

# Information Bulletin

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## STALKING IN SOUTH AUSTRALIA

### The criminal justice response

Jayne Marshall

Attorney-General's Department

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Stalking is generally understood as behaviour that constitutes 'continual harassment of one person by another' or 'persistent and unwanted attention'. From June 1994, as a result of amendments to the *Criminal Law Consolidation Act 1935* contained in the *Domestic Violence Act 1994*, it became an offence to 'stalk' another person in South Australia. This bulletin analyses the number of stalking offences recorded by police, the number of offences cleared and the method of clearance. It also examines victim and offender profiles and the nature of their relationship, and summarises the outcomes of court cases involving stalking offences.

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## INTRODUCTION

Stalking is generally understood as behaviour that constitutes ‘continual harassment of one person by another’ or ‘persistent and unwanted attention’. This may include such conduct as following or keeping a person under surveillance, making constant contact through letters or phone calls, or sending unwanted gifts.

From June 1994, as a result of amendments to the *Criminal Law Consolidation Act 1935* contained in the *Criminal Law Consolidation (Stalking) Amendment Act 1994*, it became an offence to ‘stalk’ another person in South Australia.

However, since the introduction of the legislation, there has been little analysis of stalking.<sup>1</sup> This Bulletin aims to address the gap, using the six years of recorded police and court data now available on the offence. In particular, the paper<sup>2</sup> analyses the number of stalking offences recorded by police, the number of offences cleared and the method of clearance. The Bulletin also examines victim and offender profiles and the nature of their relationship, and summarizes the outcomes of court cases involving stalking offences.

## BACKGROUND

Stalking legislation was enacted in South Australia in response to concern that existing criminal law offered little protection for victims who were being continually harassed or intimidated by another person. It was acknowledged that stalking behaviour, while outwardly innocent, was very threatening and disturbing to victims. However, unless someone committed an actual crime, such as property damage or assault, he or she could not be stopped, removed or charged by police (Hansard, SA Legislative Council, 16/2/94).

### South Australian definition of stalking

Stalking activity is defined in the legislation as a range of behaviours such as following, loitering, entering or interfering with property or ‘acts in any other way that could reasonably be expected to arouse the other person’s apprehension or fear’. However, for a person to be charged with the offence of stalking they must have engaged in such behaviour on *at least two separate occasions* and must have intended to cause *serious physical or mental harm* to the other person or to cause *serious apprehension or fear*.

The requirement of intent to cause physical or mental harm or apprehension/fear was specified in the legislation to “reflect both the essential criminality of the behaviour and limit the offence to its target offenders” (Hansard, SA Legislative Council, 16/2/94). In other words, it was included to distinguish the offence of stalking from behaviour that may outwardly be similar, but is not actually designed to cause harm or fear, such as investigative journalism, residents picketing a demolition site or private detectives investigating WorkCover fraud.

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<sup>1</sup> In February 1998 the Office of Crime Statistics released an Information Bulletin (Issue No. 6), which provided a statistical overview of restraining order matters and stalking offences finalised in the Magistrates Courts in 1995 and 1996.

<sup>2</sup> This report is an extended version of a paper presented at the Australian Institute of Criminology conference Stalking: Criminal Justice Responses, held in Sydney on 7 and 8 of December 2000.

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## **Penalties**

The legislation created three sub-types of offence: a 'basic' stalking offence and two 'aggravated' offences. For the basic offence the maximum penalty is three years imprisonment. However, where the offender's conduct contravened a previous court order, or if the offender was in possession of an offensive weapon at the time of the offence, the maximum penalty is five years imprisonment.

## **Multiple charges – stalking and other offences**

It should be noted that stalking legislation includes provisions which state that a person cannot be convicted of both *stalking* and any other offence, such as *assault* or *threaten life*, if both charges arose out of the same set of circumstances. As explained in the SA House of Assembly on 10 March 1994,

"...the object of the Bill is to create precisely drawn offences targeting a gap in the law. The physical elements of the charge of stalking have been deliberately drafted to be as wide as possible to catch the ingenuity of the obsessed in harassment, and therefore the overlap with other offences is likely to be correspondingly wide. If a person makes a threat, commits an assault or does something that is against the existing criminal law, the appropriate offence can and should be employed. The problem that the Bill is designed to address is that, where that is not so, and.....no adequate offence exists for the protection of the public."

## **Crime prevention**

The South Australian stalking legislation was also considered to have potential as a crime prevention tool. During the Second Reading speech for the Bill in the Legislative Council in February 1994, South Australian police were encouraged to consider the experience of the Threat Management Unit in Los Angeles. Upon receipt of a complaint, police from this Unit would inform the alleged offender that the legislation existed and explain about the effect of his or her behaviour, with the intention of discouraging further occurrences.

## **Comparison with other Australian jurisdictions**

All Australian jurisdictions enacted stalking legislation between 1993 and 1996. While the actual conduct that constitutes stalking is similar between jurisdictions, the South Australian definition is unique in the stringency of its criteria for intent: it requires that the offender intended to cause *serious* physical or mental harm or *serious* apprehension or fear. The South Australian legislation also differs from that of Tasmania, Victoria, New South Wales and Western Australia in the requirement that the actual conduct is engaged in on at least two separate occasions.

## **SOUTH AUSTRALIAN POLICE RESPONSE TO STALKING BEHAVIOUR**

South Australian Police have specific guidelines in relation to the reporting of stalking offences. According to South Australian Police Prosecutions, it is very difficult to establish in court that an alleged offender intended to cause serious mental harm or serious apprehension or fear, as stipulated in the stalking legislation, unless an admission is made. Therefore, it is police policy (Police Commissioners Circular No. 458) to formally caution/warn offenders the first time they come to police attention. If a complainant reports that a person has engaged in stalking behaviour on more than one separate occasion, the police warn the alleged offender that their behaviour is causing serious mental harm or serious apprehension or fear to that person and that if they continue the behaviour they may be committing the offence of stalking and will be subjected to criminal proceedings. If the behaviour continues and the police receive another complaint, the alleged offender will be arrested and charged with stalking. From the prosecution perspective, a further occurrence of the behaviour after such a warning can then be presented in court as intent. This procedure is also in line with the 'crime prevention' approach advocated by the Government when the stalking legislation was introduced into SA Parliament in February 1994, as discussed earlier.

It should be noted that, by legal definition, stalking behaviour must have occurred on at least two separate occasions. If a complainant reports to police that he/she has been followed home but it is the first such occurrence, police will inform the victim that they cannot proceed in terms of stalking. A

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Police Incident Report will be completed, listing the offence as *offensive behaviour* although the alleged offender will be cautioned about stalking. If the victim makes a second complaint the two reports will be linked and the offender will be arrested or reported for stalking.

As advised by SAPOL, a caution may also be administered in situations where the offence, although complete and provable, was adjudicated as minor and not warranting prosecution.

## **METHODOLOGICAL ISSUES**

The information provided in this Bulletin was obtained from a number of databases downloaded to the Office of Crime Statistics on a regular basis. These databases deal with offences recorded by police, victims, apprehensions and finalised court cases.

### **Recorded crime**

The findings in this Bulletin relate only to those offences that were recorded in official crime statistics. It should be noted that the recorded incidence of stalking does not necessarily equate to the actual incidence of stalking in the community. Community surveys indicate that reporting rates for personal crime are generally low, particularly when compared with rates for property crime. In the latest Crime and Safety survey conducted in South Australia in October 2000, only 27% of *assault* victims and 55% of *robbery* victims reported the offence compared with 71% of *break-in* victims and 91% of *vehicle theft* victims (Crime and Safety, South Australia October 2000 ABS Cat. No. 4509.4).

While specific information on the extent to which people in South Australia are prepared to report incidents of *stalking* is not available, recent findings from the 1998 British Crime Survey can be used as a guide. The survey indicated that only 34% of respondents who had experienced an incident of stalking (defined broadly as 'persistent and unwanted attention') subsequently reported that incident to police (Budd and Mattinson, 2000).

