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**SEXUAL OFFENDING
IN
SOUTH AUSTRALIA**

by

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The aim of this Information Bulletin is to examine the incidence of sexual offending in South Australia and to detail the way in which the criminal justice system processes those individuals apprehended for such behaviour.

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INTRODUCTION

Sexual offending is a highly emotive issue which frequently attracts public and media attention because of the traumatic and potentially long-term consequences for its victims. The issue of child sexual abuse is particularly volatile, and in recent months in South Australia considerable publicity has been given to what is perceived to be a disturbing level of paedophilic behaviour. Media headlines such as "Horror of Child Rape Revealed" (The Advertiser, February 13, 1996: p8) have led to calls for tougher sentences for rape. Such debate, however, often takes place without reference to relevant statistical data.

The aim of this Information Bulletin is to provide a relatively comprehensive overview of sexual offending in South Australia, in order to facilitate more informed discussion about the issues involved.

In broad terms, the Bulletin will examine the incidence of sexual offending in South Australia as estimated from crime victimisation surveys. It will also detail the way in which the criminal justice system processes those individuals apprehended for such behaviour by examining:

- the different types of sexual offences coming to police notice;
- the proportion of offences within each category which are cleared by police;
- the outcomes of sexual offence cases brought before the adult courts; and
- the types of penalties handed down in those cases where guilt has been established.

The main offence groupings which will be considered include: rape, unlawful sexual intercourse (USI), gross indecency, indecent assault and indecent behaviour/exposure. Other behaviours, such as inciting or procuring the commission by a child of indecent acts, account for such a small number of cases that they will be grouped under the broad heading of "other" sexual offences. Definitions of these offences are provided in Appendix 1.

MEASURING SEXUAL OFFENDING: SOME METHODOLOGICAL ISSUES

Information presented in this Bulletin is drawn from two main sources: official crime statistics and crime victimisation surveys.

Official crime statistics refer to empirical data collected and compiled by agents of the criminal justice system; notably the police and courts.

Police keep detailed records on the number and types of offences reported to them. They also record details on:

- the characteristics (such as age and gender) of the victims who initiate those reports;
- the results of their investigations (ie. whether the offence was cleared or not cleared); and
- in those cases where an apprehension is made, details about the person charged.

At the next level of the system, courts keep records on the type of offences processed, the characteristics of the defendants, the outcomes of each case and the penalties handed down.

Official crime statistics therefore provide vital information on the number and type of offences dealt with by the criminal justice system. They also give an insight into how that system responds to or deals with accused persons brought before it. However, they do not, as many people assume, provide a valid measure of the actual levels of crime in the community. We know, for example, that a high proportion of offences are never reported to police in the first place and so are never recorded in police data. Moreover, of those offences which are reported, a large number are never "cleared" by police; ie. the perpetrator is never apprehended, is never brought before the courts and so is never counted in official court data.

To provide more accurate information on the "real" levels of offending, alternative data sources must be used. In South Australia, some insight into the level of sexual assault in the community is drawn from victimisation surveys. These attempt to identify how much crime actually occurs (rather than how much is reported to police) by surveying a randomly selected cross section of

households and individuals and asking them whether or not they have been the victims of particular types of crime.

The most recent survey of this type in South Australia was conducted in April 1995 by the Australian Bureau of Statistics. As part of a broader set of questions, it asked a sample of women (aged 18 and over) whether they had been the victims of a sexual assault during the previous twelve months. From the responses given by this small sample, it is then possible to estimate the incidence of sexual assault experienced by all women in South Australia.

While such surveys avoid the problem of under-reporting to police, they have other limitations. For example,

- The definition used for sexual assault in these surveys is very general and is therefore not directly comparable with the definitions applied by the criminal justice system.
- They rely on people's ability to recollect incidents accurately and to be truthful in their responses. This cannot always be guaranteed, particularly when the subject is sexual offences and when the perpetrator may be a household member.
- In relation to sexual offences, they only survey women aged 18 and over. The experiences of children and young people are therefore not identified. Nor is there any measurement of the rate of male victimisation.
- Because they canvas only a proportion of the population, they are subject to sampling errors which means that the population estimates derived from them need to be interpreted with care.

In summary then, official crime statistics and crime surveys measure two quite different things. While the latter provides some insight into levels of offending in the community, the former tells us something about how the criminal justice system responds to those offences and offenders brought to its attention. They therefore complement each other and, despite inherent methodological problems, provide a useful insight into sexual offending in South Australia.

THE INCIDENCE OF SEXUAL ASSAULT IN SOUTH AUSTRALIA

As noted above, in April 1995, the Australian Bureau of Statistics (ABS), as part of "Crime and Safety, South Australia" surveyed a sample of women aged 18 and over and asked if they had been the victim of a sexual assault during the previous twelve months. Sexual assault was defined as

"all incidents of a sexual nature involving physical contact - rape, attempted rape, indecent assault, assault with the intent to sexually assault".

On the basis of the survey results, it was estimated that, in the twelve month period from April 1994 to April 1995 some 0.7% of women aged 18 and over in South Australia had been the victims of a sexual assault. This equates to 3,900 women out of an adult female population of 563,200. By comparison, 1.1% of all persons aged 15 and over in South Australia (ie. an estimated 12,500 out of a total population of 1,148,100) reported being the victims of a robbery, while 2.9% (ie. an estimated 33,400) reported being the victims of an assault. While these figures are obviously not directly comparable, it does suggest that the incidence of sexual assault is lower than for certain other types of crime against the person.

A comparison with data obtained from the 1993 ABS 'Crime and Safety' survey indicates only a very slight decrease in the frequency of sexual assault, from 0.8% in 1993 to 0.7% in 1995. This difference is not statistically significant. It seems then, that over the past few years the incidence of sexual assault in South Australia has remained relatively stable.

Of the women who did report being the victim of a sexual offence in the 1995 survey, just over one half (59.2%) indicated that they had been victimised only once during the previous twelve months. Almost one fifth (18.8%) had been victimised twice, while a further 12.0% reported three or more victimisations. (The remaining 10% did not respond to the question.)

Of particular significance, however, is the fact that of those women who had been victimised, only 25.6% indicated that they had reported the most recent incident to police. This meant that three quarters chose not to report the matter. The level of reporting for sexual offences was lower than that recorded for any of the other offences surveyed at the same time, as indicated in Table 1.

Table 1

Percentage of victims who reported the last offence to police

SEXUAL OFFENCES	25.6%
Assault	38.5%
Robbery	54.0%
Break and Enter	81.5%
Attempted Break/Enter	32.7%
Motor Vehicle Theft	96.8%

Source: "Crime and Safety, South Australia, April 1995". ABS Cat No 4509.4, Table 7

This reluctance to report sexual offences has long been recognised and stems from a variety of factors, including shame or fear, and a reluctance by the victim to endure the additional trauma of police interviews and court hearings. It also highlights the inaccuracy of using official police statistics as an indicator of the levels of sexual offending in the community.

Given the absence of any victimisation surveys involving individuals under the age of 18, it is not possible to determine the incidence of sexual offences perpetrated against children. Nor are there any data on the incidence of sexual offences perpetrated against adult males.

OFFICIAL POLICE STATISTICS

Total number of sexual offences reported to police

Table 2 details the number of sexual offences which were reported to police during the 1993/94 and 1994/95 financial years. In interpreting these figures, several points should be noted:

- Unlike the victimisation surveys outlined above which surveyed only adult females, these figures include all offences reported, irrespective of the age or gender of the victim.

Table 2

Number of sexual offences reported or becoming known to police

Offence Classification	1993/94		1994/95	
	no.	%	no.	%
Rape	688	31.0	656	33.2
Attempted Rape	29	1.3	23	1.2
Unlawful Sexual Intercourse	70	3.2	106	5.4
Gross Indecency (under 16)	62	2.8	54	2.7
Indecent Assault	774	34.8	625	31.6
Incest	18	0.8	9	0.5
Indecent Behaviour/Exposure	528	23.8	454	23.0
Sexual Offences n.e.c	53	2.4	50	2.5
TOTAL	2 222	100.0	1 977	100.0

Source: "Statistical Review Annual Report 1994-1995." South Australia Commissioner of Police, Table 7.1

- In this table, one offence is recorded for each victim, irrespective of the number of counts reported. For example, if a victim, when interviewed by police, recalled seven occasions on which he/she had been sexually assaulted by the same person, only one offence was recorded. But if the victim recounted an incident involving rape and another involving indecent assault, then each offence would be recorded separately. This is in keeping with the counting rules used for all other offence types.

