of adults) to cases of child sexual assault;

(d) to make the spouse of an accused compellable to give evidence in cases of child assault as well as in cases of domestic violence;

(e) to make it clear that the needs of a child are to be considered in a determination to close the court in child sexual assault proceedings, including the need of the child to have a "support" person exempted from the court's direction; and

(f) to ensure that provisions of the Child Welfare Act 1939 (and, when commenced, the Community Welfare Act 1982) prohibiting the publication of material which may identify a child will prevail over any request by an accused to make evidence available for publication.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days to be appointed by the Governor-in-Council.

Clause 3 is a formal provision dealing with references to the Crimes Act 1900.

Clause 4 is a formal provision specifying the Schedules contained in the proposed Act.

Clause 5 is a formal provision that gives effect to those Schedules.

Schedule 1 contains amendments to the Principal Act in relation to procedure in cases of child assault.

Schedule 1 (1) amends section 77A of the Principal Act (which allows certain sexual assault proceedings to be held in camera). The amendment makes it clear that a court making a direction under the section may exempt a person (such as a "support" person for a child giving evidence) from the direction. The amendment also requires a court to take certain matters, particularly the needs of the child victim, into account in determining whether to close the court.

Schedule 1 (2) omits section 333 of the Principal Act. The section deals with false evidence by children and will be unnecessary as a consequence of the proposed insertion into the Oaths Act 1900 of provisions relating to evidence by children.

Schedule 1 (3) extends the definition of "prescribed sexual offence" in section 405B of the Principal Act to include child sexual assault offences as well as adult sexual assault offences. As a result of this amendment—

(a) pursuant to section 405B of the Principal Act, a Judge on the trial of a person for a child sexual assault offence will, if there is a suggestion that the child delayed in making a complaint about the offence or did not make such a complaint, be required to warn the jury that absence of complaint or delay in complaining does not indicate that the allegation is false and that there may be good reasons for hesitation or delay in making a complaint;

(b) pursuant to section 405C of the Principal Act, a Judge on the trial of a person for a child sexual assault offence may in an appropriate case, but will no longer be required to, warn the jury of the danger of convicting the accused on the uncorroborated evidence of the victim;

(c) pursuant to section 409A of the Principal Act, in committal proceedings relating to a child sexual assault, any depositions of the child from previous connected proceedings (for example, in a case involving multiple assaults) may be read as evidence and the child need not be examined on the evidence given in the previous proceedings;

(d) pursuant to section 409B of the Principal Act, evidence relating to the sexual reputation of the victim of a child sexual assault will be inadmissible and evidence relating to any sexual experience by the victim will be admissible only in limited circumstances; and

(c) pursuant to section 409C of the Principal Act, an accused may not, in a dock statement, refer to any matter which is inadmissible as referred to in paragraph (d).

Schedule 1 (4) is a consequential amendment to section 405C of the Principal Act resulting from the amendment made by Schedule 1 (3).

Schedule 1 (5) amends section 407AA of the Principal Act so as to make the spouse of an accused compellable to give evidence in a case where a child in the accused's household or a child of the accused and the spouse is assaulted in the same way as the spouse of an accused is now compellable in a domestic violence case. Under that section, a spouse may only be excused from giving evidence in limited circumstances. The amendment also clarifies the grounds upon which a spouse may be excused from giving evidence.

Schedule 1 (6) omits section 418 of the Principal Act. The section deals with the giving of evidence by children not on oath and the corroboration of that evidence and is omitted as a consequence of the proposed insertion into the Oaths Act 1900 of provisions relating to evidence by children.

Schedule 1 (7) amends section 578 of the Principal Act so as to ensure that the provisions of the Child Welfare Act 1939 (and, when commenced, the Community Welfare Act 1982) prohibiting the publication of the name of a child involved in court proceedings or of any information which may identify the child will prevail over any request by an accused under that section to make evidence available for publication.

Schedule 2 contains amendments to the Principal Act in relation to offences.

Schedule 2 (1) (a) and (b) extend the application of provisions in section 61A of the Principal Act (including the definition of "sexual intercourse") to provisions relating to children. "Sexual intercourse" is defined in that section as including vaginal, anal or oral intercourse, fellatio, cunnilingus and the insertion of objects.

Schedule 2 (1) (c) inserts a provision into section 61A of the Principal Act which makes it clear that, for the purposes of the provisions relating to children, a reference to a child's being under the authority of a person is a reference to the child's being in the care or under the supervision or authority of the person.

Schedule 2 (2) amends section 61D of the Principal Act which creates the offence of sexual intercourse without consent (sexual assault category 3). The amendment inserts a provision creating an additional offence where the person with whom the sexual intercourse is had is under the age of 16 years and is under the authority of the offender. The penalty for the offence is penal servitude for 12 years.

Schedule 2 (3) amends section 61E of the Principal Act which creates the offences of indecent assault and act of indecency (sexual assault category 4). The amendment inserts 2 provisions creating additional offences where—

(a) an indecent assault is committed on a person under the age of 16 years who is under the authority of the offender (penalty: penal servitude for 6 years); and

(b) an act of indecency is committed with or towards a person under the age of 16 years who is under the authority of the offender (penalty: imprisonment for 4 years).

Schedule 2 (4) amends section 61G of the Principal Act (which deals with alternative verdicts) as a consequence of the amendments made by Schedule 2 (2) and (3).

Schedule 2 (5) inserts into the Principal Act the following provisions:

Proposed section 66A creates an offence of having sexual intercourse with a person under the age of 10 years. The penalty for the offence is penal servitude for 20 years.

Proposed section 66B provides for attempts to commit an offence under proposed section 66A. The penalty for the offence is penal servitude for 20 years.

Proposed section 66C creates the following offences:

(a) the offence of sexual intercourse with a person over 10 years, but under 16 years of age (penalty: penal servitude for 8 years);

(b) the offence of sexual intercourse with such a person where the person was under the authority of the offender (penalty: penal servitude for 10 years).

Proposed section 66D provides for attempts to commit an offence under proposed section 66C. The penalty for attempting to commit the offence is the penalty provided for the offence.

Proposed section 66E provides for alternative verdicts where—

(a) the jury is not satisfied that a child is under 10 years; or

(b) the jury is only satisfied that sexual intercourse was attempted.

Schedule 2 (6) omits section 67 of the Principal Act which makes it an offence to have carnal knowledge of a girl under 10 years.

Schedule 2 (7) omits section 68 of the Principal Act which makes it an offence to attempt to have carnal knowledge of a girl under 10 years.

