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# Aspects of Demand for District Criminal Court Time

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## INTRODUCTION

Of the nearly 500,000 offences reported to police in NSW in 1990, fewer than 135,000 resulted in a court appearance. The vast majority (about 83%) of these court appearances involved Local Court hearings, in which a magistrate determined the question of guilt, rather than Higher Criminal Court hearings before a judge and jury. Indeed, of the 5,992 matters disposed of by the Higher Criminal Courts of NSW in 1990, less than 25% actually involved a hearing before a judge and jury. The remaining cases were disposed of either by the judge alone because the accused pleaded guilty or, for one reason or another, did not end up being disposed of as a trial. Thus despite the fact that nearly half a million crime reports are filed annually in NSW, they generate fewer than 1,500 trials.

The relatively small number of persons tried before a judge and jury is no surprise to those working within the criminal justice system but is often a surprise to those working outside it. If everyone arrested were tried before a judge and jury, though, the criminal justice system would either grind to a halt or become impossibly expensive to maintain. The cost of any District Criminal Court proceeding[2] involves not only the salary of a judge but also the salary of the judge's associate as well as the salary of the court reporter, prosecution counsel, sheriff's officer, police officer and other administrative personnel required to run a court. In addition, there are costs associated with the upkeep of the courtroom itself and, if the court hearing is a trial, there are costs incurred because allowances are payable to juries. Some indication of the scale of these costs is evident in the fact that the cost of trials alone in the NSW District Court during 1990 exceeded $30 million.[3]

District Criminal Court time is clearly an expensive commodity and as such it needs to be managed both efficiently and effectively. Ideally one would like to be able to monitor the demand for such time by the various categories of case which consume it and thereby to determine the proportional contribution each offence group makes to the total cost of the District Criminal Court proceedings. Up until recently, however, such monitoring was impossible. Reliable information existed on the numbers of cases in each offence category dealt with by the District Criminal Courts and the type of proceeding involved in each case (e.g. trial or sentence hearing). There was, however, no accurate information available on the durations of hearings. Without this information it was impossible to determine the aggregate amount of court time consumed by various categories of offence let alone establish the cost to Government of providing that time.

The NSW Bureau of Crime Statistics and Research recently completed a study on the duration of trial and sentence hearings. When these data are combined with data on the numbers of cases of different types passing through the NSW District Criminal Court it becomes possible to obtain reliable estimates of the relative proportion of District Criminal Court time consumed by each category of offence.[4] This is the first step involved in obtaining an offence-based costing of District Criminal Court time. The purpose of this report is to provide the results of these calculations and outline some of their implications.

## METHODOLOGY

The principal consideration determining the length of a District Criminal Court proceeding is the type of hearing involved. When the defendant pleads guilty to all the charges involved there is no need for a trial. Court hearing time is consumed simply in determining what sentence should be imposed on the offender for the offence or offences in question. Such cases are commonly called 'sentence matters'. When an accused pleads not guilty to one or more of the charges laid against him or her the case goes to a trial in which a jury is empanelled and witnesses are called, examined and cross-examined by the defence and prosecution counsel.[5] If the defendant is convicted a sentence must then be imposed. Cases in which the defendant goes to trial are commonly known as 'defended matters' or trials. Sentence matters, for obvious reasons, consume much less court time than do defended matters. The proportion of defended versus sentence matters tends to vary markedly with the category of offence involved.

We wish to calculate the amount of court time consumed by different offence groups within the District Criminal Court. To do this we divide cases in each offence category into defended and sentence matters. To obtain the court time consumed by defended matters in a given offence category we begin by multiplying the number of matters in that category by the average duration of a defended matter in that category. To obtain the court time consumed by sentence matters we begin in a similar way; that is, we multiply the number of sentence matters in each offence category by the average duration of a sentence matter in that category. These two operations give us estimates of the amount of court time used within each category of offence in trial and sentence hearings, respectively. They do not, however, give us all of the information we need to determine the court time consumed by different categories of offence. The reason for this is that some cases are disposed of other than by a trial or a sentence hearing.

If a matter is registered as a trial or sentence matter but the defendant dies or absconds or the matter must be remitted to a Local Court for hearing or the case is no billed, a small amount of District Court time is still consumed. The death of a defendant, for example, requires the production by the Crown in court of a death certificate. If a defendant absconds then a bench warrant for his or her arrest must be issued by a judge. Consideration of whether to remit a matter to a Local Court of its nature consumes court time while no bill determinations must be formally received and accepted by the court. For the sake of brevity we will refer to cases disposed of in these ways as 'mentions'.[6]

Research by the Bureau indicates that the amount of court time consumed by each mention is very small but that the number of mentions is quite large. In 1990 over 20% of the total number of cases disposed of by the District Criminal Court were disposed of in hearings which we would call mentions. This suggests that it may be advisable to add a 'mention' component to our final estimates of the hearing time consumed by each category of offence. Our estimate of the court time consumed by each category of offence will therefore consist of (a) a component associated with trial hearings (b) a component associated with sentence hearings and (c) a component associated with mentions. Once we have added these three components we have calculated the aggregate amount of court time consumed by each category of offence.