### **'Tracking' and 'snapshot' statistics**

This report examines stalking offences at four points in the criminal justice system: police report, offence clearance, apprehension of offenders and final disposition of the matter in the courts. The first stage of the study involved an analysis of Police Incident Reports (completed by police when a criminal event comes to their attention) recorded between 1 January 1995 and 31 December 1999 that listed at least one offence of *stalking*. Secondly, the Police Incident Reports were followed through to identify the clearance status of the incident. For those that were cleared by way of an arrest or report, the resulting Police Apprehension Reports (where a person is arrested or reported in relation to an offence) were then accessed and relevant data analysed. In this way, the police incident reports involving stalking offences were 'tracked' through to the stage where the police apprehended an alleged offender.

The final stage of the study involved an analysis of all cases finalised in the Youth, Magistrates or District Courts<sup>3</sup> of South Australia between 1 January 1995 and 31 December 1999 that included at least one charge of stalking. However, it should be noted that the statistics detailed in this stage provide a 'snapshot' of the court disposition process over the study period, rather than a continuation of the 'tracking' of offences through the police incident report and apprehension stages. Many stalking offences and offenders that came to the attention of police in the later part of the period in question may not have had their court cases finalised by the end of the period and so would not appear in the court statistics.

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<sup>3</sup> Stalking offences are not dealt with in the Supreme Court, unless joined with other offences finalised in that court.

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## OFFENCES RECORDED BY POLICE

### Number and type of stalking offences

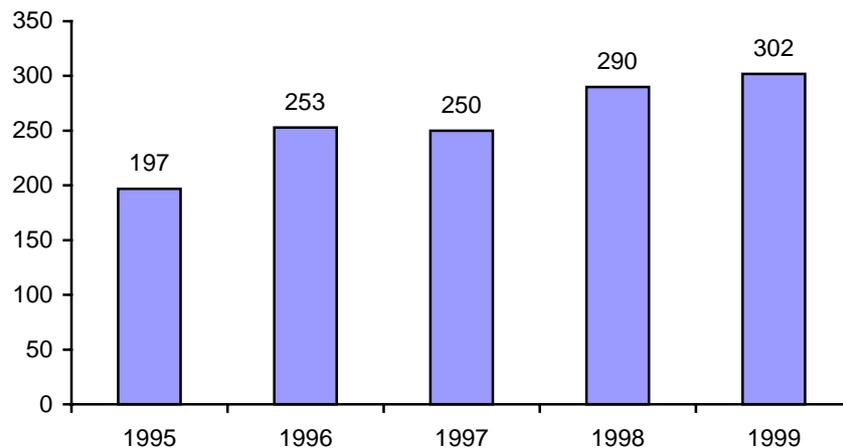
When a criminal event comes to the attention of police, a Police Incident Report (PIR) is completed for each victim involved. Based on the individual police officer's interpretation of the event, any number or type of offence may be included on the report.

Between 1 January 1995 and 31 December 1999, 1,267 police incident reports were completed which involved at least one stalking offence. The majority of these reports (1,252 or 98.8%) involved one stalking offence only. There were 12 reports that included two stalking offences, and three that recorded three, six and seven stalking offences respectively.

In total then, 1,292 separate offences of stalking were recorded during the five year period. While the majority of these offences were recorded as the 'basic' *stalking* offence (1,137 or 88%) there were 155 aggravated offences, made up of 133 *stalking breaching court order* offences (eg a restraining order or a bail agreement) and 22 offences of *stalking in possession of an offensive weapon*.

Figure 1 shows the number of stalking offences recorded between 1995 and 1999 by the year in which the offence was recorded by police. Overall, the actual number of recorded stalking offences is very low (approximately 0.1% of all recorded crime for each year between 1995 and 1999). While there appears to be an upward trend in the later part of the period, this does not necessarily mean that there has been an increase in the actual incidence of stalking in the community. These increases may simply reflect increasing victim willingness to report any incidents to police, as well as increasing police awareness of stalking as a specific offence, and the option to record an incident as stalking.

Figure 1: Stalking offences by report year



### Multiple victimisation

It should be noted that the same victim might make more than one report to police in relation to stalking incidents over a period of time. The victim will therefore be the subject of multiple Police Incident Reports.

The 1,267 Police Incident Reports completed between 1995 and 1999 that included at least one stalking offence involved 1,095 individual victims. The majority of these victims (959 or 87.0%) made only one report of a stalking offence within the five-year period. A further 105 victims had two reports of stalking, 24 had three, four had four reports and three had five reports. While not conclusive, a manual examination of the data suggests that in all but three cases of multiple victimisation, the alleged offender was the same person.

A detailed ‘survival analysis’ on the length of time between reports to police is beyond the scope of this Bulletin. However, an examination of the reports made between 1995 and 1997<sup>4</sup> showed that nearly 88.7% of victims in 1995 did not make another report involving stalking within five years, 88.5% of 1996 victims did not make another report within four years and 90.8% of 1997 victims did not make another report within three years.

It is acknowledged that these results may be due to a number of factors other than cessation of stalking behaviour, including:

- The victims made another report that did not include a stalking offence and so was not considered by this research; and/or
- The victim moved to another jurisdiction; and/or
- The victim chose not to report any continuing stalking behaviour.

### Sex and age of victims

Information about the victim’s sex, age and relationship with the alleged offender was also obtained from the Police Incident Reports involving at least one stalking offence. However, it should be noted that the following analyses are based on the total number of stalking *offences* recorded between 1995 and 1999 (1,292 offences) and not the number of *discrete victims* (1,095 victims). For example, if a person was the victim of two stalking offences during the study period, he or she would be included twice.

The majority (1,127 or 87.2%) of the 1,292 stalking offences recorded during the study period had a female victim. Conversely, only 163 offences or 12.6% were associated with a male victim. Sex was not recorded for two offences. While in each of the five years studied the majority of offences had a female victim, as shown in Figure 2, the percentage of reported stalking offences with a male victim increased from 7.2% in 1995 to 17.6% in 1999.



Note: Sex was not recorded for one offence in 1995 and one in 1996. Therefore the percentages do not total 100.

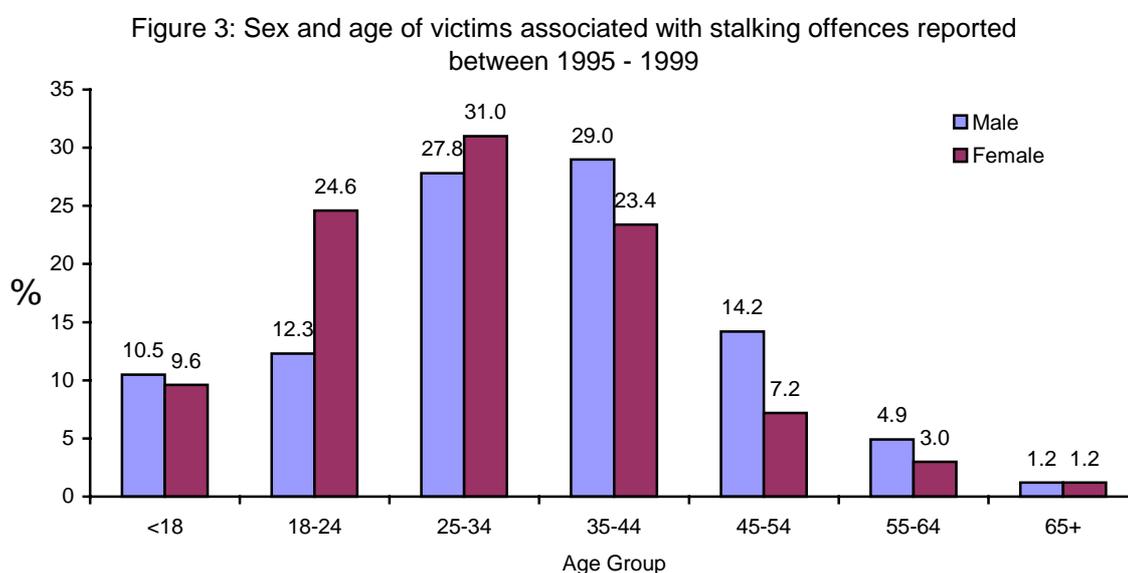
The 1,292 stalking offences involved victims who ranged in age from nine years to 98 years, with a mean of 31.5 years. The mean age recorded for offences with a female victim was slightly lower than that for offences with a male victim (30.4 years compared with 35.5 years).