As shown, a total of 1,977 sexual offences were reported to police in 1994/95. This represented 9.6% of the 20,525 offences against the person recorded by police in that 12 month period. More significantly, it represented only 1.0% of all offences reported during that financial year (n=198,881). Thus, although sexual offences are inherently serious, they do not make up a high proportion of all crimes reported to police.

Moreover, the number of reported sexual offences seems to be declining, with the 1994/95 figure of 1,977 being somewhat lower than the 2,222 sexual offences reported during the previous year. The reasons for this decline are difficult to ascertain. It may reflect a slight decrease in the actual incidence of sexual offending in the community, or it may be due to a reduction in people's willingness to report.

This decline was observed across all but one of the offence groupings. The number of rape offences, for example, decreased from 688 to 656; indecent assaults declined from 774 to 625; and indecent behaviours fell from 528 to 454. The one exception to this trend was that of unlawful sexual intercourse, which actually increased from 70 in 1993/94 to 106 in 1994/95. Again, while these figures may indicate real shifts in the pattern of sexual offending, other factors may be relevant, such as a possible change in police charging practices.

In 1994/95 rape accounted for one third (33.2%) of all sexual offences reported, followed by indecent assault (31.6%) and indecent behaviour/exposure (23.0%). At the other end of the scale, incest accounted for only 0.5% , while attempted rape accounted for 1.2% and gross indecency for 2.7%.

Clear-up rates

Not all offences reported to police result in the apprehension of a suspect. It may be that the offence is never cleared or solved by police. And even for those offences which are designated as cleared it does not always mean that a suspect has been sent to court. After investigation, for

example, police may decide that a particular allegation is unfounded and the matter will be dropped. In other instances, an offence may be designated as cleared either because the offender or suspect has died, or because the suspect has diplomatic immunity, or for some other reason. As a result, there is no one-to-one relationship between the number of offences cleared and the number of offenders who are sent to court for that particular offence.

Table 3 details the clear-up rate for all sexual offences. As shown, in 1994/95, some 67.1% of all such offences reported to police were cleared while 32.9% were not cleared. Overall, however, only 43.0% were cleared by way of an arrest or report (ie. a suspect was actually apprehended) while 22.0% were cleared by other means, and 2.2% were judged to be unfounded. When one considers that only about 25% of sexual assaults are actually reported in the first place, and that only 43.0% of those reported are cleared by way of an apprehension, it is obvious that the number of sexual offences which are actually brought before the courts are considerably lower than the level of such offending in the community.

Table 3

Sexual offences cleared by police, 1994-95

OFFENCE	Cleared								Uncleared		Number Reported
	Unfounded		Arrest/Report		Otherwise		Total		no.	%	
	no.	%	no.	%	no.	%	no.	%			
Rape	25	3.8	309	47.1	197	30.0	531	80.9	125	19.1	656
Attempt Rape	0	0	4	17.4	4	17.4	8	34.8	15	65.2	23
USI	4	3.8	58	54.7	22	20.7	84	79.2	22	20.8	106
Gross Indecency	0	0	37	68.5	6	11.1	43	79.6	11	20.4	54
Indecent Assault	10	1.6	312	49.9	151	24.2	473	75.7	152	24.3	625
Incest	0	0	3	33.3	3	33.3	6	66.7	3	33.3	9
Indecent Behaviour	2	0.4	117	25.8	48	10.6	167	36.8	287	63.2	454
Other	2	4.0	10	20.0	3	6.0	15	30.0	35	70.0	50
TOTAL	43	2.2	850	43.0	434	22.0	1 327	67.1	650	32.9	1 977

Source: "Statistical Review Annual Report 1994-95." South Australian Commissioner of Police, Table 7.1

Table 3 also shows that clearance rates vary depending on the type of sexual offence involved. For example, whereas around 80% of all rapes, unlawful sexual intercourse and gross indecency offences were cleared, only 34.8% of attempted rapes, 36.8% of indecent behaviours and 30.0% of "other" sexual offences were listed as cleared. Moreover, the way in which an offence was cleared also varied. Whereas 68.5% of gross indecency offences were cleared by way of an arrest or report, less than one half (47.1%) of all rape offences reported to police resulted in the apprehension of a suspect. By

contrast, some 30.0% of rapes were cleared "otherwise", compared with only 11.1% of gross indecencies.

Table 4 compares the clear up rates for sexual offences with those recorded for a selection of other offence types.

As shown, the clear up rate for specific types of sexual offences such as rape is either comparable with or higher than the clear up rates for minor and serious assaults, and is considerably higher than the clear up rate for robbery. The clear up rate is also higher than for most offences against property.

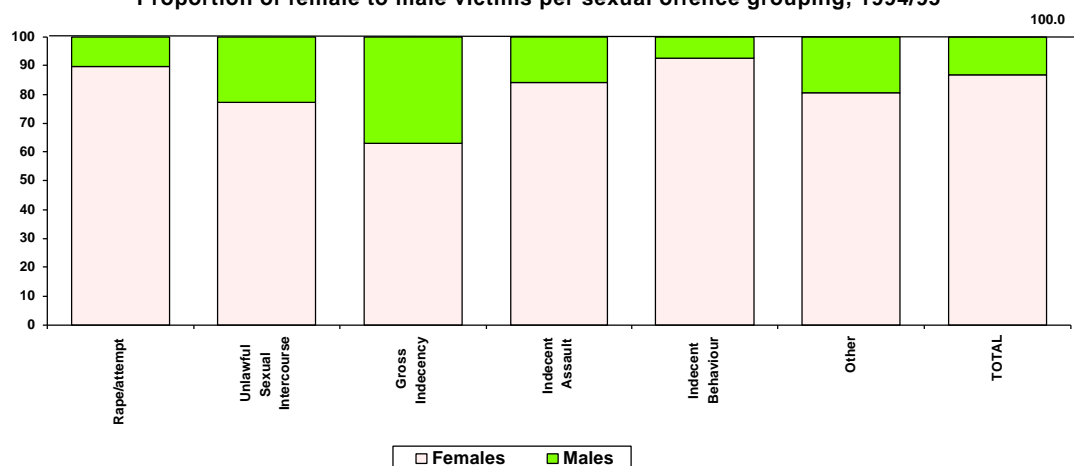
Table 4

Clear up rates: comparison between sexual offences and other offences

SEXUAL OFFENCES		OTHER OFFENCES AGAINST THE PERSON		OFFENCES AGAINST PROPERTY	
	%		%		%
Rape	80.9	Homicide	88.3	Break and Enter	9.8
Unlawful Sexual Intercourse	79.2	Serious Assaults	74.2	False Pretences	71.3
Gross Indecency	79.6	Minor Assaults	81.8	Other Theft	18.7
Indecent Assault	75.7	Robbery	37.1		
Indecent Behaviour	36.8				
TOTAL	67.1	TOTAL	75.5	TOTAL	20.6

Source: "Statistical Review Annual Report 1994 - 1995." South Australia Commissioner of Police, Table 7.1

Figure 1
Proportion of female to male victims per sexual offence grouping, 1994/95



Source: "Statistical Review Annual Report 1994-1995." South Australia Commissioner of Police, Table 8.1

Characteristics of victims who report sexual offences to police

Gender

As shown in Figure 1, the overwhelming majority (86.9%) of all sexual offences reported to police involved a female victim and this pattern was fairly consistent across all of the offence categories. In 1994/95 for example, of the 679 rapes or attempted rapes reported to police, 89.8% involved a female victim, as did 77.4% of all unlawful sexual intercourse offences, 63.0% of all gross indecencies, 84.1% of all indecent assaults and 92.8% of all indecent behaviours. However, it should be stressed that this predominance of females may be partially due to different reporting rates between the two sexes. Adult males, for example, may be even more reluctant to report such

offences than females possibly because of the different societal pressures and expectations placed on them.