**Table 1: Estimated average hearing durations for trials**

| *Type of principal offence charged*[7] | *No. of cases in sample* | *Average hearing duration (hr)* |
|---|---|---|
| Attempt murder | 1 | 7.5 |
| Manslaughter | 2 | 17.5 |
| Assault | 40 | 14.6 |
| Sexual assault | 28 | 16.8 |
| Other offences against the person | 1 | 2.5 |
| Robbery/extortion | 24 | 48.8 |
| Break, enter and steal | 13 | 30.2 |
| Fraud | 24 | 34.6 |
| Handling stolen goods | 3 | 9.2 |
| Vehicle theft | 1 | 2.5 |
| Other theft | 6 | 11.7 |
| Property damage | 7 | 11.8 |
| Against justice | 6 | 9.2 |
| Against prison rules | 2 | 24.2 |
| Against good order | 5 | 22.5 |
| Possess/use drugs | 0 | - |
| Supply/traffic drugs | 47 | 10.9 |
| Import/export drugs | 7 | 76.8 |
| Manufacture/grow drugs | 0 | - |
| Other drug offences | 0 | - |
| Driving causing death | 8 | 14.4 |
| Other driving offences | 4 | 7.5 |
| Other offences | 2 | 10.0 |
| **Total** | **231** | |

*The average trial duration for the whole sample is 22.2 hours and its standard deviation is 40.7 hours.*

We can summarize all this in a simple equation.

Let:

$T_d$ = the average duration of a defended matter

$T_s$ = the average duration of a sentence matter

$T_m$ = the average duration of a mention

$N_d$ = the number of defended matters

$N_s$ = the number of sentence matters

$N_m$ = the number of mentions

$T$ = the aggregate court time consumed by a specific offence

Then:

$$T = [(T_d \times N_d) + (T_s \times N_s) + (T_m \times N_m)] \quad (1)$$

In what follows, values of $N_d$, $N_s$ and $N_m$ are taken from statistics for the NSW Higher Criminal Courts in 1990.

The average duration of a mention, $T_m$, is assumed not to vary sufficiently between offence groups to warrant the calculation of separate estimates of it for each offence category. An estimate of $T_m$ was determined from a sample of 924 mentions selected from the tape transcripts of District Criminal Court proceedings held in the Downing Centre in Sydney. The tape counter values at the start and end of each mention were used to determine the duration of each mention.[8]

While $T_m$ may reasonably be assumed not to vary by type of offence the same is not true of our trial duration parameter, $T_d$.

**Table 2: Estimated average hearing durations for sentence cases**

| *Type of principal offence charged* | *No. of cases in sample* | *Average hearing duration (hr)* |
|---|---|---|
| Attempt murder | 0 | - |
| Manslaughter | 0 | - |
| Assault | 5 | 0.2 |
| Sexual assault | 1 | <0.1 |
| Other offences against the person | 1 | 0.3 |
| Robbery/extortion | 10 | 0.6 |
| Break, enter and steal | 10 | 0.2 |
| Fraud | 10 | 0.5 |
| Handling stolen goods | 3 | 0.5 |
| Vehicle theft | 0 | - |
| Other theft | 5 | 0.3 |
| Property damage | 0 | - |
| Against justice | 1 | <0.1 |
| Against prison rules | 2 | 0.5 |
| Against good order | 3 | 0.3 |
| Possess/use drugs | 1 | <0.1 |
| Supply/traffic drugs | 4 | 0.8 |
| Import/export drugs | 0 | - |
| Manufacture/grow drugs | 1 | 0.3 |
| Other drug offences | 0 | - |
| Driving causing death | 0 | - |
| Other driving offences | 0 | - |
| Other offences | 7 | 1.3 |
| **Total** | **64** | |

*The average hearing duration for the whole sample is 0.5 hour and its standard deviation is 0.6 hour.*

For this reason separate estimates of $T_d$ were obtained for each offence category from the files of 231 District Court trials which were held in 1989.[10] Values of $T_d$ were estimated by computing the difference between the start and end dates of the trial and adding half a day as a correction factor. For some offences there were either no cases or insufficient numbers of cases to obtain an offence-based estimate of $T_d$. In these instances the average trial duration for the whole sample of trials was used as a substitute estimate of $T_d$.[11]

Estimates of the durations of sentence matters, $T_s$, were obtained from transcripts of a sample of 64 District Court sentence hearings which occurred in Sydney in the first five months of 1991 using the technique described above for determining mention durations. As with trials, where there were no cases or insufficient numbers of cases to obtain an offence-specific estimate of sentence hearing duration, the average sentence hearing duration for the whole sample of sentence matters was used as an alternative.