Schedule 2 (8) and (9) amend sections 69 and 70 of the Principal Act which deal with alternative verdicts on a trial for the offence of carnally knowing a girl under 10 years. The amendments are consequential upon the repeal of those offences.

Schedule 2 (10) and (11) omit sections 71 and 72 of the Principal Act which make it an offence to have carnal knowledge of a girl over 10 years but under 16 years, or to attempt to have carnal knowledge of such a girl.

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Schedule 2 (12) and (13) amend sections 73 and 74 of the Principal Act so that the offences of carnal knowledge by a teacher, etc., and attempts to commit those offences relate only to girls of 16 years. (Where a girl is under that age, the offence may be prosecuted under proposed section 66C or 66D of the Principal Act.) The penalty for an offence under either of those sections will be 8 years imprisonment.

Schedule 2 (14) amends section 75 of the Principal Act which deals with an alternative charge for the offence of carnally knowing a girl over 10 years but under 16 years. The amendment is consequential upon the other amendments made by Schedule 2.

Schedule 2 (15) substitutes section 77 of the Principal Act which provides that consent is no defence except in certain cases where the child is over 14 years and is believed to be over 16 years. The proposed section, as substituted, re-enacts those provisions with changes necessary as a consequence of the other amendments made by Schedule 2.

Schedule 2 (16) makes consequential amendments to section 77A of the Principal Act which allows certain proceedings to be held in camera. The amendments are necessary as a result of the other amendments made by Schedule 2.

Schedule 2 (17) makes consequential amendments to section 78 of the Principal Act which prevents a prosecution for an offence of carnally knowing a girl under 16 years being commenced after 12 months. The amendments are necessary as a consequence of the repeal of that offence and the creation of the offence of having sexual intercourse with a person under 16 years.

Schedule 2 (18) amends section 78A of the Principal Act which deals with the offence of incest. (The amendment prevents a prosecution under that section in a case which could be prosecuted under proposed section 66A or 66C.)

Schedule 2 (19) amends section 78E of the Principal Act by way of statute law revision consequentially upon the other amendments made by Schedule 2.

Schedule 2 (20) amends section 476 of the Principal Act which makes provision for certain indictable offences to be disposed of summarily with the accused's consent. The amendment is consequential upon the repeal of offences relating to carnal knowledge of a girl under 16 years and the creation of offences relating to sexual intercourse of a person under that age.

Schedule 2 (21) amends section 578 of the Principal Act which allows a Judge to prohibit the publication of certain evidence. The amendment is consequential upon the other amendments made by Schedule 2.

CRIMES (CHILD ASSAULT) AMENDMENT BILL 1985

No. , 1985

A BILL FOR

An Act to amend the Crimes Act 1900 in relation to children who are sexually assaulted, and in other respects.

See also Community Welfare (Child Assault) Amendment Bill 1985; Oaths (Children) Amendment Bill 1985; Evidence (Children) Amendment Bill 1985; Pre-Trial Diversion of Offenders Bill 1985.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Crimes (Child Assault) Amendment Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Crimes Act 1900 is referred to in this Act as the Principal Act.

Schedules

4. This Act contains the following Schedules:

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO PROCEDURE IN CASES OF CHILD ASSAULT

SCHEDULE 2—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES

Amendment of Act No. 40, 1900

5. The Principal Act is amended in the manner set forth in Schedules 1 and 2.

SCHEDULE 1

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO PROCEDURE IN CASES OF CHILD ASSAULT

(1) Section 77A **(Proceedings in camera in certain cases)**—

At the end of section 77A, insert:

(3) Where, under this section, the Court directs that proceedings or a part of any proceedings be held in camera, it may, either absolutely or subject to conditions, exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose which the Court thinks fit.

(4) A Court may make a direction under this section on its own motion or at the request of any party and, in determining whether to make such a direction in proceedings in respect of an offence alleged to have been committed upon a child under the age of 18 years, the Court shall consider—

(a) the need of the child to have any person excluded from those proceedings;

(b) the need of the child to have any person present in those proceedings;

(c) the interests of justice; and

(d) any other matter which the Court thinks relevant.

(2) Section 333 **(False evidence by child not on oath)**—

Omit the section.

(3) Section 405B **(Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings)**—

Omit subsection (1), insert instead:

(1) In this section—

"prescribed sexual offence" means—

(a) an offence under section 61B, 61C, 61D, 61E, 66A, 66B, 66C or 66D; or

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO PROCEDURE IN CASES OF CHILD ASSAULT—*continued*

(b) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a).

(4) Section 405C **(Judge not required to warn jury against convicting person of certain sexual offences)**—

(a) At the end of subsection (3) (a), insert "or".

(b) From subsection (3) (b), omit "or".

(c) Omit subsection (3) (c).

(5) Section 407AA **(Compellability of spouses to give evidence in certain proceedings)**—

(a) From subsection (1) (a), omit "and".

(b) At the end of subsection (1) (b), insert:

; and

(c) a reference to a child assault offence is a reference to—

(i) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 42, 43, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 66A, 66B, 66C, 66D, 493 or 494 committed upon a child under the age of 18 years; or

(ii) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in subparagraph (i).

(c) After subsection (2), insert:

(2A) Except as provided in subsection (3), the husband or wife of an accused person in a criminal proceeding shall, where the offence charged is a child assault offence (other than an offence constituted by a negligent act or omission) committed upon—

(a) a child living in the household of the accused person; or

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO PROCEDURE IN CASES OF CHILD ASSAULT—*continued*

(b) a child who, although not living in the household of the accused person, is a child of the accused person and that husband or wife,

be compellable to give evidence in the proceeding in every Court, either for the prosecution or for the defence, and without the consent of the accused person.

(d) In subsection (3), after "(2)", insert "or (2A)".

(e) Omit subsection (4), insert instead:

(4) A Judge or Justice may excuse the husband or wife of an accused person from giving evidence for the prosecution as referred to in subsection (2) or (2A) if satisfied that the application to be excused is made by that husband or wife freely and independently of threat or any other improper influence by any person and that—

(a) it is relatively unimportant to the case to establish the facts in relation to which it appears that that husband or wife is to be asked to give evidence or there is other evidence available to establish those facts; and

(b) the offence with which the accused person is charged is of a minor nature.

(6) Section 418 **(On hearing of a charge for certain offences, evidence not on oath may be received in case of children of tender years, but such evidence must be corroborated)**—

Omit the section.

