CHILD SEXUAL ASSAULT

The Court Response

NSW BUREAU OF CRIME STATISTICS AND RESEARCH

CHILD SEXUAL ASSAULT: THE COURT RESPONSE

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PREFACE

The Bureau of Crime Statistics and Research has conducted several research studies concerned with sexual assault, the most recent being those monitoring the Crimes (Sexual Assault) Amendment Act, 1981. This report is the first dealing with child sexual assault and follows mounting concern about the problem of child sexual assault, culminating in the establishment of the New South Wales Child Sexual Assault Task Force on June 25, 1984.

This report presents an analysis of the way cases of child sexual assault are dealt with in the criminal justice system of New South Wales. The study includes all indictable cases of child sexual assault finalised in New South Wales courts during 1982. It provides a detailed examination of the course of such matters from their entry into the criminal justice system with the arrest of alleged offenders to the finalisation of the matter. It is one of only a few studies providing such information available in either Australia or overseas.

A. J. Sutton
Director

1. INTRODUCTION

There has been increasing recognition and concern about child sexual assault both within Australia and in other countries over the past decade. This concern has been reflected in a number of Government reports and inquiries on child sexual assault, in increased research in the area, and in unprecedented media publicity about the problem. Government committees or task forces inquiring into the legal, social and welfare issues associated with child sexual assault have been set up in a number of overseas countries (for example, Canada and the United States) and in nearly every state of Australia during the past few years (Report of the Western Australian Advisory and Co-ordinating Committee on Child Abuse, 1982; Report of the New South Wales Task Force on Child Sexual Assault, 1985; Community Discussion Paper of the South Australian Government Task Force on Child Sexual Abuse, 1985; Hewitt, 1986: Victorian Child Sexual Assault Discussion Paper).

Associated with the increased awareness of the problem has been the recent dramatic increase in the number of reported cases of child sexual assault. In New South Wales, for example, the number of notifications to the Department of Youth and Community Services rose from 176 cases in 1981 to 454 in 1982, 843 in 1983, and 1668 in 1984. In four years, the number of notifications increased by nearly 850%. Other agencies, such as hospitals and sexual assault centres, have also seen increasing numbers of children over the same period. Such marked increases are not restricted to New South Wales but have also occurred in other states of Australia and follow a similar pattern to what has already happened overseas (Canada: Report of Committee on Sexual Offences against Children and Youths, 1984; United States: Finkelhor, 1983; National Centre on Child Abuse, 1981).

The sharp increase in these figures does not necessarily indicate an equally significant increase in the incidence of child sexual assault; it is, in fact, more likely to reflect greater willingness to report. The establishment of community-based specialist centres for sexual assault victims, including child sexual assault centres, has made reporting easier and enabled more cases to be reported. At the same time, heightened recognition of the problem by professionals and by the community in general as a result of increased reporting has increased willingness to report.

The actual incidence of child sexual assault is very difficult to estimate and studies which have attempted to do so have been plagued by a number of methodological problems. Definitions of child sexual assault, the reporting agency involved, and the type of sample differ across studies, making comparisons across studies very difficult. The main problem, however, is the estimation of the size of the hidden component. The private nature of child sexual assault within the family and the reluctance of victims to report it mean that the available figures on reported cases do not provide a reliable guide to its actual incidence.

Despite the difficulties associated with measuring the incidence of child sexual assault, it is generally agreed that reported cases represent only a fraction of the number of cases occurring in the community (Canadian Report of the Committee on Sexual Offences against Children and Youths, 1984; Finkelhor & Hotaling, 1984; Mrazek, Lynch, & Bentovim, 1983; Report of the New South Wales Task Force on Child Sexual Assault, 1985). A number of retrospective surveys of child sexual assault have found that most victims do not tell anyone about the assault(s) during their childhood; in fact, many do not disclose it later either. In a Canadian "population survey", only about 11% of males and 24% of females who reported having been the victim of an actual or attempted sexual assault (mostly when they were children) had told someone about the assault. An even smaller percentage of victims (about 9% of females and 7% of males) had reported the assault to the police or sought assistance (Report of the Committee on Sexual Offences against Children and Youths, 1984). Other surveys in San Francisco (Russell, 1983), Britain (West, 1985) and phone-in surveys in Australia in Adelaide (Adelaide Rape Crisis Centre, 1979, 1983), Brisbane (Brisbane Women's House, 1980), and Sydney (Waldby, 1985) have found similar results, clearly indicating that official figures based on reported cases of child sexual assault do not reflect the actual extent of the problem. To borrow a commonly-used phrase in this area, reported cases really only constitute the "tip of the iceberg". The recent sharp increase in the number of reported cases, however, suggests that the exposed portion of the iceberg is increasing in size and becoming more visible.

THE ROLE OF THE CRIMINAL JUSTICE SYSTEM IN CHILD SEXUAL ASSAULT

The growing awareness of child sexual assault and, in particular, the recognition that a relatively large proportion of cases involve family members (especially fathers and father-figures), has led to a demand for new ways of dealing with the problem. One

aspect of the debate about what should happen following the reporting of a child sexual assault case has been a discussion of the role of the criminal justice system. The main issues in this discussion have been the effects on child victims who are required to give evidence in court proceedings, and the likelihood of conviction for offenders and the provision of various sentencing options, including treatment services, especially for intrafamilial offenders. The discussion of these issues must occur within the context of an analysis of the way cases are handled within the criminal justice system. For example, how many child victims have to give evidence in court? How many offenders plead guilty, and how many receive the various types of sentence?

Unfortunately, little information is available concerning the prosecution of cases of child sexual assault, either in Australia or overseas. Only two studies in Australia have examined the prosecution of sexual assault cases involving children, and one of these was concerned only with incest cases in Victoria (Heath, 1985). The other dealt with child sexual assault cases as part of a South Australian study of sexual assault (Office of Crime Statistics, 1983). Three studies have provided some information about the treatment of such cases in the United States (Conte & Berliner, 1981; De Francis, 1969; Finkelhor, 1983), and a Canadian study (Report of the Committee on Sexual Offences against Children and Youths, 1984) surveyed over 700 convicted sexual offenders against children. As the Canadian study pointed out, however,

> "there is virtually no documentation about the selective process of winnowing that occurs between the actual occurrence of sexual offences and the conviction of a small proportion of offenders" (Vol 2., p .785).

One of the main reasons that there is so little information available about this process is that data sources on the criminal justice system concentrate on convicted offenders and are almost invariably offender-oriented, not victim-oriented. They do not include easily accessible information about victims, such as their age, so that identifying cases of sexual assault in which children are the victims is difficult and time-consuming. A special study involving a check of the records for all cases is therefore generally required. This was necessary in the present study, which was conducted in order to investigate in some detail the way in which cases involving child sexual assault are dealt with in the criminal justice system of New South Wales. How, then, do cases of child sexual assault come to be prosecuted, and what is the law relating to child sexual assault in New South Wales?

THE PROSECUTION OF CASES OF CHILD SEXUAL ASSAULT

Cases of child sexual assault may be notified or reported to one of several agencies, including the police, a sexual assault centre, a medical service or a child protection service (for example, in New South Wales, the Department of Youth and Community Services). Most commonly, a child's disclosure of sexual assault to a parent, relative, teacher, or doctor is reported to one of these agencies. In some cases, however, the assault may be (accidentally) uncovered during the investigation of another problem with the child, such as truancy, or a medical complaint. Once the report is made, the case is likely to be referred to the other agencies, and investigation by the police and the Department of Youth and Community Services follows. This investigation generally involves a medical examination of the child, questioning of the child by the police and an officer of the Department of Youth and Community Services, and questioning of the suspect, if known. If there is sufficient evidence of an assault, legal action may follow. The usual sequence of events following the report of an alleged sexual assault offence against a child is outlined in the flow diagram of Figure 1.

In New South Wales, as in the other states of Australia and in most common-law jurisdictions overseas (for example, Britain, Canada, and the United States), legal action may be undertaken in either the criminal justice system (in New South Wales under the Crimes Act) or, in cases in which the alleged perpetrator is a family member, in the Children's Court as part of the child protection process. (If the alleged offender is a child, criminal proceedings against the offender may be carried out in the Children's Court.) Action may also be undertaken simultaneously in both systems in cases involving family members. Under the Child Welfare Act (1939), a complaint may be laid, alleging that a child suspected of being sexually abused by a family member or guardian is a "neglected child". One of the advantages of pursuing the case as a welfare matter in the Children's Court rather than as a criminal matter in the criminal justice system is that the children involved usually do not have to give evidence. The burden of proof for a complaint in the Children's Court (on the balance of probabilities) is also less onerous than that in the criminal justice system (beyond reasonable doubt), so some protection for the child may therefore be available even if the criminal action does not proceed.

Although cases of child sexual assault may be dealt with as both a welfare matter and as a criminal matter, this report concerns only those cases dealt with in the criminal justice system. It includes all cases of sexual assault involving children finalised in thehigher courts of New South Wales in 1982, following successful committal in the several years up to and including 1982. It cannot and does not claim to be representative of all reported cases of child sexual assault, let alone unreported cases. As indicated earlier, only

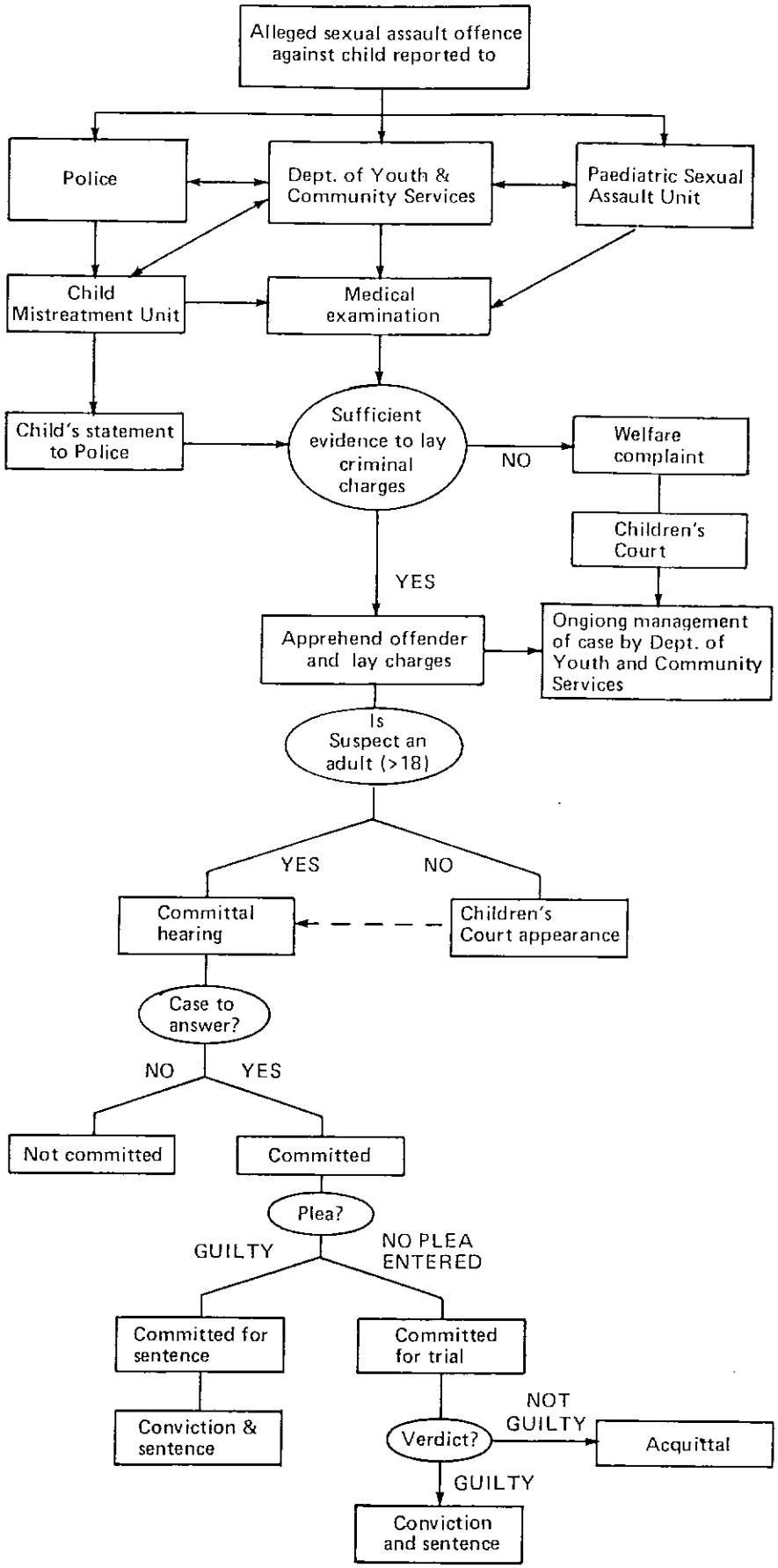

Fig. 1

Flow diagram of child sexual assault cases from reporting to finalisation.

a small proportion of cases are reported, and only some of these reported cases are dealt with by way of prosecution in the criminal courts. The number of reported cases leading to prosecution in New South Wales is unknown, but several overseas studies point to a number of factors which are likely to affect both the likelihood of a case being reported, and the way it is dealt with after being reported. These factors include the relationship between the perpetrator and the victim, the age and sex of the victim, the agency to which the initial report was made, and the seriousness of the offence (De Jong, Hervada, & Emmett,, 1983; Finkelhor, 1983; Report of the Committee on Sexual Offences against Children and Youths, 1984). The effect of some of these factors on the way cases are dealt with once they have entered the criminal justice system and the associated attrition of cases as they pass through the system are two of the central concerns of this report.

THE CRIMINAL LAW RELATING TO CHILD SEXUAL ASSAULT IN NEW SOUTH WALES

As indicated earlier, this report includes all indictable cases of sexual assault involving children (under 18) finalised in 1982. Since the law relating to sexual assault was amended in 1981, the study therefore includes cases in which the charges were laid under the pre-1981 legislation and cases in which the charges were laid after the amended legislation came into force. The main effect of the 1981 amendments to the Crimes Act was to replace the common law offences of rape and attempted rape with three categories of sexual assault (s.61B, s.61C and s.61D, and attempts of all three categories under s.61F). In addition, the offences of indecent assault (on a female: under s.76 and s.76A of the Crimes Act) were replaced by a fourth category of sexual assault (s.61E). The four categories of sexual assault represent a gradation of sexual assault, with distinct ranges of penalties, ranging from a maximum penalty of 20 years' imprisonment for Category 1 sexual assault to a maximum of two to six years for Category 4 sexual assault. The aim of the new legislation was to shift the emphasis from the sexual aspect of the old offence of rape to the violence associated with the assault. In fact, the essential element of Category 1 and Category 2 sexual assault is the degree of violence and bodily harm threatened or inflicted with intent to have sexual intercourse, not the actual completion of sexual intercourse. Sexual intercourse is an essential element of the offence only for Category 3 sexual assault and, in this case, the main issue is consent. The new legislation also extended the definition of sexual intercourse to include vaginal and anal penetration by a foreign object or by any part of another person; it also includes cunnilingus and fellatio. Other important effects of the amended legislation were to place limits on the admissibility of evidence relating to the complainant's sexual experience or reputation (or lack of sexual experience) and to remove the immunity from prosecution of cohabiting husbands, and youths under 14.

Other provisions in the Crimes Act concerning sexual offences against children were unaffected by the 1981 sexual assault amendments. These offences relate to carnal knowledge, defined by sexual intercourse with a girl under 10 (s.67, attempt: s.68), under 16 (s.71, attempt: s.72), or under 17 if fathers, step-fathers, and teachers are involved (s.73 and s.74). Consent of the girl is irrelevant to the commission of an offence of carnal knowledge, except that consent may be offered as a defence if the girl consented, was over the age of 14 at the time of the offence, and if "the accused had reasonable cause to believe that she was over the age of sixteen" (s.77). This defence does not apply to offences under Sections 73 and 74.

The offence of incest (s.78A) is a special case of carnal knowledge, defined as sexual intercourse between "a son and mother, brother and sister, father and daughter, or grand-father and grand-daughter". Incest was not a crime under statute until relatively recently, but was a taboo enforced through moral, social, biological, and religious concerns. The basis of the offence is consanguinity, not consent, and under New South Wales law, both parties to the offence may be charged (except for females under 16 and males under 14). The approval of the Attorney General is required before a prosecution for offence can commence.

A summary of the relevant sexual assault offences and the associated maximum penalties under the Crimes Act is presented in Table 1. The elements of the offences are outlined in Appendix 1, together with a summary of the subsections of the Crimes (Sexual Assault) Amendment Act, 1981. The legislation dealing with the sexual assault of children has been further amended by the Crimes (Child Assault) Amendment Act 1985 and other cognate acts. The main provisions of these amendments are summarised in Appendix 2.

AIM OF THE STUDY

The aim of this study is to investigate the way in which cases of child sexual assault are dealt with in the criminal justice system of New South Wales. The following three questions will serve as the focus of the analysis:

(1) What proportion of cases entering the criminal justice system proceed through the various stages of committal and trial to conviction and sentencing?

(2) What factors affect the passage of cases through the various stages of the system? Particular attention will be paid to the relationship between the offender and the victim.

(3) What major features of the way cases are dealt with affect the major participants - the defendant and the complainant?

TABLE 1

Sexual offences in New South Wales and associated penalties under the Crimes Act

Classification of offence	Offence (Crimes Act)	Maximum penalty
PRE-1981 LEGISLATION		
Rape	s. 63	Life imprisonment
Attempted rape		
Assault with intent to rape	s. 65	Life imprisonment
Attempt rape	s. 65	Life imprisonment
Indecent assault on female		
Under 16 years	s. 76	6 years
16 years & over	s. 76	4 years
Act of indecency on female under 16	s. 76A	2 years
Indecent assault on male(1)	s. 81	5 years
Buggery(2) .....(2).....	s. 79	14 years
Attempt buggery(2)	s. 80	5 years
POST-1981 AMENDED LEGISLATION(3)		
Sexual Assault Category 1(4)	s. 61B	20 years
Sexual Assault Category 2(4)	s. 61C	12 years
Sexual Assault Category 3	s. 61D	
Sexual intercourse without consent, under 16 years	s. 61D (1)	10 years
Sexual intercourse without consent, 16 years and over	s. 61D (1)	7 years
Sexual Assault Category 4		
Sexual assault with act of indecency, under 16	s. 61E (1)	6 years
16 years and over	s. 61E (1)(5)	4 years
Sexual assault with act of indecency, include attempt under 16 years	s. 61E (2)	2 years
Incite person under 16 years to act of indecency	s. 61E (2)(5)	2 years

(1) Section 81 was repealed by the Homosexual Amendments Act (1984).

(2) Sections 79 and 80 now relate to bestiality only.

(3) Under s.61F, attempts carry the same penalties.

(4) See Appendix 1 for a summary of the sub-sections of these offences.

(5) Under s.476 of the Crimes Act, these offences may be heard summarily with the consent of the defendant.

TABLE 1 (continued)

Sexual offences in New South Wales and associated penalties under the Crimes Act

Classification of offence	Offence (Crimes Act)	Maximum penalty
CARNAL KNOWLEDGE		
Carnal knowledge of girl under 10 years.....	s. 67	Life imprisonment
Attempt or assault with intent to carnally know girl under 10 years.....	s. 68	14 years
Carnal knowledge of girl 10 to 16 years.....	s. 71	10 years
Attempt or assault with intent to carnally know girl 10 to 16 years.....	s. 72	5 years
Carnal knowledge of idiot or imbecile.....	s. 72A	5 years
Carnal knowledge of girl 10 to 17 years by teacher, father or step-father.....	s. 73	14 years
Attempt carnal knowledge, or assault with intent, of girl 10 to 17 years by teacher, father or step-father.....	s. 74	7 years
Incest - carnal knowledge of female by grandfather, father, brother, or son.....	s. 78A	7 years
Attempt incest.....	s. 78B	2 years

2. METHOD

This study examined all indictable cases of sexual assault finalised in New South Wales courts in 1982 (following successful committal in the years up to and including 1982)(1), and in which the victims were under 18 years of age at the time of the offence(2). It does not include cases which were finalised in the Local Courts and which were not committed for trial or sentence to the higher courts. Since there is no central recording system which keeps records of the ages of sexual assault victims for cases in which a criminal charge is laid, it was necessary first to locate the court records for all indictable sexual assault matters finalised in New South Wales in 1982 to ascertain the age of the victims. There were 380 such cases in 1982, and 191 (50.3%) of these involved defendants charged in relation to victims who were under 18 at the time of the offence. These cases involved a total of 223 victims under 18.

As the difference between the number of victims (223) and suspects (191) immediately indicates, there was no simple one-to-one correspondence between victims and alleged offenders. The most common combination was, in fact, one alleged offender-one victim but there were also 19 cases in which a victim was assaulted by more than one offender and 53 cases in which an offender was charged with sexually assaulting more than one victim. In total, there were 235 victim-defendant pairs and a coding sheet (see Appendix 3) was completed for each pair. For example, where a defendant in a case was charged with sexual assault offences against five victims, five coding sheets were completed, one for each complainant-defendant pair. Similarly, where there were several defendants accused of assaulting a single victim, a separate coding sheet was again completed for each complainant-defendant pair.

The papers which were examined in order to complete the coding sheets included court papers, committal papers, court judgments relating to sentencing, and statements to the police by victims, offenders, and mothers of the victims.

A note on terminology

Throughout this report, several terms may be used for "offenders" and "victims". "Offenders" are generally referred to as "suspects" prior to committal, as "defendants" or "the accused" (for those facing trial) prior to conviction, and as "offenders" following conviction. Similarly, "victims" are generally referred to as "complainants" (particularly in references to "defendant-complainant pairs") until a conviction is secured in their case, and "assaults" refers to alleged assaults until conviction. "Cases" refers to defendant-complainant pairs.

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[1]The vast majority of distinct defendants (94.3%) were committed during either 1981 (41.4%) or 1982 (52.9%). Nine distinct defendants (4.7%) were committed during 1980, one in 1975, and one in 1964.

[2]The offence involved include only those offences shown in Table 1.

3. THE ALLEGED OFFENDERS AND VICTIMS

THE "VICTIMS"

Sex of the complainants

The majority of the 223 complainants (153, 68.6%) were female. The proportion of male complainants (31.4%) in the study was, however, higher than expected. Available figures on the proportion of male complainants in reports to the police or sexual assault centres in New South Wales generally vary between 10% and 20%. American figures also indicate only a small proportion of male victims reporting to authorities, at around 10%, although there has been some indication since the late 1970s that the proportion is rising (Bulkley, 1981; Finkelhor, 1984; National Centre on Child Abuse and Neglect, 1981). In a comparable study of prosecuted sexual assault cases in South Australia, "one in five" child victims were males, still somewhat lower than the figure in the current study. The reason for the higher figure in this study is unclear.

Age of the complainants

The age of the complainant was recorded on the basis of age at the date of the offence to which legal action related. The youngest victim was one year old at the time of the offence. The average age was 11.1 years, but this is likely to be older than the average age at the date of the (first) offence because a number of cases (mostly involving family members) involved repeated assaults that occurred over a period of time. In 24 cases, for example (representing 10.7% of the total number of complainants), repeated offences occurred over a period of more than three years.