It should be noted that for each type of court hearing, estimates of hearing time were based on samples which were selected from data sources that were readily available at the time of sampling. All of the samples were of court hearings in Sydney and, therefore, it cannot be claimed that they are representative of all court hearings in NSW. While court hearing times may be different in country centres there is no particular reason to suspect that the relativities of hearing times for different offences would differ. For example, if, in Sydney, the average trial time for a case of break, enter and steal is longer than the average trial time for an assault case, one would expect this also to be true elsewhere in NSW.

In this bulletin the focus is on the relative amount of court time consumed by different types of offence rather than the actual amount of court time consumed by particular types of offence. The estimated hearing times should therefore be adequate for this purpose.

## RESULTS

### TRIAL AND SENTENCE HEARING DURATIONS

Table 1 shows the estimated average duration (in hours) of trials, for each category of offence and for the whole sample. Table 2 shows the corresponding data for sentence hearing durations.

Inspection of Table 1 shows that, while the average duration of all trials is just over 4 days[12], there is obviously considerable variation in trial length depending on the type of offence involved. The average duration of trials involving drug import/export charges, for example, at 15 days, is more than three times longer than the overall average duration of trials in the District Criminal Court. Robbery/extortion cases take nearly 10 days on average to complete[13] while fraud trials on average take nearly 7 days. Trials involving property damage, on the other hand, are on average only slightly more than half the average length of all trials.

As can be seen from Table 2, with the exception of the categories of assault; robbery/extortion; break, enter and steal; fraud; other theft; and other offences; there were too few sentence cases in the sample to permit offence-specific estimates of sentence hearing duration. For most offences the average hearing duration for the entire sample of sentence hearings was used as the estimate of $T_s$. This is not a major source of concern.

The variation between offence categories in their contribution to the demand for sentence hearing time is unlikely to be large. Moreover the contribution of sentence matter hearing time to the overall demand for hearing time within the District Criminal Court is only a fraction of that of trial hearings.

## RELATIVE FREQUENCY OF TRIALS

Table 3 show the numbers of trials in each of the various offence categories which made up the work of the District Criminal Court in 1990. Six categories of offence accounted for 81% of the defended matters. The proportional contributions of these six offence types are shown in Figure 1. It is evident that nearly half the defended matters involve either sexual assault (26%) or assault (23%). A further 11% of defended matters involve cases of supplying or trafficking in drugs. The remaining categories of offence, including cases falling into the category of robbery/ extortion, each account for less than 10% of the number of defended cases.

## DEMAND FOR TRIAL COURT TIME

Using estimates of trial hearing durations ($T_d$) from Table 1 together with the numbers of defended matters ($N_d$) from Table 3 we can calculate the demand for trial court time for each offence category. That is, we can calculate the ($T_d$ x $N_d$) component of T in equation (1). The results of these calculations are shown in Table 4. Figure 2 shows the relative contributions of the six offence types which account for most of the demand for trial court time. It can be seen from Table 4 and Figure 2 that, so far as defended matters are concerned, a significant source of demand for District Criminal Court time comes from cases of sexual assault (21%) and assault (16%). This accords with what might have been expected from Table 3. A more unexpected source of demand, however, arises from the category of robbery/ extortion.[14] Cases in this category take up 20% of the court time consumed by hearing defended cases, although, as indicated in Table 3, they constitute only 9% of the trials disposed of by the

**Table 3: Numbers of trials finalised. NSW District Criminal Court, 1990**

| *Type of principal offence charged* | *No. of cases* | *Proportion (%)* |
|---|---|---|
| Attempt murder | 2 | 0.2 |
| Manslaughter | 22 | 1.8 |
| Assault | 279 | 22.7 |
| Sexual assault | 321 | 26.1 |
| Other offences against the person | 8 | 0.6 |
| Robbery/extortion | 106 | 8.6 |
| Break, enter and steal | 84 | 6.8 |
| Fraud | 81 | 6.6 |
| Handling stolen goods | 18 | 1.5 |
| Vehicle theft | 28 | 2.3 |
| Other theft | 15 | 1.2 |
| Property damage | 15 | 1.2 |
| Against justice | 12 | 1.0 |
| Against prison rules | 8 | 0.6 |
| Against good order | 11 | 0.9 |
| Possess/use drugs | 0 | 0.0 |
| Supply/traffic drugs | 129 | 10.5 |
| Import/export drugs | 9 | 0.7 |
| Manufacture/grow drugs | 15 | 1.2 |
| Other drug offences | 0 | 0.0 |
| Driving causing death | 65 | 5.3 |
| Other driving offences | 1 | 0.1 |
| Other offences | 2 | 0.2 |
| **Total** | **1,231** | **100.0** |