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO PROCEDURE IN CASES OF CHILD ASSAULT—*continued*

(7) Section 578 **(Publication of evidence may be forbidden in certain cases)**—

After subsection (2), insert:

(3) The provisions of this section are subject to any Act or law under which evidence relating to a child under the age of 18 years, or a report or account of that evidence, may not be published.

SCHEDULE 2

(Sec. 5)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES

(1) Section 61A **(Definition of sexual intercourse, etc.)**—

(a) From subsection (1), omit "this section and sections 61B, 61C and 61D", insert instead "sections 61A–66E".

(b) From subsection (2), omit "61B, 61C and 61D", insert instead "61B-66E".

(c) After subsection (4), insert:

(5) For the purposes of sections 61D-66E, a person is under the authority of another person if the person is in the care, or under the supervision or authority, of the other person.

(2) Section 61D **(Sexual assault category 3—sexual intercourse without consent)**—

(a) After subsection (1), insert:

(1A) Any person who has sexual intercourse with another person who—

(a) is under the age of 16 years; and

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES—*continued*

(b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,

without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 12 years.

(b) From subsections (2) and (3), omit "subsection (1)" wherever occurring, insert instead "subsections (1) and (1A)".

(3) Section 61E (**Sexual assault category 4—indecent assault and act of indecency**)—

(a) From subsection (1), omit "or, if the other person is under the age of 16 years, to penal servitude for 6 years".

(b) After subsection (1), insert:

(1A) Any person who assaults another person who—

(a) is under the age of 16 years; and

(b) is (whether generally or at the time of the assault only) under the authority of the person,

and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 6 years.

(c) After subsection (2), insert:

(2A) Any person who commits an act of indecency with or towards a person who—

(a) is under the age of 16 years; and

(b) is (whether generally or at the time the act is committed only) under the authority of the firstmentioned person,

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES—*continued*

or who incites any such person to an act of indecency with that or another person shall be liable to imprisonment for 4 years.

(4) Section 61G **(Alternative verdicts)**—

(a) In subsection (2), after "section 61D", insert "committed before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985".

(b) After subsection (2), insert:

(2A) Where on the trial of a person for an offence under section 61D (1) committed on or after the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985 the jury is satisfied that the person upon whom the offence was alleged to have been committed was under the age of 16 years, but above the age of 10 years, and that the accused had sexual intercourse with the person but is not satisfied that the sexual intercourse was had without the person's consent, it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.

(2B) Where on the trial of a person for an offence under section 61D (1A) the jury is not satisfied that the accused had sexual intercourse without the consent of the other person but is satisfied that the accused is guilty of an offence under section 66C (2), it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (2), and the accused shall be liable to punishment accordingly.

(2C) Where on the trial of a person for an offence under section 61D (1A) or 61E (1A) or (2A) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 61D (1) or 61E (1) or (2), as the case may require, it may find the accused not guilty of the offence charged but guilty of an offence under section 61D (1) or 61E (1) or (2), as the case may be, and the accused shall be liable to punishment accordingly.

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES—*continued*

(5) Sections 66A–66E—

After section 66, insert:

Sexual intercourse—child under 10

66A. Any person who has sexual intercourse with another person who is under the age of 10 years shall be liable to penal servitude for 20 years.

Attempting, or assaulting with intent, to have sexual intercourse with child under 10

66B. Any person who attempts to have sexual intercourse with another person who is under the age of 10 years, or assaults any such person with intent to have sexual intercourse, shall be liable to penal servitude for 20 years.

Sexual intercourse—child between 10 and 16

66C. (1) Any person who has sexual intercourse with another person who is of or above the age of 10 years, and under the age of 16 years, shall be liable to penal servitude for 8 years.

(2) Any person who has sexual intercourse with another person who—

(a) is of or above the age of 10 years, and under the age of 16 years; and

(b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,

shall be liable to penal servitude for 10 years.

Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16

66D. Any person who attempts to commit an offence under section 66C upon another person who is of or above the age of 10 years, and under the age of 16 years, or assaults any such person with intent to commit such an offence, shall be liable to the penalty provided for the commission of the offence.

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES—*continued*

Alternative verdicts

66E. (1) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years, but is satisfied that—

(a) the other person was under the age of 16 years; and

(b) the accused had sexual intercourse with the other person,

it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.

(2) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years or that the accused had sexual intercourse with the other person, but is satisfied that—

(a) the other person was under the age of 16 years; and

(b) the accused is guilty of an offence under section 66D,

it may find the accused not guilty of the offence charged but guilty of an offence under section 66D, and the accused shall be liable to punishment accordingly.

(6) Section 67 (**Carnally knowing girl under 10**)—

Omit the section.

(7) Section 68 (**Attempting, or assaulting with intent, to carnally know girl under 10**)—

Omit the section.

(8) Section 69 (**Trial for carnal knowledge—girl in fact over 10**)—

(a) Omit "carnally knowing a girl under the age of ten years", insert instead "an offence under section 67".

(b) Omit "she was of or above that age", insert instead "the girl was of or above the age of ten years".

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES—*continued*

(9) Section 70 **(Trial for carnal knowledge—verdict of assault with intent)**—

(a) Omit "carnally knowing a girl under the age of ten years", insert instead "an offence under section 67".

(b) Omit "she was of or above that age", insert instead "the girl was of or above the age of ten years".

(10) Section 71 **(Carnally knowing girl between 10 and 16)**—

Omit the section.

(11) Section 72 **(Attempts)**—

Omit the section.

(12) Section 73 **(Carnal knowledge by teacher, etc.)**—

(a) Omit "of or above the age of ten years, and under the age of seventeen years", insert instead "of the age of 16 years".

(b) Omit "fourteen years", insert instead "8 years".

(13) Section 74 **(Attempts)**—

(a) Omit "of or above the age of ten years, and under the age of seventeen years", insert instead "of the age of 16 years".

(b) Omit "seven years", insert instead "8 years".

(14) Section 75 **(Alternative charge)**—

After "section 74", insert "as respectively in force before the commencement of Schedule 2 to the Crimes (Child Assault) Amendment Act 1985".

(15) Section 77—

Omit the section, insert instead:

Consent no defence in certain cases

77. (1) Except as provided by subsection (2), the consent of the child or other person to whom the charge relates shall be no defence to a charge under section 61E (1A), (2) or (2A), 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76.

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES—*continued*

(2) It shall be a sufficient defence to a charge which renders a person liable to be found guilty of an offence under section 61E (1A), (2) or (2A), 66C, 66D, 71, 72 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76 if the person charged and the child to whom the charge relates are not both male and it is made to appear to the court or to the jury before whom the charge is brought that—

(a) the child to whom the charge relates was over the age of 14 years at the time the offence is alleged to have been committed;

(b) the child to whom the charge relates consented to the commission of the offence; and

(c) the person so charged had, at the time the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the child to whom the charge relates was of or above the age of 16 years.