<sup>4</sup> So that at least three years was available to analyse repeat offending, only reports made between 1995 and 1997 were considered here.

Figure 3 shows the sex and age of all victims of a stalking offence recorded by police for the period 1995 to 1999. As shown, the highest percentage of offences with a male victim were in the 25-34 years and 35-44 years age groups (27.8% and 29.0% of male victims respectively). In contrast, the highest percentage of offences with a female victims ranged across three age groups; 18-24 years (24.6% of female victims), 25- 34 years (31.0%) and 35-44 years (23.4%). While there was twice the percentage of female victims than male victims in the 18-24 years age group (24.6% compared with 12.3%), the situation was reversed for the 45-54 years age range, which included 14.2% of male victims but only 7.2% of female victims.

As indicated above, it should be noted that Figure 3 is based on the number of stalking *offences* recorded between 1995 and 1999 and not the number of *discrete victims*.

The age breakdowns were consistent over the five years studied, with approximately three quarters of all victims aged between 18 and 44 years.



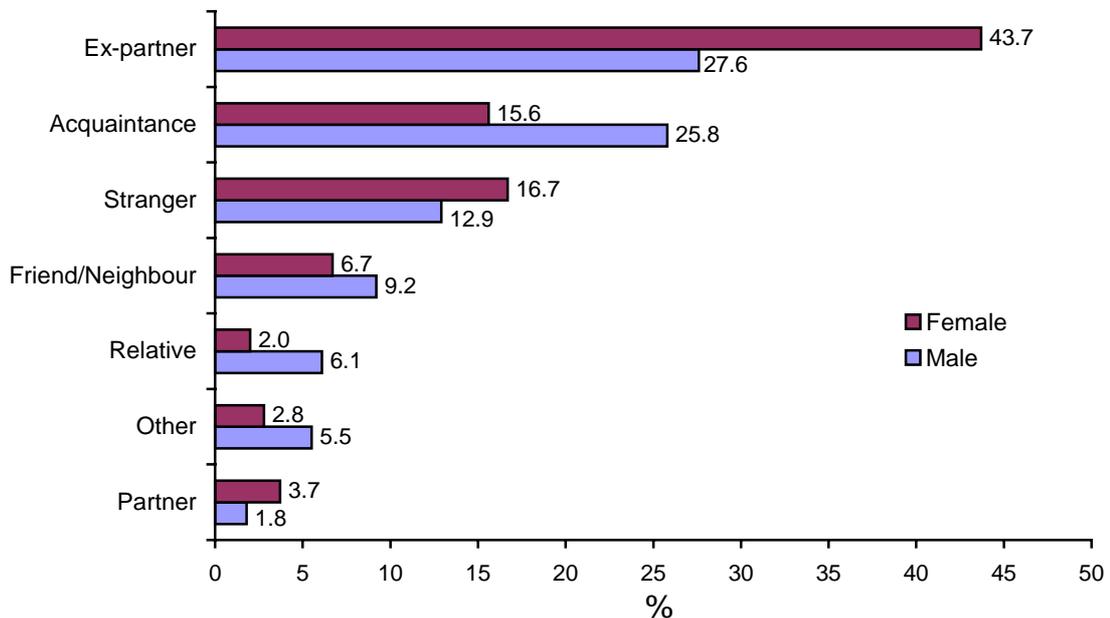
### Relationship of offender to victim

Figure 4 shows the relationship of the offender to the victims of the 1,292 stalking offences. A number of differences are evident according to the sex of the victim associated with the stalking offence. A much higher percentage of offences with a female victim involved an ex-partner (43.7% compared with 27.6% for offences with a male victim). In contrast, offences with a male victim were more likely to involve an acquaintance (25.8% compared with 15.6% of offences with a female victim).

Overall, almost half of all offences with a female victim (49.4%) and over one-third of offences with a male victim (35.5%) involved a partner, ex-partner or relative. In addition, almost one-quarter of offences with a female victim (22.4%) and 35.0% of offences with a male victim involved an acquaintance or friend/neighbour. Relatively few offences involved a stranger (16.7% of offences with a female victim and 12.9% of offences with a male victim) while conversely, the majority of offences involved victims who knew the perpetrator.

The pattern of victim-offender relationships was relatively consistent over the five years studied, with the largest category in all years being that of 'ex-partner' (ranging from 35.6% in 1996 up to 50.7% in 1999). For the years 1995 to 1998, 'stranger' was the next highest category (between 17.0% and 20.2%) compared with between 14.4% and 17.3% for acquaintance. However, in 1999 this was reversed with 19.6% of offenders being recorded as an acquaintance and 8.8% recorded as a stranger.

Figure 4: Relationship of offender to victim



### Clear up status

After extracting and analysing the Police Incident Reports, the study then involved ‘tracking’ the clearance status of each report.

A Police Incident report (and therefore the offences included within it) may be recorded as ‘cleared’ in one of a number of ways, as follows:

- *By arrest/caution/report*: A defendant is either cautioned, arrested or reported/summonsed.
- *Unfounded*: following enquiries, police find no evidence that an offence had been committed.
- *Victim requests no further action*: the victim of the alleged offence(s) signs an official form affirming that he/she wishes no further action to be taken in relation to the alleged offence(s).
- *Other*: includes situations where the accused or complainant has died, or where the charge has lapsed.

As noted earlier, 1,267 Police Incident Reports containing at least one offence of stalking were completed between 1995 and 1999. Overall, these incident reports involved 1,292 separate offences of stalking. As with the previous sections of this Bulletin, the following analysis is based on stalking offences, rather than the number of Police Incident Reports.

Figure 5 shows that for the five-year period overall, 593 offences or just under half (45.9%) of all stalking offences recorded were cleared when the police took action against an alleged offender. This action was either a caution (452 or 35.0% of all reports), an arrest (73 or 5.7%), or a report (68 or 5.3%). A further 160 offences were cleared by other means, including 110 (8.5%) where the victim requested no further action and 30 (2.3%) where the offence was considered to be unfounded. The remaining offences (539 or 41.7%) were not cleared.