**Figure 1: Percentage of all trials finalised, selected offences, NSW District Criminal Court, 1990**

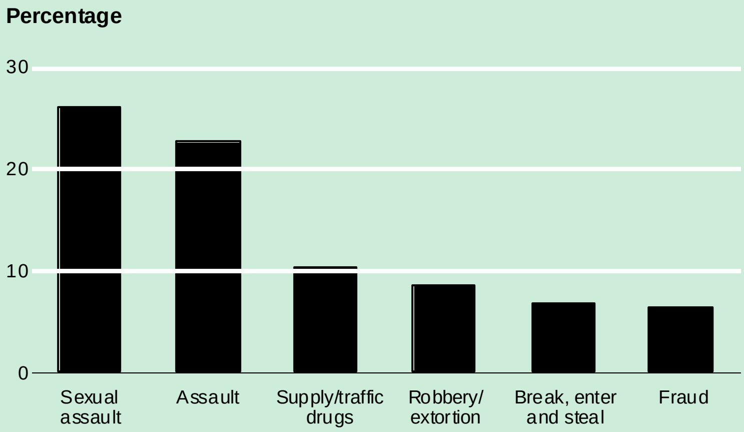
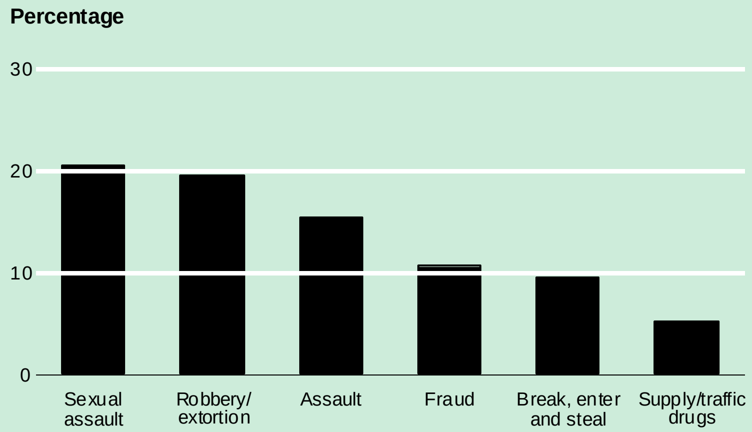


**Table 4: Estimated amount of court time consumed by trials**

| *Type of principal offence charged* | *Court time consumed (hr)* | *Proportion (%)* |
|---|---|---|
| Attempt murder | 44 | 0.2 |
| Manslaughter | 487 | 1.9 |
| Assault | 4,080 | 15.7 |
| Sexual assault | 5,388 | 20.7 |
| Other offences against the person | 177 | 0.7 |
| Robbery/extortion | 5,168 | 19.9 |
| Break, enter and steal | 2,536 | 9.7 |
| Fraud | 2,801 | 10.8 |
| Handling stolen goods | 399 | 1.5 |
| Vehicle theft | 620 | 2.4 |
| Other theft | 175 | 0.7 |
| Property damage | 177 | 0.7 |
| Against justice | 110 | 0.4 |
| Against prison rules | 177 | 0.7 |
| Against good order | 248 | 1.0 |
| Possess/use drugs | 0 | 0.0 |
| Supply/traffic drugs | 1,407 | 5.4 |
| Import/export drugs | 691 | 2.7 |
| Manufacture/grow drugs | 332 | 1.3 |
| Other drug offences | 0 | 0.0 |
| Driving causing death | 934 | 3.6 |
| Other driving offences | 22 | 0.1 |
| Other offences | 44 | 0.2 |
| **Total** | **25,019** | **100.0** |

**Figure 2: Percentage of trial hearing time, selected offences**




District Court. Cases involving charges of fraud also consume a somewhat disproportionate amount of court time given their numbers. Almost 11% of the court time is consumed in the hearing of defended fraud cases although they constitute only 7% of defended matters.

Clearly, while the numbers of cases involved in robbery/extortion and fraud may be smaller than other categories of offence, their contribution to the demand for District Criminal Court time is boosted by the fact that they take longer on average to dispose of than many other categories of offence.

## RELATIVE FREQUENCY OF SENTENCE MATTERS

Table 5 shows, for each type of offence, the number of sentence matters finalised in the NSW District Criminal Court in 1990. The proportional contributions of the six most frequently occurring types of sentence matter are shown in Figure 3.

It can be seen from Figure 3 and Table 5 that the most commonly occurring sentence matters involve either a case of break, enter and steal (18%) or a case of assault (17%). The next most commonly occurring categories of case are those of robbery/extortion (14%), fraud (11%), sexual assault (11%) and supply/traffic drugs (10%). The remaining categories of offence each make up less than 5% of the total number of sentence matters.