Table 2 shows the age distribution for both male and female complainants. The majority of complainants (60.0%) were 12 years old or younger. Figure 2 presents a graphical representation of the percentage breakdown of this data with grouped ages for both male and female complainants. As Figure 2 shows, female complainants were more likely than male complainants to be in both the youngest (0 - 4 years) and the oldest (16 years and over) age groups. Male complainants, on the other hand, were about twice as likely as female complainants to be in the 5-to-9 year age group.

These figures are similar to the findings of several other studies, both in the younger age of male complainants (De Jong, Hervada, & Emmett, 1983; Finkelhor, 1984; Pierce & Pierce, 1985) and in the overall mean age of complainants. Like the current study, a number of studies of both reported and prosecuted cases of child sexual assault have found that the average or median age of complainants is around 11 years (De Francis, 1969; De Jong et al., 1983; Heath, 1985; Russell, 1983). It should be noted that this average age is likely to be somewhat higher than the average age of sexual assault victims in general, because of the estimated lower reporting rate among younger victims (De Jong et al., 1983) and a reluctance to prosecute where young children are required to give evidence in court. Further, there is some indication of a recent downward shift in the age of victims overseas (Cantwell, 1983; Finkelhor & Hotaling, 1984) and in Australia (New South Wales Department of Health figures on child sexual assault).

TABLE 2

Age and sex of complainants

Age(years)	Female	Male	Total No.	Total %	Total Cum. %
1.....	1	0	1	0.5	0.5
2.....	2	0	2	0.8	1.3
3	6	1	7	3.1	4.5
4.....	7	0	7	3.1	7.6
5.....	6	4	10	4.5	12.1
6.....	4	5	9	4.0	16.1
7.....	4	4	8	3.6	19.7
8.....	5	6	11	4.9	24.8
9.....	9	6	15	6.7	31.4
10.....	13	7	20	9.0	40.4
11.....	11	7	18	8.1	48.4
12.....	14	5	19	8.5	60.0
13.....	20	7	27	12.1	69.1
14.....	13	9	22	9.9	78.9
15.....	12	6	18	8.1	87.0
16.....	13	2	15	6.7	93.7
17.....	13	1	14	6.3	100.0
TOTAL	153	70	223	100.0	
AVERAGE AGE	11.3	10.7	11.1		

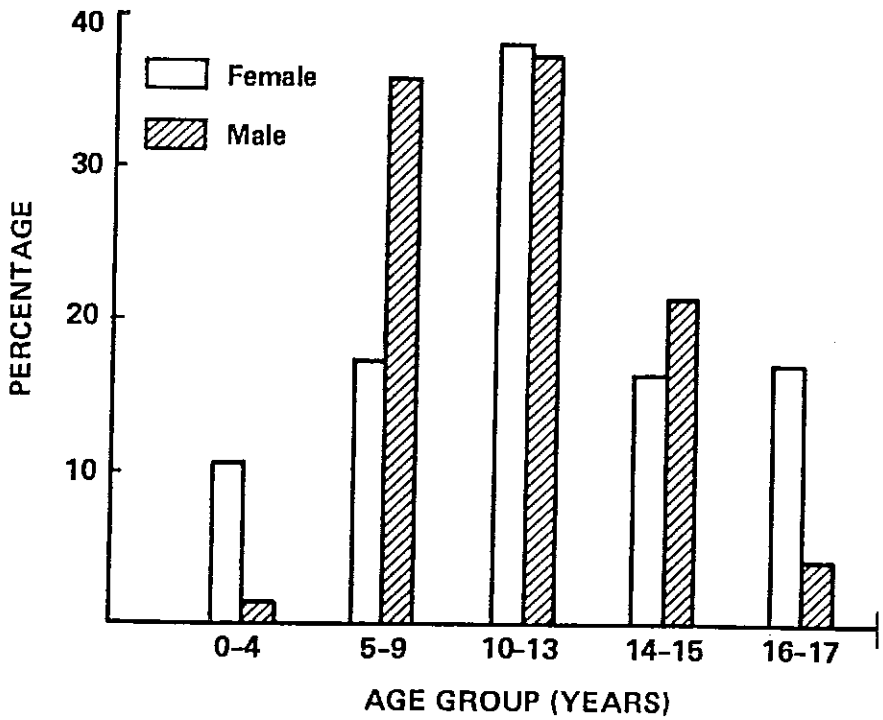

Fig. 2

Percentage of distinct complainants by age and sex.

THE "OFFENDERS"

There were 191 defendants charged with indictable sexual assault offences against children in cases finalised in 1982. All were male.

Age of the alleged offenders

The average age of offenders at the time of the alleged offence (or at the time of arrest for cases in which multiple offences occurred over a period of time) was 32.7 years. The youngest was 13 years old and the oldest, 76 years old. The age distribution, shown in Table 3, indicates that the defendants in this study tended to be older than the defendants in Bonney's (1985a,b) study of sexual assault cases entering the criminal justice system in New South Wales during an 18-month period from July 1981 to January 1983. The average age of defendants in Bonney's study (which included cases involving both adult and child complainants) was around 24 years, about 8 years younger than the average age in the current study.

TABLE 3

Age of defendants

Age	No.	%
Under 14 years.....	1	0.5
14 to 17 years.....	10	5.2
18 to 19 years.....	22	11.4
20 to 24 years.....	36	18.7
25 to 29 years.....	24	12.4
30 to 34 years.....	22	11.4
35 to 39 years.....	19	9.8
40 to 44 years.....	21	10.9
45 to 49 years.....	12	6.2
50 to 59 years.....	15	7.8
60 years & over.....	6	3.1
Unknown.....	5	2.6
TOTAL	191	100.0
AVERAGE AGE	32.7 years	

This difference in average age between the two studies seems to be largely due to the fact that alleged offenders against children are much more likely to be family members than is the case for adult complainants. A breakdown of the age of defendants in terms of their relationship to the complainant (Appendix 4) indicates that defendants who allegedly assaulted members of their own family were older than other defendants.

Their average age was 35.3 years compared with an average age of 28.6 for defendants who were either strangers to their complainants or friends or acquaintances. This age (for intrafamilial suspects) is also close to the average age of offenders of 36.4 years in Heath's (1985) study of incest cases in Victoria. The average age for all offenders is also similar to that reported in other studies of both prosecuted (De Francis, 1969: median age of 31.3 years) and reported cases of sexual assault of children (Russell, 1984: mean age of 30 years).

Marital status of alleged offenders

Information on the reported marital status of alleged offenders was available for all but four of the 191 defendants from the Police Facts sheet. Of these 187 alleged offenders, 93 (49.7%) were single, 58 (31.0%) were married, 17 (9.1%) were living in a de facto relationship, 16 (8.5%) were either divorced or separated and three (1.6%) were widowed. The majority of suspects (59.4%) were therefore, on their own report, not involved in a marital or de facto relationship at the time of their arrest.

Previous sexual offence convictions

Forty-one alleged offenders (21.5%) had previous sexual offence convictions; no such prior conviction was recorded for 149 defendants (78.0%), and no information about prior convictions was available for three defendants. This is similar to the finding of a South Australian study on sexual assault that 17.3% of alleged offenders had at least one previous conviction for a sexual offence (Office of Crime Statistics, 1983). Heath (1985) also found that 17% of incest offenders in Victoria had a previous conviction for a sexual offence. The current study did not, however, take into account prior convictions for offences other than sexual offences. In addition to previous sexual offences, the South Australian study found that 47.8% of persons apprehended for alleged sexual assault (including those charged with sexual offences against adults) had prior convictions for property offences, and 26.4% had previous convictions for offences against the person (Office of Crime Statistics, 1983).

RELATIONSHIP BETWEEN ALLEGED OFFENDER AND VICTIM

The relationship between victim and offender can be broadly broken down into six major categories depending on whether the alleged offender was a member of the victim's family or household, a close family friend, a close friend of the victim, someone in a professional position of authority over the child, someone otherwise known to the child, or a total stranger. Table 4 shows the number of alleged offenders and the number of complainants in each of these categories. It is necessary to present figures for both complainants and offenders despite the fact that we are now discussing the relationship between offender and victim because, as we have already seen, some alleged offenders assaulted more than one victim. Table 4 also shows the ratio of the number of complainants to the number of offenders -- in effect, a proxy for the average number of complainants per offender for each of the categories of relationship. As Table 4 shows, offenders who were either close family friends or in positions of authority relative to their complainants were more likely than offenders in the other relationship categories to assault more than one victim. This is probably a reflection of their ease of access to a number of victims in situations which allowed them the opportunity to assault their victims; it may also reflect the increased likelihood of being reported in cases of multiple victims rather than one victim. A more detailed breakdown of the frequencies within each of these categories follows.

TABLE 4

Number of distinct complainants and distinct defendants by defendant-complainant relationship

Relationship	Complainants		Defendants		Complainants/ defendants
	No.	%	No.	%	
Family member	51	22.9	48	25.1	1.06
Family friend	22	9.9	17	8.9	1.29
Authority figure ...	27	12.1	17	8.9	1.58
Close friend	5	2.2	5	2.6	1.00
Acquaintance.....	87	39.0	77	40.3	1.13
Stranger	31	13.9	27	14.1	1.15
TOTAL	223	100.0	191	100.0	1.17

Family relationship

Fifty-one children (22.9%) were victims of alleged assault by family members. This includes alleged assault by de facto fathers who were living in the household at the time of the assault. Table 5 shows the number of complainants and defendants involved in intrafamilial assaults according to the relationship between them. Most of these victims were assaulted by a father figure -- either their biological father (18 complainants), their stepfather (11 complainants) or the de facto spouse of their mother (11 complainants). The de facto spouse category includes only live-in de facto fathers; those not living with the family were classified as close family friends. Children assaulted by their uncle (7) or great-uncle (1) comprised the next biggest group of intrafamilial victims, with another two children assaulted by their brother and another one by a cousin. Clearly then, these offenders were likely to be in significant positions of authority within the family in relation to the child -- that is, alleged offenders within the family group were more likely to be a parent rather than a sibling, and to be closely related rather than distantly related to the complainant.

TABLE 5

Number and percentage of complainants and defendants within family relationships

	Complainants		Defendants	
Relationship	No.	%	No.	%
Biological father.....	18	35.3	18	37.5
Stepfather.....	11	21.6	10	20.8
De facto father.....	11	21.6	9	18.7
Uncle.....	7	13.7	7	14.6
Great uncle.....	1	2.0	1	2.1
Brother.....	2	3.9	2	4.2
Cousin.....	1	2.0	1	2.1
TOTAL	51	100.1*	48	100.0

* Rounding error.

Alleged intrafamilial offenders were also more likely to assault female children than male children. Only six complainants in this category were males (8.6% of male complainants) whereas 45 were females (29.4% of female complainants: see Appendix 5). This finding is very similar to the finding from several studies in the United States (Finkelhor, 1984; National Centre on Child Abuse and Neglect, 1981). For both reported and prosecuted cases, girls were more likely to be sexually assaulted within the family whereas boys were more likely than girls to be assaulted by someone outside the family.

Child complainants in this group were also most likely to be between 10 and 13 years of age (47.1%) and least likely to be in the youngest (under 5) and oldest (16 and over) age groups (7.8% each: see Appendix 6).

Family friends

Twenty-two children (9.9%) were sexually assaulted by close family friends -- that is, by people considered by the adults of the family to be friends rather than people chosen by the children themselves as friends. Included in this group of suspects were, for example, one close friend of the family living in the household when the offences took place, friends of both parents, friends in either sexual or non-sexual relationships with mothers living alone with children, friends of the family who sometimes had overnight or weekend care of the children, the de facto father of a schoolfriend of one victim (primary school age), and in another case, a boarder taken in by a single mother to supplement her small income. All the child complainants in this group were under 14, with the vast majority (86.4%) between 5 and 13 years of age. Seventeen complainants were girls and five were boys.

Professional authority figure to the child

A mixed group of people who were in positions of care and authority in relation to the children sexually assaulted 27 children. The largest group of complainants in this category (13) were children victimised by child care workers or youth workers or by a children's camp manager. Seven children were assaulted by teachers, and a further four by babysitters. For two older girls, the assailant was their employer or potential employer. One intellectually disabled girl was sexually assaulted by a cleaner in the institution in which she lived. The majority of complainants in this category were aged between 10 and 15 years (70.4%). They were also more likely to be male rather than female (see Appendix 5); this was the case for only one other relationship category, that of strangers. Indeed, 24.3% of male complainants were allegedly assaulted by a professional authority whereas the figure was only 6.5% for females.

Close friends of the "victim"

Five adolescents ranging in age from 12 to 15 were involved in cases where the "offender" was someone with whom the "victim" had a sexual relationship. All except one of these complainants were girls aged between 12 and 15 years; the exception was a 13-year old boy. The age of the "offender" was not known in four of these cases; in the one case where the age of the "offender" was known, it involved a 12-year old girl and her 19-year old boyfriend.

Friends and acquaintances

The last and largest category of complainants (87, 39.0%) who were assaulted by someone known but outside the immediate family comprised children who were acquainted with the offender in various ways -- for example, as a friend or acquaintance (42 complainants), or as a neighbour (15 complainants) or work associate (3 complainants). In the friend or acquaintance sub-category, 17 complainants met their assailant only on the day or night of the offence. The overall acquaintance category also included a mixed group of people who were known to their complainants in their work-related roles of shopkeeper, ice-skating rink employee and circus-hand; five men in these positions were the defendants in cases of sexual assault against 10 complainants. Children in this category were mostly 10 years of age or older (77.0%) and were about equally likely to be girls as boys (see Appendix 6).

Strangers

Only 31 of the 223 complainants (13.9%) were sexually assaulted by someone completely unknown to them. This category includes two children who were hitch-hiking or accepted a ride from a stranger. Most of these complainants (24, 77.4%) were between 5 and 13 years of age, with the single largest group (16, 51.6%) between 5 and 9 years of age. They were more likely to be male than female, with 22.9% of male complainants alleging assault by a stranger compared with only 9.8% of female complainants (see Appendix 5).

There were 27 defendants and 13.2% of the defendant-complainant pairs involved in this category. These figures are considerably lower than those reported in several other Australian studies of prosecuted cases of sexual assault. For example, Bonney (1985a) and the South Australian study by the Office of Crime Statistics (1983) reported that 29.9% and 41.9%, respectively of defendant-complainant pairs involved strangers. Both of these studies included adult as well as child complainants. Comparative figures indicate that children are less likely to be sexually assaulted by strangers than are adults.

In summary, then, 192 of the 223 complainants (86.1%) knew the alleged offender prior to the offence. For 104 complainants, the offender was clearly in a position of authority and trust in relation to the child victim. These offenders included family members or relatives, close friends of the family, child care or youth workers, babysitters, teachers, employers and a camp manager. As a result of their position in relation to the children, these alleged offenders had easy access to their victims and were able through their position of authority and trust in relation to their victims to coerce them into sexual activities. It is understandable then that these offenders were responsible for offences against a large proportion of the young victims and, judging by the victim to offender ratio were more likely than other offenders to assault more than one victim.

These findings are similar to the results of other studies of reported cases of child sexual assault. A number of overseas studies have reported that the offender is most likely to be known to the child and in a position of trust and authority in relation to the child. The actual proportion of cases involving known offenders varied across studies, depending upon the samples involved and, in particular, the agency to whom the assault was reported (Canadian Report of the Committee on Sexual Offences against Children and Youths, 1984). In all studies, however, the majority of perpetrators were known to their victims. For example, 25% of offenders in reported cases of child sexual assault in New York City were strangers (De Francis, 1969), as were 16.5% of offenders in a Denver study reported by Cantwell (1981), and 26% of perpetrators in a British study of cases reported to doctors (Mrazek, Lynch, & Bentovim, 1983). The figure of 13.9% in the present study is somewhat lower, and closer to the figure of 8.3% reported by Conte & Berliner (1981) for prosecuted cases in Seattle.

As noted earlier (see Introduction), these proportions are unlikely to indicate the incidence of child sexual assault in the population because intrafamilial sexual assault is more likely to go unreported than cases involving strangers (Canadian Report of the Committee on Sexual Offences against Children and Youths, 1984), and is also less likely to be prosecuted (Finkelhor, 1983). Taking intrafamilial cases alone, the predominant contribution of fathers and father-figures (step-fathers and de facto fathers) in the present study is in line with the relative proportion of such cases in other studies of intrafamilial sexual assault. Numerous studies have reported that the most common form of intrafamilial sexual assault involves fathers or father-figures. This finding applies to both reported (Cantwell, 1981; De Francis, 1969) and unreported cases (Russell, 1984; West, 1985) of intrafamilial sexual assault.

CHARACTERISTICS OF THE ASSAULT INCIDENT(S)

Before dealing with the formal legal definition of the offence in terms of the charges laid against defendants, there are four main characteristics of the offence which provide important information about the sexual assault incident and the type of offence. These concern the number of alleged offenders and victims involved in any one incident, the number of occasions on which assaults occurred, the type of penetration (if any), and the injury or injuries sustained by the victim as a result of the assault.

Type of incident

Table 6 shows the type of incident according to whether the complainant was the sole victim of one or more assailants or one of several victims of a lone assailant. As indicated earlier, the majority of cases (69.6% of defendant- complainant pairs and 74.0% of distinct complainants) involved one alleged offender with one victim. Four complainants were also the sole victim of more than one assailant during the one incident so that 169 (75.8%) complainants were the sole victim of an assault involving one or more assailants. This is very similar to De Francis' (1969) finding that 75% of reported cases of child sexual assault involved one victim per case.

Fifty-four children were involved in cases in which a lone offender was charged with assaulting more than one complainant. Just over half (31, 57.4%) of these cases involved joint assaults against more than one victim during the one incident; the remaining cases involved several victims who were assaulted by one alleged offender over a period of time. Twenty-three suspects (11.9% of suspects) allegedly assaulted more than one victim.

TABLE 6

Type of incident: number of distinct complainants

Incident type	No.	%
One victim-one offender.....	166	74.0
One victim-multiple offenders.....	4	1.8
One offender-multiple victims.....	53	24.2
TOTAL	223	100.0

The number of incidents

Just over half of the complainants (129, 57.8%) were assaulted on a single occasion. For 94 complainants (41.2%), however, assaults occurred on multiple occasions; in all but one case, the victim knew the offender. As might be expected, victims of intrafamilial sexual assault were much more likely than other victims to be assaulted on more than one occasion, with only 17.6% of intrafamilial victims being assaulted only once. In contrast, 63.1% of victims who knew their assailant through extrafamilial relationships were assaulted on a single occasion.

Where the alleged assault occurred as part of one incident, the date of offence was recorded and is shown by year in Table 7. These cases involved 113 alleged offenders (59.2% of distinct suspects) and 129 complainants (57.8% of distinct complainants), and generally occurred in either 1981 or in 1982. One notable exception concerned a sexual assault which occurred in 1964. The offender in this case absconded after committal in 1964 but finally gave himself up to the police in 1981 following his religious conversion; there were no further proceedings against him.

TABLE 7

Number of complainants and defendants involved in single incidents by year of offence

Year	No. of complainants	No. of defendants
1964.....	1	1
1979.....	5	2
1980.....	12	12
1981.....	59	6
1982.....	49	41
Unknown.....	3	1
TOTAL	129	113

Where the alleged assaults occurred on more than one occasion over a prolonged period of time, it makes more sense to take account of the duration of the assaults rather than a specific date of offence, although, in law, charges must relate to specific acts on specific occasions and all the elements of the offence must be proved beyond reasonable doubt.

Ninety-four (94) complainants reported offences occurring on multiple occasions; these cases involved 78 alleged offenders (40.4% of distinct offenders). The periods of time reported by complainants over which multiple assaults occurred ranged from several days to over five years, but because the charge related to one or more specific occasions, the period of time over which numerous offences occurred is not routinely or systematically recorded by the police. In some cases, children's statements to the police referred to multiple assaults but did not contain clear information about the period of time over which these assaults had occurred; for example, children sometimes made comments to the police such as "it happened lots of times before" or "he did it to me before in the school holidays". There was, however, a clear indication of the period of time over which offences had occurred for 63 of the 94 complainants involved (Table 8). (This information did not always appear in the court transcripts, but may have been taken from the child's, the mother's, or the alleged offender's statement to the police.)

TABLE 8

Number of complainants of multiple assaults by period of time over which offences occurred

Duration	No. of complainants	% of total complainants
0 - 6 months.....	33	14.8
7 - 12 months.....	4	1.8
1 - 2 years.....	3	1.3
2 - 3 years.....	3	1.3
3 - 4 years.....	7	3.1
4 - 5 years.....	2	0.9
Over 5 years.....	11	4.9
Not specified.....	31	13.9
TOTAL	94	42.1

In cases where the alleged offences occurred over prolonged periods, the offender was almost invariably a family member. Nearly all the 24 victims who were subjected to sexual assaults for three years or longer were assaulted by a family member, but there were also several close family friends among the defendants in cases where the abuse appeared to continue for periods of up to three years. Of the 11 cases in which the offences occurred over more than five years, eight involved biological fathers, one a stepfather, and one a

de-facto father. Only one of these 11 cases involved a male child (who was one year old at the time of the first offence). The average age of the children at the time of the first offence for this long-standing group was seven years. The reasons for the high involvement of family members and close family friends in offences which occurred over prolonged periods are fairly obvious. As a result of their position of trust and authority in relation to their victims, such offenders are able to exert pressure on the child both to engage in the activities and to keep the activities a secret. They also have ease of access to the child victim.

Physical injury to the victim

To some extent the injuries sustained by the victim should be reflected in the charges that are laid against the offender. In the 1981 amendments to the sexual assault legislation, the degree of violence involved in the assault became the primary factor determining the severity of the offence. For example, the most serious offence of Category 1 sexual assault (s. 61B (1)) involves "grievous bodily harm". Category 2 (s. 61C (1)) is defined as "actual bodily harm", or the threat of such harm (with a weapon), and Category 3 (s. 61D (1)) as "sexual intercourse without consent". A charge of Category 1 or 2 sexual assault can be laid without sexual intercourse having occurred if the assault was committed with intent to have sexual intercourse. Category 3 sexual assault, however, necessarily involves sexual intercourse; in this case, the essential element of the offence is intercourse without consent, and not physical injury or violence.

According to the information available in the court records examined in this study, there was no indication of physical injury to 171 (76.7%) of the 223 complainants. Fifty-two victims (23.3%) suffered some form of physical injury, the most common being bruising, abrasions and/or soreness to the anal-genital area (37 victims, 71.1% of those injured). Other injuries included cuts to other parts of the body (11 victims, 21.1% of those injured), and four victims became pregnant as a result of the assault(s). In two cases of pregnancy, the offenders were the step-fathers of the victims, another offender was a new acquaintance met only on the night of the assault, and the other was the boyfriend of a thirteen-year-old girl who was under the legal age of consent (16 years). All four pregnant girls were under 16, being aged 12, 13, 14 and 15. Both step-fathers were charged and pleaded guilty to several counts under s.73 of the Crimes Act dealing with carnal knowledge of a daughter or stepdaughter aged 10 to 17 years. No bill of indictment was filed against the the young girl's boyfriend who was initially charged with carnal knowledge. The remaining offender was charged and found guilty of five counts of carnal knowledge under s.71 of the Crimes Act.