Figure 5: Clearance status of stalking offences reported 1995 to 1999

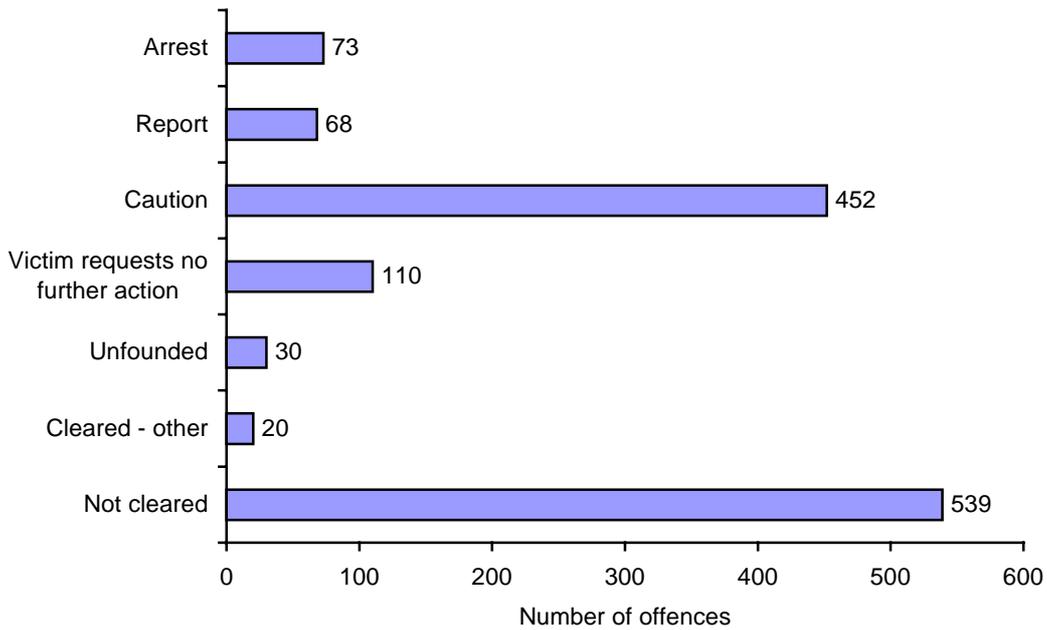
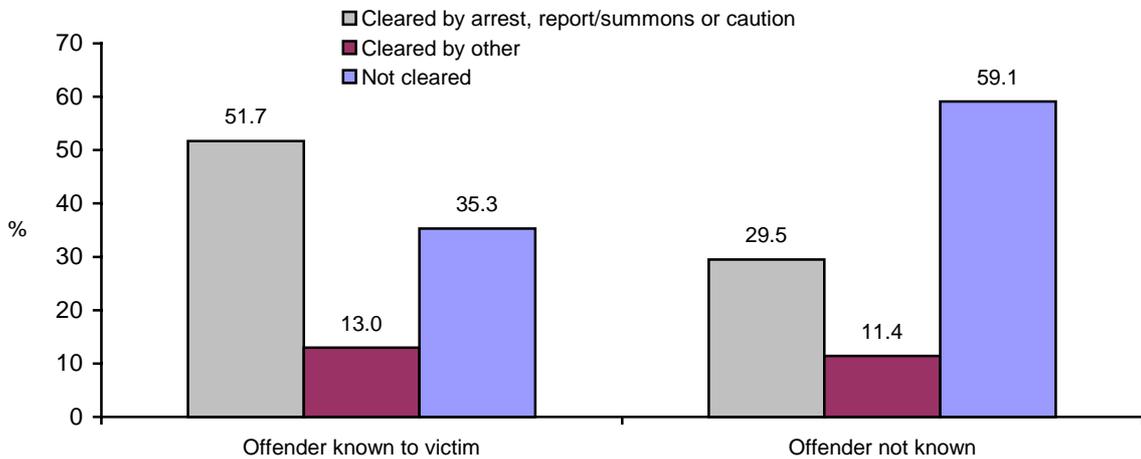


Figure 6 shows the clear-up status of all stalking offences recorded by police between 1995 and 1999, summarised into three categories, by relationship of offender to victim.

Figure 6: Clearup status of all stalking offences recorded 1995 to 1999 by relationship of offender to victim



As shown in Figure 6, as could be expected, a higher percentage of offences where the victim knew the offender were cleared by way of arrest, report/summons or caution, compared with offences where the offender was a stranger (51.7% compared with 29.5%). Conversely, a higher percentage of offences where the victim did not know the offender were not cleared (59.1% compared with 35.3% where the offender was known). However, as indicated above, the percentage of offences cleared by way of arrest, report/summons or caution was still relatively low (just over 50%) for those victims who knew their offender.

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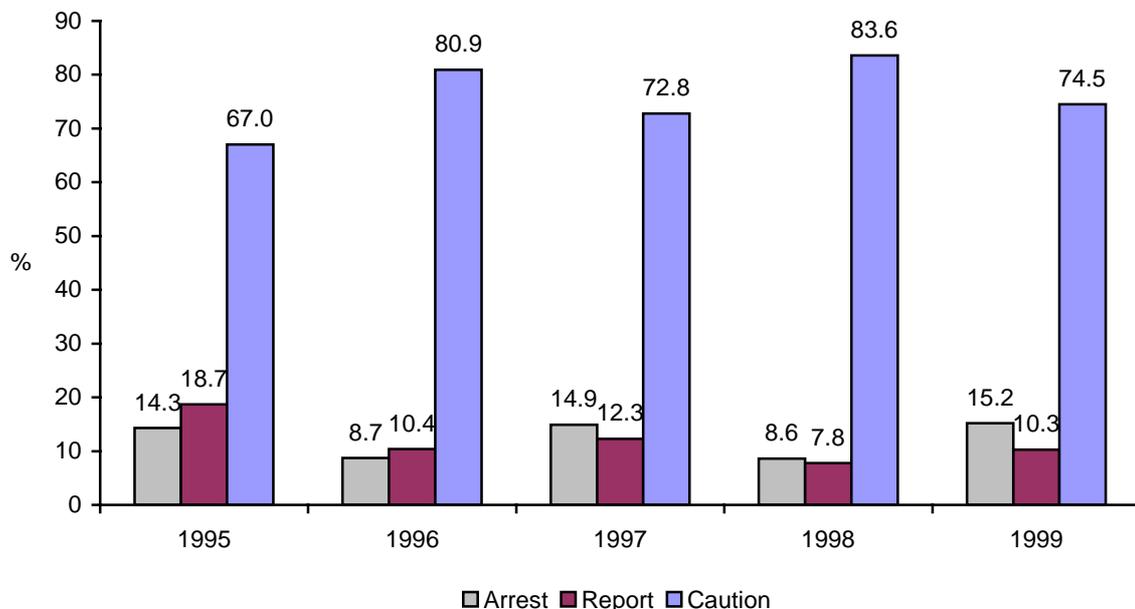
### *Offences cleared by arrest, report/summons or caution*

As previously noted, just under half of the 1,292 stalking offences recorded between 1995 and 1999 were cleared when the police took specific action against an offender, either by caution, arrest or report/summons (593 or 45.9%).

Figure 7 shows a breakdown of the clear up status for these 593 stalking offences according to the year in which they were recorded by police. For each year between 1995 and 1999 a substantially higher proportion of offences in this category were cleared by police cautioning the offender (over two-thirds each year), rather than arrest or report. While a number of offences would have been cleared by caution due to their minor nature, these findings may also reflect the previously mentioned South Australian police practice of cautioning an alleged offender the first time he or she comes to police attention for stalking.

As shown later in this Bulletin, the emphasis on cautioning rather than arrest or report has considerable implications for the number of stalking offences that are dealt with in court, given that a person who is cautioned for an offence is not required to attend court at a later date.

Figure 7: Stalking offences cleared by police action against an offender - method of clearance per year, 1995 to 1999



## **APPREHENSIONS FOR STALKING OFFENCES**

The following section provides details on apprehensions made by police for *stalking* offences recorded during the period 1995 to 1999.

### **Police Apprehension Reports**

Police complete an apprehension report each time a person is arrested or reported. If two people are apprehended for the same incident, then two apprehension reports are filed. As with a Police Incident Report, an apprehension report may contain more than one offence type, as well as multiple counts of the same offence. Moreover, the offences listed in the one apprehension report may relate to several different criminal events. For example, an offender may follow another person home on two or more occasions, as well as send a number of threatening letters. The same offender may, several weeks or months later, assault a completely different victim. If, at the time of apprehending the person, police

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have evidence to link him to both incidents, one Apprehension Report will be filed listing one *stalking*, one *use carrier service to menace or harass* and one *assault* even though these offences relate to a number of criminal events and two different victims.

In addition to criminal charges, an Apprehension Report may also list non-offence matters such as the issuance of a restraining order or a warrant to arrest.

It should also be noted that the offence listed on an Apprehension Report may not be the same as that listed on the original Police Incident Report(s). For example, an apprehension report may include a charge of *indecent assault* when the police incident report relating to the same criminal event listed the offence of *stalking*. This issue, which also has implications for the number of *stalking* offences that are dealt with in court, is discussed in more detail later in this Bulletin.