Age of victims

An age breakdown of the victims of sexual offences is presented in Table 5. As shown, the majority of victims were relatively young, with 37.1% aged 14 or under, and 58.2% aged less than 20. By contrast, only 5.8% of victims were aged 45 and over.

Table 5

Age of sexual offence victims, 1994-95

Age	Total	
	no.	%
0-14	716	37.1
15-19	407	21.1
20-24	256	13.3
25-34	296	15.3
35-44	145	7.5
45-59	86	4.5
> 59	26	1.3
TOTAL	1 932	100.0

Unknown = 45

Source: "Statistical Review Annual Report 1994-1995."
South Australia Commissioner of Police, Table 8.1

Age profiles varied somewhat from one offence category to another (see Table 6). Given the fact that unlawful sexual intercourse and gross indecency are both defined in terms of the youthfulness of the victim (see Appendix 1), it is not surprising that 64.2% and 77.8% respectively of the victims of these offences were aged 14 and under. Yet even for those offences where age is not a determinant of illegality, young people still feature prominently as victims. In fact 49.8% of victims of indecent assault were aged 14 and under, as were 28.2% of victims of rape and attempted rape. A further 21.0% of rape/attempt rape victims were aged 15 to 19, which meant that in total, almost one half (49.2%) were under the age of 20. By contrast, only 4.7% of rape/attempt rape victims were aged 45 and over.

Table 6

Age of sexual offence victims by type of offence

Age	Rape/Attempted Rape	Unlawful Sexual Intercourse	Indecent Assault	Gross Indecency	Indecent Behaviour
	%	%	%	%	%
0-14	28.2	64.2	49.8	77.8	20.1
15-19	21.0	30.2	20.8	14.8	19.9
20-24	17.3	4.7	11.3	3.7	13.4
25-34	19.9	0.9	10.2	1.9	21.5
35-44	8.9	0	3.7	1.9	13.4
45-59	4.0	0	2.7	0	9.1
> 59	0.7	0	1.5	0	2.6
TOTAL	100.0 n = 677	100.0 n = 106	100.0 n = 620	100.0 n = 54	100.0 n = 418

Source: "Statistical Review Annual Report 1994 - 1995." South Australia Commissioner of Police, Table 8.1

It should be stressed, however, that these figures do not "prove" that young people are more vulnerable to rape and other sexual offences than older people. Instead, differences in willingness to report an incident to police may be at least a partial contributor to these age differences. To illustrate, in the case of children, because it is usually adults (either parents, guardians, school teachers etc) who are responsible for bringing such offences to the attention of police, this may lead to greater levels of reporting. This is particularly likely, given the fact that mandatory notification of child sexual abuse has been in place in South Australia for a number of years. By contrast, in cases involving adult victims, because it is usually the victims themselves who must decide whether or not to report, there may be greater reluctance to do so. Unfortunately, as noted earlier, victimisation surveys make no attempt to measure the incidence of sexual assault against children, which means that we know very little about whether or to what extent reporting rates vary according to age (or for that matter, gender).

Before leaving this issue of age differences, it is also worth noting that on the whole, male victims tended to be younger than their female counterparts. In fact, if all sexual offences are considered (see Table 7) well over one half (58.5%) of all male victims were aged 14 and under compared with a much lower figure of 33.8% for female victims.

Table 7

Age and gender of sexual offence victims

Age	Male		Female	
	no.	%	no.	%
0-14	148	58.5	568	33.8
15-19	38	15.0	369	22.0
20-24	20	7.9	236	14.1
25-34	30	11.9	266	15.8
35-44	9	3.6	136	8.1
45-59	6	2.4	80	4.8
> 59	2	0.8	24	1.4
TOTAL	253	100.0	1 679	100.0

Source: "Statistical Review Annual Report 1994 - 1995."
 South Australia Commissioner of Police, Table 8.1

At the other end of the scale, only 6.8% of male victims were aged 35 and over, compared with 14.3% of female victims. Again, however, these patterns varied from one offence grouping to another, as indicated in Table 8.

Table 8

Proportion of victims per offence category aged 14 and under

Offence	Male %	Female %
Rape	58.8	24.9
Unlawful Sexual	62.5	64.6
Intercourse		
Gross	75.0	79.4
Indecency		
Indecent	64.6	47.0
Assault		
Indecent Behaviour	16.7	20.4

Source: "Statistical Review Annual Report 1994 - 1995."
 South Australia Commissioner of Police, Table 8.1

Relationship between victim and offender

One final piece of information derived from police data focuses on the relationship between the offender and victim. While these data are only published for the offences of rape and attempted rape, they are nevertheless useful in reinforcing a fact which is now well established - namely that in most instances of rape the perpetrator is known to the victim. As shown in Table 9, only 16.4% of rape and attempted rape offences reported to police in 1994/95 involved a stranger. In the remaining cases the alleged offender was known. In total, 18.9% involved a friend/family friend, 17.8% involved an acquaintance or co-worker, while 18.6% involved either a parent, sibling or other relative. Current or ex defactos and spouses accounted for a further 10.2%.

Table 9

Relationship between victim and offender:
rape/attempted rape

Relationship	no.	%
Stranger	105	16.4
Parent/ Guardian	57	8.9
Brother/Sister	10	1.6
Other Relative	52	8.1
Friend/ Family Friend	121	18.9
Acquaintance/Co- worker	114	17.8
Boy/Girl friend and ex-Boy/Girl friend	35	5.5
Defacto Spouse	19	3.0
Ex-defacto Spouse	18	2.8
Spouse	17	2.7
Ex-spouse	11	1.7
Housemate	19	3.0
Neighbour	13	2.0
Employer/Servant	3	0.5
Teacher/Tutor	2	0.3
Worker/Servant	2	0.3
Other	41	6.4
TOTAL	639	100.0

Unknown = 40

*Source: "Statistical Review Annual Report 1994 - 1995."
South Australia Commissioner of Police, Table A.10.*

PROCESSING OF SEXUAL OFFENCES THROUGH THE COURT SYSTEM

Once police have identified an alleged offender and the decision to prosecute has been made, if the suspect is an adult the matter is usually referred to the Magistrates Court, at least for a preliminary hearing. (It should be noted at this point that cases involving juvenile offenders will not be considered in this Bulletin).

However, only those sexual offences which are classified as minor indictable matters (such as some indecent assaults) or summary matters (such as indecent behaviour) can actually be finalised at the Magistrates Court level by way of a sentencing. By contrast, offences designated as major indictables - such as rape, attempted rape and unlawful sexual intercourse - must be sent to a Higher Court for finalisation. Thus, while the majority of cases have their beginnings in the Magistrates Court, all major indictable matters which are not withdrawn or dismissed at a preliminary or committal hearing in the Lower Court must be referred on to the Supreme or District Court either for trial or sentencing.

In the ensuing sections, data relating to the outcomes of cases dealt with by the Magistrates Court and Higher Courts will be outlined. It should be stressed, however, that these statistics are not directly comparable with the police-based data presented above, for a number of reasons.