The likelihood of physical injury varied with both the age and sex of the complainant. Female complainants were more likely than males to suffer physical trauma; 26.8% of female complainants were physically injured as a result of the assault compared with 15.7% of male complainants. Both the oldest (16–17 years, 48.3%) and the youngest (0–4 years, 35.3%) age groups were the most likely to have been physically injured; overall, 17.5% of the other age groups (5–15 years) suffered physical injury.

The number of victims suffering physical injury as a result of the assault in this study is similar to the figures reported in several overseas studies. De Jong et al. (1983) found that there was evidence of physical trauma in 24.9% of cases of child sexual assault. The Canadian Report of the Committee on Sexual Offences against Children and Youths (1984) stated that between 14% to 25% of sexually assaulted girls had suffered physical injury; the proportion varied with the data source, with cases reported to hospitals, not surprisingly, producing the higher figure. Girls were also more likely to have been injured than boys.

Which group of offenders was most likely to inflict physical injury upon their victims? Using the same categories of victim-offender relationship outlined earlier, Table 9 shows that victims who were assaulted by a member of their family or household were significantly more likely to be physically injured as a result of the assault(s) than other victims. The high incidence of physical injury among intrafamilial victims in this study is at odds with the findings of other studies (De Francis, 1969; De Jong et al., 1983; Meiselman, 1978), which have generally reported that while threats of violence and emotional blackmail may be used, direct force likely to result in physical injury is not usually used by family members and other perpetrators who are well known to their victims. Other means of coercion, including simple reliance on the child's compliance to a known adult authority, are available to these perpetrators. For example, De Francis (1969) and De Jong et al. (1983) both found that the use of force and the evidence of physical trauma decreased across groups of offenders as the closeness of the relationship to their victims increased. These findings were, however, based on <u>reported</u> cases of child sexual assault, not <u>prosecuted</u> cases as in the present study. The conflicting finding in the present study may reflect the greater likelihood of cases of intrafamilial assault being prosecuted when injury is involved than when no physical injury has resulted from the assault. Cases of extrafamilial assault, on the other hand, are more likely than those of intrafamilial assault to be reported to the police and thereby prosecuted (Canadian Report of the Committee on Sexual Offences against Children and Youths, 1984) even when physical injury has not occurred.

TABLE 9

Physical injury to victims by defendant-complainant relationship
(N = 223 distinct complainants)*

	No injury		Physical injury		Total
Relationship	No.	%	No.	%	No.
Family member.....	32	62.7**	19	37.3	51
Family friend.....	18	81.8	4	18.2	22
Authority figure.....	25	92.6	2	7.4	27
Boyfriend.....	5	100.0	0	0.0	5
Friend/acquaintance...	64	73.6	23	26.4	87
Stranger.....	27	87.1	4	12.9	31
TOTAL	171	76.7	52	23.3	223

* The percentages are row percentages, indicating the proportion of victims within each relationship group who suffered various types of injury.

** Victims allegedly assaulted by family members were significantly more likely to suffer physical injury than other victims: $\chi^2 = 7.16$, $p < .01$.

4. THE OFFENCES AND THE CRIMINAL JUSTICE PROCESS

A note on the unit of analysis

To this point, because the discussion has focused on the characteristics of victims and offenders, the unit of analysis has been the number of distinct complainants or the number of distinct suspects. The number of defendant-complainant pairs is, however, a more appropriate unit of analysis for the discussion of the charges against defendants at the various stages of the proceedings. This measure takes account of cases where there are multiple defendants and/or multiple complainants, treating each defendant-complainant pair within each case as the equivalent of a separate hearing or case within a case. The charges against defendants involved in cases where there are multiple complainants are thereby counted for each complainant. Using distinct suspects as the basis of the analysis would allow the charges for only one of several complainants to be registered even though the one defendant may face different charges for each victim or complainant.

An additional unit of analysis will also be used. This is the principal or most serious offence for each defendant-complainant pair. The principal offence is deemed as that offence which, given a conviction, would attract the most severe penalty or the longest sentence. This is determined by a comparison of the maximum penalties associated with each offence under the Crimes Act (see Table 1).

INITIAL CHARGES

A total of 363 counts were laid against the 191 distinct defendants, giving an average of 1.90 charges per (distinct) defendant. Table 10 shows the frequency of defendant-complainant pairs by the number of charges. The majority of defendants faced one charge, with just over one-third facing two or more charges. This is quite a different picture from that presented by Bonney (1985b) in comparable research on all sexual assault cases (including both adult and child victims) finalised in New South Wales over two 18-month periods. In Bonney's study, less than a third of the defendants faced only a single charge at committal; two charges were the most common but a substantial proportion (around 19% overall) faced three or more charges compared with only about 9% in the present study.

The offences with which the 191 (distinct) defendants were initially charged fell into two major categories relating to the pre- and post-1981 sexual assault legislation. As indicated earlier, the 1981 amendments to the Crimes Act replaced the principal offence of rape with a series of sexual assault offences graded on three levels

TABLE 10

Number of charges per defendant-complainant pair

Number of charges	No. of pairs	%
One charge.....	154	65.5
2 charges.....	57	24.3
3 charges.....	11	4.7
4 charges.....	6	2.5
5 charges.....	3	1.3
6 charges.....	4	1.7
TOTAL	235	100.0

of seriousness. The indecent assault offences under s.76 and s.76A were also replaced in the 1981 amendments with s.61E(1) and (2) which, like the other three new categories of sexual assault, were gender-neutral. The amendments also introduced new committal and trial procedures which placed limitations on the cross-examination of victim-witnesses with respect to prior sexual experience and reputation (Woods, 1981). Because our study dealt with cases finalised in 1982, it includes cases in which the charges were laid under the pre-1981 legislation and cases in which the charges were laid after the amended legislation had come into force.

Just under a half (180/363, 49.6%) of the charges laid at arrest were laid under the post-1981 amended legislation; these charges involved 121 alleged offenders (51.5% of defendant-complainant pairs). Forty-four alleged offenders (18.7% of defendant-complainant pairs) were charged with offences that related to the pre-1981 legislation under sections 63, 65, 76 and 76A of the Crimes Act. Thirty-seven alleged offenders (15.7% of defendant-complainant pairs) faced a principal charge at arrest that related to the offences of buggery and attempted buggery (s.79, s.80) and indecent assault on a male (s.81, s.81A, s.81B). These offences have been included in the overall category of pre-1981 legislation since these charges became less common after the 1981 amendments expanded the definition of sexual intercourse to include anal intercourse (buggery) and made sexual offences gender-neutral. Technically, however, these offences were not affected by the 1981 amendments to the sexual assault legislation.[3]

[3]These offences have since been repealed by further legislation. Sections 81 and 81B were repealed by the 1984 homosexual offences amendments, and s.79 and s.80 (the old crime of buggery and bestiality) now relate to bestiality only.

Offences such as carnal knowledge (s.67, s.68, s.71, s.73, s.74, s.89) and incest (s.78A, s.78B) were also largely unaffected by the 1981 amendments. Thirty-three alleged offenders (14.0% of defendant-complainant pairs) were charged at arrest with these offences. (A summary of the relevant sexual assault offences and the associated maximum penalties under the Crimes Act was presented in Table 1.)

The number of alleged offenders (based on the number of defendant-victim pairs) charged at arrest under the various sections of the Crimes Act relating to sexual offences against children is shown in Table 11, together with the total number of counts for each offence, and the principal offence. Because suspects may be charged with more than one category of offence, the total number of suspects summed over all offences adds to more than 235 (the total number of defendant-victim pairs).

The offence with which the largest number of offenders was charged was Category 4 sexual assault (108 suspects) and, in particular, the sub-category of s.61E relating to victims under 16 (100 suspects). This finding is similar to that reported by other studies. Both the South Australian study of sexual assault (Office of Crime Statistics, 1983) and the Seattle study of child sexual assault (Conte & Berliner, 1981) found that offences of indecent assault were by far the most common charges prosecuted. The principal (or only) offence shown in the last column in Table 11 for the 235 defendant-complainant pairs shows a similar pattern to the overall number of charges. Category 4 sexual assault was the principal charge at arrest for 81 distinct suspects.

How do these charges, particularly for the principal offence, relate to the nature of the sexual act to which the victim was subjected? The nature of the sexual act was classified on the basis of evidence available in statements to the police and in court papers according to the different categories of "intercourse" drawn from the definition of sexual intercourse in the Crimes Act. In the pre-1981 legislation dealing with carnal knowledge, intercourse was defined only as penile-vagina penetration, but since 1981 under s.62 of the Crimes Act, carnal knowledge has included anal penetration by a penis. Buggery is defined as penile-anus penetration. The 1981 amendments to the Crimes Act expanded the definition of intercourse to include other forms of penetration, which are included in the "other" category in Table 12. The "no penetration" category was used for cases in which there was no actual penetration alleged or in which there was no mention in the available papers of the actual type of penetration. The most common type of behaviour in this category involved touching the child's genitals by the defendant or manipulation of the defendant's genitals by the child. It also included activities such as ejaculating over the child's body. The majority of these cases resulted in charges of Category 4 sexual assault (56 cases) or of indecent assault (of a female, 9 cases; of a male, 8 cases).

TABLE 11

Total number of counts of original charge (at arrest), number of suspects with at least one count, and number of suspects by principal offence (Based on no. of defendant-complainant pairs = 235)

Offence	No. of counts	No. of suspects with at least one count	Principal offence
Pre-1981 legislation			
Rape (s.63)	13	11	11
Attempt rape (s.65)	2	2	2
Indecent assault on female (s.76, 76A)			
under 16 years	40	32	28
16 & over	14	13	3
Buggery (s.79, 80)	15	12	8
Indecent assault on male (s.81, 81A, 81B)	56	37	29
Post-1981 amendments			
Category 1 (s.61B)	--	--	--
Category 2 (s.61C)	11	11	11
Category 3 (s.61D)			
under 16 years	21	17	11
16 & over	25	20	15
Category 4 (s.61E)			
under 16 years	115	100	81
16 & over	8	8	3
Other offences			
Carnal knowledge by father/ step-father (s.73,74,78A, s.78B)	10	8	8
Carnal knowledge of girl under 10 (s.67, s.68)	2	2	2
Carnal knowledge of girl over 10 (s.71)	28	26	23
Abduct with intent to know carnally (s.89)	2	2	--
Common assault (s.61, s.493,s.494)	1	1	--
TOTAL	363	303	235

TABLE 12

Number of suspects by actual penetration* and charge at arrest for principal offence (Based on no. of defendant-complainant pairs = 235)

Offence	Type of penetration*				
	P-V	P-A	Other	None	Total
Pre-1981 legislation					
Rape (s.63)	11	–	–	–	11
Attempt rape (s.65)	–	–	–	2	2
Indecent assault on female (s.76, 76A) under 16 years	4	1	14	8	28
16 & over	1	–	1	1	3
Buggery (s.79, 80)	–	8	–	–	8
Indecent assault on male (s.81, 81A, 81B)	–	4	17	8	29
Post-1981 amendments					
Category 2 (s.61C)	2	2	6	1	11
Category 3 (s.61D) under 16 years	2	4	5	–	11
16 & over	10	–	4	1	15
Category 4 (s.61E) under 16 years	2	2	24		81
16 & over	–	–	–	3	3
Other offences					
Carnal knowledge by father/step-father (s.73,74,78A,78B)	8	–	–	–	8
Carnal knowledge of girl under 10 (s.67, s.68)	2	–	–	–	2
Carnal knowledge of girl over 10 (s.71)	23	–	–	–	23
TOTAL	65	21	71	78	235
PERCENTAGE	27.7	8.9	30.2	33.2	

* Type of penetration classified as penile-vagina (P-V), penile-anus (P-A), other (penis-mouth, tongue-vagina/anus, finger-vagina/anus), none (no actual penetration).

As Table 12 shows, evidence of penile-vagina penetration was generally associated with charges of carnal knowledge, rape, or Category 2 or 3 sexual assault. There were, however, several cases in which there was some discrepancy between evidence of this type of penetration and the charge laid at arrest. For example, there were five cases apparently involving penile-vagina penetration in which the principal charge at arrest was one of indecent assault (under s.76 and s.76A of the pre-1981 legislation). In these cases, it appears that the nature of the sexual act could have justified the more serious charges of rape or carnal knowledge.

Similarly, there were 28 cases in which the principal offence was a Category 4 sexual assault but in which the available information (in the statements to police and in the court papers) indicated some form of penetration of the alleged victim's body. Prima facie, such evidence would have justified the more serious charge of Category 3 sexual assault. There were also five cases of indecent assault under s.76 and s.76A of the pre-1981 legislation (four on males, one on a female) relating to penile-anus penetration. Again, in these cases, the evidence may have warranted the more serious charge of buggery (s.79 and s.80) being laid instead of the lesser charge of indecent assault.

It is not possible to say, on these data alone, whether some form of charge bargaining or other process is resulting in less serious charges being laid than those which the evidence at hand would have justified. We cannot be sure about the quality or reliability of the evidence or whether other essential elements of the relevant charges (for example, consent in the case of rape) were present. However, the fact that 38 cases (12.5% of the sample) showed this type of discrepancy certainly warrants closer examination of the issue.

Another factor which should be considered in determining whether the charges laid at arrest accurately reflected the seriousness of the alleged behaviour is the sustained nature of the behaviour (measured by the number of incidents involved and the period of time over which the alleged behaviour occurred). As indicated earlier (Table 8), a substantial proportion of cases (about 40%) involved allegations of multiple incidents over prolonged periods of time, ranging from a few months to over five years. In 36 cases, however, suspects were charged with only one count of one offence although the information available in the statements to police and other records clearly indicated that the allegation was that the offences had occurred on other occasions.

Under criminal law, charges must be laid in relation to specific acts on specific occasions and the long-standing nature of the abuse is not considered. The only but rather inadequate means of taking account of ongoing abuse under the current structure of the law is by laying multiple separate charges. The fact that multiple charges were not laid in a number of cases in which allegations had been made of

multiple offences may have been because the child was unable to give clear details of the alleged offences to warrant prosecution on multiple charges or because prosecution on a single charge was expected to minimise the trauma of the court appearance and testimony for the victim.

A less benign explanation includes the possibility that some form of charge or plea bargaining was entered into by the police. Whichever explanation applies, it is clear that a single conviction of sexual assault will often belie the extent of the abuse suffered by the victim. This issue will be discussed further later in the report.

Was there any difference in the type of charge and, in particular, the seriousness of the offence associated with the relationship between the defendant and the complainant, and the age of the complainant? Some differences might be expected because, as we have already seen, physical injury to the victim was more likely if the complainant was closely related to the alleged offender; more serious charges might be expected to follow physical injury. In addition, some charges which carried relatively heavy penalties (for example, s.73: carnal knowledge of a girl by a father, step-father or teacher with a maximum penalty of 14 years) were only applicable when there was a specific relationship between the alleged offender and the complainant. The principal charge laid at arrest by the relationship between the suspect and the complainant is shown in Appendix 7(4) but the seriousness of the principal offence (measured in terms of the maximum penalty attaching to the principal offence) by the suspect-victim relationship is shown in Table 13.

Perhaps the most noticeable feature of Table 13 is that a relatively high proportion of intrafamilial suspects (40.4%) were charged with offences which had maximum penalties of 10 or more years' imprisonment. In contrast, only 13% of family friends and 14.8% of authority figures were charged with such serious offences; 47.8% of family friends faced charges which attracted maximum penalties of two years' imprisonment or less. There were therefore significant differences across the five categories of victim-suspect relationship (excluding "boy-friend" because of the small numbers involved) in the principal charge laid against the suspect at arrest ($\chi^2 = 41.00$, 12 d.f., $p < .001$), mainly as a function of the difference between the family member and family friend categories.

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[4] It should be noted from Appendix 6 that the charges of rape and attempted rape were only laid against suspects who were acquaintances or strangers to their alleged victims. There were no cases inwhich family members, family friends, and those in positions of authority were charged with these offences.

When these five categories were collapsed, however, into two categories of closeness (close: family members, family friends, and those in positions of authority versus distant: acquaintances and strangers), there was no significant difference in the seriousness of the principal offence across these two major categories ($\chi 2$ = 4.37, 3 d.f., p > .05, not significant, Appendix 7).

TABLE 13

Seriousness of the principal offence (penalty) by defendant-complainant relationship

	Maximum Penalty (years)				
Relationship	2 or less	3-5	6-10	10 or more	Total
Family member.....	7 (13.5%)	3	21	21 (40.4%)	52
Family friend.....	11 (47.8%)	2	7	3 (13.0%)	23
Authority figure.....	2 (7.4%)	10	11	4 (14.8%)	27
Boy-friend.....	-	-	-	5 (100%)	05
Friend/acquaintance...	9 (9.7%)	15	38	31 (33.3%)	93
Stranger.....	4 (11.4%)	5	18	8 (22.9%)	35
TOTAL	33	35	95	72	235

Similarly, some association between the age of the complainant and the seriousness of the initial charge at arrest might be expected because sexual assault of a young child may be regarded more seriously than that of an older child and this view may be reflected in the type of charges laid at arrest. On the other hand, the type of charge laid is likely to reflect the presence of physical injury to the complainant, and as we saw earlier, physical injury was most common for both the oldest and the youngest age groups of complainants. Table 14 shows the seriousness of the principal charge at arrest (again measured in terms of the maximum penalty attaching to the principal offence) by the age of the complainant.

As Table 14 shows, the seriousness of the principal charge at arrest increased with the age of the complainant. This relationship was significant ($\chi 2$ = 57.4, 12 d.f., p = .001). For example, 45.6% (36/79) of cases involving complainants 14 years of age and older related to charges carrying penalties of 10 years or more whereas only 13.9% (10/72) of cases involving complainants under 10 years of age related to such serious offences.

The main contribution to this significant relationship comes from the disproportionately high number of cases involving 5-to-9 year-old complainants in which the defendant was charged with a principal offence carrying a maximum penalty of two years'

imprisonment or less. The majority of these charges were for Category 4 indecent assault. In view of the age of these complainants and the type of offence, it seems likely that force was unnecessary and physical injury less common so that the charges involved were less serious than for the other age groups of complainants.

TABLE 14

Seriousness of the principal offence (penalty) by the age of the complainant

Age	Maximum penalty (years)				
	2 or less	3-5	6-10	10 or more	Total
0 - 4 years.....	1 (5.9%)*	1	12	3 (17.6%)*	17
5 - 9 years.....	19 (34.5%)	6	23	7 (12.7%)	55
10 - 13 years.....	12 (14.3%)	10	40	22 (26.2%)	84
14 - 15 years.....	1 (2.4%)	11	8	21 (51.2%)	41
16 years & over....	- (0.0%)	7	16	15 (37.5%)	38
TOTAL	33	35	99	68	235

* These are row percentages.

These significant associations between the seriousness of the principal offence and both the age of the complainant and the defendant-complainant relationship will need to be taken into account later when the factors affecting the progress of cases through the criminal justice system are considered.

The charges just described refer to the charges facing suspects at arrest as they enter the criminal justice system prior to committal. In the following sections, we will trace the passage of defendants through the criminal justice system, with particular focus on the actual offences with which defendants were charged at each stage of the proceedings.

COMMITTAL

Following arrest and the laying of charges, the first stage of the criminal justice procedure for persons charged with indictable offences(5) is the committal hearing. The aim of this

[5]Nearly all sexual assault offences are indictable offences, but there are several (for example, under s.61 E(1), sexual assault with an act of indecency upon a person 16 years and over) which may be heard summarily with the defendant's consent under s.476 of the Crimes Act. Sexual assault offences may also be heard summarily in Children's Court if the defendant is a child.

preliminary hearing is to determine whether or not the evidence is sufficient to justify committing the person for trial to a higher court. The test used by the magistrate is that the evidence is sufficient to put the person "on his trial", and that test includes the fact that there is a prima facie case against the defendant. Defendants are not required to enter a plea to the charge(s) against them in a committal hearing, but in New South Wales under s.51A of the Justices Act, 1902, defendants may plead guilty at any stage of the proceedings(6). When a defendant does enter a guilty plea and this plea is accepted by the magistrate, the defendant is committed for sentence to the District or Supreme Court, unless the charge is such that it can be heard summarily before the magistrate, with the defendant's consent.

If the defendant enters no plea and the magistrate considers that the evidence is sufficient to justify putting the defendant on trial for an indictable offence, the magistrate commits the defendant for trial. If, however, the magistrate considers that a prima facie case has not been established or that the defendant "ought not to be put upon his trial" (Justices Act, as at 1982), the defendant is discharged and the charges dismissed.

The charges facing all the defendants who were committed for trial or for sentence are shown in Table 15. A comparison of Tables 11 and 15 shows few differences between the charges at arrest and those following committal. In fact, there were only four cases in which the number or nature of the charges at arrest changed by reason of committal hearings; two involved changes to more serious charges, one involved the addition of three charges, and in the other, the defendant was not committed on one of two charges. It seems then that the charges upon which the defendants were committed were basically the same as those laid at arrest. This finding was not expected in view of the findings reported in overseas studies of "enormous attrition rates" (Finkelhor, 1983, p. 202) and reduced charges as a result of plea bargaining (De Francis, 1969).

Of the 235 cases which entered committal, the defendants involved in 164 cases (69.8%) pleaded guilty to all charges and were committed for sentence; 71 (30.2%) were committed for trial. The numbers of distinct suspects were 132 and 59, respectively. All of these cases did not, however, proceed to trial or sentence. The non-proceeding cases will be dealt with in the next section.

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[6]Until the amendment of s.51A of the Justices Act in 1985, the option of pleading guilty at committal was not available to defendants facing charges for which the maximum penalty was life imprisonment. The defendants in this study who were charged with rape, attempted rape or carnal knowledge of a girl under 10 were therefore not able to plead guilty at committal because their cases were finalised in 1982, prior to the 1985 amendment.