For this study, each of the Police Incident Reports filed by police between 1995 and 1999 that included at least one *stalking* offence were 'tracked' to identify the clearance status of the incident. For those Police Incident Reports that were cleared by way of an arrest or report, the resulting apprehension reports were then accessed and relevant data analysed. It should be noted that while *stalking* incidents were reported in 1995 to 1999, the alleged offenders were not necessarily apprehended during these same years.

It should also be noted that the following analysis includes *all* offences listed on the Police Apprehension Report and it is therefore possible that some of the offences included do not relate to a stalking incident, but to a different criminal event involving the same apprehended individual.

### **Number of Apprehension Reports linked to a Police Incident Report involving stalking**

As noted in the previous section, between 1995 and 1999, police completed 1,267 Police Incident Reports (involving a total of 1,292 offences of stalking). Of these reports, 137 (including a total of 141 stalking offences) were cleared by way of an arrest or report of an offender.

For the 137 Police Incident Reports cleared by way of an arrest or a report, 123 Apprehension Reports were completed. In general, the number of apprehension reports will be lower than the number of matched police incident reports because one apprehension report may be linked to two or more incident reports.

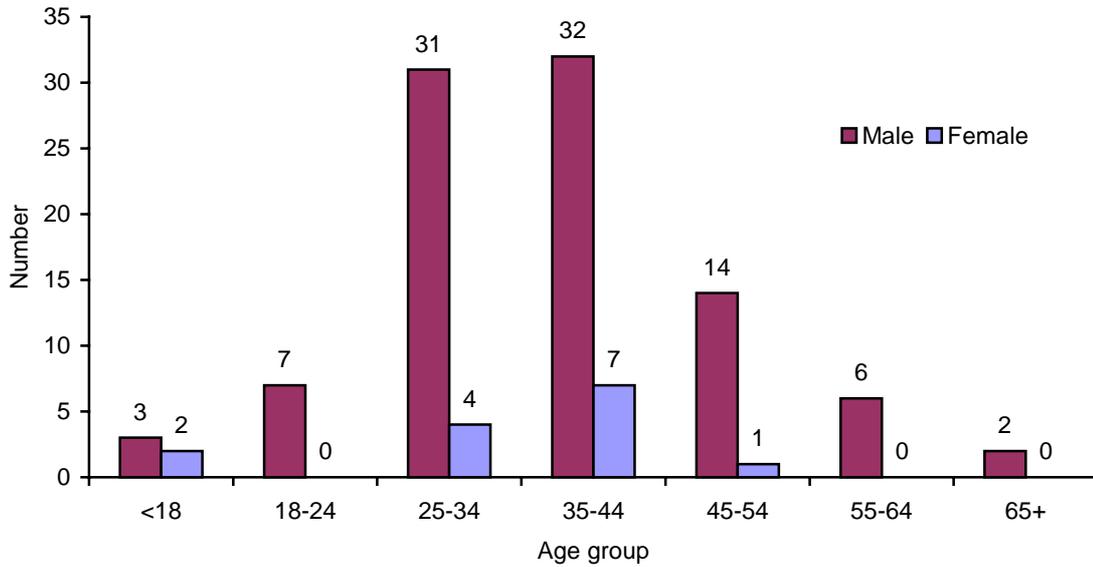
### **Sex and age of alleged offenders**

The following data relate to completed Apprehension Reports and not discrete offenders. For example, a person apprehended on two occasions during the study period would be included twice. The 123 Apprehension Reports actually included 104 discrete individuals, with 17 the subject of more than one report.

As could be expected, the majority (95 or 88.6%) of the 123 apprehension reports involved a male offender. Only 14 apprehension reports listed a female offender.

The age of apprehended males ranged from 16 years to 70 years, with a mean age of 36 years. (Data on offender age was unavailable for 14 apprehension reports, all involving a male offender). Apprehended females ranged from 17 years to 50 years, with a mean age of 34 years. Figure 8 shows the sex and age of offenders associated with the 109 apprehension reports where both offender sex and age information was available. Due to the small number of apprehension reports with a female offender, the graph depicts numbers rather than percentages. Most offenders were aged 25 to 34 years and 35 to 44 years, with approximately one-third of male offenders in each group. Of the 14 apprehension reports which involved a female offender, one half (seven) were aged between 35 and 44 years.

Figure 7: Sex and age of persons apprehended in relation to a stalking offence 1995 to 1999



#### Number and combination of charges per apprehension report

The majority of apprehension reports listed one charge only (75 or 61.0%). There were 41 reports that had two or more charges, including 18 with two, 15 with three and eight with four. Seven apprehension reports did not list any charges but instead recorded non-offence matters such as the issuance of a restraining order (six reports) or a warrant to arrest (one report).

As indicated above, a Police Apprehension Report may list different offences from those included in the original Police Incident Report. In fact, only 69 (56.1%) of the 123 apprehension reports analysed included a charge of *stalking*. The following section looks at the offence combinations listed on these apprehension reports.

#### *Apprehension reports involving stalking charges*

The offence combinations listed on the 69 apprehension reports that included a charge of stalking are shown in Table 1 below.

Table 1: Offence combinations for apprehension reports including a stalking charge

Offence Combination	Number of reports
Stalking only	40
Stalking + failure to comply with a restraining order or bail agreement	6
Stalking + common assault	3
Stalking + resist police	1
Stalking + drive recklessly	1
Stalking + unlawfully on premises	1
Stalking + possess offensive weapon	1
Stalking + use carrier service to menace	1
Stalking + indecent behaviour	1
Stalking + fail to comply with restraining order + fail to comply with bail agreement	2
Stalking + fail to comply with restraining order + restraining order issued	1
Stalking + use carrier service to menace + restraining order issued	2
Stalking + fail to comply with bail agreement + use carrier service to menace	1
Stalking + threaten life + possession of firearm	1
Stalking + threaten life + threaten harm	1
Stalking + damage property + throw missile	1
Stalking + assault causing actual bodily harm + threaten life + damage property	1
Stalking + common assault + threaten life + illegal use of a motor vehicle	1
Stalking + threaten harm + trespassing + damage property	1
Stalking + using a carrier service to menace + interfere with a motor vehicle + damage property	1
Stalking + attempted rape + break-in + threaten harm	1
<b>Total</b>	<b>69</b>

In summary, of the 69 apprehension reports that included a charge of stalking:

- 40 listed one charge of stalking only;
- 15 included one charge of stalking and one ‘other’ charge;
- 3 had one charge of stalking, one ‘other’ charge and one restraining order issued;
- 6 had one charge of stalking and two ‘other’ charges; and
- 5 had one charge of stalking and three ‘other’ charges.

As shown, the majority of apprehension reports involving a charge of *stalking* included only that charge (40 or 58.0%). Of the 29 reports where charges other than stalking were listed, the majority (10) involved *failure to comply with a restraining order* or *bail agreement*. This indicates that the alleged offender had been involved with the police on a previous occasion and in particular, had entered into agreements concerning his or her behaviour, which they had not complied with. Six reports included charges for violent offences (five for *assault* and one for *attempted rape*) while six reports involved threats - *threaten life* or *threaten harm* charges. Five reports included the charge of *use carrier service to menace or harass*.

There were also a number of reports involving property charges, including *damage property* (four reports), *break/enter*, *interfere with a motor vehicle* and *use motor vehicle without permission* (one report each). Two reports involved weapons offences (*carrying an offensive weapon* and *unregistered firearm*).

However, as indicated previously, it is not known if these charges arose from another criminal event outside the scope of this study.

#### ***Apprehension reports not involving stalking charges***

Just under half (54 or 43.9%) of the 123 apprehension reports did not include a stalking charge at all, even though they were linked to Police Incident Reports that involved a stalking offence.

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There are a number of reasons why some apprehension reports that could be linked to a stalking incident report did not result in a stalking charge, but rather another type of charge. It is possible that, once an apprehension was made, stalking was found to be an inappropriate charge that did not fit the circumstances of the original incident.