(16) Section 77A (**Proceedings in camera in certain cases**)—

(a) From subsection (1), omit "66,", insert instead "63, 65, 66, 66A, 66B, 66C, 66D,".

(b) From subsection (1), omit "73 or 74", insert instead "73, 74, 76 or 76A".

(c) Omit subsection (2).

(17) Section 78 (**Limitation**)—

Omit "71 or 72, or under section 76 as in force at any time before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act, 1981,", insert instead "66C (1), 66D, 71, 72 or 76".

(18) Section 78A (**Incest**)—

Before "his mother", insert "a female of or above the age of 16 years who is".

SCHEDULE 2—*continued*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO OFFENCES—*continued*

(19) Section 78E **(Rape or attempt—verdict of incest or attempt)**—

Omit "as in force at any time before the commencement of Schedule 1 to the Crimes (Sexual Assault) Amendment Act, 1981, or section 65 as so in force,", insert instead "or 65".

(20) Section 476 **(Indictable offences punishable summarily with consent of accused)**—

Omit subsection (6) (b), insert instead:

(b) any offence mentioned in section 61E, 66C (1), 66D, 71, 72, 76 or 76A, where the person upon whom the offence was committed was at the time of the commission of the offence of or above the age of 14 years;

(21) Section 578 **(Publication of evidence may be forbidden in certain cases)**—

(a) From subsection (1), omit "66,", insert instead "63, 65, 66, 66A, 66B, 66C, 66D,".

(b) In subsection (1), after "74,", insert "76, 76A,".

(c) Omit subsection (1A).

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

APPENDIX 2

page 1

CHILD SEXUAL ASSAULT LEGISLATION MONITORING PROJECT

Court Procedures Coding Form

CASE DETAILS

1. Incident type. ☐☐ 2
   (Incident is relative to one set of circumstances)

   (Enter the number of complainants in the first box and the number of suspects in the second box e.g.
   One complainant, one suspect = 11
   one complainant, two suspects = 12
   two complainants, one suspect = 21 etc.
   Don't know = 99

2. Case identification number ☐☐☐☐ 6

   (Do not write in this space will be coded later)

3. Complainant ID ☐ 7
   Use a different number for each complainant in THIS case
   e.g. FIrst complainant = 1, second complainant = 2 etc.

4. Suspect ID ☐ 8
   Use a different number for each suspect in THIS case
   e.g. First suspect = 1, Second suspect = 2 etc.

page 2

COMMITTAL MATTERS

5. Complainants Name
   Family Name _____
   Given Name _____

6. Suspects Name
   Family Name _____
   Given Name _____

7. Paper Committal? ☐ 9
   (1=Yes, 2=No, 3=Part paper, 9=D/K)

8. Date of Committal outcome (DD-MM-YY) ☐☐/☐☐/☐☐ 15

9. Court _____ (coded later) ☐☐☐ 18

10. Magistrate _____ (coded later) ☐☐☐ 21

11. Plea to Principal Offence ☐ 22
    (1=Not guilty, 2= Guilty, 3=No plea, 4=Ex parte, 9=D/K)

12. Did the complainant give evidence? ☐ 23
    (1=Oral, 2=Deposition, 3=No, 9=D/K)

13. Did the complainant make a declaration etc.? ☐ 24
    (1=Declaration, 2=Affirmation, 3=Oath, 4=Unsworn, 8=N/A 9=D/K)

14. Was the complainant cross examined? ☐ 25
    (1=Yes, 2=No, 8=N/A 9=D/K)

15. Was a spouse compelled to give evidence? ☐ 26
    (1=Yes, 2=No, 3=Granted exemption 9=D/K)

page 3

16. Was the prior sexual experience or reputation of complainant raised?
(1=Yes, 2=No 9=D/K)

(NOTE: This includes the absence of prior sexual experience etc.)

Raised by defence ☐ 27

Raised by prosecution ☐ 28

In record of interview ☐ 29

Raised otherwise ☐ 30

17. Was any of this material allowed?
(1=Yes, 2=No, 8=Not applicable, 9=D/K)

When raised by defence ☐ 31

When raised by prosecution ☐ 32

When in record of interview ☐ 33

When raised otherwise ☐ 34

page 4

18. Means by which any such material was admitted (regardless of source)

(NOTE: Code very reason for acceptance
1=Yes, 2=No, 9=N/A)

18.1 Sexual experience or activity "at or about the relevant time." ☐ 35

18.2 Sexual experience or activity "in a connected set of circumstances". ☐ 36

18.3 Sexual intercourse contested and history is evidence of the presence of semen, pregnancy, disease or injury. ☐ 37

18.4 Disease in complainant, absent in accused. ☐ 38

18.5 Disease in the accused, absent in complainant. ☐ 39

18.6 Where it is alleged that complaint was made after the discovery of pregnancy or disease. ☐ 40

18.7 Where prosecution argues complainant had a certain sexual experience (or lack) or activity (or lack). ☐ 41

18.8 Allowed without challenge or justification. ☐ 42

18.9 Other (specify) _____ ☐ 43

_____

19. Was delay or absence of complaint raised? ☐ 44
(1=By defence, 2=By prosecution 3=By defence and prosecution
4=No 9=D/K)

20. Was the complainants evidence heard in camera? ☐ 45
(1=Yes, 2=No, 8=N/A, 9=D/K)

21. Was a support person excluded from the order closing the court? ☐ 46
(1=Yes, 2=No, not excluded, 3=No, none available
(4=No, none required, 8=N/A, 9=D/K)

page 5

22. Was an order made prohibiting publication of identifying information? (1=Yes, 2=No, 9=D/K) ☐ 47

23. Was the suspect on bail at time of THIS court appearance? (1=Yes, 2=No, in custody, 3=No, dispensed with, 8=N/A 9=D/K) ☐ 48

23.1 Bail conditions (indicate ALL conditions relating to the suspect's conduct).

(1=Yes, 2=No, 3=N/A 9=D/K)

Not to approach complainant/home etc. ☐ 49

Not to reside with complainant etc. ☐ 50

Accused must reside at given place. ☐ 51

Reporting conditions. ☐ 52

Other (specify) _____ ☐ 53

24. Was the suspect on bail at time of FIRST (committal) court appearance? (1=Yes, 2=No, in custody, 3=No, dispensed with, 8=N/A 9=D/K) ☐ 54