TABLE 15

Total number of charges upon committal,
number of defendants with at least one count,
and number of defendants by principal offence
(Based on no. of defendant–complainant pairs = 235)

Offence	No. of counts	No. of suspects with at least one count	Principal offence
Pre–1981 legislation			
Rape (s.63).....	13	11	11
Attempt rape (s.65).....	2	2	2
Indecent assault on female (s.76, 76A)			
under 16 years.....	39	32	28
16 & over.....	16	13	3
Buggery (s.79, 80).....	14	12	08
Indecent assault on male (s.81, 81A, 81B).....	56	36	29
Post–1981 amendments			
Category 2 (s.61C).....	11	11	11
Category 3 (s.61D)			
under 16 years.....	20	19	10
16 & over.....	25	17	15
Category 4 (s.61E)			
under 16 years.....	115	99	81
16 & over.....	8	9	3
Other offences			
Carnal knowledge by father/step–father (s.73,74,78A,78B).....	10	8	08
Carnal knowledge of girl under 10 (s.67, s.68)...	2	2	02
Carnal knowledge of girl over 10 (s.71).....	29	25	24
Abduct with intent to know carnally (s.89).....	2	2	—
Common assault (s.61, s.493,s.494).....	1	1	—
TOTAL	364	300	235

CASES LAPSING BEFORE TRIAL OR SENTENCE

A number of cases lapsed before trial or sentence. These cases fell into three categories. The first of these comprised those cases in which the Attorney-General declined to file a bill of indictment. This may happen if the Attorney-General is of the opinion, on advice, that there is insufficient evidence or that there is some other compelling reason why the defendant ought not stand trial. The Attorney-General is not required to reveal the reasons for declining to file a bill of indictment. As Table 16 shows, there were 21 cases in which no bill of indictment was filed in the current study, involving 19 distinct suspects and a total of 29 counts of various charges. In five cases, the defendant had pleaded guilty at committal and had been committed for sentence, not for trial. The details of the charges involved in the "no-billed" cases and in the other categories of non-proceeding cases are outlined in Table 16.

The second category of cases which lapsed before trial or sentence comprised cases in which the defendant either died or absconded. There were five defendant-complainant pairs and five distinct suspects facing a total of seven charges in this category. In three cases, the defendant died before sentencing, after pleading guilty; in one of these cases, the defendant (facing two counts of rape and one of indecent assault) hanged himself before his sentence date. In the fourth case, the defendant (also facing a charge of rape) absconded after the trial had begun. In the final case, the defendant (charged with carnal knowledge of a girl over 10) had absconded in 1964 before his trial began; he gave himself up in 1981 but there were no further proceedings against him.

The third and final category involved only one distinct defendant who was committed to the care of a psychiatric institution after pleading guilty to one count of Category 4 sexual assault against each of two girls. The proceedings in the criminal justice system did not proceed further (s.51A (4) of the Justices Act).

In total, 11.9% of cases involving 28 defendant-complainant pairs (and 25 distinct suspects) did not proceed to trial or sentence. These cases differed from the cases which did proceed in several ways. The non-proceeding cases were less likely than proceeding cases to involve defendants who were closely related to their alleged victims.

TABLE 16

Charges following committal for cases lapsing before trial or sentence

	No bill filed	Died/ absconded	No further proceedings
No. of defendant–complainant pairs	21	5	2
No. of distinct defendants	19	5	1
OFFENCE CATEGORIES			
Pre–1981 legislation			
Rape (s.63)	–	3 (2)*	–
Indecent assault of female (s.76, s.76A)			
Under 16 years	8 (8)	2 (1)	–
16 & over	2 (2)	2 (1)	–
Buggery (s.79, 80)	1 (1)	–	–
Indecent assault of male (s.81, 81A, 81B)	5 (3)	–	–
Post–1981 amendments			
Category 2 (s.61C)	2 (2)	–	–
Category 3 (s.61D)			
16 & over	4 (1)	–	–
Category 4 (s.61E)			
Under 16 years	1 (1)	–	–
16 & over	2 (1)	–	–
Other offences			
Carnal knowledge of girl over 10 (s.71)	4 (3)	2 (2)	–
TOTAL CHARGES	29 (21)	7 (5)	2

* Number of principal offences in parentheses.

Just over 20% (6/28) of non-proceeding cases involved defendants who were either a member of the complainant's family, a close family friend or an authority figure; just over 40% (43.4%, 102/235) of proceeding cases fell into this joint category (see Appendix 8)(7). Non-proceeding cases were also more likely than proceeding cases to involve older rather than younger complainants. Whereas 60.7% (17/28) of the complainants in non-proceeding cases were 14 years of age or older, the figure was only 30.0% (62/207) for proceeding cases (see Appendix 9)(8).

In summary, then, there were several significant differences(9) between the cases which proceeded to trial or sentence and those that did not. The number of cases not proceeding was, however, not remarkable. The 25 distinct suspects represent 13.1% of the total sample of defendants in this study, a figure which is comparable with the percentage of defendants appearing in previous years before higher courts in New South Wales whose cases did not proceed to trial or sentence. Figures from the Australian Bureau of Statistics indicate that the percentage of non-proceeding cases has varied from a low of 12.0% to a high of 17.5% in the seven years between 1977 and 1983. It is interesting to note that a much lower percentage of cases (only 5 out of 121 arrests, 4.1%) in which the defendant was charged under the post-1981 legislation lapsed compared with 17.3% (14 out of 83 arrests) of those charged under the pre-1981 legislation.

CASES PROCEEDING TO SENTENCE AND TRIAL

Sentence matters

The defendants in 155 cases were committed for sentence after entering guilty pleas at committal. There were 124 distinct defendants involved in these cases, representing 74.7% of all defendants whose cases proceeded beyond committal. The majority of cases, then, proceeded direct to sentence rather than to trial and sentence. The charges involved in these cases are shown in Table 17. Because these defendants pleaded guilty to all charges against them, these charges also indicate the offences with which these defendants

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[7] When the difference between the two categories of defendant-complainant relationship in the likelihood of a case proceeding versus not proceeding was tested by a chi-square test of significance (excluding the boyfriend category), the difference was statistically significant (χ^2 = 5.35, d.f. = 1, $p < .05$).

[8] A chi-square test of significance using the two age-group categories (below 14, and 14 years and above) yielded significant results: χ^2 = 10.46, d.f. = 1, $p < .01$. A test using all five age-group categories (0 - 4 years, 5 - 9 years, 10 - 13 years, 14 - 15 years, and 16 years and above) was also significant: χ^2 = 12.52, d.f. = 4, $p < .02$).

[9] These differences were all tested by chi-square tests and found to be statistically significant ($p < .05$).

were convicted, except for a few cases in which there were changes to the charges on technical grounds. In two cases, for example, the nature of the charge was changed from committal to sentence because the defendant had been charged under the post-1981 amended legislation although the offences had been committed prior to the operation of those amendments.

Cases committed for trial

The defendants in 52 cases, involving 42 distinct defendants (25.3% of proceeding defendants) were committed for trial. This includes those defendants who entered no plea at committal (to one or more charges) but pleaded guilty (to all charges) at the beginning of the trial before the jury was empanelled. These cases proceeded immediately to sentence and did not involve trial before a jury. The principal charges involved in these cases are shown in Table 18 (in parentheses). There were 18 defendant-complainant pairs, involving 13 distinct defendants in this category, so that about one-third of the cases committed for trial did not in fact involve trial by jury. In one of these cases, the defendant pleaded guilty to a lesser charge than either of the two offences on which he had been committed. In total, then, including both the cases where the defendant pleaded guilty at committal and those where a guilty plea was entered at trial, the majority of defendants (83.6% of proceeding cases) pleaded guilty to all charges either at committal or at trial and proceeded to sentence.

Only 34 of the 52 cases in which the defendant was committed for trial actually involved trial by jury. These cases, referred to as trial matters, constitute only 14.3% of the total number of cases and 16.4% of proceeding cases. All but three of the defendants in these 34 cases entered not guilty pleas to all the charges listed on the bill of indictment. Three defendants entered mixed pleas, with guilty pleas to some of the charges against them, and not guilty pleas to the others.

Just over two-thirds (67.3%) of defendants who were committed for trial (including those who pleaded guilty at trial) were charged under the pre-1981 legislation; only 21.2% of these cases involved defendants charged under the amended legislation. The charges listed on the bills of indictment for all defendants committed for trial are shown in Table 18.

Seventeen cases in which the defendant was committed for trial (32.7% of both delayed sentence matters and trial matters) involved some change to the charges from committal to indictment. The Crown Prosecutor is not restricted to the charges on which a defendant is committed and may add or drop charges or change the nature of the charges (Bishop, 1983). The most common change, involving 12 accused (and 13 charges in total) was a reduction in the number of charges. In four cases, extra counts of the original offence were added and, in one case, the nature of the charges was changed from post-1981 offences to the appropriate pre-1981 sections of the legislation.

TABLE 17

Total number of charges at sentence,
number of defendants with at least one count,
and number of defendants by principal offence
for (direct) sentence matters
(Based on no. of defendant-complainant pairs = 155)

Offence	No. of counts	No. of suspects with at least one count	Principal offence
Pre-1981 legislation			
Rape (s.63)	--	--	--
Attempt rape (s.65)	--	--	--
Indecent assault on female (s.76, 76A)			
Under 16 years	20	15	11
16 & over	0	0	0
Buggery (s.79, s.80)	5	5	5
Indecent assault on male (s.81, 81A, 81B)	29	17	17
Post-1981 amendments			
Category 2 (s.61C)	9	9	9
Category 3 (s.61D)			
Under 16 years	9	7	6
16 & over	21	13	9
Category 4 (s.61E)			
Under 16 years	101	91	74
16 & over	5	4	2
Other offences			
Carnal knowledge by father/step-father (s.73,74,78A,78B)	9	7	07
Carnal knowledge of girl under 10, attempt (s.68)....	1	1	01
Carnal knowledge of girl over 10 (s.71)	21	17	14
Abduct with intent to know carnally (s.89)	--	--	--
Common assault (s.61, s.493,s.494)	--	--	--
TOTAL	230	186	155

TABLE 18

Total number of charges at indictment, number of defendants with at least one count, and number of defendants by principal offence for cases committed for trial
(Based on no. of defendant-complainant pairs = 52)

Offence	No. of counts	No. of defendants with at least one count	Principal offence*
Pre-1981 legislation			
Rape (s.63)	13	9	9 (0)*
Attempt rape (s.65)	3	3	2 (0)
Indecent assault on female (s.76, s.76A)			
Under 16 years	15	14	8 (2)
16 & over	9	6	2 (1)
Buggery (s.79, s.80)	4	3	2 (1)
Indecent assault on male (s.81, 81A, 81B)	22	14	12 (9)
Post-1981 amendments			
Category 2 (s.61C)	1	1	0 (0)
Category 3 (s.61D)			
Under 16 years	3	3	3 (2)
16 & over	4	4	4 (0)
Category 4 (s.61E)			
Under 16 years	11	6	4 (2)
16 & over	0	0	0 (0)
Other offences			
Carnal knowledge by father/step-father (s.73,74,78A,78B)	1	1	1 (1)
Carnal knowledge of girl under 10 (s.67).....	1	1	1 (0)
Carnal knowledge of girl over 10 (s.71)	6	4	4 (1)
Abduct with intent to know carnally (s.89)	2	2	0 (0)
TOTAL	95	72	52 (18)

* These figures refer to the number of principal offences for delayed sentence matters (the cases in which the defendants were committed for trial, but pleaded guilty at trial).

Comparison of cases committed for sentence and trial

A comparison of Tables 17 and 18 indicates substantial differences in the charges relating to cases in which the defendant was committed (directly) for sentence and for trial. Although the majority (74.7%) of cases were (direct) sentence matters with defendants pleading guilty at committal, the relative distribution of sentence to trial matters varied across the different types of offence. Table 19 provides a summary of this comparison for the principal offence only. The most obvious feature of Table 19 is that cases in which the defendant was charged under the post-1981 legislation were much more likely to proceed directly to sentence following committal rather than to trial (100 out of 111 cases, 90.9%) than pre-1981 cases (33 out of 68 cases, 48.5%). Bonney (1985b) also found an increased guilty plea rate for sexual assault offences following the introduction of the amended Crimes Act. This difference between the pre- and post-1981 offences can be partly explained by the fact that defendants who were charged with offences which carried a maximum penalty of life imprisonment (under the pre-1981 legislation) did not have the option at the time their cases were heard in 1981 of pleading guilty at committal. All cases of rape (s.63), attempted rape (s.65) and carnal knowledge of a girl under 10 (s.67) were therefore necessarily committed for trial. In addition, as the Government predicted (Second Reading Speech of the Bill, Hansard, March 18, 1981), it seems that offenders were more likely to plead guilty under the amended legislation with its graduated penalties for crimes of differing seriousness than under the old legislation with its single maximum penalty of life imprisonment.

Within each category of offences (pre- and post-1981 legislation), there was also an increased rate of guilty pleas from the more to less serious offences. Offences attracting shorter maximum penalties were generally more likely to proceed directly to sentence than to trial. For example, only 6.3% of cases where Category 4 sexual assault was the principal offence proceeded to trial compared with 30.4% of cases in which Category 3 sexual assault was the principal offence. The most obvious explanation again is that, given the more severe penalties relating to more serious offences, defendants facing more serious charges are more likely to plead not guilty.

A comparison of cases involving guilty and not guilty pleas

The comparison here is slightly different from the previous comparison between cases committed for sentence and those committed for trial because of the group of 18 cases in which the defendant was committed for trial but pleaded guilty at trial. The focus of comparison is also different, concentrating on factors other than the nature and seriousness of the charges involved. These include the relationship between the defendant and complainant, the age of the complainant, and the characteristics of the assault incident(s).

TABLE 19

Number of defendants by principal offence
for cases committed for sentence and for trial
(No. of defendant-complainant pairs = 155 and 52, respectively)

Offence	No of cases committed for Sentence	Trial	Total
Pre-1981 legislation			
Rape (s.63)	0	9	9
Attempt rape (s.65)	0	2	2
Indecent assault on female (s.76, s.76A)			
Under 16 years	11	8	19
16 & over	0	2	2
Buggery (s.79, s.80)	5	2	7
Indecent assault on male (s.81, 81A, 81B)	17	12	29
Post-1981 amendments			
Category 2 (s.61C)	9	0	9
Category 3 (s.61D)			
Under 16 years	6	3	9
16 & over	9	4	13
Category 4 (s.61E)			
Under 16 years	74	4	78
16 & over	2	0	2
Other offences			
Carnal knowledge by father/step-father (s.73,74,78A,78B)	7	1	8
Carnal knowledge of girl under 10 (s.67, attempt s.68)	1	1	2
Carnal knowledge of girl over 10 (s.71)	14	4	18
TOTAL	155	52	207

What proportion of cases involving guilty pleas (either at committal or trial) involved family members and other defendants who had a close relationship with the complainant? As Table 20 shows, 91.7% of intrafamilial defendants pleaded guilty; all except two of these 44 guilty pleas were entered at committal, and two pleaded guilty at trial. The group of defendants least likely to plead guilty were friends and acquaintances of the complainant. When the different relationship groups, shown in Table 20, were collapsed into two categories (family members, close family friends and authority figures compared with friends, acquaintances and strangers), there was a significant difference between the two groups in the likelihood of a guilty plea ($\chi 2 = 9.25$, d.f.= 1, $p < .01$)(10). Nearly 92% of defendants who assaulted a child with whom they were in a relatively close relationship through their position as either a family member, a family friend or an authority figure pleaded guilty, whereas only 75.7% of friends, acquaintances and strangers pleaded guilty.

Since, as indicated earlier, there was no significant association between the defendant-complainant relationship (close versus more distant) and the seriousness of the offence, this difference cannot be explained as a function of a difference between the two relationship groups in the seriousness of the offence.

TABLE 20

Type of plea by defendant-complainant relationship

Relationship	Type of plea: Guilty No.	Guilty %*	Not guilty No.	Not guilty %*
Family member.....	44	91.7	4	8.3
Family friend.....	19	82.6	4	17.4
Authority figure.....	25	100.0	0	0.0
Boyfriend	4	100.0	0	0.0
Friend/ acquaintance	56	73.7	20	26.3
Stranger.....	25	80.6	6	19.4
TOTAL	173	83.6	34	16.4

* These percentages are row percentages, indicating the proportion of defendants who pleaded guilty and not guilty within each relationship group.

10 A chi-square test could not be carried out using the six relationship categories because the expected frequencies of the cells were too small. The "boyfriend" group was excluded from this analysis because of the small numbers involved and the difficulty of assigning them to one of the two collapsed categories.

Other differences between cases involving guilty and not guilty pleas may, however, be at least partially attributable to differences associated with the seriousness of the offence. For example, guilty pleas were more likely in cases involving younger than older complainants; 91.7% of defendants in cases involving complainants under 14 pleaded guilty compared with only 64.5% of cases relating to complainants who were 14 years of age or older (Table 21). This difference was statistically significant ($\chi 2$ = 23.4, d.f. = 1, p < .001). However, as indicated earlier (Table 14), the seriousness of the offence was greater in cases involving older than younger complainants, and it is likely that defendants are more likely to plead guilty to less serious offences.

TABLE 21

Type of plea by age of complainant

Age	Type of plea			
	Guilty		Not guilty	
	No.	%*	No.	%*
0 - 4 years.....	13	92.9	1	7.1
5 - 9 years	49	94.2	3	5.8
10 - 13 years	71	89.9	8	10.1
14 - 15 years	25	78.1	7	21.9
16 years & above	15	50.0	15	50.0
TOTAL	173	83.6	34	16.4

* These percentages are row percentages, indicating the proportion of defendants who pleaded guilty and not guilty within each complainant age group.

Similarly, defendants were more likely to plead guilty when there was no evidence of physical injury to the victim (138/156 cases, 88.5%) than in cases in which there was evidence of physical injury (35/51 cases, 68.6%); this difference was statistically significant ($\chi 2$ = 11.01, d.f. = 1, p < .001). But again, as indicated earlier, cases involving physical injury to the victim might be expected to result in more serious charges than if no physical injury was sustained. It is therefore difficult to determine to what extent the difference between guilty pleas and not guilty pleas is a function of either the likelihood of physical injury or the age of the complainant as distinct from the seriousness of the offence.

Cases in which the defendant pleaded guilty were also more likely than those involving not guilty pleas to be related to multiple incidents. Defendants pleaded guilty in 94.8% of cases (55/58 cases) involving multiple incidents but in only 79.2% of cases relating to single incidents (118/149 cases). This difference was statistically significant ($\chi^2 = 7.43$, d.f. = 1, $p < .01$), but might be partly a function of the closeness of the relationship between the defendant and the victim since defendants who were more closely related to their victims were more likely to have assaulted them on more than one occasion.

In summary, then, defendants were more likely to enter a guilty plea at committal or trial if they were were closely related to the victim, if the case involved younger victims, if the assault involved multiple incidents, and if the victim was not physically injured as a result of the assault.

OUTCOME

The outcome for defendants who pleaded guilty to all charges at either committal or trial is clear-cut: they were convicted on all charges and sentenced. The principal offences against those 155 defendants who pleaded guilty at committal and the 18 defendants who pleaded guilty at trial and proceeded direct to sentence are shown in Table 22 (based on the number of defendant-complainant pairs).

The situation was, however, more complex where defendants pleaded not guilty to one or more charges, and the outcome for these cases is best described in terms of the three categories into which the cases fall.

The first category includes those cases (defendant-complainant pairs) in which the defendant was acquitted of all charges. Ten defendants were found not guilty by the jury, and the defendants in a further four cases (involving two distinct defendants and four distinct complainants) were found not guilty following the direction of the judge. At least one of the cases involved an acquittal by direction because the young victim was deemed incapable of understanding the nature of the oath and corroborating evidence required to support her unsworn testimony was not available. The principal offences in these 14 cases were four charges of rape, five of indecent assault (two of a female, three of a male), four charges of Category 3 and one of Category 4 sexual assault. In total, then, the defendants in 41.2% of cases (14 out of 34) which proceeded by way of trial by jury were acquitted on all charges.

The second category of cases comprises a relatively small number of cases in which the accused was found not guilty on some charges, and guilty on others. This includes four cases in which not guilty pleas were entered to all charges and three cases in which mixed pleas were entered. In three of these seven cases, the defendant was found guilty of the principal offence, and in the remaining four cases, the defendant was found not guilty of the principal offence but was convicted on lesser offences (for example, not guilty of rape or attempt rape, but guilty of indecent assault).

The third category contains those cases in which the defendant was convicted on all charges following trial by jury. There were 13 cases (defendant-complainant pairs) in this category.

The principal offences involved in all cases resulting in conviction are shown in Table 22, together with the conviction rate for each offence, defined as the number of cases in which the defendant was convicted on the principal offence as a percentage of the number of defendants indicted on those offences (as the principal offence). The conviction rate for most offences was quite high, generally ranging between 90% and 100%. The notable exception was for rape, with only three of the nine rape cases (33.3%) resulting in convictions. A comparison of cases involving charges laid under the pre- and post-1981 legislation indicates a higher conviction rate for the post-1981 cases (105/111, 94.6%) than for the pre-1981 cases (57/68, 83.8%).

The majority of convictions for the principal offence (91.5%) were the result of guilty pleas either at committal (155, 82.0%) or at trial (18, 9.5%). This was especially true for cases involving post-1981 charges. Only 16 accused were convicted of the principal offence following trial by jury, and only one of these cases involved post-1981 charges. The accused in 18 cases which went to trial were found not guilty of the principal offence on which they were indicted. Of those 18 cases, 14 accused were found not guilty of all charges against them, but four were found guilty of lesser offences.

Comparison of the 20 cases which were tried by a jury and resulted in a conviction (either on the principal offence or a lesser offence) with the 14 cases which were tried but resulted in acquittals revealed few systematic differences in the type of offence involved (Appendix 10). Cases in which the defendant was charged under the post-1981 legislation were, however, much more likely to result in an acquittal (8 out of 10 cases, 80%) than those involving charges under the pre-1981 legislation (6 out of 20 cases, 30%). It should be noted though that the numbers involved are quite small, and the guilty plea rate for post-1981 legislation cases was much higher at committal than for cases under the old (pre-1981) legislation.

TABLE 22

Guilty findings and conviction rate by principal offence
(No. of defendant-complainant pairs = 207)

Offence	Guilty pleas: At committal	Guilty pleas: At trial	Guilty verdicts	Total convicted: No.	Total convicted: %
Pre-1981 legislation					
Rape (s.63)	0	0	3	3	33.3
Attempt rape (s.65)	0	0	2	2	100.0
Indecent assault on female (s.76, 76A)					
Under 16 years	11	2	4 (2)*	17	89.5
16 & over	0	1	1	2	100.0
Buggery (s.79, s.80)	5	0	2	7	100.0
Indecent assault on male (s.81, 81A, 81B).....	17	9	0	26	89.7
Post-1981 amendments					
Category 2 (s.61C)	9	0	0	9	100.0
Category 3 (s.61D)					
Under 16 years	6	2	0 (1)	8	88.9
16 & over	9	0	0	9	69.2
Category 4 (s.61E)					
Under 16 years	74	2	1	77	98.7
16 & over	2	0	0	2	100.0
Other offences					
Carnal knowledge by father/step-father (s.73,74,78A,78B)	7	1	0	8	100.0
Carnal knowledge of girl under 10 (s.67, attempt s.68)	1	0	1	2	100.0
Carnal knowledge of girl over 10 (s.71)	14	1	2 (1)	17	94.4
TOTAL	155	18	16 (4)*	189	91.3

* The figures in parentheses refer to the lesser offence on which the defendant was found guilty if he was found not guilty of the original offence.