An alternative explanation is that, while the incident could be interpreted as stalking, there were other charges that also arose out of the same event. As indicated earlier, the South Australian stalking legislation includes provisions which state that a person cannot be convicted of stalking and another offence if both charges arise out of the same set of facts. It is possible, therefore, that at the apprehension stage, the police considered that other charges should be recorded instead of stalking. For example, while the act of repeatedly sending unwanted letters to another person fits within the definition of the offence of *stalking* in South Australia, police also have the option of charging the offender with the offence of *use carrier service to menace or harass*.

Of the 54 apprehension reports which did not include a stalking charge, the majority (35 or 64.8%) included only one offence, three include two offences, six listed three offences and three included four offences. As previously mentioned, a further seven apprehension reports listed non-offence matters such as the issuance of a restraining order (six reports) or a warrant to arrest (one report).

A summary of the charge combinations is included in Table 2 below.

As shown, the offence profile of the apprehension reports that did not include a stalking charge was very similar to those that did. The most common 'other' offences included were failing to comply with a restraining order or a bail agreement (20 of the 54 reports). Twelve reports included *assault* charges, while eight involved the charges of *threaten harm*, *threaten life* or *endanger life*. The offence of *using a carrier service to menace* was included in seven reports, while *damage property* charges were listed in four reports. One report also had the offence of *use listening device*, suggesting that the alleged offender had been closely monitoring his/her victim.

Table 2: Offence combinations for apprehension reports not including a stalking charge

Offence Combination	Number of apprehension reports
<b><i>One offence only</i></b>	
Failure to comply with a bail agreement or a restraining order	17
Common assault	4
Indecent assault	1
Assault with intent to commit offence	1
Using carrier service to menace	4
Threaten harm	2
Unlawfully on premises	2
Depositing indecent material	1
Damage property	1
Endanger life	1
Disorderly behaviour	1
<b><i>Two offences</i></b>	
Common assault of a family member + threaten life	1
Fail to comply with a restraining order + using carrier service to menace	1
Damage property + throw missile	1
<b><i>Three offences</i></b>	
Common assault of a family member + fail to comply with a restraining order + threaten harm	1
Endangering life + unregistered firearms + unlicensed for firearms	1
Common assault of a family member + using carrier service to menace + threaten harm	1
Unlawfully on premises + use listening device + threaten life	1
Larceny + damage property + common assault	1
Rape + threaten life + carry an offensive weapon	1
<b><i>Four offences</i></b>	
Common assault of a family member + using carrier service to menace + threaten life + common assault	1
Fail to comply with a restraining order + attempted murder + false imprisonment + break out	1
Common assault of a family member + damage property + threaten life + larceny	1
<b>Non-offence matters</b>	
Issuance of a restraining order	6
Issue warrant to arrest	1
<b>Total</b>	<b>54</b>

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## COURT CASES

The following section presents the results of an analysis of court cases<sup>5</sup> finalised in the Youth, Magistrates or District Courts of South Australia between 1 January 1995 and 31 December 1999 that included at least one charge of *stalking*. As indicated previously, this section presents a 'snapshot' of the court disposition process for stalking offences, rather than a continuation of the preceding 'tracking' process from Police Incident Report to Police Apprehension stage. Many stalking offences and offenders that came to the attention of police in the later part of the period in question may not have had their court cases finalised by the end of the period and so would not appear in the court statistics.

It should also be noted that only court cases including an offence of *stalking* are considered here. An examination of the court outcomes for the 54 apprehension reports discussed previously which did not list a stalking offence was beyond the scope of this study.

### **Number of finalised court cases involving stalking, 1 January 1995 to 31 December 1999**

Between 1 January 1995 and 31 December 1999 there were 69 finalised court cases involving at least one charge of stalking. While the court data are not directly comparable with the police incident and apprehension data, this figure suggests that the number of stalking offences finalised in court is very low compared with the number recorded by police.

The very low number of finalised cases involving stalking may be a result of the difficulty in proving intent and the subsequent police policy of giving a formal caution/warning for a first report of a stalking offence. It is also noted, as discussed previously, that just under half of all persons apprehended in relation to stalking offences listed on a Police Incident Report between 1995 and 1999 were charged with offences other than stalking. While it is likely that a number of these individuals had their matters finalised in court, an analysis of the subsequent outcomes was beyond the scope of this report.

Just under half (33 or 47.8%) of these 69 cases included only one charge of any type. For the remaining cases the number of charges ranged between two charges (12 cases) and 26 charges (1 case).

In terms of the actual number of stalking charges per case, almost all of the 69 cases (62) included only one such charge. As shown in Table 3, there were seven cases with multiple *stalking* charges. Of these, two had three charges each. The remaining five cases had two, four, ten, 11 and 13 *stalking* charges respectively.

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<sup>5</sup> A case is regarded as a group of matters involving the one defendant which were all finalised before the same magistrate or judge in the same court on the same day. If a person has more than one case finalised over the study period, then he or she will be counted separately each time. The number of cases finalised in a given period may therefore be greater than the number of discrete individuals who are actually dealt with in that time frame.

Table 3: Number of stalking offences per finalised stalking case, 1995 to 1999

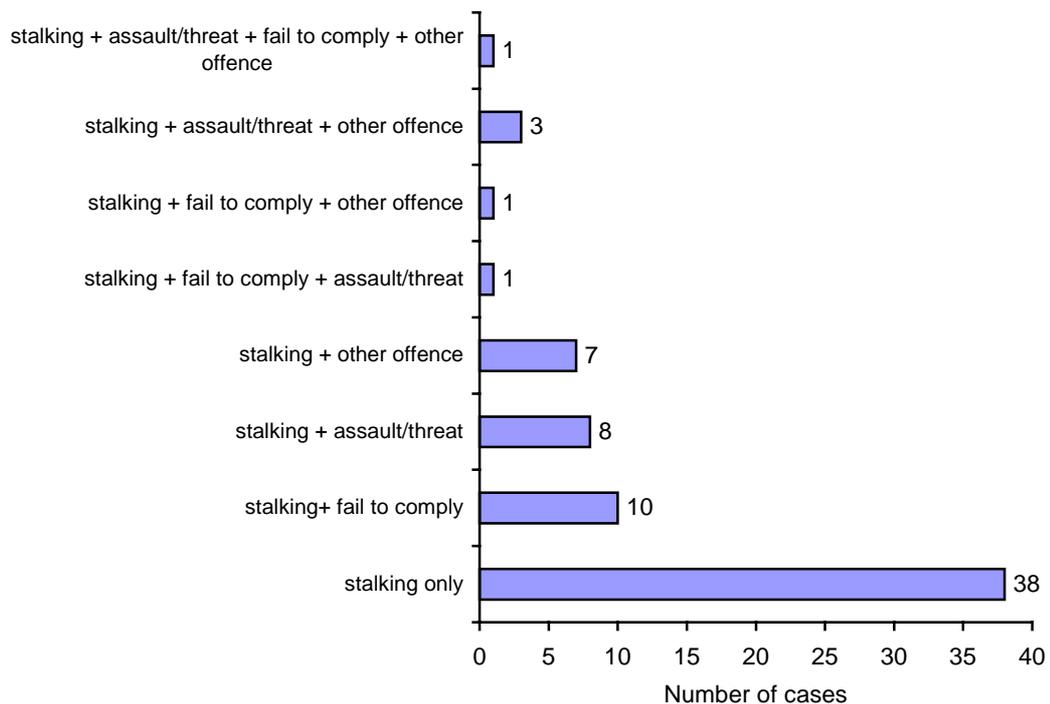
No of stalking offences per case	No of cases
1	62
2	1
3	2
4	1
5+	3

Stalking was the most serious charge<sup>6</sup> in 57 out of the 69 cases. For the 12 cases that did not have stalking as the most serious charge, five had *threat to kill*, four had *pervert justice*, two had *indecent assault* and one had *damage property* as the most serious charge.