24.1 Bail conditions (indicate ALL conditions relating to the suspect's conduct).

(1=Yes, 2=No, 3=N/A 9=D/K)

Not to approach complainant/home etc. ☐ 55

Not to reside with complainant etc. ☐ 56

Accused must reside at given place. ☐ 57

Reporting conditions. ☐ 58

Other (specify) _____ ☐ 59

page 6

25. Was the suspect previously granted POLICE bail in respect of this matter? ☐ 60
(1=Yes, 2=No, in custody, 3=No, dispensed with, 8=N/A 9=D/K)

25.1 Bail conditions (indicate ALL conditions relating to the suspect's conduct).

(1=Yes, 2=No, 3=N/A 9=D/K)

Not to approach complainant/home etc. ☐ 61

Not to reside with complainant etc. ☐ 62

Accused must reside at given place. ☐ 63

Reporting conditions. ☐ 64

Other (specify) _____ ☐ 65

26. Total number of charges and total number of offences laid against suspect with respect to this complainant? ☐☐/☐☐ 69
(e.g 2 counts of s.61B and 2 counts of s.61E(1) 02 02)

27. Principal offence at charge ☐☐/☐☐/☐☐ 75

(Indicate the number of charges in the first two columns, the number of those charges to which the suspect pleaded "guilty" in the second two columns and the offence type in the third two columns e.g. 3 charges of s.73 but one pleaded guilty to 03 01 24)

28. Second offence at charge. ☐☐/☐☐/☐☐ 81
(As above)

29. Third offence at charge. ☐☐/☐☐/☐☐ 87
(As above)

page 7

30. Fourth offence at charge.
(As above) 93

31. Fifth offence at charge.
(As above) 99

32. Sixth offence at charge.
(As above) 105

33. Outcome of offences with respect to this complainant:
(Indicate the total number of charges and the total number of offences for which it was found the accused had a case to answer.) 109

34. Principal offence for which it was found the accused had a case to answer. 113
(Indicate number of counts in the first two columns and the offence type in the second two columns.)

35. Second offence for which it was found the accused had a case to answer. 117

36. Third offence for which it was found the accused had a case to answer. 121

37. Fourth offence for which it was found the accused had a case to answer. 125

38. Fifth offence for which it was found the accused had a case to answer. 129

39. Sixth offence for which it was found the accused had a a case to answer. 133

40. Number of charges for which a "no bill" was entered. 135
(Show TOTAL number of charges)

page 8

41. Number of charges not proceeded with for ANY other reason. ☐☐ 12

Specify reason(s) _____

42. Was the principal offence charged the same as the principal offence on the indictment? ☐ 13
(1=Yes, 2=No, 9=D/K)

43. If these WERE different, what was the principal offence for which the suspect was indicted. ☐☐ 14
(Use the offence category codes for Q27)

44. Nature of the principal offence on indictment ☐☐ 15

01 Vaginal penetration by penis

02 Anal penetration by penis

03 Vaginal penetration by other body part

04 Anal penetration by other body part

05 Vaginal penetration by object

06 Anal penetration by object

07 Fellatio

08 Cunnilingus

09 Indecent assault/act of indecency

10 Don't know

11 None of the above

page 9

SENTENCE MATTERS

45. Date of sentence (DD-MM-YY) ☐☐/☐☐/☐☐ 14

46. Court (state whether Local/District/Supreme) ☐☐☐☐ 15

_____

47. Judge _____ ☐☐ 12

48. Magistrate _____ ☐☐☐ 15

49. Is this a hand-up brief? ☐ 19
(1=Yes, 2=No, 9=D/K)

50. Was the victim called as a witness? ☐ 13
(1=Yes, 2=No, 3=D/K)

51. Did they recount the circumstances of the offence? ☐ 11
(1=Yes, 2=No, 8=N/A 9=D/K)

52. Was the complainants evidence heard in camera? ☐ 16
(1=Yes, 2=No, 8=N/A, 9=D/K)

53. Was a support person excluded from the order closing the court? ☐ 17
(1=Yes, 2=No, not excluded, 3=No, none available
(4=No, none required, 8=N/A, 9=D/K)

54. Was an order made prohibiting publication of identifying information? ☐ 15
(1=Yes, 2=No, 9=D/K)

page 10

55. Was the suspect on bail at time of THIS court appearance? ☐ 164
(1=Yes, 2=No, in custody, 3=No, dispensed with, 8=N/A 9=D/K)

55.1 Bail conditions (indicate ALL conditions relating to the suspect's conduct).

(1=Yes, 2=No, 3=N/A 9=D/K)

Not to approach complainant/home etc. ☐ 165

Not to reside with complainant etc. ☐ 166

Accused must reside at given place. ☐ 167

Reporting conditions. ☐ 168

Other (specify) _____ ☐ 169

56. Was the suspect on bail at time of FIRST (sentence) court appearance? ☐ 170
(1=Yes, 2=No, in custody, 3=No, dispensed with, 8=N/A 9=D/K)

56.1 Bail conditions (indicate ALL conditions relating to the suspect's conduct).

(1=Yes, 2=No, 3=N/A 9=D/K)

Not to approach complainant/home etc. ☐ 171

Not to reside with complainant etc. ☐ 172

Accused must reside at given place. ☐ 173

Reporting conditions. ☐ 174

Other (specify) _____ ☐ 175

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TRIAL MATTERS

57. Date trial commenced (DD-MM-YY) ☐☐/☐☐/☐☐ 181

58. Date of trial outcome (DD-MM-YY) ☐☐/☐☐/☐☐ 187

59. Date of sentence (DD-MM-YY) ☐☐/☐☐/☐☐ 193

60. Court _____ ☐☐☐☐ 197

61. Judge _____ ☐☐ 199

62. Did the defendant change his/her plea to any offence(s). ☐ 200
(1=Yes, 2=No, 9=D/K)

63. Did the complainant give evidence? ☐ 201
(1=Oral, 2=Deposition, 3=No, 9=D/K)

64. Did the complainant make a declaration etc.? ☐ 202
(1=Declaration, 2=Affirmation, 3=Oath, 4=Unsworn, 8=N/A 9=D/K)

65. Was the complainant cross examined? ☐ 203
(1=Yes, 2=No, 8=N/A 9=D/K)

66. Was a spouse compelled to give evidence? ☐ 204
(1=Yes, 2=No, 3=granted exemption, 9=D/K)

page 12

67. Was the prior sexual experience or reputation of complainant raised?
(1=Yes, 2=No 9=D/K)

(NOTE: This includes the absence of prior sexual experience etc.)