There were also quite marked differences between the acquitted and convicted cases in the age and sex of the complainant, though these results should be treated with some caution because of the small numbers on which these conclusions are based. The convicted cases were more likely than the acquitted cases to involve younger complainants (Table 23) and female complainants. For example, cases involving female victims resulted in convictions more often (62.9%) than those involving male victims (42.9%). Similarly, cases involving victims under 16 were more likely to result in a conviction than those in which the victim was 16 or older. An acquittal was more common than a conviction only for cases in which the victim was 16 or older. This suggests, though more evidence is needed to support it, that older witnesses in sexual assault cases are seen as less credible, more likely to lay false complaints, or possibly as more blameworthy than younger complainants. This issue will be dealt with further in the Discussion.

The difference between acquitted and convicted cases associated with the relationship between victim and offender is also quite marked, though once again the numbers involved are quite small. Defendants who were acquaintances of, or strangers to their victims were just as likely to have been acquitted as convicted (50%), but family members and close family friends were much more likely to have been convicted (87.5%) than acquitted (Appendix 11). None of the acquitted cases involved fathers or step-fathers, but four of the convicted cases did.

There was little difference between the convicted and acquitted "tried" cases in either the presence of physical injury to the victim (45% of convicted cases, 50% of acquitted cases) or in the likelihood of prior convictions among the accused in the two groups (20% and 14.3%, respectively).

In summary, then, convictions were recorded for 193 of the 207 defendants (93.2%) whose cases proceeded beyond committal; this includes the four cases in which the defendant was found not guilty of the principal offence but was convicted of a lesser offence. Table 24 provides a summary of the final outcome of the 235 cases in the study. The final conviction rate (the percentage of proceeding cases resulting in a conviction) by the relationship between the victim and offender is shown in Appendix 12.

TABLE 23

Age of complainants in trial cases leading to acquittal and conviction

Age	Acquitted cases No.	Acquitted cases %	Convicted cases No.*	Convicted cases %**
0 - 4 years	—	—	1	100.0
5 - 9 years	1	33.3	2	66.7
10 - 13 years	2	25.0	4(2)	75.0
14 - 15 years	2	33.3	3(1)	66.7
16 years & above	9	60.0	6(1)	40.0
TOTAL	14	41.2	16(4)	58.8

* The figures in parentheses refer to cases in which the defendant was found not guilty of the principal offence but was convicted of a lesser offence.

** These are row percentages.

TABLE 24

Outcome for defendant-complainant pairs and distinct defendants

Outcome	Defendant-complainant pairs No.	Defendant-complainant pairs %	Distinct defendants No.	Distinct defendants %
Pleaded guilty	173	73.6	134	70.1
Found guilty	20	8.5	20	10.5
Acquitted	14	6.0	12	6.3
Not proceeded with ...	28	11.9	25	13.1
TOTAL	235	100.0	191	100.0

PENALTIES / SENTENCES

What sentences were imposed on the convicted offenders? As indicated earlier, the maximum penalties associated with each offence are summarised in Table 1. The maximum penalty for all offences specifies a term of imprisonment, ranging from two years for several offences (for example, under s.76A, s.78B and s.61E) to life imprisonment for rape (s.63) and carnal knowledge of a girl under 10 (s.67 or attempt, s.68). The majority of convicted offenders, however, did not receive a custodial sentence. Ninety-two distinct offenders (59.7%) involved in 120 cases which resulted in convictions (62.2% of cases) received good behaviour bonds or, in one case, a community service order. Custodial sentences were imposed on 62 distinct offenders (40.3%) who were involved in 73 cases leading to convictions (37.8% of cases).

Table 25 shows both the sentence for the principal offence and the total head sentence imposed on offenders receiving custodial sentences, together with the number of offenders receiving non-custodial sentences. The figures in this table, like all of the earlier tables dealing with the nature of the offence and the progression of cases through the criminal justice system, are based on defendant-complainant pairs or, more correctly following conviction, offender-victim pairs. In a number of cases, but not all, where a distinct victim was involved in more than one defendant-complainant pair, the sentences imposed for the offences relating to the different victims were the same and were to be served concurrently.

It should be noted that in a few cases the principal offence, defined earlier as the offence attracting the most severe penalty according to the legislation, was not, in fact, the offence punished most severely by the court. For the sake of simplicity, we have, however, retained the classification according to the penalty specified in the legislation.

The most common term of imprisonment specified by the courts for those receiving custodial sentences was between two and three years, with the majority (67.6%) receiving total terms of between one and five years. The average length of the total or aggregate head sentence was 47.7 months. In most cases, the total head sentence was the same as the length of the sentence for the principal offence since sentences for multiple offences were generally specified to be concurrent rather than cumulative. The non-parole periods set by the courts ranged between 6 and 210 months, with an average of 23.8 months. The majority (73.3%) were between 6 and 24 months, inclusive. Only about a quarter of the offenders had non-parole periods which exceeded two years.

TABLE 25

Sentences imposed for the principal offence and total head sentence
(No. of victim-offender pairs = 193)

	Principal offence*		Total head sentence	
	No.	%	No.	%**
Non-custodial sentence				
Good behaviour bond	119	61.7		
Community service order.....	1	0.5		
Custodial sentence				
Periodic detention	1	0.5		
Less than 12 months	6	3.1	7	9.6
12 months - less than 2 yrs.....	11	5.7	9	12.3
2 years - less than 3 yrs.....	15	7.8	16	21.9
3 years - less than 4 yrs	14	7.3	11	15.1
4 years - less than 5 yrs	11	5.7	10	13.7
5 years - less than 10 yrs.....	8	4.1	13	17.8
More than 10 years	2	1.0	5	6.8
Not known	5	2.6	2	2.7
Total custodial	73	37.8		
TOTAL	193	100.0	73	100.0

* Includes the four cases in which the defendant was found not guilty of the principal offence, but was convicted of a lesser offence.

** As a percentage of those receiving a custodial sentence.

How did the sentences vary by offence and by plea? Table 26 shows the distribution and average length of sentences by offence for the principal offence, together with the maximum penalty associated with each offence. As might be expected, offences carrying heavier penalties were more likely than less serious offences to result in custodial sentences. For example, 77.8% of cases in which the principal offence was a Category 3 sexual assault resulted in a custodial sentence compared with 19.0% of cases involving the less serious Category 4 sexual assault offence. The offenders in all seven cases in which the maximum penalty for the offence was life imprisonment (rape, attempt rape, carnal knowledge of a girl under 10) received custodial sentences. The length of these sentences ranged from 42 months to 12 years. A comparison of the penalties imposed on offenders convicted of offences under the pre-1981 and

TABLE 26

Type of sentence (custodial and non-custodial) and average length of custodial sentence by principal offence*
(No. of victim-offender pairs = 193)

Custodial Offence	Maximum penalty (years)	Non-custodial No.	Custodial No.	Custodial Mean length (months)
Pre-1981 legislation				
Rape (s.63).....	Life	0	3	62.5
Attempt rape (s.65).....	Life	0	2	37.0
Indecent assault on female (s.76, s.76A)				
Under 16 years	6	13	6	33.6
16 & over	4	0	2	42.0
Buggery (s.79, s.80).....	14	3	4	46.5
Indecent assault on male (s.81, 81A, 81B).....	5	17	9	23.6
Post-1981 amendments				
Category 2 (s.61C)	12	3	6	51.0
Category 3 (s.61D)				
Under 16 years	10	2	7	44.4
16 & over	7	2	7	51.8
Category 4 (s.61E)				
Under 16 years	6	63	14	16.0
16 & over	4	1	1	36.0
Other offences				
Carnal knowledge by father/step-father (s.73,74,78A,78B)	7	3	5	37.6
Carnal knowledge of girl under 10 (s.67).....	Life	0	2	120.0
Carnal knowledge of girl over 10 (s.71)	10	13	5	35.3
TOTAL		120	73	38.9

* Includes the four cases in which the defendant was found not guilty of the principal offence, but was convicted of a lesser offence.

post-1981 legislation also indicates a difference in the likelihood of receiving a custodial sentence. Only a third (33.0%) of offenders convicted under the amended legislation received custodial sentences compared with 44.1% of those convicted of "pre-1981 offences".

Custodial sentences were also much more likely in cases in which a conviction followed trial by jury than in cases in which the defendant pleaded guilty either at trial or at committal. Only 25% of offenders in cases which proceeded to trial received non-custodial sentences compared with 65.9% of cases in which the offender pleaded guilty at committal or at trial. This difference, however, probably reflects both the seriousness of the offence and the type of plea (Appendix 13). As indicated earlier, defendants were less likely to plead guilty to a serious than to a less serious offence. In fact, defendants were not able to enter a guilty plea at committal to charges carrying a maximum penalty of life imprisonment. In addition, judges generally take some account of a guilty plea and the inherent admission of the offence when deciding upon the type and length of sentence (Cashman, 1980; Willis, 1985).

What proportion of intrafamilial offenders received custodial sentences? Was there a difference in the likelihood of a custodial sentence associated with the relationship between the offender and his victim? As Table 27 shows, intrafamilial offenders were the most likely group of offenders to receive a custodial sentence. Those least likely to receive a custodial sentence were offenders in positions of professional authority in relation to their victims, but when they did receive custodial sentences, these sentences were longer than average. This difference across relationship groups was statistically significant ($\chi 2 = 12.86$, d.f. = 5, $p < .05$). This difference may, however, be at least partly attributable to the greater seriousness of charges against family members and the less serious charges against those in positions of professional authority in relation to their victims (see Table 13).

Other factors which might be expected to affect the sentence imposed by the court are whether or not the offender had prior convictions for previous sexual offences, whether or not the victim was physically injured as a result of the assault, and the age of the victim.

Somewhat surprisingly, the likelihood of a custodial sentence was greater for cases in which the victim was older rather than younger (Table 28). This difference was statistically significant ($\chi 2 = 20.13$, d.f. = 4, $p < .001$). In fact, a custodial sentence was more likely than a good behaviour bond only in cases in which the victim was 16 or older. As indicated earlier, both guilty pleas and convictions following trial (Table 22) were less common in cases involving older than younger victims, but it seems that when a

conviction involving an older victim was secured, it was more likely to result in a custodial sentence than in a good behaviour bond. This is probably because these cases involved more serious offences than those involving younger victims, thereby making a custodial sentence more likely.

Table 29 shows the number of offenders with and without prior convictions for sexual offences who received custodial versus non-custodial sentences (good behaviour bonds) by the type of offence. As might be expected, a history of a prior conviction increased the likelihood of a custodial sentence; 51.6% of offenders with a prior conviction for a sexual offence received a custodial sentence whereas the figure was only 31.3% for offenders without a prior conviction ($\chi 2 = 7.3$, d.f.= 1, $p < .01$).

Physical injury to the victim also increased the likelihood of a custodial sentence for the offender. Forty-four convicted offenders inflicted physical injury on their victims and, of these, 27 (61.4%) received a custodial sentence. Only 30.9% of offenders involved in cases which did not result in physical injury received a custodial sentence. The chance of a custodial sentence was therefore doubled if the victim was injured ($\chi 2 = 13.55$, d.f.= 4, $p < .001$).

In summary, then, in 82.1% of the 235 cases in which defendants were initially charged with at least one sexual assault offence against children, the defendant was convicted; 73 of these offenders received custodial sentences and 120 received non-custodial sentences following their conviction. The ultimate sentences and the progression of all the defendants (based on the number of defendant- complainant pairs) through the criminal justice system are summarised in the flow chart in Figure 3. Figure 4 shows the number of distinct defendants at the various stages of prosecution and Figure 5 provides a further summary of results by outlining the factors which differentiated between cases at the various stages of prosecution: between proceeding and non-proceeding cases, between cases in which the defendant pleaded guilty or not, between trial matters which resulted in conviction and acquittal, and between cases in which the offender received a custodial or non-custodial sentence.

TABLE 27

Type of sentence (custodial and good behaviour bonds (GBB))
by victim-offender relationship
(No. of victim-offender pairs = 193)

Relationship	Type of sentence: GBB No.	GBB %*	Custodial No.	Custodial %*	Mean length**
Family member.....	24	50.0	24	50.0	46.0
Family friend.....	14	63.6	8	36.4	20.3
Authority figure.....	22	88.0	3	12.0	66.0
Boyfriend.....	4	100.0	–	–	–
Friend/acquaintance.....	39	59.1	27	40.9	53.3
Stranger.....	17	60.7	11	39.3	56.1
TOTAL	120	62.2	73	37.8	47.7

* These percentages are row percentages, indicating the proportion of offenders receiving good behaviour bonds and custodial sentences, within each relationship group.

** Mean total head sentence in months.

TABLE 28

Type of sentence (custodial and good behaviour bonds (GBB))
by age of victim

Age of victim	Type of sentence: GBB No.	GBB %*	Custodial No.	Custodial %*
0 – 4 years.....	7	53.8	6	46.2
5 – 9 years.....	35	70.0	15	30.0
10 – 13 years.....	55	68.8	25	31.2
14 – 15 years.....	19	65.5	10	34.5
16 years & over.....	4	19.0	17	81.0
TOTAL	120	62.2	73	37.8

* These percentages are row percentages, indicating the proportion of offenders receiving good behaviour bonds and custodial sentences, within each victim age group.

TABLE 29

Type of sentence (custodial and good behaviour bonds (GBB)) by prior convictions for previous sexual offences for principal offence*
(No. of defendant-complainant pairs = 193)

Offence	Prior convictions		No prior convictions	
	GBB	Custodial	GBB	Custodial
Pre-1981 legislation				
Rape (s.63)	0	3	–	–
Attempt rape (s.65)	0	2	–	–
Indecent assault on female (s.76, s.76A)				
Under 16 years	2	2	11	4
16 & over	0	0	0	2
Buggery (s.79, s.80).....	0	1	3	3
Indecent assault on male (s.81, 81A, 81B)....	5	6	12	3
Post-1981 amendments				
Category 2 (s.61C)	0	3	3	3
Category 3 (s.61D)				
Under 16 years	0	2	2	5
16 & over	0	1	2	6
Category 4 (s.61E)				
Under 16 years	23	5	40	9
16 & over.....	0	0	1	1
Other offences				
Carnal knowledge by father/step-father (s.73,74,78A,78B)	0	3	3	2
Carnal knowledge of girl under 10 (s.67, attempt s.68)	0	2	0	0
Carnal knowledge of girl over 10 (s.71)	0	2	13	3
TOTAL	30	32	90	41
	48.4%	51.6%	68.7%	31.3%

* Includes the four cases in which the defendant was found not guilty of the principal offence, but was convicted of a lesser offence.

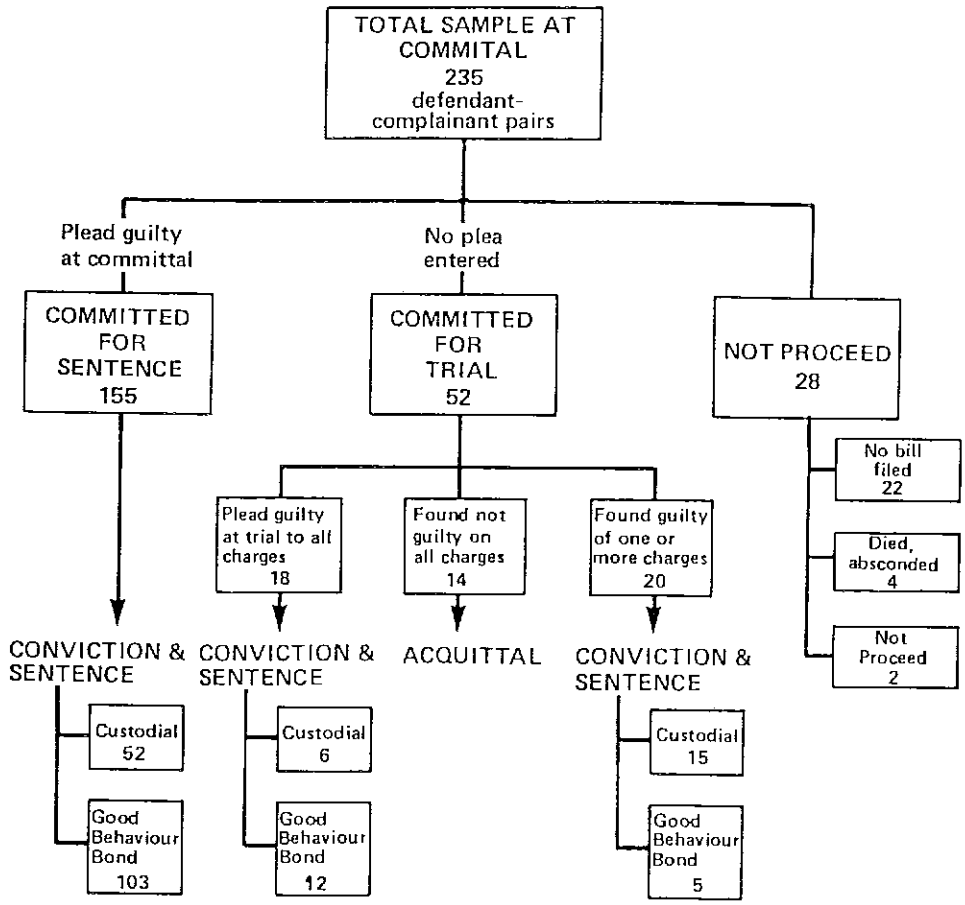

Fig. 3

Flow diagram of cases of child sexual assault from committal to finalisation.

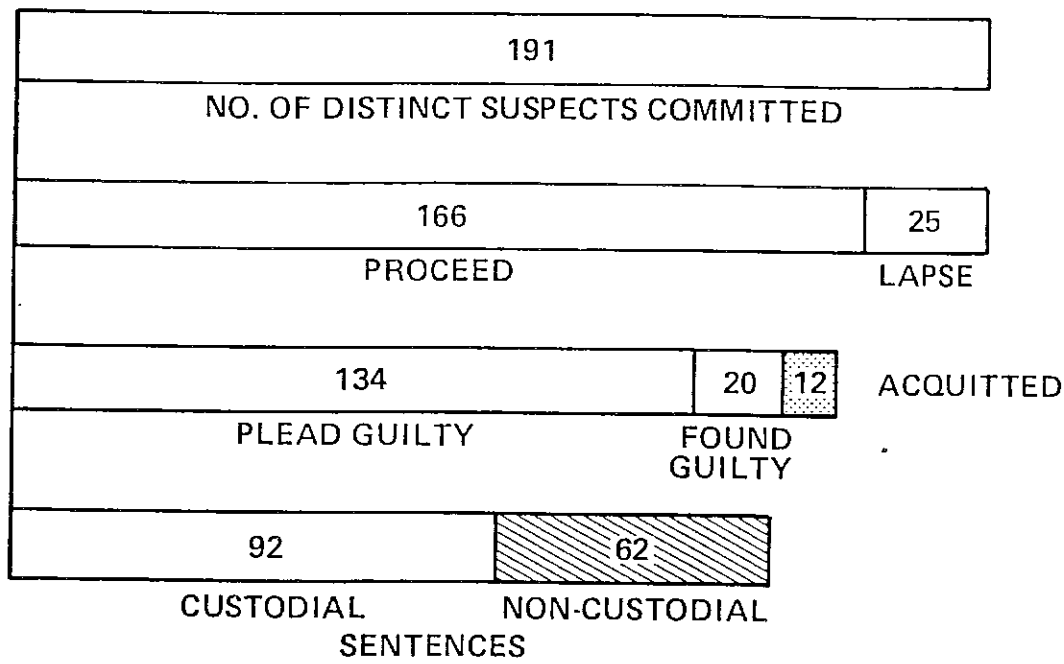

Fig. 4

Number of distinct suspects/defendants at various stages of prosecution.

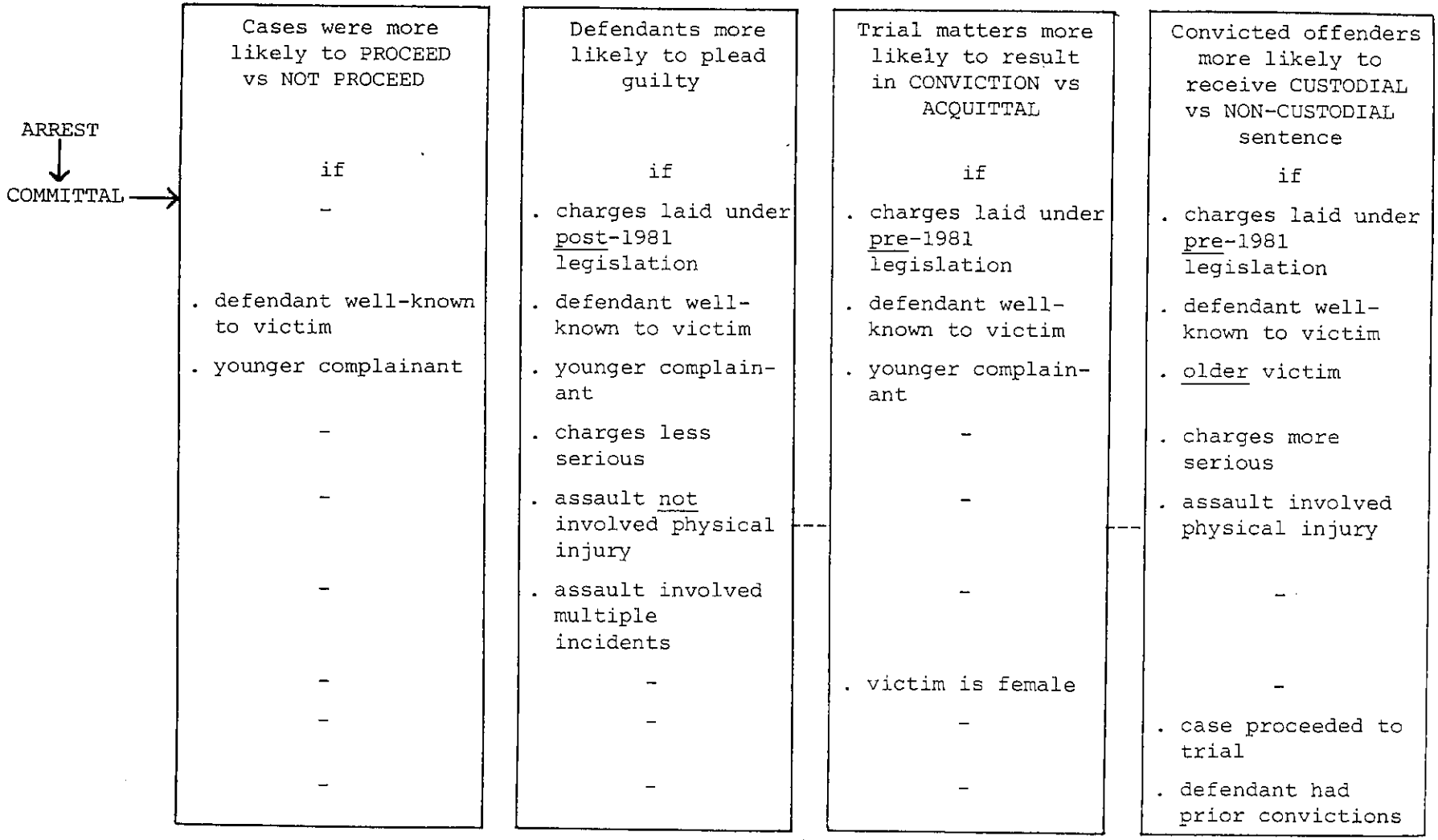

Fig. 5

Factors affecting processing of child sexual assault cases through the various stages of the criminal justice system.