## DEMAND FOR SENTENCE MATTER TIME

As for defended matters, we can now calculate the demand for sentence matter hearing time using our estimates of hearing durations for sentence matters, $T_s$, from Table 2 and the numbers of sentence matters, $N_s$, from Table 5. Table 6 shows the aggregate amount of court hearing time devoted to sentence matters for each category of offence. The offence categories which generate most of the demand for sentence matter hearing time are shown in Figure 4.

Note first the large difference between sentence matters and trials in the aggregate amount of hearing time they consume. A comparison of the aggregate hearing time totals in Tables 4 and 6 shows that sentence matters consume less than 5% of the hearing time taken up in trials.

When a comparison is made between offence groups, once again robbery/ extortion emerges as a surprisingly large consumer of District Court hearing time. It consumes 20% of the court time devoted to the hearing of sentence matters although, as inspection of Table 5 shows, it accounts for only 14% of sentence matters dealt with in the District Criminal Court. The second most important source of demand comes from the categories of fraud and sexual assault, both of which consume about 13% of the time devoted to hearing sentence matters. This is slightly higher than their percentage contribution to the sentence matter workload of the District Court (11%). Similarly, the percentage of sentence matter hearing time consumed by cases of supplying or trafficking in drugs (12%) is slightly higher than their percentage contribution to the sentence matter workload of the District Court (10%). Cases of break, enter and steal, however, which as Table 5 indicates, make up 18% of the court's sentence matter workload, only account for 9% of the time devoted to the hearing of sentence matters. The remaining categories of case each consume less than 10% of the court time devoted to sentence matters.

## COURT TIME CONSUMED IN MENTIONS

We now have values for the amount of court time consumed in each category of offence by sentence matters and trials. As indicated in equation (1), to determine the court time consumed by each offence category we sum these two values and add the amount of court time consumed by mentions in each offence category. The average duration of mentions[15] is assumed to be independent of the type of offence.

As can be seen from Table 7, however, the number of mentions varies considerably from offence to offence.

The proportional contribution of each offence category to the amount of court time consumed by mentions is the same as the relative frequency of mentions in

**Table 5: Numbers of sentence matters finalised. NSW District Criminal Court, 1990**

| *Type of principal offence charged* | *No. of cases* | *Proportion (%)* |
|---|---|---|
| Attempt murder | 9 | 0.3 |
| Manslaughter | 13 | 0.4 |
| Assault | 526 | 17.2 |
| Sexual assault | 320 | 10.5 |
| Other offences against the person | 18 | 0.6 |
| Robbery/extortion | 423 | 13.8 |
| Break, enter and steal | 537 | 17.5 |
| Fraud | 328 | 10.7 |
| Handling stolen goods | 44 | 1.4 |
| Vehicle theft | 118 | 3.9 |
| Other theft | 37 | 1.2 |
| Property damage | 40 | 1.3 |
| Against justice | 36 | 1.2 |
| Against prison rules | 79 | 2.6 |
| Against good order | 24 | 0.8 |
| Possess/use drugs | 1 | 0.0 |
| Supply/traffic drugs | 312 | 10.2 |
| Import/export drugs | 37 | 1.2 |
| Manufacture/grow drugs | 100 | 3.3 |
| Other drug offences | 0 | 0.0 |
| Driving causing death | 51 | 1.7 |
| Other driving offences | 1 | 0.0 |
| Other offences | 8 | 0.3 |
| **Total** | **3,061** | **100.0** |

**Figure 3: Percentage of all sentence matters finalised, selected offences, NSW District Criminal Court, 1990**

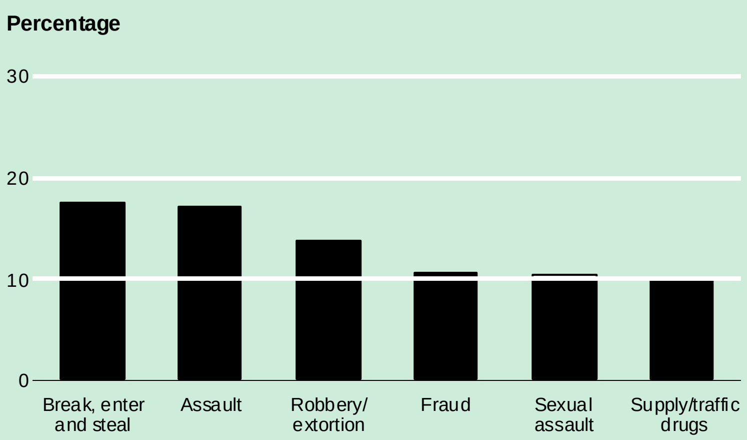
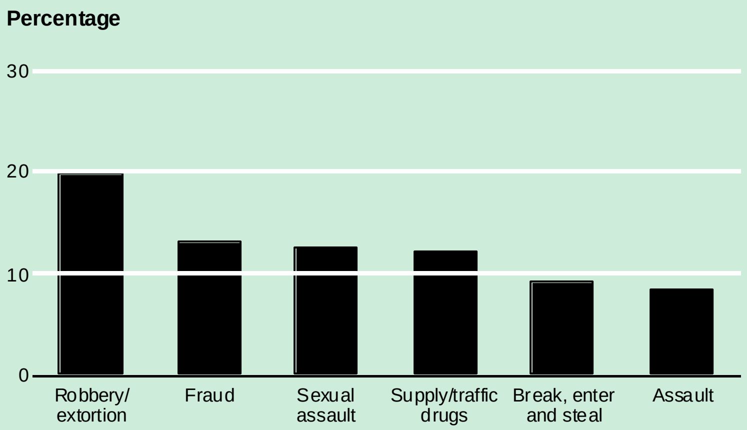