Raised by defence ☐ 205

Raised by prosecution ☐ 206

In record of interview ☐ 207

Raised by defendant in dock statement ☐ 208

68. Was any of this material allowed?
(1=Yes, 2=No, 8=Not applicable, 9=D/K)

When raised by defence ☐ 209

When raised by prosecution ☐ 210

When in record of interview ☐ 211

When raised by defendant in dock statement ☐ 212

69. If raised by defendant in dock statement, when was the jury warned by the judge?

(1=Immediately, 2=Later, 3=Never, 8=N/A 9=D/K) ☐ 213

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70. Means by which any such material was admitted (regardless of source)

(NOTE: Code very reason for acceptance
1=Yes, 2=No, 8=N/A 9=D/K)

70.1 Sexual experience or activity "at or about the relevant time." ☐214

70.2 Sexual experience or activity "in a connected set of circumstances". ☐215

70.3 Sexual intercourse contested and history is evidence of the presence of semen, pregnancy, disease or injury. ☐216

70.4 Disease in complainant, absent in accused. ☐217

70.5 Disease in the accused, absent in complainant. ☐218

70.6 Where it is alleged that complaint was made after the discovery of pregnancy or disease. ☐219

70.7 Where prosecution argues complainant had a certain sexual experience (or lack) or activity (or lack). ☐220

70.8 Allowed without challenge or justification. ☐221

70.9 Other (specify) _____ ☐222

_____

70.0 Not relevant ☐223

71. Was delay or absence of complaint raised? ☐224
(1=By defence, 2=By prosecution 3=By defence and prosecution
4=No 9=D/K)

72. Did the judge issue the warning about delay etc.? ☐225
(1=Yes, 2=No, 8=N/A 9=D/K)

page 14

73. Was the two point warning given by the judge? ☐ 226
(i.e 405B and Kilby direction)

(1=405B only, 2=Kilby only, 3=Both, 4=Neither
8=N/A, 9=D/K)

74. Was the corroboration warning given by the judge? ☐ 227
(1=Yes, 2=No, 8=N/A, 9=D/K)

75. Was the warning given only after a reminder by the defence? ☐ 228
(1=Yes, 2=No, 8=N/A, 9=D/K)

76. What was the basis of the defence?
(Indicate ALL defences offered)
(1=Yes, 2=No, 8=N/A, 9=D/K)

76.1 Alibi - accused not present at all and positively elsewhere. ☐ 229

76.2 Fabrication or error - accused present but no intercourse with him - intercourse with another. ☐ 230

76.3 Fabrication - no intercourse at all. ☐ 231

76.4 Fabrication - mistaken belief in consent. ☐ 232

76.5 Fabrication - conspiracy/fantasy. ☐ 233

76.6 Section 77(2). ☐ 234

76.7 Duress/Intoxication. ☐ 235

76.8 Other (specify) _____ ☐ 236

_____

76.9 Not applicable. ☐ 237

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77. Did the accused give evidence or make a statement? ☐ 228
(1=Yes, Evidence in chief, 2=Yes, Dock statement, 3=Both, 4=No, 8=N/A, 9=D/K)

78. Was the complainant called as a witness? ☐ 239
(1=Yes, 2=No, 8=N/A, 9=D/K)

79. Did they recount the circumstances of the offence? ☐ 240
(1=Yes, 2=No, 8=N/A, 9=D/K)

80. Was the complainants evidence heard in camera? ☐ 241
(1=Yes, 2=No, 8=N/A, 9=D/K)

81. Was a support person excluded from the order closing the court? ☐ 242
(1=Yes, 2=No, not excluded, 3=No, none available
(4=No, none required, 8=N/A, 9=D/K)

82. Was an order made prohibiting publication of identifying information? ☐ 243
(1=Yes, 2=No, 9=D/K)

83. Was the suspect on bail at time of THIS court appearance? ☐ 244
(1=Yes, 2=No, in custody, 3=No, dispensed with, 8=N/A 9=D/K)

83.1 Bail conditions (indicate ALL conditions relating to the suspect's conduct).

(1=Yes, 2=No, 3=N/A 9=D/K)

Not to approach complainant/home etc. ☐ 245

Not to reside with complainant etc. ☐ 246

Accused must reside at given place. ☐ 247

Reporting conditions. ☐ 248

Other (specify) _____ ☐ 249

page 16

84. Was the suspect on bail at time of FIRST (trial) court appearance? 250
(1=Yes, 2=No, in custody, 3=No, dispensed with, 8=N/A 9=D/K)

84.1 Bail conditions (indicate ALL conditions relating to the suspect's conduct).

(1=Yes, 2=No, 3=N/A 9=D/K)

Not to approach complainant/home etc. 251

Not to reside with complainant etc. 252

Accused must reside at given place. 253

Reporting conditions. 254

Other (specify) _____ 255

85. Total number of charges and total number of offences for which defendent was on trial 259
(e.g 2 counts of s.61E(1) and one count of s.71 is 03 02)

86. Principal offence at trial 263

(Indicate the number of charges in the first two columns and the offence type in the second two columns e.g. 3 charges of s.73 03 24)

87. Second offence at trial. 267
(As above)

88. Third offence at trial. 271
(As above)

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89. Fourth offence at trial. 275
(As above)

90. Fifth offence at trial. 279
(As above)

91. Sixth offence at trial. 283
(As above)

Complainant Information

92. Sex (1=Male, 2=Female, 9=D/K) 289

93. Date of birth (DD-MM-YY) 290

94. Date of first (alleged) offence (DD-MM-YY) 296

95. Date of last (alleged) offence (DD-MM-YY) 302

95. Date of complaint (DD-MM-YY) 308

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Defendant Information

96. Sex (1=Male, 2=Female, 9=D/K) ☐ 315

97. Date of birth (DD-MM-YY) ☐☐/☐☐/☐☐ 316

98. Marital status ☐ 317

1=Single 2=Married
3=Widowed 4=Divorced
5=Permanently separated
6=De facto 9=D/K

99. Relationship to complainant ☐☐ 318

01=Parent 02=Step=parent
02=Grandparent 04=Uncle/Aunt
05=De facto 06=Sibling
07=Other relative

08=Friend of complainant 09=friend of parent
10=Authority figure 11=Neighbour
12=Other acquaintance

13=Stranger 14=D/K

100. Previous criminal record
(excluding traffic and juvenile offences unless noted)
(record number of each offence type)

Juvenile sexual offences ☐☐ 320

Child sexual assault ☐☐ 322

Other sexual offences ☐☐ 324

Offences against the person ☐☐ 326

Other offences ☐☐ 328

page 19

101. Was the accused resident with the complainant at the time of the principal offence? [329]
(1=Yes, 2=No, 9=D/K)

102. What was the length of residence to that time? [332]
(in months rounded up to the nearest month e.g. 000 if not resident, 001=1 month or less, 012=1 year, 120=10 years etc. 999=D/k)

103. Defendant's address

Suburb/Town (specify) _____ [336]

104. History or sexual assault between suspect and complainant [339]
(Number of months, e.g. 000=No history, 001=1 month or less, 012=1 year etc.)