5. FEATURES OF THE PROSECUTION PROCESS

Three key features of the prosecution process were examined in more detail because of their potential impact on the victim. These were the delays between the various stages of the proceedings, the requirement for complainants to give evidence in court, and the granting of bail.

Time between the various stages of the proceedings

One of the major features of the prosecution process which affects the experience of both defendants and complainants are the delays which occur between the various stages of the proceedings: between the reporting of the alleged offence and the arrest and charge of the suspect; between charge and committal; and between committal and trial and/or sentencing. The average intervals between these various stages are shown in Table 30 and the frequency distribution for each of these intervals is presented in Appendix 14.

TABLE 30

Average time intervals between stages of the prosecution process

Between:	
. Offence and charge	37.2 weeks
. Charge and committal	11.9 weeks
For sentence matters:	
. Committal and sentence	18.3 weeks
For trial matters:*	
. Committal and trial	40.2 weeks
. Trial and sentence	3.2 weeks

* This includes those cases in which the defendant pleaded guilty at trial.

There was then a considerable period from the time a case first entered the criminal justice system at arrest to the time the case was finalised. On average, this took about 24.8 weeks for a case in which the defendant pleaded guilty at committal and proceeded directly to sentence (sentence matters).

The overall time was much greater for cases in which the defendant was committed for trial after entering no plea at committal; this includes both those cases in which the defendant pleaded guilty at trial and then proceeded to sentence and trial matters in which the defendant was tried by jury. The average time from entry to finalisation for these cases was 63.6 weeks. In total, then, the average time period between the date of the offence and the time at which the case was finalised was likely to be over a year for sentence matters and nearly two years for delayed sentence matters and trial matters. This includes the unknown time between the date of the offence(s) and the reporting of the offence to the authorities. This is a much longer time than that reported by Conte and Berliner (1981) in their study of child sexual assault offenders in Seattle, Washington. Nearly 80% of cases in this study were finalised within three months, and all were finalised within six months.

Complainants as witnesses

Perhaps the most traumatic aspect of the prosecution process for complainants in sexual assault cases is the requirement to give evidence in court and face cross-examination. This is especially problematic in cases of child sexual assault since the complainants are children and they may have considerable diffulty in understanding what happens in court and what is required of them. How many children in these cases were required to give evidence in court?

In total, 59 child complainants gave evidence at committal, 48 of whom were cross-examined. Four of these 59 children gave evidence several times against more than one accused. There were a further 16 cases in which it was unclear whether or not the complainant had given evidence at committal or not. Fourteen children also gave evidence at trial, and all but one of these children were cross-examined.

Tables 31 and 32 show the age and sex of children who gave evidence and were cross-examined at committal. As might be expected, the proportion of children (as measured by the percentage of children within the age group) who gave evidence and were cross-examined at committal increased with age. Only 9.4% of complainants in the 5-to-9 year-old group gave evidence, but the proportion increased steadily with age until 58.6% of those in the oldest age group, those 16 or older, gave evidence at the committal hearing. A slightly higher proportion of female (28.8%) than male (21.4%) complainants gave evidence and were subsequently cross-examined, but this difference is likely to be a function of the higher proportion of younger boys than girls.

TABLE 31

Number and percentage of children required to give evidence at committal by sex and age

Age	Female	Male	Total	% of age group
5 - 9 years.....	2	3	5	9.4
10 - 13 years.....	15	6	21	25.0
14 - 15 years.....	12	4	16	40.0
16 - 17 years.....	15	2	17	58.6
TOTAL	44	15	59	26.4

TABLE 32

Number of children cross-examined at committal by sex and age

Age	Female		Male		Total	
	No.	%*	No.	%*	No.	%*
5 - 9 years.....	1	50.0	3	66.7	5	60.0
10 - 13 years.....	15	100.0	6	50.0	18	85.7
14 - 15 years.....	10	83.3	3	75.0	13	81.3
16 - 17 years.....	13	86.7	1	50.0	14	82.4
TOTAL	39		9		48	

* Percentage of children within the age group who gave evidence at committal.

The likelihood that children were required to give evidence at committal (and be cross-examined) also varied with their relationship to the accused, as Table 33 shows. Children were most likely to give evidence at committal in both absolute and relative terms if the accused was an acquaintance; 33 children, 37.9% of distinct complainants in this category, gave evidence at committal against an acquaintance accused of sexually assaulting them. Children were least likely to give evidence against a stranger; only four out of the 31 distinct complainants (12.9%) in cases involving strangers gave evidence at committal.

The majority of complainants (81.4%) who gave evidence at committal were also cross-examined. Cases in which the accused was in a position of authority in relation to the complainant were the only exception. Although six children gave evidence at committal against an accused authority figure, none of these children were cross-examined.

TABLE 33

Number of children required to give evidence at committal by defendant-complainant relationship

Relationship	No. giving evidence	No. in category	%
Family member	9	51	17.6
Family friend	5	22	22.7
Authority figure	6	27	22.2
Boyfriend	2	5	40.0
Friend/ acquaintance	33	87	37.9
Stranger	4	31	12.9
TOTAL	59	223	26.4

Only 14 complainants gave evidence at trial -- two males and twelve females (Table 34). These 14 children represent 46.7% of (distinct) complainants whose cases were heard before a jury. Three of these children gave evidence more than once at trial, against two or three accused. In the 20 cases in which the defendant was found guilty at trial on at least one charge, 8 complainants (six distinct children) gave evidence at trial and committal. In all 10 cases in which the jury returned a not guilty finding, the complainant (8 distinct children) had given evidence at both committal and trial. In the four cases in which there was a not guilty finding by direction of the judge, no complainant gave evidence at trial, but two had given evidence at committal. Of those who gave evidence at trial, all except one 15-year-old girl were cross-examined.

TABLE 34

Number of children required to give evidence (and face cross-examination) at trial

Age	Female	Male	Total
5 – 9 years	0 (0)	1 (1)	1 (1)*
10 – 13 years	4 (4)	0 (0)	4 (4)
14 – 15 years	1 (1)	1 (1)	2 (2)
16 – 17 years	7 (6)	0 (0)	7 (6)
TOTAL	12 (11)	2 (2)	14 (13)

* The numbers in parentheses refer to the number of children within each age group who were cross-examined at trial.

Once again, it seems that the likelihood of children giving evidence at trial varied across age-groups and with the relationship between the defendant and the complainant, although the small numbers involved mean that the conclusions should be treated with caution. Children in the oldest age group (16 and over) were most likely to give evidence at trial and face cross-examination. Similarly, children involved in trial cases in which the accused was an acquaintance of the child were most likely to give evidence at trial; ten of the 17 children in this category (58.8%) whose cases went to trial gave evidence at trial (Table 35).

TABLE 35

Number of children required to give evidence at trial by defendant-complainant relationship

Relationship	No. giving evidence	No. in category	%
Family member	2	7	28.6
Family friend	1	7	14.3
Authority figure	0	4	0.0
Boyfriend		2	0.0
Friend/acquaintance	10	17	58.8
Stranger	1	6	16.7
TOTAL	14	43	32.6

In summary, only a relatively small proportion of the children involved in these cases of sexual assault as complainant-victims were required to give evidence. The main reason for this was the high proportion of guilty pleas. The defendants pleaded guilty in about 70% of the total number of cases (defendant-complainant pairs) and in about 83.6% of cases which proceeded beyond committal.

Bail conditions for defendants

After the accused is charged at arrest, bail is determined until the first court appearance by the authorising officer at the police station. The majority of accused persons in this study received either unconditional (48.1%) or conditional (37.7%) bail. Bail was dispensed with for three suspects (1.6%) and only a small number (23, 11.9%) were refused bail and held in custody, one in a psychiatric institution.

For the majority of defendants, the bail conditions determined by the police were continued by the court. For 25 defendants, however, there was a change in bail conditions between committal and sentence (18) or between committal and trial (7). Where there was a change, it was more likely to be towards less strict conditions (for example, from conditional bail to unconditional bail, or from unconditional bail to bail dispensed with : 17 suspects) than to more stringent conditions (8 suspects). Four suspects, however, who were on conditional bail at the start of committal proceedings were remanded in custody following committal. All four pleaded guilty at committal to charges of carnal knowledge of a daughter, carnal knowledge of a girl over 10, indecent assault of a male, and Category 4 sexual assault, respectively. Two of these offenders were subsequently gaoled (for 4 years for incest, and for 9 months for Category 4 sexual assault) and the other two received good behaviour bonds.

Comparison of defendants committed for sentence and those committed for trial indicates little difference in the bail determinations for these two groups at the start of the sentence hearing and the trial, respectively (Appendix 15). In both cases, approximately 80% of defendants were on bail and around 14% to 15% had been refused bail and were in custody. Defendants whose cases proceeded to trial were, however, less likely to have unconditional bail and more likely to have conditional bail than those committed for sentence directly following committal.

6. SUMMARY AND DISCUSSION

The central concern of this study was the way in which cases of sexual assault against children are dealt with by the criminal justice system in New South Wales. All indictable cases of child sexual assault which were finalised in New South Wales' courts in 1982 and which involved complainants under 18 were examined. The analysis focused on the way in which these cases were dealt with at each of the various stages of the criminal justice system, and on the factors that affected their passage through the criminal justice system.

It should be made clear that although the term "the criminal justice system" implies "a coherent set of institutions and linked processes" within which criminal offenders are "processed" (Hogg, 1984, p. 12), the criminal justice system is not a system as such, but a series of agencies, each of which makes decisions about and exercises discretion in the handling of cases. The first of these decisions concerns whether or not criminal charges will be laid, and if so, what charges are laid. Subsequent decisions include the committal process whereby the magistrate decides whether to commit, the prosecutorial discretion of the Crown, particularly in relation to the finding of a bill of indictment, and judicial discretion in relation to the trial and sentencing processes. The following discussion will focus on each of these processes and on some of the factors which may affect each.

The initial decision to lay criminal charges

The decision to lay criminal charges against the alleged offender is made following the report of child sexual assault to either the police, a social welfare agency, or a medical or hospital service. In New South Wales, this decision is usually made jointly by the police and officers of the Department of Youth and Community Services after investigation of the case and may depend upon a number of factors including the availability of supporting evidence, the age of the child, and a judgment concerning the child's competence and willingness to give evidence in court.(11)

11Even if charges are laid, they may be dropped and the case withdrawn before it reaches court if the evidence is judged to be insufficient to secure a conviction or if the complainant declines to give evidence. This is not uncommon in cases of child sexual assault because the pressure on children from the offender and the child's family to recant can be enormous, especially if the offender is a family member or otherwise well-known to the child. Figures on the number of cases that are withdrawn for this reason are, however, difficult to obtain.

Overseas studies have indicated that a number of factors influence the likelihood of prosecution of child sexual assault offenders (Conte & Berliner, 1981; De Francis, 1969; Finkelhor, 1983). These factors include the police record of prior convictions and socio-economic status of the accused, the age of the child, the relationship between the child and the accused, and again the type of agency to which the initial report was made. Cases reported first to the police were more likely to result in criminal prosecution of the offender than those reported to other agencies such as child protection services or hospitals; so also were cases in which the alleged offender was unknown or not closely related to the child rather than a family member. According to Finkelhor (1983), however, the single best predictor of whether or not a case of child sexual assault was prosecuted was whether the suspect had a prior criminal record.

Comparable Australian information on the factors influencing the decision to initiate prosecution is difficult to obtain and is not available from this study because the sample was court-based and included only those cases which reached committal. Australian figures on the proportion of reported cases in which criminal charges are laid are also difficult to obtain and estimates vary according to which agency the case is initially reported to. An attempt will be made, however, on the basis of available figures to make a rough estimate of the prosecution rate. In New South Wales in 1982, for example, there were 454 new notifications of alleged sexual abuse to the Department of Youth and Community Services, and 248 reported offences to the police in which the victim was 18 years of age or younger. The amount of overlap between these two sets of data is unknown. On the basis of these two sets of figures, the prosecution rate may be roughly estimated at between 42.5% and 77.8%, respectively(12). The lower range of this estimate is similar to the figures reported by most of the overseas studies.

12These percentages were calculated using the number of distinct offenders in cases finalised in 1982 (193, therefore 193/454, and 193/248). These figures are, however, only rough estimates because not all the prosecuted cases finalised in 1982 related to offences which occurred and were reported during 1982. A number of the single incident offences occurred during the years 1979 to 1981 and may have been reported during those years, not during 1982. This factor would have had a greater impact on the estimate based on the Youth and Community Services figure because of the strong increasing trend in the number of notifications since the late 1970's. The number of reports to the police in 1979 and 1982 was, however, almost identical at 251 and 248, respectively. The figures from the Police and the Department of Youth and Community Services also include 18 year old victims whereas the court study did not. The figure from the Department of Youth and Community Services also includes only new notifications and since criminal charges may well relate to repeat notifications, the estimated rate of prosecuted cases based on this figure is likely to be an over-estimate.

The proportion of reported cases which resulted in prosecution in overseas studies varied from a low of 10% to a high of 69%. At the high end of the range, De Francis (1969) found that 69% of offenders in reported cases of child sexual assault in New York were prosecuted. This figure is considerably higher than the figures reported in other studies. Finkelhor (1983), for example, reported substantially lower prosecution rates, varying from 10% to 43% across states in the United States, with an overall rate of 24% nationwide.

The Canadian Report of the Committee on Sexual Offences against Children and Youths (1984) also reported variations in the prosecution rate from 21.4% to 41.6%, depending on whether the report was initially made to a child protection service or to the police. An English study by Mrazek et al. (1983) reported that criminal prosecution of the offender occurred in 43% of cases reported to a variety of medical agencies.

A further aspect to the initial decision to lay charges is the nature of the actual charges laid. Initially, the police decide which charges to lay but these may be dropped, added to or changed by the magistrate at committal or by the Crown Prosecutor in filing a bill of indictment. In the present study, there was some evidence that the charges initially laid did not sufficiently reflect the severity of the offences, both in relation to the nature of the sexual act, and in the duration and number of offences. First, the facts of some cases in relation to the nature of the sexual act (the type of penetration) might have satisfied the elements of a more serious offence. The fact that the more serious charges indicated were not laid was a function of police and prosecutorial discretion, probably based on an assessment of the reliability of the evidence and the relative likelihood of securing a conviction for the more and the less serious charges. It is also possible that the lesser charges may have been the result of charge or plea bargaining. The second way in which the charges laid did not adequately take account of the seriousness of the alleged behaviour relates to the number and duration of the offences. In some cases, assaults occurred over a number of years, but the defendant was charged with only one count of one offence. To some extent, this is a function of substantive law in that the law does not recognise the circumstances of repeated assaults over time unless separate charges are laid. The courts may take into consideration evidence of continuing sexual assault when sentencing an offender (if such evidence has been introduced during the hearing of the case)(13), but the laying and framing of charges does not allow the continuous nature of the behaviour to be taken into account. The concentration on specific acts on specific

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[13] Boyd, Court of Criminal Appeal, Australian Criminal Reports, 20, p.20; R. V. Clare, Court of Criminal Appeal, unreported, February 1984, 228, 1983.

occasions means that the criminal law as it currently stands does not appropriately reflect the ongoing nature of such behaviour in cases in which the abuse continues over some period of time. Some restructuring of the law relating to these matters may be necessary to provide for greater flexibility and a broader approach to prosection in such cases.

The decision to proceed with prosecution following committal

All the cases in the current study were committed for trial or sentence but not all proceeded to trial or sentence. The next stage of the decision-making process for which information is available therefore from the current study concerns the decision to proceed with prosecution beyond committal. The main reason for cases lapsing before trial or sentence was that the Crown exercised its discretion not to file a bill of indictment. As indicated earlier, the Crown may decline to file a bill of indictment if there is deemed to be insufficient evidence or if there is some other reason why the defendant ought not stand trial. The Attorney-General is not required to reveal the reasons for not finding a bill of indictment. In the curent study, no bill was filed in 21 cases (8.9% of all cases).(14)

The actual charges on the bill of indictment are also determined by the Crown. In contrast to the reported findings of some overseas studies (De Francis, 1969; Finkelhor, 1983), there was little evidence in the current study of plea bargaining since most defendants were committed for sentence or stood trial on the same charges as were laid at arrest. This might be expected, however, since plea-bargaining is not formally recognised or tolerated in Australia.

The plea

The major decision made by the defendant, generally on advice from defence counsel, is whether to enter a plea of guilty. Although this decision is largely the prerogative of the defendant, there is still an element of administrative and judicial discretion involved since the magistrate at committal and the judge at trial may decide to accept or reject a guilty plea. If the defendant enters a guilty plea at committal and this plea is accepted, the case proceeds directly to sentence. If no plea is entered at committal and the magistrate decides that there is sufficient evidence to warrant it, the defendant is committed for trial. The defendant may still then enter a guilty plea at trial.

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[14]There were also five cases (2.1% of all cases) which failed to proceed beyond committal because the defendant died or absconded.

The decision by the defendant to enter a guilty plea has a major impact on the way the case proceeds. In particular, a guilty plea at committal has two main consequences for the main participants in the proceedings -- the complainant and the defendant. First, the complainant is spared the ordeal of giving evidence and being cross-examined at trial.

This is particularly important in cases in which the complainants are children. It is even more important when the defendant is well- known to them, as is often the case, or even a member of their family because publicly "telling on" someone known and trusted is especially difficult for children (Summit, 1983).In the present study, 59 children, 26.4% of complainants, gave evidence at committal but only 14 (6.3%) gave evidence at trial. Most children who gave evidence were also cross-examined(15). The reason for the big reduction in the numbers of children required to testify at committal and at trial was that the defendants involved in these cases pleaded guilty, thereby avoiding the need for a trial.

The second important consequence of a guilty plea by the defendant (at committal) is that the delay before the case is finalised is considerably reduced from an average of nearly 64 weeks, if there is a trial, to about 25 weeks. This difference in the length of the delay has significant implications for both the complainant and the defendant since a long delay means that the incident and the associated prosecution is a continuing issue of uncertainty and cannot be "closed" until the legal proceedings are finalised. Long delays create special difficulties for child witnesses in that they are required to remember the details of traumatic events over long periods of time.

In the present study, the majority of defendants pleaded guilty, either at committal or at trial. In total, the defendants in 73.6% of all cases, and 83.6% of cases which proceeded beyond committal, pleaded guilty; 10.4% of these guilty pleas were entered at trial. Little information is available from other studies on the plea rate(16), but the figure of 73.6% is almost identical to the figure of 73.8% of prosecuted cases reported by Conte and Berliner (1981), and somewhat higher than the figure of 61.3% of proceeding cases reported by De Francis (1969).

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[15]The only other available figure from other studies on the number of children required to give evidence or face cross-examination was reported by De Francis (1969) who found that 19.1% of children involved in cases of prosecuted child sexual assault were cross-examined.

[16]The South Australian study by the Office of Crime Statistics (1983) does not provide information on the number of defendants who pleaded guilty, and the samples used in other studies makes comparison difficult.

There were several differences in the present study between cases in which the defendant pleaded guilty and those in which the defendant pleaded not guilty. In summary, defendants were likely to enter a guilty plea at committal or trial if they were closely related to the victim, if the case involved younger victims (under 14), if the assault involved multiple incidents, and if the victim was not physically injured as a result of the assault. A guilty plea was also more likely than a not guilty plea if the charges were less serious, and if the charges were laid under the post-1981 legislation rather than the pre-1981 legislation. The picture is, however, more complex than that indicated by the separate analysis for each of these factors. Such single factor treatment does not take account of the likely interaction between factors, and the possible confounding effects associated with these interactions. For example, when considering the association between the age of the victim and the likelihood of a guilty plea, it is necessary take into account the seriousness of the offence. Cases involving younger victims tended to relate to less serious offences, and defendants charged with less serious offences are more likely than those charged with more serious offences to plead guilty. Similarly, the greater likelihood of a guilty plea in cases in which the victim was not physically injured is also confounded with the seriousness of the offence. The possible confounding of effects should be borne in mind when interpreting the effect of various factors at the different stages of prosecution.

Judicial discretion and the decision of the jury

The next major set of decisions made in the handling of cases which proceed by way of trial relates to the discretion of the trial judge, particularly in relation to the admission of evidence and the direction given to the jury, and the final decision of the jury. In the present study, 58.8% of defendants who were tried by a jury (and 9.7% of all cases which proceeded beyond committal) were found guilty of either the principal offence or of a lesser charge. Nearly 30% of those tried were found not guilty by the jury and 11.7% were acquitted by direction of the judge to the jury. These figures are very similar to those reported by both Conte and Berliner (1981) and De Francis (1969). Conte and Berliner found that 60% of those who were tried were convicted; De Francis's figure was 62.5%.

At the time that the defendants in the current study faced trial by jury, cases involving children as witnesses involved several procedural difficulties. Under Section 418 of the Crimes Act, the testimony of children could only be accepted as sworn evidence if they were deemed capable of understanding the nature of an oath or affirmation. Most children under 14 who gave evidence in court were subjected to a voire dire examination about their understanding of the duty to tell the truth and the consequences of lying in court. Although Section 418 allowed for the acceptance of the unsworn evidence of a child, such evidence had to be corroborated by other material evidence.

At least one case in the present study resulted in an acquittal by direction to the jury because the young victim was deemed incompetent to take an oath or affirmation, and, as is often the case for child sexual assault since most child sexual assault offences occur within the privacy of the home, no suitable corroborative evidence was available.

Even in the case of sworn evidence, the judge was required to warn the jury about the danger of convicting on the uncorroborated evidence of a child complainant. The reason for the requirement for such a warning to the jury was that the evidence of children in general and of complainants of sexual assault in particular, has been regarded as unreliable (Cross on Evidence, paras. 9.7 & 9.28, 2nd Aust. ed.). There is, however, good evidence contrary to the accepted judicial wisdom, that children are not likely to fabricate stories, that they can distinguish between fantasy and reality, and that their testimony can be as accurate as that of adults (Burton, 1976; Loftus & Davies, 1984; Yuille & King, 1985).

One of the major changes introduced by the Crimes (Sexual Assault) Amendment Act of 1981 was the limitation on questioning concerning the complainant's sexual experience and reputation. Although the 1981 amendment did result in a sharp reduction in the number of cases in which this line of questioning was raised (Bonney, 1986), such questioning was not totally eliminated and the effect of the amendments did not extend to offences other than those covered by Section 61. Unfortunately, the present study did not include a detailed examination of the line of questioning used in cross-examination and Bonney's (1986) study did not differentiate between child and adult complainants in this respect.

So what differences, if any, were there between the cases in which the defendant was acquitted and those in which the defendant was convicted? Cases resulting in a conviction were more likely to involve female victims than male victims. Convictions were also much more likely when the victim was under 16 than over 16, suggesting that younger victims are seen as more credible witnesses and possibly as less blameworthy in the assault. There is some support for this suggestion in the findings of the Canadian Report of the Committee on Sexual Offences against Children and Youths (1984), which reported that the likelihood of charges initially being laid is influenced by the age of the victim.