**Table 6: Estimated amount of court time consumed by sentence matters**

| *Type of principal offence charged* | *Court time consumed (hr)* | *Proportion (%)* |
|---|---|---|
| Attempt murder | 4 | 0.4 |
| Manslaughter | 6 | 0.5 |
| Assault | 107 | 8.6 |
| Sexual assault | 158 | 12.6 |
| Other offences against the person | 9 | 0.7 |
| Robbery/extortion | 247 | 19.8 |
| Break, enter and steal | 116 | 9.3 |
| Fraud | 163 | 13.1 |
| Handling stolen goods | 22 | 1.7 |
| Vehicle theft | 58 | 4.7 |
| Other theft | 11 | 0.9 |
| Property damage | 20 | 1.6 |
| Against justice | 18 | 1.4 |
| Against prison rules | 39 | 3.1 |
| Against good order | 12 | 0.9 |
| Possess/use drugs | <1 | 0.0 |
| Supply/traffic drugs | 154 | 12.3 |
| Import/export drugs | 18 | 1.5 |
| Manufacture/grow drugs | 49 | 4.0 |
| Other drug offences | 0 | 0.0 |
| Driving causing death | 25 | 2.0 |
| Other driving offences | 0 | 0.0 |
| Other offences | 10 | 0.8 |
| **Total** | **1,249** | **100.0** |

**Figure 4: Percentage of sentence matter hearing time, selected offences**




each offence category. This follows from the fact that the average duration of a mention is the same for each offence. The offence categories which generate most of the demand for mention hearing time are shown in Figure 5.

## OVERALL DEMAND FOR COURT TIME

Table 8 shows the effects of adding together, for each offence category, the component contributions which defended matters, sentence matters and mentions make to aggregate court time consumed.[16]

The largest proportion of court time consumed clearly comes from the offence category of sexual assault. It takes up just over 20% of the District Criminal Court hearing time. The next most important offence category is that of robbery/ extortion, which consumes 20% of District Criminal Court hearing time. The third most important category is that of assault, which consumes 15% of District Criminal Court hearing time. The only other offence which consumes more than 10% of the hearing time in the District Criminal Court is that of fraud. It consumes 11% of District Criminal Court hearing time.

The proportions of court time consumed by these four types of offence and by break, enter and steal and supply/traffic drugs are shown in Figure 6. The six categories of offence shown in this figure together consume 82% of total court hearing time.

## SUMMARY AND DISCUSSION

Taken together, the offence categories of sexual assault, robbery/extortion and assault, account for over half (56%) of the court time consumed by District Criminal Court trials. Together with fraud offences they also account for some 54% of the District Criminal Court time consumed by sentence matters. When we add together the court time consumed by all types of court hearings, the offence categories of robbery/extortion, assault, sexual assault and fraud account for nearly two-thirds of all District Court hearing time devoted to the conduct of either trials, sentence hearings or mentions. These findings are at variance with what might have been expected from an examination of the relative frequency of different kinds of offence dealt with in the District Criminal Court.

In interpreting the figures it is important to note first that the amount of court time consumed by a category of offence is strongly influenced by particularly long trials. The contribution to the amount of court time consumed by robbery/extortion offences in the sample of cases examined here, for example, was strongly influenced by two exceptional cases. One involved three defendants charged with conspiracy to commit robbery. The other involved multiple charges in addition to the main robbery charge. The first case lasted 85 days. The second case lasted 48 days. It may be that offences which perennially consume large amounts of court time are just those which typically involve conspiracy charges or multiple defendants. Whether this is true or not it is clear that any initiative which reduced the frequency of very long trials would significantly reduce demand for court time. Further investigation into the ways of reducing the duration of very long trials would obviously be a profitable line of enquiry for court administrators.