- First, the data presented relate to the 1994 calendar year only rather than to the 1994/95 financial year used in discussing police data.
- Second, even if 1994/95 court data were available, the number of cases processed through the courts in any given year bears no direct relationship to the number of matters reported to police in that same year. For example, a victim may report a rape in one year but it may take several years before a suspect is apprehended and the case finalised by the courts.
- Third, the counting units used to compile the police statistics differ from those used at the court level. The court statistics presented in the ensuing discussion relate, not to individual offences, but to finalised cases. While each case may involve more than one offence, for the purposes of this analysis only those finalised cases where a sexual offence was identified as the major or most serious charge - ie. the one attracting the most serious penalty - are counted. For example, if a person was charged with rape, minor assault and break/enter, and the rape charge resulted in five years imprisonment while the other two offences involved a non-custodial sentence, then rape would be designated as the major charge. Similarly, if a person was charged with two sexual offences - such as rape and indecent assault - only that charge which attracted the most serious penalty would be counted. By contrast, if a victim reported to police that they were the victims of rape and indecent assault, both would be counted in the police data. Other differences also apply. For example, the police statistics outlined earlier relate to victims, whereas the court data pertain to defendants. One defendant may be charged with multiple offences involving several different victims. If all of these offences are finalised at the one hearing, only the one designated as the most serious for that case would be counted in the court statistics, but in the police data, each victim would be counted separately.
- Fourth, the final charge(s) processed by the court may be different from the one(s) laid by police at the point of apprehension.

The main purpose of court-based data then, is not to provide a point of comparison with police statistics, but to identify how defendants are dealt with once they become the subject of a formal prosecution.

Sexual offence cases dealt with by the Magistrates Court

In the 1994 calendar year, 456 appearances finalised by the Magistrates Court involved a sexual offence as the major charge. As shown in Table 10, in 34.2% of these cases rape constituted the major charge, while indecent assault accounted for a further 36.6% and indecent behaviour/exposure 19.1%. Relatively few cases involved unlawful sexual intercourse as the major offence (6.6%) while only four (0.9%) involved attempted rape and one (0.2%) involved incest. For those offences where the gender of the victim was known - ie. in cases involving rape, attempted rape, indecent assault and USI - the victims were overwhelmingly female.

Table 10

Cases dealt with by the Magistrates Court in 1994 where the major offence charged was a sexual offence

Major Offence	Magistrates Court	
	no.	%
Rape		
of female	122	26.8
of male	19	4.2
unspecified	15	3.3
TOTAL RAPE	156	34.2
Attempted Rape		
of female	4	0.9
of male	0	0
unspecified	0	0
TOTAL ATTEMPTED RAPE	4	0.9
Indecent Assault		
of female	123	27.0
of male	19	4.2
unspecified	25	5.5
TOTAL INDECENT ASSAULT	167	36.6
Unlawful Sexual Intercourse		
with female	22	4.8
with male	3	0.7
unspecified	5	1.1
TOTAL UNLAWFUL SEXUAL INTERCOURSE	30	6.6
Incest	1	0.2
Indecent behaviour/exposure	87	19.1
Gross Indecency	2	0.4
Other	9	2.0
TOTAL	456	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 3.3

Outcomes

The outcomes for these major charges are depicted in Tables 11 to 14.

Rape/attempted rape

Rape and attempted rape constitute major indictable offences and so cannot be finalised in the Magistrates Court. This is reflected in the outcomes. As shown in Table 11, just under one half (48.1%) of these cases resulted in the matter being committed for trial or sentence in the Higher Court. However, in an equally high proportion of cases (46.9%), the major charge was either dismissed or withdrawn. The proportion of dismissals or withdrawals was higher in cases where the victim was a female rather than a male (46.8% compared with 36.8%). In the remaining eight cases, the defendant was found guilty of a lesser or another offence.

Indecent assault

Indecent assault can be categorised as either a major or minor indictable offence, depending on the severity of the behaviour involved. Some cases therefore fall within the jurisdiction of the Magistrates Court. This is reflected in Table 12 where 34.7% of cases were finalised either by way of a conviction with penalty (30.5%) or a finding of guilt without conviction (4.2%). Some 17.4% were considered serious enough for committal to a Higher Court for trial or sentencing. However, as was the case with rape, in a particularly high proportion of cases (44.9%) the major charge was either withdrawn or dismissed.

While the number of cases involving a male victim was relatively small, it is interesting to note that the majority of these resulted in the dismissal of the major charge (63.2%) while the remainder were either convicted with penalty or were found guilty without conviction. By contrast, in the cases involving a female victim, a smaller proportion resulted in dismissal (34.1%), while one fifth (20.3%) were committed for trial or sentence in a Higher Court

Table 11

Outcome for the major charge of rape/ attempted rape, Magistrates Court, 1994

Outcome	Female victim		Male Victim		Gender Unspecified		Total	
	no.	%	no.	%	no.	%	no.	%
Committed for trial or sentence	62	49.2	10	52.6	5	33.3	77	48.1
Guilty of lesser or other offence	5	4.0	2	10.5	1	6.7	8	5.0
Major charge withdrawn	2	1.6	0	0	0	0	2	1.3
Major charge dismissed	57	45.2	7	36.8	9	60.0	73	45.6
TOTAL	126	100.0	19	100.0	15	100.0	160	100.0
		0		0				

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 3.3

Table 12

Outcome for the major charge of indecent assault, Magistrates Court, 1994

Outcome	Female victim		Male Victim		Gender Unspecified		Total	
	no.	%	no.	%	no.	%	no.	%
Committed for trial or sentence	25	20.3	0	0	4	16.0	29	17.4
Convicted with penalty	40	32.5	6	31.6	5	20.0	51	30.5
Guilty without conviction	6	4.9	1	5.3	0	0	7	4.2
Guilty of lesser or other offence	3	2.4	0	0	0	0	3	1.8
Acquitted on major charge	2	1.6	0	0	0	0	2	1.2
Major charge withdrawn	5	4.1	0	0	1	4.0	6	3.6
Major charge dismissed	42	34.1	12	63.2	15	60.0	69	41.3
TOTAL	123	100.0	19	100.0	25	100.0	167	100.0
		0		0				

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 3.3

Table 13

Outcome for the major charge of unlawful sexual intercourse, Magistrates Court, 1994

Outcome	Female victim	Male Victim	Gender Unspecified	Total	
	no.	no.	no.	no.	%
Committed for trial or sentence	14	1	5	20	66.7
Major charge withdrawn	1	0	0	1	3.3
Major charge dismissed	7	2	0	9	30.0
TOTAL	22	3	5	30	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 3.3

Table 14

Outcome for the major charge of indecent behaviour/exposure, Magistrates Court, 1994

Outcome	Total	
	no.	%
Convicted with penalty	42	48.3
Convicted without penalty	1	1.1
Guilty without conviction	24	27.6
Major charge withdrawn	14	16.1
Major charge dismissed	6	6.9
TOTAL	87	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 3.3

Unlawful sexual intercourse

Although the number of cases involving this offence was relatively small (n=30), two thirds resulted in a committal to a Higher Court, while in the remaining third, the major charge was dismissed or withdrawn (see Table 13).

Indecent behaviour/exposure

For this summary offence, the outcomes were generally different from those observed for the indictable offences (Table 14). In fact, over three quarters (77.0%) resulted in a sentence - either convicted with or without penalty, or guilty without conviction. Conversely, the major charge was either dismissed or withdrawn in less than one quarter (23.0%) of cases. For this less serious offence then, there is a greater likelihood that the offender will be found guilty or admit guilt. By contrast, for the more serious major indictable offences of rape and indecent assault, the chances of the major charge being dismissed or withdrawn are much higher.

Several factors may account for this. First, because it is a summary offence, the maximum penalty which can be imposed is considerably less severe than those stipulated for a major indictable offence. Hence, there may be a greater willingness to admit. Secondly, anecdotal evidence suggests that such behaviour is more

likely to be observed by an independent “witness” (often a police officer), which increases the likelihood of a successful prosecution. By contrast, in the majority of rape cases, for example, there are no witnesses, and so it comes down to the word of the victim against the word of the defendant.

Penalties imposed by the Magistrates Court

As noted above, the Magistrates Court can impose penalties only in those cases involving summary or minor indictable offences. The only two sexual offences which fall within these categories are some indecent assaults and indecent behaviour/exposure. In the ensuing discussion, only the most serious penalty imposed for the major charge is counted. For example, if an indecent behaviour charge resulted in a community service order and a licence disqualification, only the community service order would be listed. The rank ordering of severity assigned to different penalties is listed in Appendix 2.