The report concluded that "it strongly appears that sexual victims of both sexes under the age of 12 were considered more credible than older sexual victims, that victims 16 to 20 were perceived to be the least credible" (Volume 1, p. 485). It seems likely that juries may have similar conceptions about the credibility of younger witnesses when they make their decision about the probable guilt of the defendant as the police do when they decide whether to lay charges or not.

Convictions following trial by jury were also more likely when the offender was a family member than when a stranger or acquaintance of the victim was involved. There was no effect, however, on the likelihood of a conviction versus acquittal associated with the defendant's history of convictions for sexual assault. This is to be expected since the prior convictions of an accused are generally inadmissible in a trial.

The sentencing process

The final stage of the prosecution process involves sentencing. In the present study, the majority (62.2%) of convicted offenders were given non-custodial good behaviour bonds. Unfortunately, however, no data on the conditions of recognisance were collected. The remaining offenders (37.8%) received custodial sentences, with an average head sentence of 47 months and an average non-parole period of 23.8 months. In other studies, the proportion of offenders receiving custodial sentences varied from 25.7% (Conte & Berliner, 1981: includes involuntary placements in "mental hospitals") to 43% (De Francis, 1969; Office of Crime Statistics, 1983). The figure found in the present study is well within this range, and the average length of sentence is also similar.

The type of sentence imposed on convicted offenders in the present study differed in association with several factors: the type of plea entered, whether or not the defendant had any prior convictions for sexual assault, and the age of the victim.

The first factor affecting the type of sentence imposed was the plea entered by the defendant. Custodial sentences were less likely if the defendant pleaded guilty than if he pleaded not guilty. This difference may, however, have been confounded to some extent by the seriousness of the offence; defendants facing more serious charges were both more likely to plead not guilty and more likely to receive custodial sentences. Another explanation for the greater likelihood of a non-custodial sentence following a guilty plea is the possibility of discounted sentences. Although Willis (1985, p. 133) points out that "there are no reported cases providing a definitive ruling on the issue" in New South Wales, it is clear from Willis' discussion of various judgments and from Cashman's (1980) national survey of judges and magistrates that sentences in New South Wales may be discounted if the defendant pleads guilty. Whether the discounting factor would make the difference, however, between a custodial and non-custodial sentence is not clear, and there is little empirical evidence for such a suggestion. It is also unclear whether the possibility of a reduction in sentence had any effect on the guilty plea rate; again, there is little evidence to this effect, except perhaps for the increased guilty plea rate following the change in the structure of offences and associated penalties introduced by the Crimes (Sexual Assault) Amendment Act of 1981.

Prior convictions are also taken into account by judges when determining sentence so, as expected, convicted offenders with prior convictions for sexual offences were more likely than those with no such prior convictions to receive custodial sentences. Similarly, the likelihood of a custodial sentence was doubled for an offender if his assault had inflicted physical injury on the victim.

Once again, there was a significant difference associated with the age of the victim. In fact, the age of the victim had an effect on the way cases were dealt with at all stages of the prosecution process. Cases involving younger victims were more likely than those involving older victims to proceed beyond committal. They were less likely to go to trial, but more likely to result in a conviction if they did go to trial. Somewhat surprisingly, perhaps, offenders convicted of assaulting younger victims were, however, less likely to receive custodial sentences but this finding is probably the result of some confounding with the seriousness of the offence. There was a positive relationship between the age of the victim and the seriousness of the offence (measured by the severity of the associated penalty) so that offenders who had assaulted older victims were liable to more severe penalties, and were therefore more likely to receive a custodial sentence.

In summary, what proportion of cases in the present study proceeded and resulted in conviction, and how do these figures compare with the findings of other studies? In particular, is there any evidence in the present study of the "enormous attrition rate" claimed by Finkelhor (1983, p. 202) for child sexual assault cases "as [they] go through the system"?

In the present study, 86% of defendants proceeded beyond committal to trial or sentence. Of these proceeding cases, 92.8% resulted in a conviction, either through a guilty plea or a finding of guilt at trial. The vast majority of these convictions (87.7%) were the result of a guilty plea. In addition, most of these defendants were convicted on the charges laid against them at arrest. On the other hand, there was some evidence that the charges initially laid did not sufficiently reflect the severity of the offences, both in the type of offence (penetration) and in the duration of the offences. Overall, however, these findings do not indicate a high attrition rate of cases once prosecution has begun and the cases have entered the criminal justice system.

How do these figures compare with the findings of other studies? In general, as Figure 6 shows, the figures from other studies relating to the three main stages of prosecution are, with one exception, similar to those found in the present study. Conte and Berliner (1981), for example, found that 88.1% of defendants were convicted and 83.7% of these convictions followed a guilty plea. Similarly, the Canadian Report of the Committee on Sexual Offences against Children and Youths (1984) reported conviction rates (as a

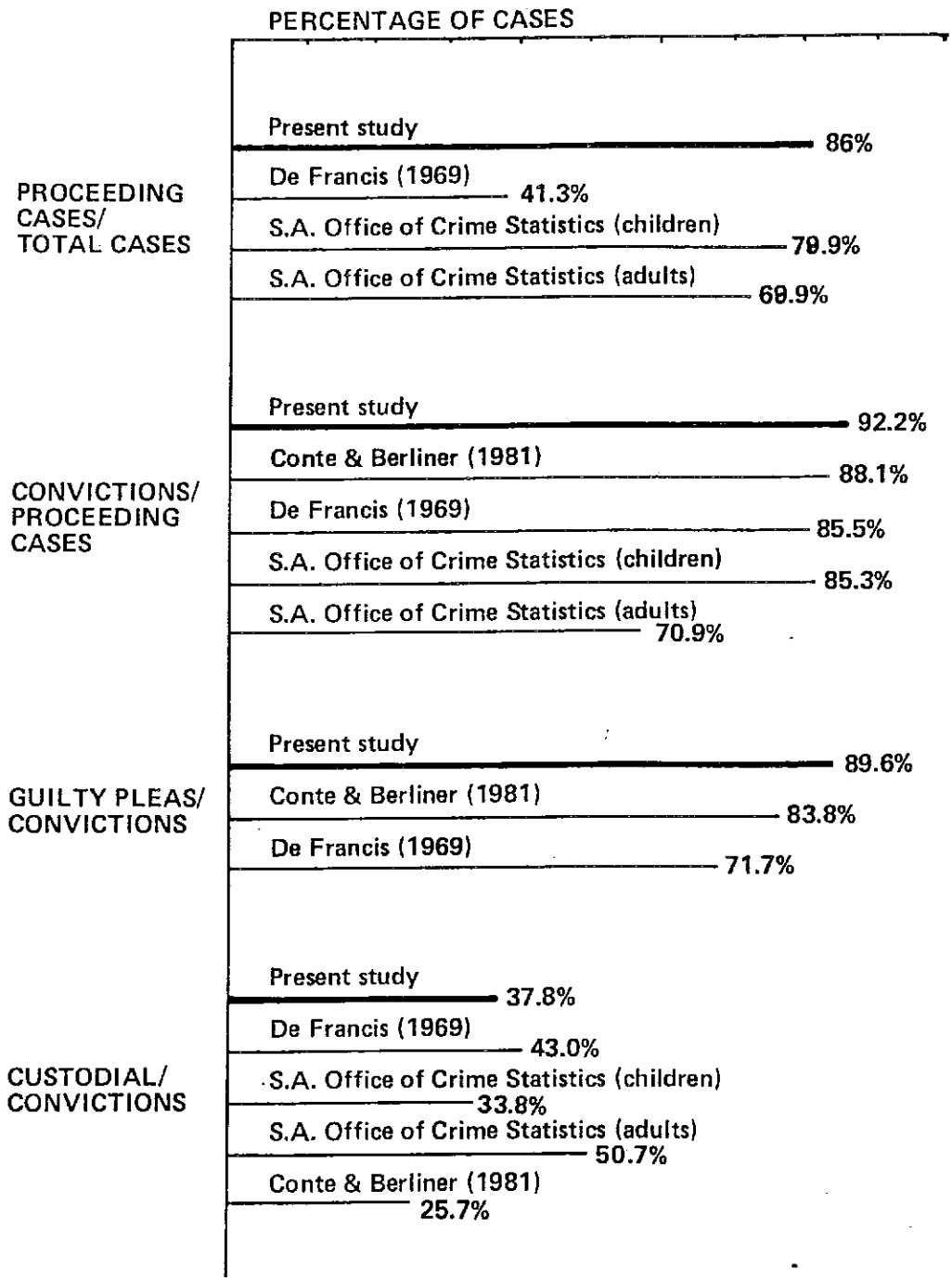

Fig. 6

Comparison of findings across studies.

proportion of the number of charges laid) for sexual offences which have consistently been above 80% since the 1950's. Unlike the South Australian study, however, there was no difference between the Canadian conviction rate for sexual offences against children and that for adults. The South Australian report by the Office of Crime Statistics (1983) found that a higher proportion of cases involving child victims proceeded and resulted in a conviction; 79.9% of cases in which charges of child sexual assault were laid proceeded compared with 69.9% of cases involving adult victims, and of these, 85.3% resulted in a conviction (compared with 70.9% of "adult" cases). These figures are similar to, though a little lower than, those found in the present study.

The exception to this pattern comes from the earliest study by De Francis (1969). De Francis' (1969) study of reported cases of child sexual assault in New York found that only 41.3% of cases in which criminal charges were laid proceeded. Of those that did proceed, 85.5% resulted in a conviction, but plea bargaining was common and the majority were convicted on lesser charges. The higher attrition rate for this study should, however, be set in the context of the higher initial prosecution rate reported by De Francis (1969) -- 69% compared with around 20% to 40% in other studies. In a comparative study of attrition rates in rape cases, Polk (1985) found that the overall attrition rates were similar across studies, although there was considerable variation between studies in the stages at which the attrition occurred. For example, where a high proportion of reported cases were prosecuted, a lower percentage of cases proceeded to conviction and custodial sentences. On the other hand, in jurisdictions in which a smaller proportion of cases entered the court system, a higher proportion resulted in both a conviction and a custodial sentence.

It is likely that the same effect might be found across different types of offenders (within a study). For example, in the present study, the conviction rate for intra-familial offenders, family friends and authority figures was higher than for any other group of offenders. The proportion of intra-familial offenders receiving custodial sentences was also higher than for other groups (though it should be remembered that this may be partly accounted for by the greater seriousness of the charges facing these offenders). It may also be due to the fact that an element in the sentencing process (viz. individual deterrence) does not operate as strongly if the offender has unrestricted access to teh victim in the home environment. Although no information was available on the initial likelihood of prosecution for different groups of offenders, if the findings of other studies are any guide, cases involving intrafamilial offenders are least likely to be reported to the police and result in criminal prosecution. Thus, intrafamilial offenders are less likely than other offenders to find their way into the criminal justice system, but if they do, on the figures in the present study,

they are more likely to be convicted and more likely to receive custodial sentences. In future, then, any study of the attrition of cases through the criminal justice system needs to examine the whole process of prosecution from the initial decision to prosecute following the reporting of cases to the authorities to the final stage of sentencing.

Further research is also required to investigate the decision-making processes at each of the various stages of prosecution, including examination of the attitudes of the personnel in the various agencies toward the most appropriate way of dealing with cases of child sexual assault. Little research has been carried out in this area (Craft & Clarkson, 1985) but it is vital to know how decisions are made about the management of such cases, particularly since there is considerable dispute and controversy about the desirability of criminal prosecution of the offender. Those in favour of criminal prosecution argue that criminal sanctions are necessary to communicate society's condemnation of such behaviour, to deter future sexual abuse and assault, and perhaps to enforce treatment for the offender. Opponents of criminal prosecution, however, argue that the whole process has adverse effects on both the victim and offender and exacerbates the negative effects of the original assault(s) (Conte & Berliner, 1981; Finkelhor, 1983; Parker, 1982).

Need for reform of judicial procedures in cases dealing with child victims

Since criminal prosecution of child sexual assault offenders is likely to continue, at least for some cases, there is an urgent need to minimise the negative consequences of children's involvement in such proceedings. Although special Children's Courts were established some time ago in most jurisdictions in recognition of the special needs and vulnerabilities of juvenile offenders and "children in need of care", so far there has been little special provision for accommodating the needs of children who appear in often more traumatic circumstances as witnesses in the "adult" criminal justice system. Children who are required to appear in criminal court to give evidence and face cross-examination encounter a number of difficulties in dealing with a system that does not take into account that, as children, they are even more vulnerable than an adult witness giving evidence about a traumatic event in their lives. The major difficulties faced by any witness include the requirement that they repeat the story of what happened to a variety of people during the investigation and in court hearings, the delays between the various stages of investigation and prosecution, and the intimidating nature of the physical environment of the court and of court procedures. Child witnesses experience all these difficulties, but more acutely, since they may not be (depending on age) at a stage of their development which would enable to fully understand the court experience and place it in a meaningful context.

Although it might be argued that the proportion of children involved directly in court proceedings is not large, in absolute terms the number of children is quite high -- in the present study based on one year's cases, 59 children gave evidence at committal, and 14 also gave evidence at trial. The problems these children face are such that they warrant significant reforms in the way child victims are dealt with in the criminal justice system. Fortunately, the need for greater sensitivity to the difficulties faced by child victims of sexual assault is increasingly being recognised and moves are under way in most states of Australia to make changes in the way cases (of child sexual assault) are dealt with in the criminal justice system to alleviate the problems for child witnesses.

A number of measures have been proposed to ease some of these difficulties (Bulkley & Davidson, 1981; Berliner & Barbieri, 1984; Melton, 1980; Naylor, 1985; Ordway, 1983). For example, the New South Wales Task Force on Child Sexual Assault has recommended expedited hearings for child sexual assault matters, following similar moves in other jurisdictions, especially in North America. As the findings of the present study indicate, the average time between charges being laid and the finalisation of a case of child sexual assault was about six months for cases committed for sentence but over 63 weeks if the defendant was committed for trial. Such long delays make it difficult for children, and adults also, to recall accurately the exact details of the incident about which they will be questioned. Such questioning can be particularly difficult for children who have been subjected to sexual abuse over a long period of time since charges are generally laid in relation to one or more specific incidents and it may be difficult for children to separate out specific incidents from a history of assaults and for them to understand the concentration of questioning on specific assault incidents. Expedited hearings are especially important in cases which rely on the uncorroborated evidence of children since these cases depend solely on the integrity of the child's evidence which is vulnerable to long delays. It is therefore imperative that such cases should have priority in listing.

Several measures have been proposed to avoid the need for children to repeat the story of what happened to them. These include joint interviews during investigation rather than separate interviews by the various agencies involved (police, social welfare and medical personnel), the establishment of a specialised prosecution unit to ensure the continuity of prosecution personnel, skilled in dealing with children who have been sexually assaulted, and the recording of the child's statement (either by video or audio-tape). The real benefit of recording the child's statement, however, depends on the admissibility of such recordings as evidence in court proceedings so that the child's involvement in court can be minimised.

Measures to lessen the intimidatory nature of both the court-room and court procedures include the presence in court of a support person for the child, the use of child advocates to protect the interests of the child, and physical modifications to the court-room, such as the installation of one-way glass screens or television monitors so that the child can give evidence without having to confront the accused.

Children who are related to the alleged offender face additional specific problems. Since the vast majority of defendants receive bail, children who have been assaulted by a family member have little protection under criminal law when the defendant returns home on bail and the child may be subjected to considerable pressure from the defendant to recant. The only means of protection generally available to these children, lies in their removal from their home "to a place of safety", under child welfare legislation, an action which children often understandably construe as punishment for their own role in the abuse (Conte, 1984). Giving evidence in court is also particularly difficult for children when the person they are required to testify against is a member of their family or someone well-known to them who is in a position of trust and authority (Summit, 1983).

One type of measure which aims to overcome some of the problems for these children is the introduction of diversion procedures for offenders. Diversion programs have been instituted in several overseas jurisdictions (Bulkey & Davidson, 1981) and they have been proposed in several states of Australia (Hewitt, 1986: Victorian Child Sexual Assault Discussion Paper; Report of the New South Wales Child Sexual Assault Task Force, 1985). Entry to such schemes is generally restricted to non-violent, first offenders who are related to their victims, plead guilty, and agree to undertake a treatment program.

The aim of such schemes is to encourage offenders to plead guilty and enter a treatment program. As indicated earlier, a guilty plea avoids the need for a trial and spares the victim the ordeal of testifying in court. A guilty plea by the offender may also have the advantage of indicating to the victim that the offender has accepted responsibility for the assault(s), so alleviating the child victim's feelings of guilt about their own role in the behaviour (Burgess & Holmstrom, 1978; MacDonald, 1971), and in the ensuing punishment for the offender. In addition to the encouragement to offenders to plead guilty, the other major advantages of such schemes are that they may impose conditions on the offender's behaviour to provide protection for the victim and they provide an incentive for offenders to undertake treatment. As Conte (1984) points out, "very few offenders voluntarily enter treatment" (p. 565), and so the authority of the criminal justice system may be required to enforce such participation.

The value of such participation, however, especially if it is unwilling, will depend on the form of treatment and such a scheme will require careful monitoring and evaluation. Diversion procedures have, however, been criticised as constituting "a soft option" for intrafamilial offenders which, it is argued, is tantamount to the decriminalisation of their offences. Unfortunately, no information is available from the present study on the conditions imposed with the good behaviour bonds received by the 50% of intrafamilial offenders who received non-custodial sentences, but it is likely that the conditions and supervision associated with these bonds were less onerous and provided less protection for the child victim than those that would be imposed under a diversion and treatment program. There has been a significant lack of facilities within the correctional system for the treatment of this type of offender. Supervision by a probation and parole officer is not, arguably, sufficient to ensure that the offender observes the conditions of a bond. Researchers in this field have noted that the child sexual assault offender is particularly manipulative of correctional agencies (Finkelhor, 1983; Summit, 1983). Diversion procedures have also been criticised for not meeting the need for both offender and victim to know that the crime has been punished (Mrazek & Kempe, 1981; Report of the New South Wales Child Sexual Assault Task Force, 1985; Hewitt, 1986: Victorian Child Sexual Assault Discussion Paper, 1986). The little information that is available on children's reactions to the punishment of the offender and their preferred options for outcome, however, suggests that "many victims and families want both treatment and punishment for the offender" (Conte, 1984, p. 559).

In summary, a variety of measures have been proposed to ease the problems of child victims who are involved in criminal proceedings. Research will be required to evaluate the effect of the various proposed changes, but in order to facilitate such research, more accessible information on the way cases are processed through the criminal justice system will be necessary. A data-base incorporating such basic accessible information as the age and sex of victims is a necessary first step. This would avoid the need for the full-scale search of all sexual assault records that was required in this study to locate cases involving child victims.

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APPENDIX I

ELEMENTS OF THE OFFENCES AND SUBSECTIONS OF THE CRIMES (SEXUAL ASSAULT) AMENDMENT ACT (1981)

Section 61B: Sexual assault category 1 - inflicting grievous bodily harm with intent to have sexual intercourse

The elements of an offence under s.61B (1) are that the accused:-

(1) maliciously inflicted;
(2) grievous bodily harm upon another person;
(3) with intent to have sexual intercourse with that person.

The elements of an offence under s.61B (2) are that the accused:-

(1) maliciously inflicted;
(2) grievous bodily harm upon another person;
(3) with intent to have sexual intercourse with a third person who is present or nearby.

Section 61C: Sexual assault category 2 - inflicting grievous bodily harm, etc., with intent to have sexual intercourse

The elements of an offence under s.61C (1) are that the accused:-

(1) maliciously inflicted;
(2) actual bodily harm upon another person
OR
(2) threatened to inflict actual bodily harm upon another person by means of an offensive weapon or instrument;
(3) with intent to have sexual intercourse with that person.

The elements of an offence under s.61C (2) are that the accused:-

(1) maliciously inflicted
OR
(1) threatened to inflict;
(2) actual bodily harm upon another person;
(3) with intent to have sexual intercourse with a third person.

Section 61D: Sexual assault category 3 – sexual intercourse without consent

The elements of an offence under s.61D (1) are that the accused:-

(1) had sexual intercourse with another person;
(2) without that other person's consent;
(3) knowing such other person did not consent to the sexual intercourse.

Section 61E: Sexual assault category 4 – indecent assault and act of indecency

The elements of an offence under s.61E (1) are that the accused:-

(1) assaulted the complainant, and
(2) without his or her consent;
(3) immediately before or after, or at the same time committed an act of indecency;
(4) upon the complainant or in his or her presence.

The elements of an offence under s.61E (2) are that the accused:-

(1) committed an act of indecency;
(2) with or towards a person under 16;
OR
(1) incited a person under 16;
(2) to an act of indecency;
(3) with the accused or another person.

Section 67: Carnally knowing girl under 10

The elements of this crime are:-

(1) sexual intercourse of a girl;
(2) under ten years of age.

Section 68: Attempting or assaulting with intent to carnally know girl under 10

The elements of this crime are:-

(1) that the accused attempted to have sexual intercourse with the girl named;
AND
(2) that she was under 10 years of age.

Section 71: Carnally knowing girl between 10 and 16

The elements of this crime are:-

(1) sexual intercourse with a girl,
(2) under the age of sixteen years but above the age of ten years.

Section 72: Attempted carnal knowledge girl under 16

The elements of this crime are:-

(1) that the accused attempted to have sexual intercourse with the girl named;
AND
(2) that she was under sixteen years of age but over ten.

Section 72A: Carnal knowledge of idiot or imbecile

The elements of this crime are:-

(1) that the person named is an idiot or imbecile;
(2) that the accused knew this fact; and
(3) that the accused had carnal knowledge of her, or he attempted to have such carnal knowledge.

Section 73: Carnal knowledge by teacher, parents, etc.

The elements of this crime are:-

(1) that the female named was the pupil, daughter or step-daughter of the accused;
(2) that she was over ten and under seventeen; and
(3) that the accused had sexual intercourse with her.

Section 78A: Incest

Incest by male

The elements of this crime are:-

(1) sexual intercourse between son and mother, brother and sister, father and daughter, or grand-father and grand-daughter;
(2) whether the relationship is of the half or the full blood and whether or not it is traced through lawful wedlock.

Incest by female

The elements of this crime are:-

(1) sexual intercourse between mother and son, sister and brother, daughter and father, grand-daughter and grand-father (whether or not the relationship is of the half or the full blood and whether or not it is traced through lawful wedlock); and that

(2) the accused be over the age of sixteen at the time of the offence.

Main provisions of Crimes (Child Assault) Amendment Act (1986)

(4) Sections 61A–61G—

After the heading before section 62, insert:—

Sexual intercourse.

61A. (1) For the purposes of this section and sections 61B, 61C and 61D, "sexual intercourse" means—

(a) sexual connection occasioned by the penetration of the vagina of any person or anus of any person by—

(i) any part of the body of another person; or

(ii) an object manipulated by another person,

except where the penetration is carried out for proper medical purposes;

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

(c) cunnilingus; or

(d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).