The findings described in this report are noteworthy from another perspective given the current level of congestion in the District Criminal Court.[17] One (though by no means the only) way to reduce this congestion would be to reduce the number of cases competing for hearing time in the District Criminal Court. This could be done if, for example, the rules governing the division between summary and indictable matters were altered so as to ensure a greater proportion of cases were dealt with in the Local rather than the District Court. An important consideration in assessing this sort of change, however, is its likely impact on the sentencing of serious offenders. Local Courts are quite restricted in the penalties they can impose. Where gaol terms are concerned they can only impose a maximum of two years imprisonment.[18] An injudicious change to the summary/indictable distinction might result in serious offenders being given much reduced penalties.

It is accordingly of interest to examine the penalties imposed for those offences which we have discovered make up the greatest demand on District Criminal Court

**Table 7: Numbers of mentions and estimated amount of court time consumed by mentions, NSW District Criminal Court, 1990**

| *Type of principal offence charged* | *No. of cases* | *Court time consumed (%)* | *Proportion (%)* |
|---|---|---|---|
| Attempt murder | 1 | 0.1 | 0.1 |
| Manslaughter | 7 | 0.4 | 0.6 |
| Assault | 233 | 12.4 | 20.2 |
| Sexual assault | 192 | 10.2 | 16.7 |
| Other offences against the person | 14 | 0.7 | 1.2 |
| Robbery/extortion | 121 | 6.5 | 10.5 |
| Break, enter and steal | 165 | 8.8 | 14.3 |
| Fraud | 90 | 4.8 | 7.8 |
| Handling stolen goods | 32 | 1.7 | 2.8 |
| Vehicle theft | 44 | 2.3 | 3.8 |
| Other theft | 18 | 1.0 | 1.6 |
| Property damage | 19 | 1.0 | 1.7 |
| Against justice | 33 | 1.8 | 2.9 |
| Against prison rules | 11 | 0.6 | 1.0 |
| Against good order | 14 | 0.7 | 1.2 |
| Possess/use drugs | 3 | 0.2 | 0.3 |
| Supply/traffic drugs | 119 | 6.3 | 10.3 |
| Import/export drugs | 4 | 0.2 | 0.3 |
| Manufacture/grow drugs | 17 | 0.9 | 1.5 |
| Other drug offences | 0 | 0.0 | 0.0 |
| Driving causing death | 10 | 0.5 | 0.9 |
| Other driving offences | 1 | 0.0 | 0.0 |
| Other offences | 4 | 0.2 | 0.3 |
| **Total** | **1,151** | **61.4** | **100.0** |

**Figure 5: Percentage of mention hearing time, selected offences**

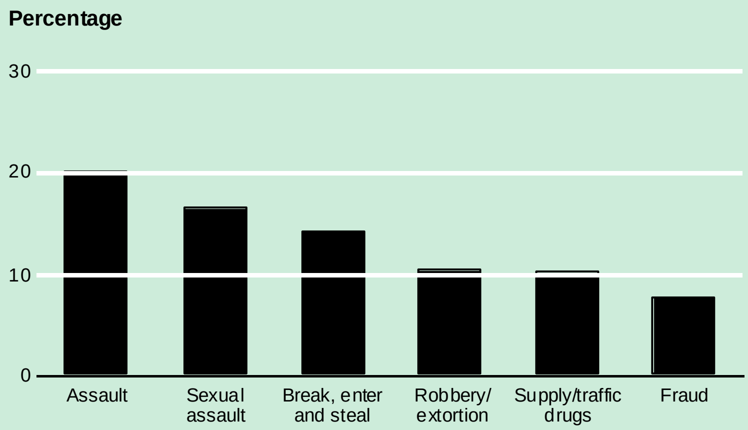
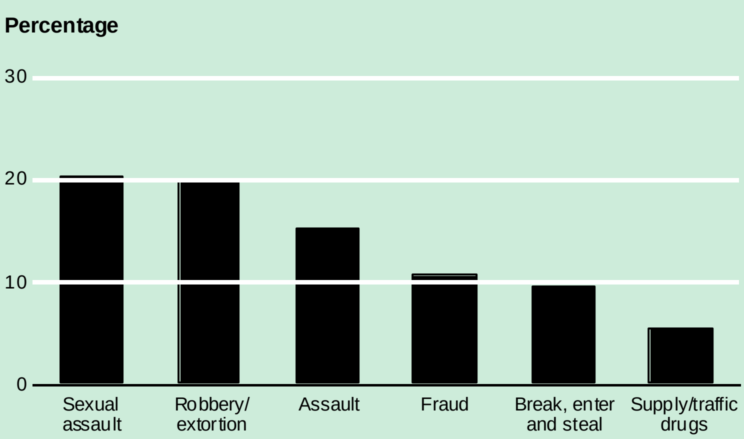