Indecent assault

The main penalties imposed by the Magistrates Court in relation to the major charge of indecent assault where a conviction with penalty was recorded are detailed in Table 15. As shown, the majority (61.1%) resulted in suspended imprisonment, while 18.5% resulted in direct imprisonment. The number of cases involving a male victim is too small to enable valid comparison between the sexes.

Table 15

Major penalty imposed for the major charge of indecent assault; Magistrates Court, 1994

Penalty	Where victim was female		Where victim was male		Where sex unspecified		Total	
	no.	%	no.	%	no.	%	no.	%
Fine	6	14.3	0	0	0	0	6	11.1
Community Service Order	1	2.4	0	0	0	0	1	1.9
Bond	2	4.8	1	14.3	1	20.0	4	7.4
Suspended Imprisonment	27	64.3	3	42.8	3	60.0	33	61.1
Imprisonment	6	14.3	3	42.8	1	20.0	10	18.5
TOTAL	42	100.0	7	100.0	5	100.0	54	100.0

Average length of imprisonment 45 weeks 87 weeks 91 weeks 55 weeks

Source: “Crime and Justice in South Australia 1994”, Office of Crime Statistics, Table 3.16

Indecent behaviour/exposure

Table 16 details the penalties imposed for the major charge of indecent assault/exposure. Fines and bonds accounted for 72.1% of these, while imprisonment (either direct or suspended) was imposed in only 18.6% of cases. The predominance of community-based sanctions reflects the less serious nature of this type of behaviour compared with other types of sexual offending.

Table 16

Major penalty imposed for the major charge of indecent behaviour/exposure; Magistrates Court, 1994

Penalty	no.	%
No penalty	1	2.3
Fine	18	41.9
Community Service Order	3	7.0
Bond	13	30.2
Suspended	4	9.3
Imprisonment		
Imprisonment	4	9.3
TOTAL	43	100.0

Average length of imprisonment = 8 weeks

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 3.16

Sexual offences dealt with by the District and Supreme Courts, 1994

In the 1994 calendar year, the District and Supreme Courts finalised 220 cases in which a sexual offence constituted the major charge. As shown in Table 17, 46.8% of these cases involved rape or attempted rape as the major offence, while 23.2% involved indecent assault and 27.7% involved unlawful sexual intercourse.

In relation to the rape charges, the overwhelming majority (90 out of 97) involved a female victim.

While age was not specified for rape, this information was available for indecent assault and unlawful sexual intercourse. As shown, of the 51 cases where indecent assault was listed as the major charge, 22 (43.1%) involved victims under the age of 12, while another quarter (25.5%) were aged 12 to 16. In total then, victims aged 16 and under accounted for 68.6% of all indecent assault cases.

Table 17

Supreme and District Court appearances where a sexual offence was listed as the major charge

Major Charge	District/Supreme Court	
	no.	%
Rape		
of female	90	40.9
of male	7	3.2
Attempted Rape	6	2.7
TOTAL RAPE/ATTEMPT	103	46.8
Indecent Assault		
victim under 12	22	10.0
victim 12-16	13	5.9
victim over 16	3	1.4
victim's age unstated	13	5.9
TOTAL INDECENT ASSAULT	51	23.2
Unlawful Sexual Intercourse		
victim under 12	40	18.2
victim 12-16	20	9.1
victim over 16	1	0.5
TOTAL UNLAWFUL SEXUAL INTERCOURSE	61	27.7
Incest	4	1.8
"Other"	1	0.5
TOTAL SEXUAL OFFENCES	220	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 4.3

Given that by definition, unlawful sexual intercourse applies almost exclusively to victims aged 16 and under, it is not unexpected that 60 of the 61 cases where USI constituted the major charge involved victims within this age category. By contrast, only one of the 61 cases involved a victim who was aged over 16.

Outcomes

Outcomes for the 97 cases where rape was listed as the major charge are detailed in Table 18. As shown, only 13 (13.4%) resulted in a plea of guilty, either to the major charge or to a different offence. A further 38 (39.2%) pleaded not guilty and stood trial. Of these, 10 were found guilty as charged, 10 were found guilty of a lesser or other offence, while 18 were acquitted. However, by far the most common outcome was that of a nolle prosequi. Here, the prosecution decided not to proceed with the major charge. This applied to 44 (45.4%) of all rape cases, and 41 of these resulted in the accused being discharged.

In total then, of the 97 rape cases dealt with by the Higher Courts in 1994, the majority (59 or 60.8%) resulted in the defendant being acquitted or discharged, either as a result of a trial or because of a nolle prosequi. Conversely, only 20 (20.6%) either admitted to or were found guilty of the original charge of rape. The remainder (16.5%) either admitted to or were found guilty of another or lesser offence, while two received an "other" outcome.

A somewhat similar pattern applied to those cases where either indecent assault or unlawful sexual intercourse was listed as the major charge (Table 19). In relation to indecent assaults, 41.2% of the 51 major charges resulted in the accused being discharged because of a nolle prosequi, while 14 (27.5%) of the accused were acquitted as a result of a trial. In total then, 68.7% of cases involving indecent assault resulted in an acquittal or discharge. Conversely, only 15 of the 51 (29.4%) admitted to or were found guilty of indecent assault, as originally charged.

In the 61 cases where unlawful sexual intercourse constituted the major charge, the proportion who admitted to or were found guilty of the original offence was somewhat higher (37.7%) while the proportion who were either acquitted as a result of a trial or had their case discharged because of a nolle prosequi was somewhat lower (45.9%). Nevertheless, this latter figure is still high.

table 18

District/Supreme Court outcomes where rape was the major charge

Outcome for major charge	Victim = female		Victim = male		Total	
	no.	%	no.	%	no.	%
Guilty Plea						
Guilty as charged	8	8.9	2	28.6	10	10.3
Guilty of other offence	3	3.3	0	0	3	3.1
Trial						
Guilty as charged	10	11.1	0	0	10	10.3
Guilty of lesser/other offence	9	10.0	1	14.3	10	10.3
Acquitted	16	17.8	2	28.6	18	18.5
Nolle prosequi						
Guilty of other offence	3	3.3	0	0	3	3.1
Accused discharged	40	44.4	1	14.3	41	42.3
Other outcome	1	1.1	1	14.3	2	2.1
TOTAL	90	100.0	7	100.0	97	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 4.3.

Table 19

District/Supreme Court outcomes where indecent assault or USI was the major charge, 1994

Outcome for major charge	Indecent Assault		Unlawful Sexual Intercourse	
	no.	%	no.	%
Guilty Plea				
Guilty as charged	11	21.6	19	31.1
Guilty of other offence	1	2.0	5	8.2
Trial				
Guilty as charged	4	7.8	4	6.6
Guilty of other/lesser offence	0	0	3	4.9
Acquitted	14	27.5	11	18.0
Nolle Prosequi				
Guilty of other offence	0	0	2	3.3
Accused discharged	21	41.2	17	27.9
TOTAL	51	100.0	61	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 4.3.

Of the remaining five cases involving "other" sexual offences, four resulted in the acquittal of the accused, either as a result of a trial (n=3) or because of a nolle prosequi (n=1). Only one of the five resulted in a guilty plea to the original charge.

Table 20 details the outcomes for all 220 cases dealt with by the Supreme and District Courts where a sexual offence constituted the major charge. This illustrates very clearly the high number of acquittals as a result of a trial (20.9%) or discharges from a nolle prosequi (37.7%). Conversely, only 27.3% (ie. just over one quarter) were found guilty or admitted guilt to the original charge.

Table 20

District/Supreme Court outcomes where a sexual offence was listed as the major charge

Outcome for major charge	no.	%
Guilty Plea		
Guilty as charged	42	19.1
Guilty of other offence	10	4.5
TOTAL GUILTY PLEA	52	23.6
Trial		
Guilty as charged	18	8.2
Guilty of lesser/other offence	13	5.9
Acquitted	46	20.9
TOTAL TRIAL	77	35.0

Nolle Prosequi		
Guilty of other offence	6	2.7
Accused discharged	83	37.7
<hr/>		
TOTAL NOLLE PROSEQUI	89	40.4
<hr/>		
Other outcome	2	0.9
<hr/>		
TOTAL	220	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 4.3.