(2) For the purposes of sections 61B, 61C and 61D, a person shall not, by reason only of age, be presumed incapable of having sexual intercourse with another person or of having an intent to have sexual intercourse with another person.

(3) Subsection (2) shall not be construed so as to affect the operation of any law relating to the age at which a child can be convicted of an offence.

(4) The fact that a person is married to a person—

(a) upon whom an offence under section 61B, 61C or 61D is alleged to have been committed shall be no bar to the firstmentioned person being convicted of the offence; or

(b) upon whom an offence under any of those sections is alleged to have been attempted shall be no bar to the firstmentioned person being convicted of the attempt.

Admissibility of evidence relating to sexual experience, &c.

409B. (1) In this section—

"prescribed sexual offence" has the same meaning as it has in section 405B (1);

"prescribed sexual offence proceedings" means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence;

"the accused person", in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a prescribed sexual offence;

"the complainant", in relation to any proceedings, means the person, or any of the persons, upon whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed.

(2) In prescribed sexual offence proceedings, evidence relating to the sexual reputation of the complainant is inadmissible

(3) In prescribed sexual offence proceedings, evidence which discloses or implies that the complainant has or may have had sexual experience or a lack of sexual experience or has or may have taken part or not taken part in any sexual activity is inadmissible except—

(a) where it is evidence—

(i) of sexual experience or a lack of sexual experience of, or sexual activity or a lack of sexual activity taken part in by, the complainant at or about the time of the commission of the alleged prescribed sexual offence; and

(ii) of events which are alleged to form part of a connected set of circumstances in which the alleged prescribed sexual offence was committed;

(b) where it is evidence relating to a relationship which was existing or recent at the time of the commission of the alleged prescribed sexual offence, being a relationship between the accused person and the complainant;

(c) where—

(i) the accused person is alleged to have had sexual intercourse, as defined in section 61A (1), with the complainant and the accused person does not concede the sexual intercourse so alleged; and

(ii) it is evidence relevant to whether the presence of semen, pregnancy, disease or injury is attributable to the sexual intercourse alleged to have been had by the accused person;

(5) In prescribed sexual offence proceedings, where the Court or Justice is satisfied that—

(a) it has been disclosed or implied in the case for the prosecution against the accused person that the complainant has or may have, during a specified period or without reference to any period—

(i) had sexual experience, or a lack of sexual experience, of a general or specified nature; or

(ii) taken part or not taken part in sexual activity of a general or specified nature; and

(b) the accused person might be unfairly prejudiced if the complainant could not be cross-examined by or on behalf of the accused person in relation to the disclosure or implication,

the complainant may be so cross-examined but only in relation to the experience or activity of the nature (if any) so specified during the period (if any) so specified.

(6) On the trial of a person, any question as to the admissibility of evidence under subsection (2) or (3) or the right to cross-examine under subsection (5) shall be decided by the Judge in the absence of the jury.

(7) Where a Court or Justice has decided that evidence is admissible under subsection (3), the Court or Justice shall, before the evidence is given, record or cause to be recorded in writing the nature and scope of the evidence that is so admissible and the reasons for that decision.

(8) Nothing in this section authorises the admission of evidence of a kind which was inadmissible immediately before the commencement of this section.

Limitation on dock statements in certain sexual offence proceedings.

409C. (1) In prescribed sexual offence proceedings referred to in section 409B, a person may not, in any statement made under section 405, make reference to a matter which would not, by virtue of section 409B, be admissible if given on oath.

(2) Where a person has made reference, in a statement made under section 405, to a matter which would not, by virtue of section 409B, be admissible if given on oath, the Judge shall tell the jury to disregard that matter.

Sexual assault category 1—inflicting grievous bodily harm with intent to have sexual intercourse.

61B. (1) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with the other person shall be liable to penal servitude for 20 years.

(2) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 20 years.

Sexual assault category 2—inflicting actual bodily harm, &c., with intent to have sexual intercourse.

61C. (1) Any person who—

(a) maliciously inflicts actual bodily harm upon another person; or

(b) threatens to inflict actual bodily harm upon another person by means of an offensive weapon or instrument,

with intent to have sexual intercourse with the other person shall be liable to penal servitude for 12 years.

(2) Any person who—

(a) maliciously inflicts actual bodily harm upon another person; or

(b) threatens to inflict actual bodily harm upon another person,

with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 12 years.

Sexual assault category 3—sexual intercourse without consent.

61D. (1) Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 7 years or, if the other person is under the age of 16 years, to penal servitude for 10 years.

(2) For the purposes of subsection (1), a person who has sexual intercourse with another person without the consent of the other person and who is reckless as to whether the other person consents to the sexual intercourse shall be deemed to know that the other person does not consent to the sexual intercourse.

(3) For the purposes of subsection (1) and without limiting the grounds upon which it may be established that consent to sexual intercourse is vitiated—

(a) a person who consents to sexual intercourse with another person—

(i) under a mistaken belief as to the identity of the other person; or

(ii) under a mistaken belief that the other person is married to the person,

(d) where it is evidence relevant to whether—

(i) at the time of the commission of the alleged prescribed sexual offence, there was present in the complainant a disease which, at any relevant time, was absent in the accused person; or

(ii) at any relevant time, there was absent in the complainant a disease which, at the time of the commission of the alleged prescribed sexual offence, was present in the accused person;

(e) where it is evidence relevant to whether the allegation that the prescribed sexual offence was committed by the accused person was first made following a realisation or discovery of the presence of pregnancy or disease in the complainant (being a realisation or discovery which took place after the commission of the alleged prescribed sexual offence); or

(f) where it is evidence given by the complainant in cross-examination by or on behalf of the accused person, being evidence given in answer to a question which may, pursuant to subsection (5), be asked,

and its probative value outweighs any distress, humiliation or embarrassment which the complainant might suffer as a result of its admission.

(4) In prescribed sexual offence proceedings, a witness shall not be asked—

(a) to give evidence which is inadmissible under subsection (2) or (3); or

(b) by or on behalf of the accused person, to give evidence which is or may be admissible under subsection (3) unless the Court or Justice has previously decided that the evidence would, if given, be admissible.

APPENDIX III

Coding sheet for each defendant–complainant pair

CHILD SEXUAL ASSAULT STUDY

1 INCIDENT TYPE

(Incident = relative to particular set of circumstances

One victim, one offender = 11
One Victim, two offenders = 12
Two victims, one offender = 21 etc

2 INCIDENT NUMBER

3 COURT HEARING NUMBER

(If cases arising out of 2 or more particular sets)
(of circumstances are heard at same court hearing)
(same number)

4 SEXUAL ASSAULT TYPE

(Pertaining to this victim - offender pair)

Single sexual assault incident = 1
Multiple sexual assault incident = 2

5 VICTIM ID

1st victim = 1
2nd Victim = 2 etc

6 SUSPECT ID

1st suspect = 1
2nd suspect = 2 etc

7 DISTINCT VICTIM FLAG

Code 1st form only = 1

8 DISTINCT SUSPECT FLAG

Code 1st form only = 1

9 DISTINCT VICTIM NUMBER

To 100

10 DISTINCT SUSPECT NUMBER

To 100

COMMITTAL

7 Date of Committal Outcome

8 Court _____

9 Magistrate _____

10 Did victim give evidence

1. Yes 2. No 9. D/K

11 Was the victim cross examined

1. Yes 2. No 9. D/K

12 Was the accused on bail at the start of the proceedings?

1. On bail - unconditional
2. On bail - conditional
3. Granted bail - conditional but conditions not met
4. In custody
5. Bail dispensed with
9. D/K

SENTENCE MATTERS

13 Date of sentence

14 Court _____
(state whether Local, District, Supreme)

15 Judge _____

Magistrate _____

16 Was victim called as witness?

1. Yes 2. No 9. D/K

17 Did she recount circumstances of offence

1. Yes 2. No 9. D/K

18 Was the accused on bail at the start of the proceedings?

1. On bail - unconditional
2. On bail - conditional
3. On bail - conditional/conditions not met
4. In custody
5. Bail dispensed with
9. D/K

TRIAL

19 Date trial commenced

20 Date of trial outcome/verdict

21 Date of sentence

22 Court _____
(State whether Local, District, Supreme)

23 Judge _____

Magistrate _____

24 Did victim give evidence?
1. Yes 2. No 9. D/K

25 Was victim cross examined?
1. Yes 2. No 9. D/K

26 Was the accused on bail at the start of proceedings
1. On bail - unconditional
2. On bail - conditional
3. Granted bail conditional but conditions not met
4. In custody
5. Bail dispensed with
9. D/K

27 VICTIM INFORMATION

Name _____

28 Sex. 1. Male 2. Female

29. Age at date of offence _____

SUSPECT INFORMATION

30 Name _____

31 Sex. 1. Male 2. Female

32 Date of birth

33 Marital status

1. Single
2. Married
3. Widowed
4. Divorced
5. Permanently separated
6. Defacto
9. Not known

OFFENCE INFORMATION

34 Date of offence _____

35 Relationship between bictim and suspect

01 Spouse
02 Estranged spouse
03 Lover
04 Estranged lover

06 Friend/acquaintance
07 Acquaintance - met only day/night of offence
08 Prostitute
09 Neighbour
10 No relationship - a stranger
11 Hitchhiker - victim looking for a lift and picked up by a stranger.
12 Victim accepted lift offered by a stranger
13 Victim accepted lift offered by a friend/acquaintance
14 Work associate
15 Student assailed by a teacher

37 De facto spouse
38 De facto estranged spouse
39 Biological father/adoptive father
40 Stepfather
41 De facto father/mother's de facto spouse
42 Mother's estranged de facto spouse
43 Grandfather
44 Uncle (including great uncle etc)
45 Brother
46 Brother-in-law (including by de facto relationship)
47 Cousin
48 Offender - baby sitter of victim
99 Not Known
OTHER PLEASE SPECIFY (including combinations)

36 Date of arrest

37 Was physical injury inflicted on victim?

1 No
2 G.B.H.
3 A.B.H.

38 Nature of most serious physical injury:

01 Death

02 Attempted strangulation

03 Attempted suffociation

04 Fractures requiring hospitalisation

05 Cuts, gashes, stabs requiring hospitalisation

06 04 and 05 above

07 Fractures

08 Cuts /gashes/stabs/teras/bites/burns

10 Shock requiring medical attention

11 Other conditions requiring medical attention may include bruises (NB where narrative includes punches/hits to face/head code 11)

12 Bruises, abrasions, scratches, soreness to anal/ genital area (includes punches other than to face/head).

13 None apparant

99 Not known

☐☐

39 Did head sentence/non parole period take into account charges relating to non sexual offences

1 No
2 Yes - non sexual offences also relating to the sexual assault complaint

3 Yes - non sexual offences relating to a complainant other than the sexual assault complainant.

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COMMITTAL HEARING						HIGHER COURT HEARING														
CHARGE		DEFINITION OF SEXUAL INTERCSE	PLEA	COMMITTED ON CHARGE		INDICTMENT		DEFINITION OF SEXUAL INTERCSE	PLEA/LESSER CHARGE	PLEA ACCEPTANCE		OUTCOME		SENTENCE			NON-PAROLE		

APPENDIX IV

Age of defendant by defendant-complainant relationship
(No. of distinct defendants = 193)

	Relationship									
	Family member		Family friend		Authority figure		Friend/ acquaintance		Stranger	
Age (years)	No.	%	No.	%	No.	%	No.	%	No.	%
Under 18..	1	2.1	2	11.8	1	5.8	5	6.1	2	6.9
18-19.....	3	6.3	1	5.8	1	5.8	13	15.9	4	13.8
20-24.....	4	8.3	2	11.8	3	17.7	19	23.2	8	27.6
25-29.....	5	10.4	4	23.6	3	17.7	10	12.2	2	6.9
30-34.....	9	18.7	2	11.8	3	17.7	3	3.6	5	17.3
35-39.....	12	25.0	2	11.8	-	-	4	4.9	1	3.4
40-49.....	10	20.8	2	11.8	3	17.7	15	18.3	3	10.3
50-59.....	3	6.3	1	5.8	2	11.8	8	9.8	2	6.9
60+.....	1	2.1	-	-	1	5.8	3	3.6	-	-
Unknown...	-	-	1	5.8	-	-	2	2.4	2	6.9
TOTAL	48	100.0	17	100.0	17	100.0	82	100.0	29	100.0
MEAN	35.3		30.7		34.6		31.4		28.6	

APPENDIX V

Sex of complainant by defendant-complainant relationship
(No. of distinct complainants = 223)

	Male		Female		Total
Relationship	No.	%	No.	%	No.
Family member.....	6	11.8	45	88.2	51
Family friend.....	5	22.7	17	77.3	22
Authority figure.....	17	63.0	10	27.0	27
Boyfriend.....	1	20.0	4	80.0	5
Friend/acquaintance....	25	28.7	62	71.3	87
Stranger.....	16	51.6	15	48.4	31
TOTAL	70	31.4	153	68.6	223

APPENDIX VI

Age of complainant by defendant-complainant relationship
(No. of distinct complainants = 223)

	Relationship									
	Family member		Family friend		Authority figure		Friend/ acquaintance		Stranger	
Age of complainant (years)	No.	%	No.	%	No.	%	No.	%	No.	%
0 - 4....	4	7.8	3	13.6	1	3.7	8	9.2	1	3.2
5 - 9....	10	19.6	10	45.5	5	18.5	12	13.8	16	51.6
10 - 13...	24	47.1	9	40.9	12	44.4	9	33.3	8	25.8
14 - 15...	9	17.6	-	-	7	25.9	20	23.0	1	3.2
16 - 17...	4	7.8	-	-	2	7.4	18	20.7	5	16.1
TOTAL	51	100.0	22	100.0	27	100.0	87	100.0	31	100.0

APPENDIX VII

Principal offence at arrest by defendant-complainant relationship
(N = 235 defendant-complainant pairs)

Offence	Relationship				
	Family member	Family friend	Authority figure	Friend/ acquaintance	Stranger
Pre-1981 legislation					
Rape (s.63)				9	4
Attempt rape (s.65).....				1	1
Indecent assault on female (s.76, s.76A)					
under 16 years.....	10	4	1	12	1
16 years & over.....		2		1	
Buggery (s.79, s.80)...	3		2	2	
Indecent assault on male (s.81, 81A, 81B)...	2	3	9	10	5
Post-1981 amendments					
Category 2 (s.61C).....	4		1	3	3
Category 3 (s.61D)					
under 16 years.....	3	3		3	1
16 years & over....				10	5
Category 4 (s.61E)					
under 16 years.....	14	11	12	28	16
16 years & over....	1		1	1	
Other offences					
Carnal knowledge by father/step-father etc. (s.73,s.74,78A,78B)....	8				
Carnal knowledge of girl under 10 (s.67, attempt s.68).....	1				1
Carnal knowledge of girl over 10 (s.71)....	6		1	13	
TOTAL	52	23	27	93	37

APPENDIX VIII

Number of proceeding and non-proceeding cases
by defendant-complainant relationship
(N = 235 defendant-complainant pairs)

	Proceed		Not Proceed		Total
Relationship	No.	%	No.	%	No.
Family member.....	48	92.3}	4	7.7}	52
Family friend.....	23	100.0}*	0	0.0}*	23
Authority figure.....	25	92.6}	2	7.4}	27
Boyfriend.....	4	80.0	1	20.0	5
Friend/acquaintance.....	76	81.7}	17	18.3}	93
Stranger.....	31	88.6}*	4	11.4}*	35
TOTAL	207	88.1	28	11.9	235

* Two-by-two chi-square = 6.07, d.f. = 1, $p < .05$.

APPENDIX IX

Number of proceeding and non-proceeding cases
by age of complainant
(N = 235 defendant-complainant pairs)

	Proceed		Not Proceed		Total
Age of complainant	No.	%	No.	%	No.
0 - 4 years	14	82.4	3	17.6	17
5 - 9 years	52	94.5	3	5.5	55
10 - 13 years	79	94.0	5	6.0	84
14 - 15 years	32	56.1}*	9	21.9}*	41
16 - 17 years	30	78.9}	8	21.1}	38
TOTAL	207	89.1	28	11.9	235

* Chi-square (using 5 age-group categories) = 12.52, d.f. = 4, $p < .02$.

* Chi-square (using 2 age-group categories) = 10.46, d.f. = 1, $p < .01$.

APPENDIX X

Principal charge in trial cases by outcome
(N = 34 defendant-complainant pairs)

Offence	Convicted	Acquitted
Pre-1981 legislation		
Rape (s.63).....	3	4
Attempt rape (s.65).....	2	0
Indecent assault on female (s.76, s.76A)		
Under 16 years.....	4 (2)*	2
16 years & over.....	1	0
Buggery (s.79, s.80).....	2	0
Indecent assault on male (s.81, s.81A, s.81B).....	0	3
Post-1981 amendments		
Category 3 (s.61D)		
under 16 years.....	0 (1)*	
16 years & over.....	0	4
Category 4 (s.61E)		
under 16 years.....	1	1
Other offences		
Carnal knowledge of girl under 10 (s.67, attempt s.68).....	1	0
Carnal knowledge of girl over 10 (s.71).....	2 (1)*	0
TOTAL	16 (4)*	14

* Figures in parentheses refer to cases in which the defendant was found not guilty of the principal offence, but was convicted of a lesser offence.

APPENDIX XI

Trial matters resulting in conviction and acquittal
by defendant-complainant relationship
(N = 34 defendant-complainant pairs)

	Convicted		Acquitted		Total
Relationship	No.	%	No.	%	No.
Family member.....	4	100.0	0	0.0	4
Family friend.....	3	75.0	1	25.0	4
Friend/acquaintance.....	10	50.0	10	50.0	20
Stranger.....	3	50.0	3	50.0	6
TOTAL	20	58.8	14	41.2	34

APPENDIX XII

Outcome on principal offence and conviction rate
by defendant-complainant relationship
(N = 235 defendant-complainant pairs)

Relationship	Convicted (No.)	Acquitted (No.)	Not proceed (No.)	Total (No.)	Conviction rate (%)
Family member.....	48	0	4	52	92.3
Family friend.....	22	1	0	23	95.7
Authority figure.....	25	0	2	27	92.6
Boyfriend.....	4	0	1	5	80.0
Friend/acquaintance..	66	10	17	93	71.0
Stranger	28	3	4	35	80.0
TOTAL	193	14	28	235	82.1

APPENDIX XIII

Type of sentence (custodial and non-custodial)
by plea and nature of the offence
(N = 193 victim-offender pairs)

Offence	Guilty pleas		Guilty verdict	
	Custodial	Non-Custodial	Custodial	Non-Custodial
Pre-1981 legislation				
Rape (s.63).....	0	0	0	3
Attempt rape (s.65).....	0	0	0	2
Indecent assault on female (s.76, s.76A)				
under 16 years.....	10	2	3	2
16 years & over.....	0	1	0	1
Buggery (s.79, s.80)....	3	2	0	2
Indecent assault on male (s.81, 81A, 81B)....	17	9	0	0
Post-1981 amendments				
Category 2 (s.61C).....	3	6	0	0
Category 3 (s.61D)				
under 16 years.....	2	6	0	1
16 years & over.....	2	7	0	0
Category 4 (s.61E)				
under 16 years.....	63	12	0	1
16 years & over.....	1	1	0	0
Other offences				
Carnal knowledge by father/step-father etc. (s.73,s.74,78A,78B).....	3	5	0	0
Carnal knowledge of girl under 10 (s.67, attempt s.68).....	0	1	0	1
Carnal knowledge of girl over 10 (s.71).....	11	4	2	1
TOTAL	115	58	5	15

APPENDIX XIV

Time intervals between stages of prosecution

TABLE 1
Time between charge and offence

Time	No.	%	Cum %
Less than 1 week	92	54.8	54.8
1 - 2 weeks	8	4.8	59.6
2 - 4 weeks	12	7.1	66.7
1 - 3 months	11	6.5	73.2
3 - 6 months	8	4.8	78.0
6 - 12 months	2	1.2	79.2
2 - 3 years	4	2.4	81.6
3 - 4 years	14	8.3	89.9
4 - 5 years	17	10.1	100.0
TOTAL	168*	100.0	100.0
MEAN	37.2 weeks		

* 67 cases unknown.

TABLE 2
Time between charge and committal

Time	No.	%	Cum %
Less than 1 week.....	8	3.4	3.4
1 - 2 weeks	10	4.3	7.7
2 - 4 weeks	48	20.4	28.1
1 - 2 months .....}	66	28.1	56.2
2 - 3 months .....}	32	13.6	69.8
3 - 4 months .....}	15	6.4	76.2
4 - 5 months .....}	22	9.4	85.6
5 - 6 months .....}	12	5.1	90.7
6 - 12 months	14	5.9	96.6
1 - 2 years	8	3.4	100.0
TOTAL	235	100.0	100.0
MEAN	11.9 weeks		

APPENDIX XIV (continued)

TABLE 3
Time between committal and sentence for cases committed directly for sentence following guilty plea

	No.	%	Cum %
Less than 1 week.....	5	3.2	3.2
1 - 2 weeks	2	1.3	4.5
2 - 4 weeks	10	6.5	11.0
1 - 2 months .....}	23	14.8	25.8
2 - 3 months .....}	20	12.9	38.7
3 - 4 months .....}	18	11.6	50.3
4 - 5 months .....}	13	8.4	58.7
5 - 6 months .....}	24	15.5	74.2
6 - 12 months	35	22.6	96.8
1 - 2 years	4	2.6	99.4
More than 2 years	1	0.6	100.0
TOTAL	155	100.0	100.0
MEAN	18.3 weeks		

TABLE 4
Time between committal and trial for cases committed for trial

	No.	%	Cum %
Less than 1 week	0	0.0	0.0
1 - 2 weeks	0	0.0	0.0
2 - 4 weeks	1	1.9	1.9
1 - 3 months	2	3.9	5.8
3 - 6 months	16	30.8	36.6
6 - 12 months	18	34.6	71.2
1 - 2 years	15	28.8	100.0
TOTAL	52	100.0	100.0
MEAN	40.2 weeks		

TABLE 5
Time between trial and sentence

	No.	%	Cum %
Less than 1 week	16	47.0	47.0
1 - 2 weeks	3	8.8	55.8
2 - 4 weeks	4	11.8	67.6
1 - 3 months	9	26.5	94.1
3 - 6 months	2	5.9	100.0
TOTAL	34	100.0	100.0
MEAN	3.2 weeks		

APPENDIX XV
Bail conditions for distinct defendants

TABLE 1
Bail conditions for distinct defendants
at start of sentence hearing for sentence matters

Bail	No.	%
Unconditional bail	59	47.2
Conditional bail	36	28.8
Bail dispensed with	4	3.2
In custody	18	14.4
In psychiatric institution	1	0.8
Not known	7	5.6
TOTAL	125	100.0

TABLE 2
Bail conditions for distinct defendants
at start of trial

Bail	No.	%
Unconditional bail	15	33.3
Conditional bail	21	46.7
Bail dispensed with	0	0.0
In custody	7	15.6
Not known	2	4.4
TOTAL	45	100.0