### Combinations of charges per case

Figure 8 summarises the combination of charges found in each of the 69 cases. There were 38 cases (55.1%) that included stalking charges only. Ten cases (14.5%) involved stalking charge(s) and at least one charge of *failing to comply with a restraining order or bail agreement*. A further eight cases (11.6%) included stalking charge(s) as well as *assault* (ie *common assault, common assault of a family member or indecent assault*) and/or *threaten* charges (ie *threaten harm, threaten to kill*).

Figure 8: Court cases finalised 1995 to 1999 involving stalking by charge combination



Note: 'other' charges listed were *pervert justice, offensive behaviour, damage property (excluding arson), possession and/or use of other weapons, trespass, and illegal use of a motor vehicle*.

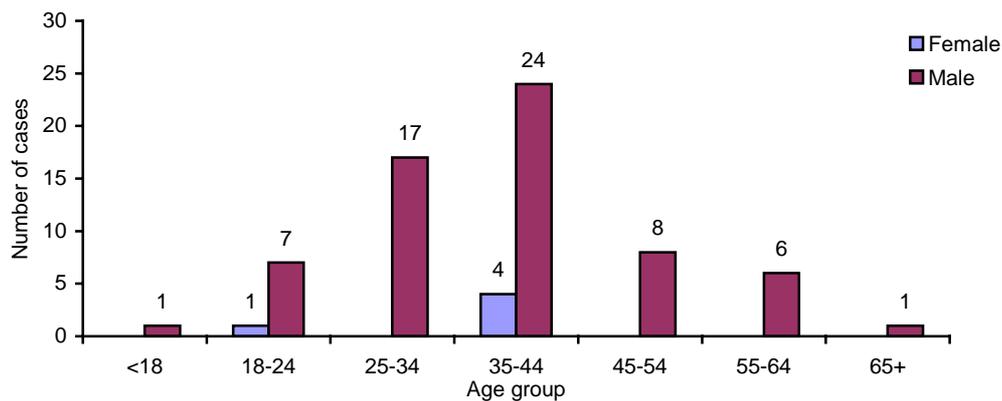
<sup>6</sup> The most serious charge per case is determined by a formula based on the highest maximum statutory penalty prescribed for each charge.

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### Sex and age of defendants involved in stalking court cases

The 69 stalking cases finalised between 1995 and 1999 involved 64 males and five females. At the time of the stalking offence, four of the female defendants were in the 35–44 years age group, while one was aged 23 years. Of the 64 males, approximately two thirds were aged between 25 and 44, including 28 (40.6%) aged between 35 and 44 years, and 17 (24.6%) in the 25 to 34 years age group. There were eight each in the 18-24 years and 45-54 years age groups and seven male defendants were aged between 18 and 24 years. These results are presented below in Figure 9.

Figure 9: Sex and age of defendants involved in finalised stalking court cases, 1995 - 1999



### Discrete Individuals

It should be noted that a number of individuals had more than one stalking court case finalised between 1995 and 1999. The 69 court cases actually involved 54 discrete individuals. Of these, 44 had one court case finalised during the study period, six had two cases finalised, three had three cases and one individual had four cases finalised. Only the disposition year of the court cases were available for this study, rather than the date when the offence occurred. However, it was found that seven of those ten individuals who were involved in more than one case over the five year period had all their cases finalised within the same year, two had cases two years apart and one person had two cases finalised between two and three years apart. Data on whether the same victim was involved in the multiple cases were not extracted for this study.

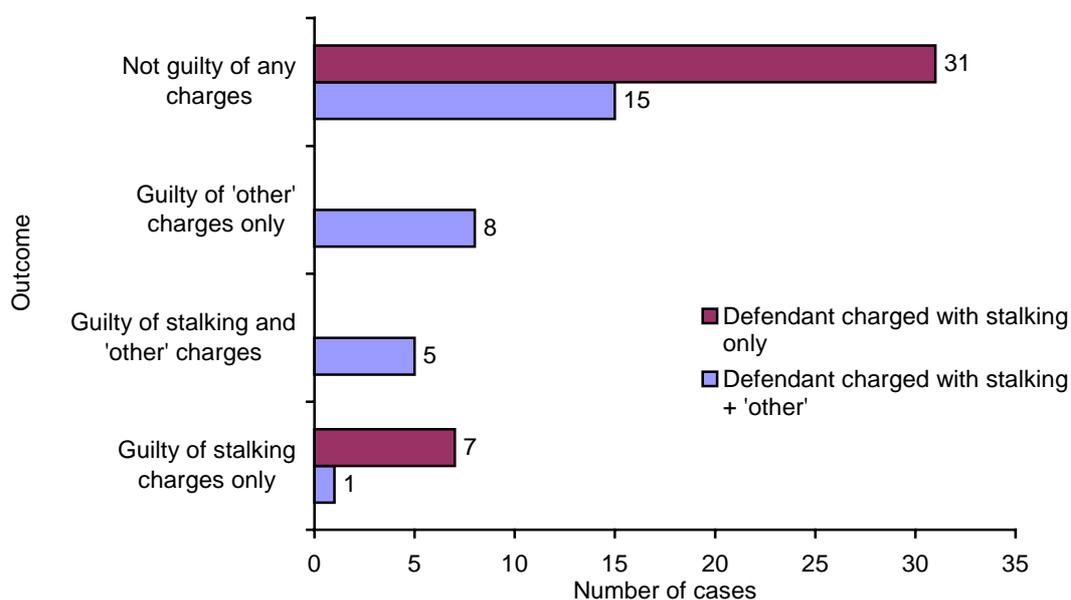
Almost all of the 54 defendants were male (51 or 94.4%). Of these, 19 (37.3%) were aged between 35 and 44 years at the time of the offence (s), and 13 were in the 25-34 age range. A further seven male defendants were aged between 45 and 54 and six were in the 18-24 age range. Only five defendants were 55 years or older while one was 16 years. Of the three female defendants, one was aged 23 years and two were aged 38 years at the time of the offence (s).

### Outcome of court cases

The next stage of the study involved analysing the outcomes of each of the 69 cases finalised between 1995 and 1999 that involved at least one charge of stalking.

Overall, in the majority of cases (46 or 66.7%) the defendant was not found guilty of any offence, while conversely, there was a finding of guilty in only 21 cases. Of these 21 cases, 13 involved a finding of guilt for at least one stalking charge, while in the remaining eight cases the defendant was found guilty of a non-stalking charge. In summary then, of the 69 cases, only 13 resulted in a guilty outcome for a charge of stalking. (There were two cases where outcome details were unavailable). These results are summarised in Figure 10.

Figure 10: Court cases finalised 1995 to 1999  
by outcome category



As advised by South Australian Police Prosecutions, the low number of convictions is possibly the result of the practice of withdrawing a case in favour of issuing a restraining order against the defendant. In fact, stalking charges were withdrawn by the prosecution in 43 of the 46 cases where the defendant was not found guilty of any offence. In addition, stalking charges were withdrawn in all eight cases where the defendant was found guilty of another offence type.

According to Police Prosecutions, the issuance of a restraining order may have greater benefits than the continuation of a court case because it offers, in theory, immediate and continuous protection to a stalking victim. A restraining order is also more likely to be obtained than a guilty verdict because a charge for stalking must be proved beyond reasonable doubt, whereas an application for a restraining order is dealt with on the balance of probability. In addition, the outcome of a court case may not be known for several weeks or months and it is possible that the defendant will be found not guilty. Even if a defendant is found guilty, the likelihood of imprisonment is low. While some guilty defendants will receive a suspended sentence, there is a defined end date to that penalty, in contrast to the continuous coverage of a restraining order.

### Penalties

Table 4 shows the penalties received for the 21 cases that had at least one guilty outcome within the case. The analysis differentiates between whether the defendant was found guilty of stalking offences only, 'other' offences only or both stalking and 'other' offences.