Longitudinal trends in major outcome types, Supreme and District Courts, 1980 to 1994

Given the high proportion of sexual offence cases which, in 1994, resulted in a nolle prosequi, a longitudinal analysis was undertaken to identify whether there had been any shifts in court outcomes during the past 15 years or so.

Figure 2 details longitudinal trends in outcomes for those cases where the major charge involved a sexual offence. As shown, from 1985 onwards, two clear patterns emerge. First, the number of guilty findings decreased while conversely, the number of nolle prosequis increased. In fact, in 1985, some 72.2% of major outcome types in cases involving sexual offences resulted in a finding or admission of guilt, while only 11.1% resulted in a nolle prosequi. By 1994, guilty findings had dropped to 40.9% while nolles had increased to 37.7%. During the same period, the number of acquittals at trial remained relatively stationary, despite annual fluctuations.

A similar pattern is evident for cases where rape constituted the major charge. As shown in Figure 3, the percentage of nolles has shown a definite increase, particularly since 1988. Conversely, the proportion of guilty pleas (either to the original charge or to a lesser or other charge) has declined.

A nolle prosequi may be entered as a way of substituting a replacement charge or in exchange for a plea of guilty to a different or lesser charge. Alternatively, it may involve the total discharge of the accused. To identify which of these two alternatives has accounted for the overall increase in nolles, a separate analysis of nolle prosequi outcomes was undertaken which differentiated between these two options. The results show quite clearly that the type of nolle prosequi which has increased most significantly is that in which no other charge is substituted or where no other guilty plea is accepted in satisfaction of the original charge. In other words, the main cause of the increase in nolles has been a dramatic increase in the number resulting in the total discharge of the accused.

And this applied to cases involving all types of sexual offences (Figure 4) as well as to those cases involving rape offences only (Figure 5).

Figure 2. Trends in the percentages of major outcome types in all types of sexual offence cases, Supreme and District Courts, 1980 - 1994

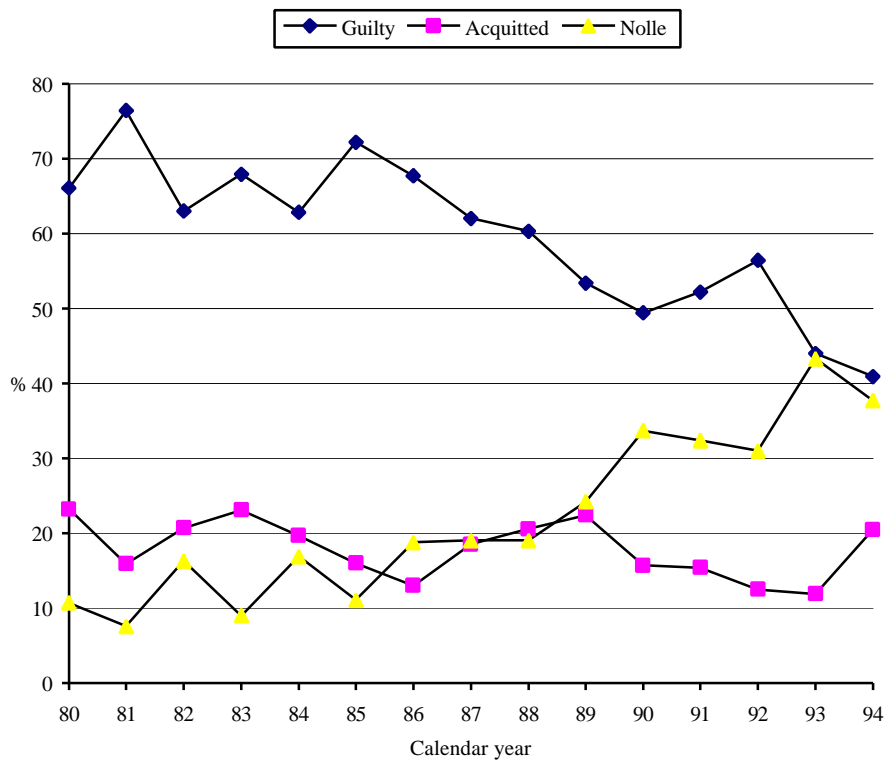


Figure 3. Trends in the percentages of major outcome types in rape cases, Supreme and District Courts, 1980 - 1994

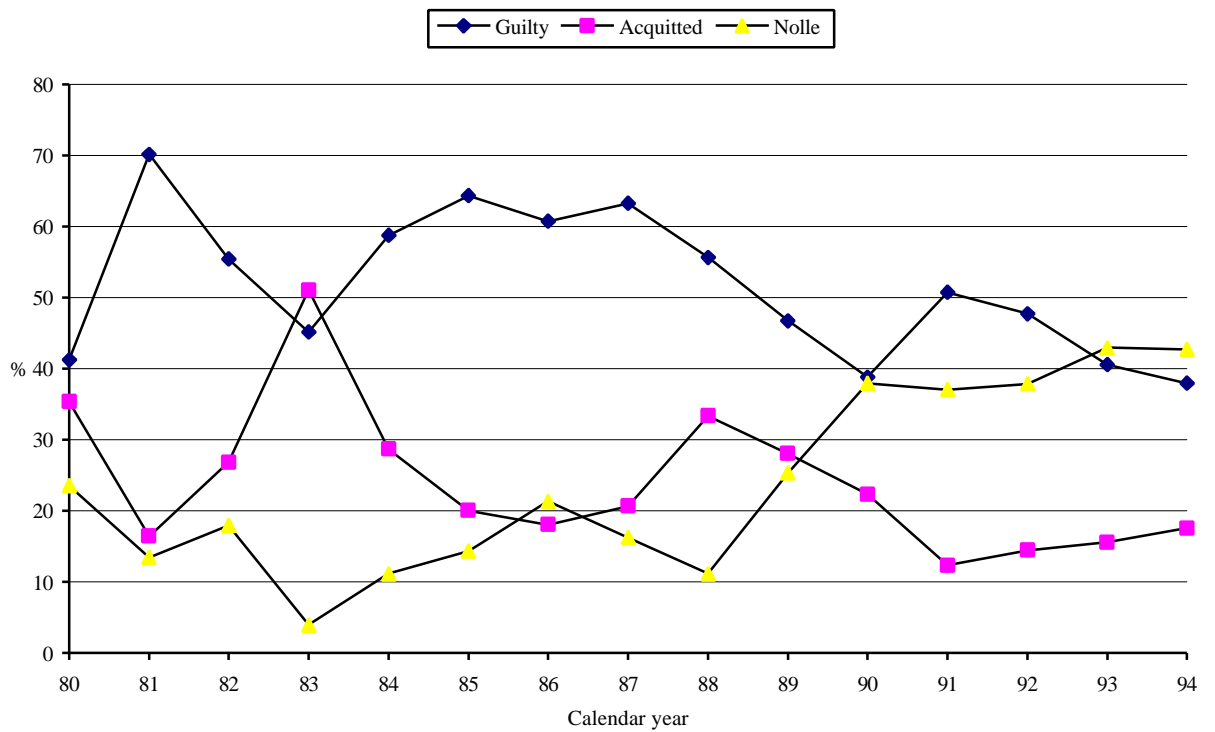


Figure 4. Nolle prosequi outcomes, all types of sexual offences, Supreme and District Courts, 1980 -1994.