105. Was physical injury allegedly inflicted on the complainant? [340]
(1=Yes, GBH, 2=Yes, ABH, 3=No, 9=D/K)

106. Were threats of physical injury allegedly made to the complainant? [341]
(1=Yes, 2=No, 9=D/K)

107. Were other threats allegedly made to the complainant?
(Code all threats 1=Yes, 2=No, 9=D/K)

Non-specific threats of harm (e.g "don't tell or you'll be sorry"). [342]

Harm to third party. [343]

Institution for complainant. [344]

Withdrawal of affection by parents. [345]

Responsible for family break-up/gaol for offender [346]

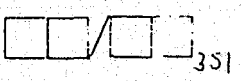
Other (specify) _____ [347]

page 20

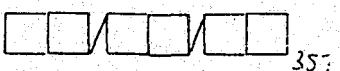
OUTCOME INFORMATION

For either sentence or trial matters

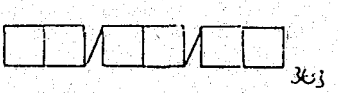
108. Total number of charges and total number of offences proceeded with



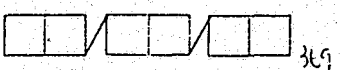
109. Principal offence proceeded with
(Indicate the number of charges in the first two columns, the number of charges on which the defendent was found guilty on in the second two columns and the offence category in the third two columns.)



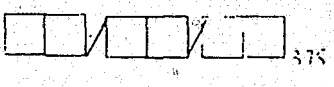
110. Second offence proceeded with.
(As above)



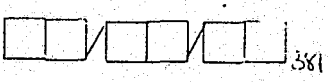
111. Third offence proceeded with.
(As above)



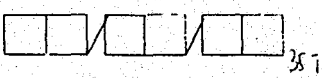
112. Fourth offence proceeded with.
(As above)



113. Fifth offence proceeded with.
(As above)

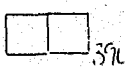


114. Sixth offence proceeded with.
(As above)



115. Was the greatest penalty imposed for the Principal indicted offence?
(1=Yes, 2=No, 9=D/K)

116. If these were different, what was the principal offence for which the suspect received the greatest penalty?
(Use offence category codes)



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117. Sentenced imposed for the PRINCIPAL INDICTED offence
(1=Custodial, 2=Non-custodial, 8=N/A, 9=D/K) [ ] 39

118. Nature of the offence FOR WHICH THE GREATEST PENALTY was imposed. [ ][ ] 397

01 Vaginal penetration by penis

02 Anal penetration by penis

03 Vaginal penetration by other body part

04 Anal penetration by other body part

05 Vaginal penetration by object

06 Anal penetration by object

07 Fellatio

08 Cunnilingus

09 Indecent assault/act of indecency

10 Don't know

11 None of the above

119. Total head sentence in months (all offences) [ ][ ][ ] 396
(001=one month, 120=10years, 888=N/A, 999=D/K)

120. Non-parole period in months [ ][ ][ ] 399
(000=Declined to state non-parole period,
(001-1 month, 120=10 years 888=N/A, 999=D/K)

121. Did the judge order no remissions? [ ] 400
(1=Yes, 2=No, 8=N/A, 9=D/K)

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122. Recognizance conditions (all offences)
(Indicate all conditions, 1=Yes, 2=No, 8=N/A, 9=D/K)

Supervision/Probation and Parole ☐ 401

Treatment/Therapy ☐ 402

Not to reside with victim ☐ 403

Not approach victim ☐ 404

Other (specify) _____ ☐ 405

123. Length of recognizance in months
(001=1 month, 012=1 year, 888=N/A, 999=D/K) ☐☐☐ 406

124. Other penalties imposed (all offences)
(1=Yes, 2=No, 8=N/A, 9=D/K)

Indicate ALL types.

Concurrent sentence ☐ 409

Cumulative sentence ☐ 410

Recognizance ☐ 411

Fine ☐ 412

Other (specify) _____ ☐ 413

125. Did compensation proceedings follow?
(1=Yes, 2=No, 9=D/K) ☐ 414

126. Amount awarded (dollars).
(00000=nothing, 05000=$5000, 99999=D/K) ☐☐☐☐☐ 415

APPENDIX 3

Sex of Complainant by Defendant–Complainant relationship (Defendant/Complainant pairs = 324)

	Male		Female		Total
	No.	%	No.	%	No.
Parent	4	1.2	30	9.2	34
Stepparent	1	0.3	26	8.0	27
Grandparent	1	0.3	4	1.2	5
Uncle/aunt	5	1.5	11	3.4	16
De facto parent	1	0.3	14	4.3	15
Sibling	–	–	–	–	–
Other relative	1	0.3	1	0.3	2
Friend of complainant	6	1.9	30	9.2	36
Friend of parent	3	0.9	18	5.6	21
Authority figure	10	3.1	29	8.9	39
Neighbour	4	1.2	26	8.0	30
Other acquaintance	21	6.9	15	4.6	36
Stranger	12	3.7	31	9.6	43
Relationship unknown	4	1.2	11	3.4	20*
TOTAL	73	22.5	246	75.9	324

*Includes 5 cases where sex and complainant–defendant relationship was unknown.

Injury by age of complainant

	Grievous Bodily Harm		Actual Bodily Harm		No injury		Unknown	
	No.	%	No.	%	No.	%	No.	%
0 - 4 years	0	0.0	0	0.0	17	5.9	1	5.0
5 - 9 years	0	0.0	2	11.1	107	37.7	3	15.0
10 - 14 years	1	50.0	7	38.9	119	41.9	4	20.0
15 years and over	1	50.0	9	50.0	40	14.1	3	15.0
Unknown	0	0.0	0	0.0	1	0.3	9	45.0
TOTAL	2	100.0	18	100.0	284	100.0	20	100.0

Non-specific threats of harm by age of complainant(1)

	Threats		No threats		Unknown		Total	
Age of complainant	No.	%	No.	%	No.	%	No.	%
0 - 4 years	2	11.1	15	83.3	1	5.6	18	100.0
5 - 9 years	21	18.8	86	76.8	5	4.4	112	100.0
10 - 14 years	37	28.2	90	68.7	4	3.1	131	100.0
15 years and over	20	37.7	30	56.6	3	5.7	53	100.0
TOTAL	80	24.7	222(2)	68.5	22(3)	6.8	324	100.0

(1) Percentage of complainants in each age group.
(2) Age of complainant unknown in one case.
(3) Age of complainant unknown in nine cases.