Table 4: Penalties received by defendants found guilty of at least one offence within a stalking case

Penalty Received	Type of guilty outcome		
	Guilty of stalking only	Guilty of 'other' offence only	Guilty of stalking + 'other' offence
Imprisonment only	2	1	0
Imprisonment + fine + restraining order	0	1	0
Imprisonment + bond with supervision	0	0	1
Suspended imprisonment + bond with supervision	2	0	0
Suspended imprisonment + bond with supervision + fine	0	0	1
Suspended imprisonment + bond with supervision + community service order	0	0	1
Suspended imprisonment + bond without supervision	1	0	1
Suspended imprisonment + bond without supervision + restraining order	2	0	0
Bond without supervision only	0	3	0
Community service order only	0	0	1
Fine only	0	1	0
Restraining order only	1	0	0
Restraining order + suspension of drivers licence + fine	0	1	0
No penalty	0	1	0
<b>Total cases with at least one guilty outcome</b>	<b>8</b>	<b>8</b>	<b>5</b>

For cases where the defendant was found guilty of a stalking offence only, the most common penalty combination was imprisonment or suspended imprisonment plus a bond, with or without supervision (seven cases out of eight). This contrasted with the eight defendants who were found guilty of 'other' offences only; three of the eight were imprisoned while the remaining five were placed on bond without supervision (3), had a restraining order issued or received no penalty.

On an individual basis, the most common penalties and their duration were as follows:

***Guilty of a stalking offence only:***

- imprisonment (2 cases) for periods of 1 and 52 weeks
- suspended imprisonment (5 cases) for periods of 4 (2 cases), 6, 17 and 26 weeks
- bond with supervision (2 cases) for periods of 18 and 24 months
- bond without supervision (3 cases) for periods of 18, 24 and 36 months
- restraining order (2 cases)

***Guilty of an 'other' offence only:***

- imprisonment (2 cases) for 34 and 39 weeks
- bond without supervision (3 cases) for 12 and 24 months (2 cases)
- restraining order (1 case)
- fine (2 cases) for \$100 and \$300

***Guilty of a stalking offence and an 'other' offence:***

- imprisonment (1 case) for a period of 52 weeks
- suspended imprisonment (3 cases) for periods of 6, 8 and 26 weeks
- bond with supervision (3 cases) for periods of 12 and 24 months (2 cases)
- bond without supervision (1 case) for a period of 36 months

- 
- fine (1 case) for \$100
  - community service order (2 cases) for 125 and 240 hours

## **SUMMARY**

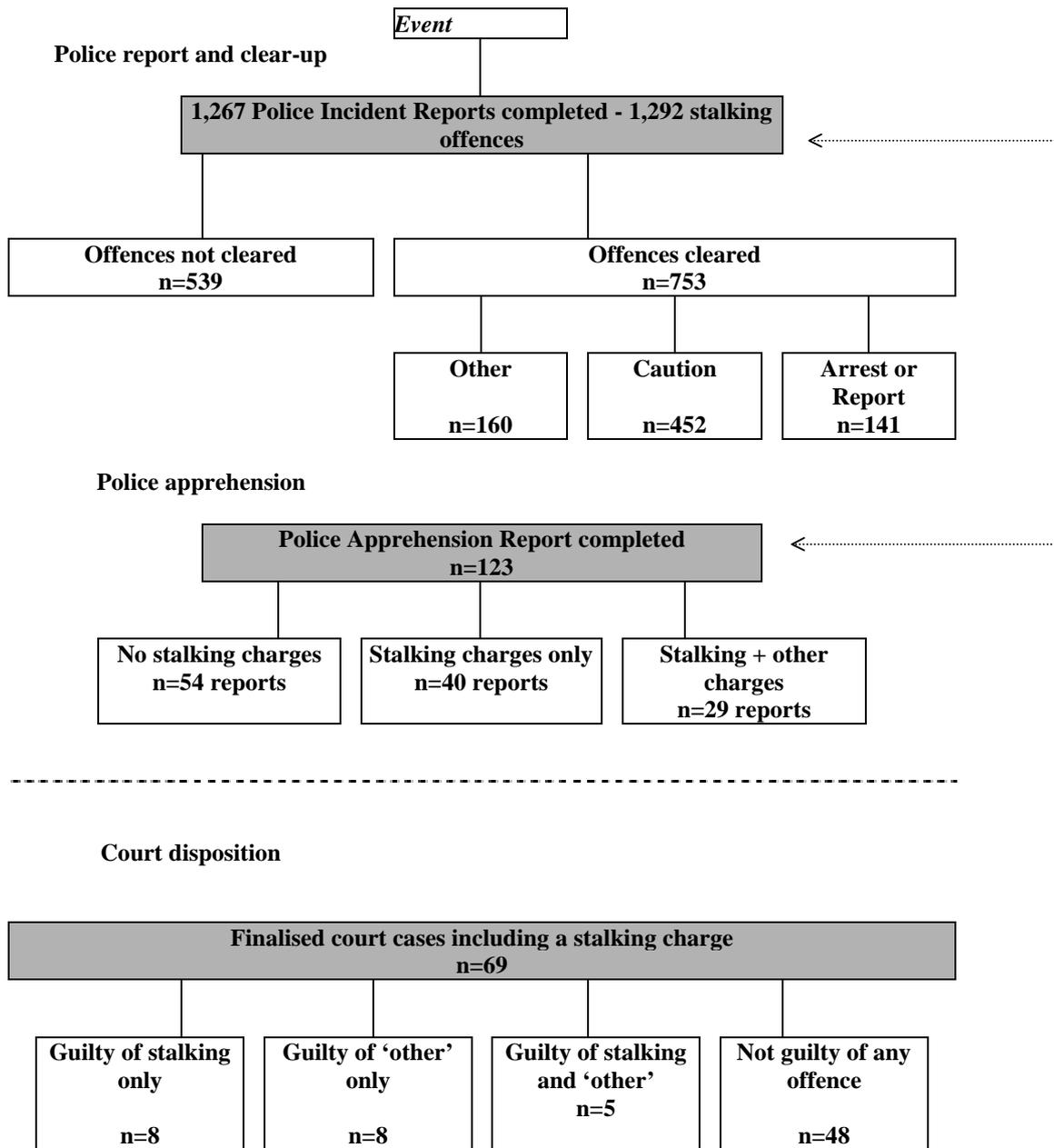
Figure 11 summarises the results of the study at the different stages of the criminal justice process.

Between 1995 and 1999, 1,267 Police Incident Reports including at least one offence of stalking were completed. Of these, 753 or 58.3% were 'cleared' by police, including 593 (45.9%) that were cleared when police arrested, reported or cautioned an offender.

The next stage of the study analysed the 123 Police Apprehension Reports that were completed when the police arrested or reported an individual in relation to the offences listed on the 1,267 Police Incident Reports. Just under half of these reports (54 or 43.9%) did not list a stalking offence, 40 reports included stalking charges only and 29 reports listed stalking and 'other' charges.

The final stage of the study examined court cases finalised between 1995 and 1999 that included at least one charge of stalking. The majority of the 69 cases (48) resulted in a 'not guilty of any offence' outcome. There were 21 cases where the defendant was found guilty of at least one offence, including eight where the defendant was guilty of stalking only, eight where the offender was guilty of an 'other' offence only, and five where the defendant was guilty of both stalking and 'other' charges.

**Figure 11: Stalking offences within the criminal justice system**



## CONCLUSION

This report has outlined the results of a study of stalking offences at three stages of the criminal justice system: police report, police apprehension and court disposition. For offences of stalking recorded by police, the offenders are predominantly male and aged between 35 and 44, while the majority of victims are female and aged between 25 and 34 years. The offender is most often the ex-partner or an acquaintance of the victim.

Overall, reports of stalking offences make up a very small proportion of all offences reported in South Australia. Just over half of all reported incidents of stalking are cleared by way of an arrest, report or caution. Very few incidents result in an arrest or report. Even fewer incidents are finalised in court and most of these are withdrawn or dismissed without a guilty outcome. However, these results can be explained, in part, by the impact of legislation and South Australian police policy.

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