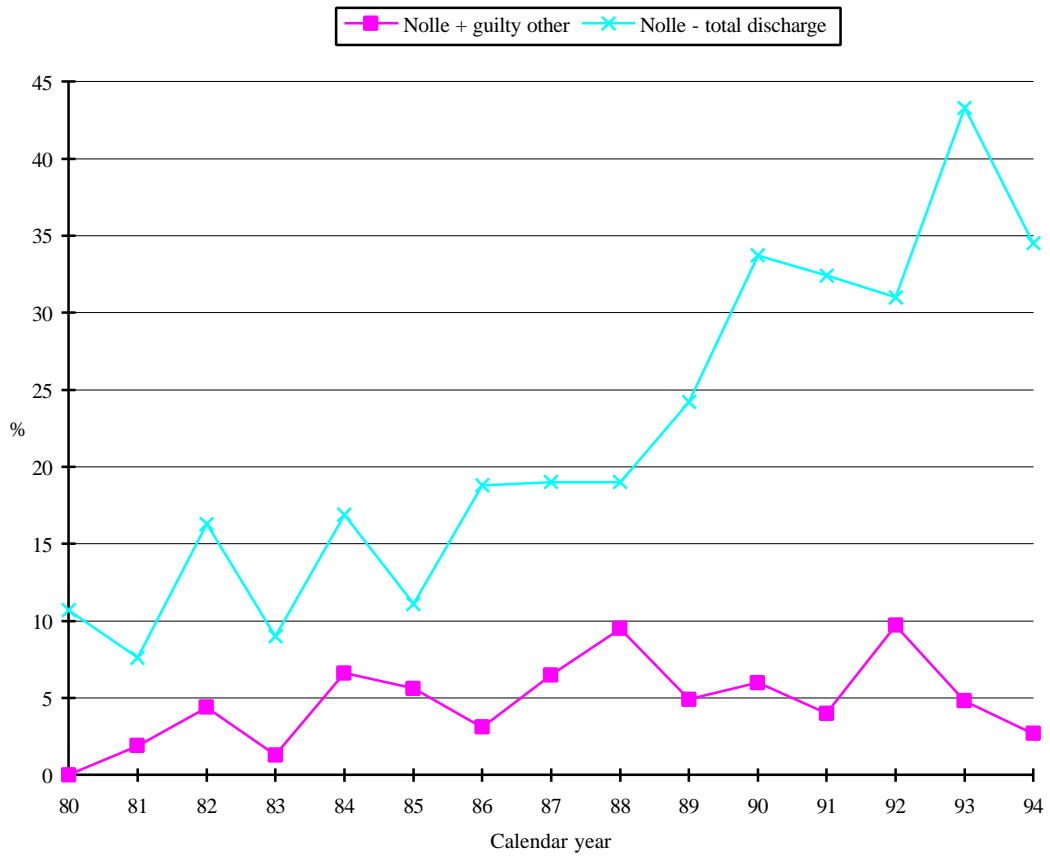
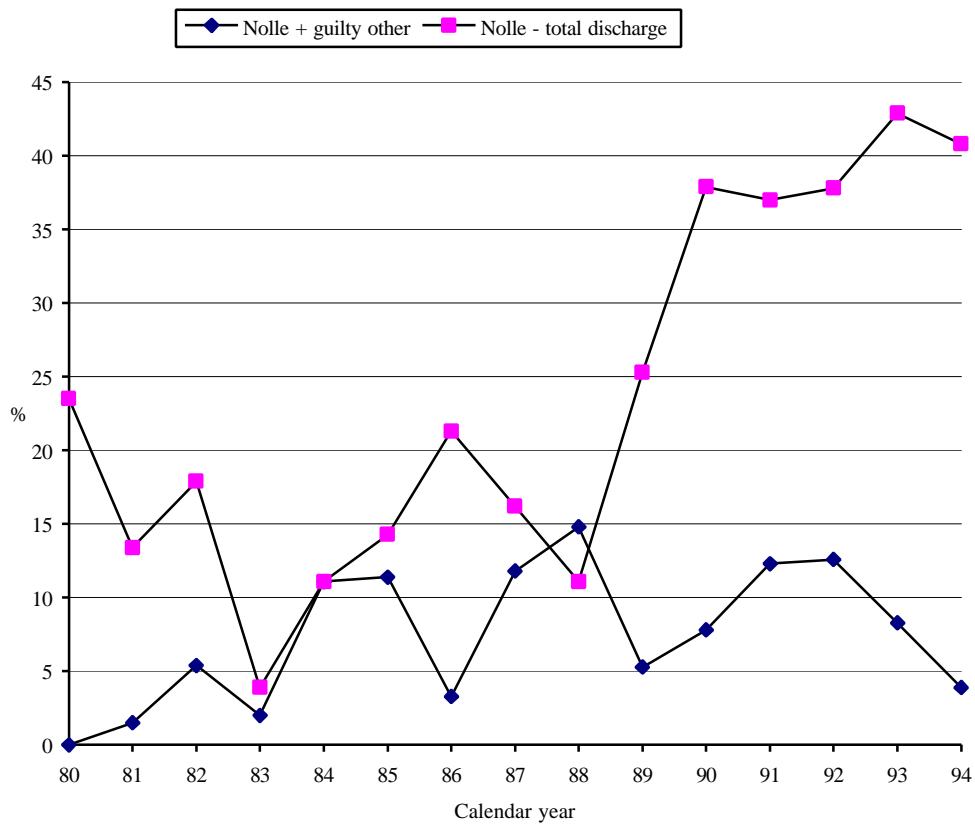


Figure 5. Nolle prosequi outcomes as a percentage of all outcomes, rape offences, Supreme and District Courts, 1980 -1994



No definitive explanation can be offered for this trend. However, one possibility may be that, because of the stronger public focus on child abuse over the past decade or so, a larger number of cases now involve children. It is widely recognised that such cases are difficult to prosecute because of the immaturity of the victim and the circumstances of the offence. A second possibility is that, because of the greater encouragement given to adult victims to report incidents of sexual abuse, more diffident or reluctant adult victims may now be coming forward. Such victims may be less able to sustain the effort of a lengthy and gruelling prosecution, leading to more nolle prosequis.

Because of the importance of this issue, a more detailed investigation of the reasons for this change in the proportion of nolle prosequis is urgently required.

Penalties imposed by the Supreme and District Courts, 1994 Calendar Year.

The following statistics detail the major penalty imposed in those cases where the major charge involved a sexual offence and where that offence resulted in a finding of guilt.

Rape

As Table 21 shows, of the 21 cases where rape constituted the major charge, just over three quarters resulted in immediate imprisonment. More specifically, for those cases involving a female victim where there was a finding of guilt:

- the majority (16 or 88.9%) resulted in immediate imprisonment. For these cases, the average sentence was 79.5 months with an average non parole period of 48.0 months. Of these 16, one received a prison term of four to five years; 13 received a sentence of five to 10 years, while the remaining two received sentences of 10 to 15 years;
- two cases resulted in a suspended imprisonment, one involving a 48 month sentence and the other a 60 month sentence.

In the three cases involving a male victim, all resulted in suspended imprisonment with the average length of the suspended term being 32.0 months.

There were also three cases of attempted rape where a finding of guilt was handed down. Of these, one received a suspended sentence of 48 months duration, while two received prison terms. The average non-parole period was 51.0 months and the average sentence was 61.5 months.

Indecent assault

Table 22 shows that of the 25 cases where indecent assault was the major charge proved, the majority (16 or 64.0%) resulted in direct imprisonment.

Table 21

Supreme and District Court appearances: major penalty for those cases where rape was the major charge

Major penalty	Female Victim	Male Victim	Total	
	no.	no.	no.	%
Suspended imprisonment	2	3	5	23.8
Immediate imprisonment	16	0	16	76.2
TOTAL	18	3	21	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 4.14

Table 22

Supreme and District Court appearances: major penalty for those cases where indecent assault was the major charge

Major penalty	Victim under 12	Victim 12-16	Victim over 16	Victim age unstated	TOTAL	
	no.	no.	no.	no.	no.	%
Bond with Supervision	0	1	0	0	1	4.0
Suspended Imprisonment	2	0	2	4	8	32.0
Imprisonment	8	5	1	2	16	64.0
TOTAL	10	6	3	6	25	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 4.14

The likelihood of receiving this penalty increased as the age of the victim decreased. Thus, eight of the 10 cases involving a victim aged under 12 resulted in direct imprisonment, compared with only one of three cases where the victim was aged over 16. However, it should be stressed that because of the small numbers involved, caution should be exercised in drawing conclusions from these figures.

Of those cases which did not result in direct imprisonment, the majority (eight of the nine cases) received a suspended sentence.