APPENDIX 6

Other offences charged in child sexual assault matters
Number of charges and number of matters
in which that charge was the principal offence

Section of Crimes Act (1900):		Number of charges	Principal offence
Section 26:	Conspire to murder	1	1
Section 27:	Attempt to murder	2	1
Section 33A:	Discharge loaded arms with intent	1	–
Section 35:	Wound (malicious)	1	–
Section 38:	Use chloroform to commit an offence	1	–
Section 59:	Assault occasioning actual bodily harm	3	–
Section 61:	Common assault	1	–
Section 83:	Administer drugs to woman with intent to procure miscarriage	2	–
Section 89:	Abduct with intent	5	4
Section 97:	Armed robbery	1	1
Section 112:	Break and enter and commit felony	5	4
Section 345:	Aid and abet	2	2
Section 90A:	Kidnapping	1	–
Section 494:	Aggravated assaults	1	–
TOTAL CHARGES		27	13

APPENDIX 7

Time interval between complaint and committal

	No.	%
Up to one week	17	5.4
1 - 2 weeks	20	6.4
2 - 4 weeks	30	9.6
1 - 3 months	97	30.9
3 - 6 months	77	24.5
6 - 12 months	51	16.2
1 - 2 years	18	5.7
2 - 3 years	4	1.3
TOTAL(1)	314	100.0
Average number of weeks	17.6	

(1) 10 cases unknown.

APPENDIX 8

Time interval between committal and sentence for cases committed directly for sentence following guilty plea

	No.	%
Up to one week	1	0.8
1 - 2 weeks	6	3.6
2 - 4 weeks	4	2.4
1 - 2 months	24	14.4
2 - 3 months	37	22.3
3 - 4 months	25	15.1
4 - 5 months	16	9.6
5 - 6 months	16	9.6
6 - 12 months	26	15.7
1 - 2 years	11	6.6
TOTAL(1)	166	100.0
Average number of weeks	19.2	

(1) 3 cases unknown.

APPENDIX 9

Time interval between committal and trial for cases committed for trial(1)

	No.	%
Up to one week	0	0.0
1 - 2 weeks	0	0.0
2 - 4 weeks	0	0.0
1 - 2 months	4	3.4
2 - 3 months	7	6.0
3 - 4 months	9	7.7
4 - 5 months	6	5.1
5 - 6 months	5	4.3
6 - 12 months	37	31.6
1 - 2 years	40	34.2
2 - 3 years	9	7.7
TOTAL(2)	117	100.0
Average number of weeks	50.1	

(1) Includes those cases where the defendant pleaded guilty after committal.

(2) One case unknown.

APPENDIX 10

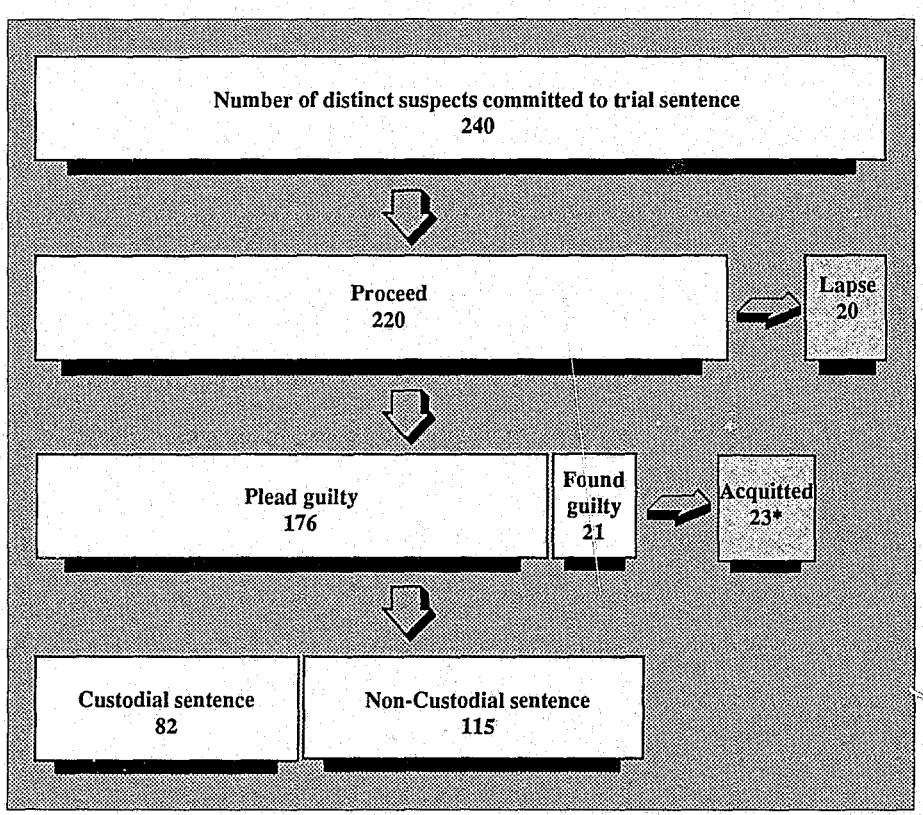
Time interval between trial and sentence

	No.	%
Same day	89	73.6
Up to one week	7	5.8
1 - 2 weeks	5	4.1
2 - 4 weeks	4	3.3
1 - 2 months	5	4.1
2 - 3 months	0	0.0
3 - 4 months	4	3.3
4 - 5 months	1	0.8
5 - 6 months	3	2.5
6 - 12 months	2	1.7
1 - 2 years	1	0.8
TOTAL(1)	121	100.0
Average number of weeks	2.8	

(1) One case unknown.

APPENDIX II

Number of distinct suspects/defendants at various stages of prosecution



* One defendant proceeded by way of trial and sentence. The defendant having entered no plea at committal for alleged offences against two complainants changed his plea to guilty with respect to offences committed against the first complainant and was acquitted of charges relating to the second complainant.

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