Unlawful sexual intercourse

As shown in Table 23, of the 27 cases involving unlawful sexual intercourse as the major proven charge, just over one half (51.9%) resulted in direct imprisonment. There was also a clear relationship between the age of the victim and the penalty imposed. In those cases where the victim was under 12, nine of the ten cases resulted in direct imprisonment. However, only five of the 16 cases involving victims aged 12 to 16 received this penalty.

Table 23

Supreme and District Court appearances: major penalty for those cases where unlawful sexual intercourse was the major charge

Major penalty	Victim	Victim	Victim	TOTAL	
	under 12	12-16	over 16	no.	%
	no.	no.	no.		
Bond with Supervision	0	3	1	4	14.8
Suspended Imprisonment	1	8	0	9	33.3
Imprisonment	9	5	0	14	51.9
TOTAL	10	16	1	27	100.0

Source: "Crime and Justice in South Australia 1994", Office of Crime Statistics, Table 4.14

The length of imprisonment was also longer in cases involving very young victims, as illustrated below:

	Average non parole period.	Average sentence
Victim aged less than 12	43.3 months	61.3 months
Victim aged 12 to 16	20.2 months	36.2 months

"Other" sexual offences

Penalties imposed for the "other" sexual offences dealt with were as follows:

- The one case involving incest as the major charge resulted in a suspended sentence of 18 months duration; and
- The single case involving an "other" sexual offence resulted in a suspended sentence of 36 months.

Total sexual offences

In total then, of the 78 cases dealt with by the District or Supreme Court in 1994 where a sexual offence constituted the major charge and a finding of guilt was handed down, the following penalties were imposed:

	no.	%
Bond with Supervision	5	6.4
Suspended Imprisonment	25	32.1
Imprisonment	48	61.5

Conclusion

While much of the public debate on sexual assault has focussed on the perceived inadequacy of the sentences handed down by the courts, the information presented in this Bulletin highlight other points of concern.

- First, there is the extremely low reporting rate for this type of offending, with an estimated 75% of women victims choosing not to notify police of the crime.
- Second, once a matter is reported to police, the proportion which is cleared by way of an apprehension may be relatively low. As noted earlier, less than half of all rape offences reported in 1994/95 resulted in the arrest or reporting of a suspect.
- Third, once brought before the courts, a high proportion of cases involving a sexual offence as the major charge is either withdrawn or dismissed at the preliminary hearing in the Magistrates Court.
- Fourth, for those cases transferred to a Higher Court for trial, a high proportion result in either a trial-based acquittal or a nolle prosequi discharge.

As a result of these various factors, the proportion of offenders who are actually found guilty and sentenced by the court for the offence with which they are initially charged is extremely low compared with the “real” incidence of sexual offending in the community.

In recent years, a range of victim support services have been put in place to encourage greater reporting to police and to help victims through the often traumatic court process. Nevertheless, as the statistics presented in this Bulletin indicate, more information is required on why the level of under-reporting of sexual offences is still so low and why matters “drop out” at particular stages of the prosecutorial process.

Appendix 1

Definitions of the main types of sexual offences

Rape:

The definition of rape is contained in section 48 of the *Criminal Law Consolidation Act 1935*. It specifies that:

“A person who has sexual intercourse with another person without the consent of that other person -

- (a) knowing that that other person does not consent to sexual intercourse with him (sic); or
- (b) being recklessly indifferent as to whether that other person consents to sexual intercourse with him (sic)

shall (whether or not physical resistance is offered by that other person) be guilty of rape and liable to be imprisoned for life”.

Unlawful sexual intercourse

Whether or not a particular act of sexual intercourse is defined as unlawful depends primarily on the age of the victim, although intellectual capacity is also taken into account in certain situations. In turn, these factors influence the maximum statutory penalties which can be imposed by the courts.

In relation to age:

- Unlawful sexual intercourse applies to any person who has sexual intercourse with a person under the age of twelve years. Here, the maximum statutory penalty is life imprisonment (s49 of the *Criminal Law Consolidation Act 1935*).
- If the victim is between the age of twelve and sixteen (inclusive), it is still classified as unlawful behaviour, but the penalty is less severe: namely imprisonment for a term not exceeding seven years. Moreover, the Act stipulates that “it shall be a defence” if, at the time of the offence, the victim was aged sixteen and the offender was either under the age of seventeen or believed that the person with whom he (sic) was having sexual intercourse was aged seventeen or over.
- A person who is a guardian, schoolmaster, schoolmistress or teacher of a person under the age of eighteen is also guilty of an offence if they have sexual intercourse with that person. Here the maximum statutory penalty is imprisonment for a term not exceeding seven years.

In relation to intellectual capacity, s 49(6) of the *Criminal Law Consolidation Act 1935* specifies that any person

“who, knowing that another is by reason of intellectual disability unable to understand the nature or consequences of sexual intercourse, has sexual intercourse with that other person is guilty of an indictable offence”.

The penalty is imprisonment for up to seven years. This applies irrespective of the age of the victim.

Two final qualifiers need to be added:

- first, that consent to sexual intercourse in any of the above situations does not constitute a defence; and

- second, that the offence does not apply to sexual intercourse between persons who are married to each other.

Indecent assault

The definition given for “indecent assault” is more ambiguous. Section 56 of the *Criminal Law Consolidation Act* simply states that “A person who indecently assaults another shall be guilty of an offence”. The maximum statutory penalty is a term of imprisonment not exceeding eight years, or, if the victim is under the age of twelve at the time of the offence, imprisonment for a term not exceeding ten years.

Again, no person under the age of seventeen is considered capable of consenting to any indecent assault, while the same applies to any person under the age of eighteen if the assault is committed by a person who is his/her guardian, teacher, schoolmaster or schoolmistress.

However, if the victim is aged sixteen or seventeen and the accused is either aged under seventeen at the time of the offence or believed that the victim was of or above the age of seventeen, then consent may be used as a defence.

Acts of gross indecency

This offence is defined by section 58(1) of the *Criminal Law Consolidation Act*, which stipulates that

"Any person who, in public or in private -

- (a) commits an act of gross indecency with, or in the presence of, any person under the age of sixteen years"

shall be guilty of gross indecency.

It should be noted however, that for the purposes of this Bulletin, offences under s58 (1)(b) and s58 (1)(c) of the *Criminal Law Consolidation Act* are included in the category of “other” sexual offences, rather than gross indecency. These subsections relate to any person who incites or procures the commission of an act of gross indecency by a person under sixteen years old, or who is otherwise a party to the commission of such an act either by or with or in the presence of such a person.

The maximum penalty for a first offence is imprisonment for a term not exceeding three years and for subsequent offences, imprisonment for up to five years.

Indecent behaviour/exposure

Unlike the other sexual offences, indecent behaviour is a summary offence, rather than an indictable matter. The *Summary Offences Act 1953* (s23) specifies that:

“A person who behaves in an indecent manner -

- (a) in a public place, or while visible from a public place, or in a police station, or
- (b) in a place, other than a public place or police station, so as to offend or insult any person,

is guilty of an offence”.

The penalty is imprisonment for up to three months or a fine of up to \$1000. This category also includes offences under s255 of the *Criminal Law Consolidation Act* which was in force from 2nd January 1936 to 5th July 1992 inclusive.

A person who commits a “grossly indecent act” in a public place or where visible from a public place or occupied premises is also guilty of an offence but, rather than being classified as indecent behaviour, it is categorised under “other” sexual offences. Here the maximum penalty is six months imprisonment or a fine of \$2,000.

Appendix 2

Once a defendant has been found guilty, the following penalties - listed in order of severity - may be imposed:

- immediate imprisonment;
- suspended imprisonment;
- community service order;
- bond with supervision;
- bond without supervision;
- suspension of driver’s licence;
- monetary fine;
- other order (eg restitution, confiscation of drugs);
- sentenced to the rising of the court;
- no penalty.

More than one of these may be applied at once. For example, a sentence of imprisonment may be suspended, on condition that the offender perform community service work and enter into a bond with supervision.

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