**Table 8: Estimated amount of court time consumed by trials. sentence matters and mentions, , NSW District Criminal Court, 1990**

| *Type of principal offence charged* | *Court time consumed (hr)* | *Proportion (%)* |
|---|---|---|
| Attempt murder | 48 | 0.2 |
| Manslaughter | 494 | 1.8 |
| Assault | 4,200 | 15.4 |
| Sexual assault | 5,556 | 20.3 |
| Other offences against the person | 187 | 0.7 |
| Robbery/extortion | 5,421 | 19.8 |
| Break, enter and steal | 2,661 | 9.7 |
| Fraud | 2,970 | 10.9 |
| Handling stolen goods | 422 | 1.5 |
| Vehicle theft | 681 | 2.5 |
| Other theft | 187 | 0.7 |
| Property damage | 198 | 0.7 |
| Against justice | 130 | 0.5 |
| Against prison rules | 217 | 0.8 |
| Against good order | 260 | 1.0 |
| Possess/use drugs | 1 | 0.0 |
| Supply/traffic drugs | 1,567 | 5.7 |
| Import/export drugs | 710 | 2.6 |
| Manufacture/grow drugs | 383 | 1.4 |
| Other drug offences | 0 | 0.0 |
| Driving causing death | 960 | 3.5 |
| Other driving offences | 22 | 0.1 |
| Other offences | 55 | 0.2 |
| **Total** | **23,329** | **100.0** |

**Figure 6: Percentage of total hearing time, selected offences**




hearing time, whether as trial or sentence matters. Table 9 shows the percentage of offenders convicted of these offences by the District Court and given a penalty by the presiding judge which would have been able to have been imposed by a magistrate.

The results are quite surprising. For each category of offence more than 50% of penalties lie within the sentencing discretion of a Local Court. Where assault offences are concerned, the percentage of penalties imposed by judges which could have been imposed by magistrates exceeds 85%. This suggests that among those offences which are the source of greatest demand for District Court time there may be a considerable number which could, in principle, be dealt with by a Local Court.

Of course it is one thing with the benefit of hindsight to identify cases dealt with by judges which could have been dealt with by magistrates. It is another to establish objective criteria which would enable such cases to be identified in advance.[19] The latter requires some a priori indication of the penalty which would have been imposed upon an offender by a judge. One might well ask how such an indication could be obtained. The answer to this question may lie in a comparison of the profile of cases where the offender is given a penalty of two years or less with those in which the defendant is given a penalty of more than two years gaol. If the profiles of these two groups of cases differ sufficiently then the features (e.g. prior criminal record of the offender) which differentiate between them might be used to guide reform of the law concerning matters able to be dealt with in the Local Court. Clearly this is another issue where further research would be of considerable benefit to court administration.

One last point deserves mention. A comparison of Tables 3 and 5 indicates that more than 70% of the criminal cases which go to a hearing in the District Court are sentence matters rather than trials. Earlier, however we found that the aggregate amount of hearing time consumed by sentence matters is less than 5% of that of trials. Slight changes in the proportion of persons pleading not guilty are clearly capable of exerting major effects on the overall demand for District Court hearing time. Strategies which increase the proportion of persons pleading guilty at District Court level[20] are therefore also capable of significantly reducing demand for District Criminal Court time.

Of course care must be taken in developing these strategies to ensure that there is no inducement to innocent people to plead guilty. For many defendants, though, the primary decision is not one of whether to plead guilty or not guilty to all the charges laid but one of deciding which charges to plead guilty to. In this circumstance factors such as the charging policies of the Crown and the expected penalty discount for pleading guilty are likely to play a key role in determining whether a criminal case goes to trial or sentence.

**Table 9: District Court convictions with penalties falling within the jurisdiction of Local Courts, selected offences, 1990**

| | *Numbers of persons found guilty* | | |
|---|---|---|---|
| ***Offence type*** | ***No. with penalties in Local Court jurisdiction*** | ***Total*** | ***Proportion (%)*** |
| Assault | 506 | 586 | 86.3 |
| Sexual assault | 294 | 422 | 69.7 |
| Robbery/extortion | 208 | 391 | 53.2 |
| Break, enter and steal | 425 | 564 | 75.4 |
| Fraud | 268 | 342 | 78.4 |
| Supply/traffic drugs | 259 | 350 | 74.0 |

# NOTES

1 Thanks are due to Jeanette Packer and Bronwyn Lind who read and commented upon an earlier draft of this report. Jeanette Packer, Leslie Kery and Elizabeth Matka also collected the data on which it is based.

2 The District Criminal Court deals with the vast majority of Higher Criminal Court cases. The Supreme Court (also a Higher Criminal Court), which deals with a small number of very serious cases, is excluded from this analysis.

3 NSW Attorney General's Department, August 1990, *NSW District Court Costing Review*, unpublished report.

4 The District Criminal Court hears appeal cases as well as trial and sentence cases. The majority of court time is however spent on trials and sentences.

5 In some circumstances a defendant may be tried before a judge alone with no jury present.

6 Note that the term 'mention' here only refers to mentions associated with cases which are either no billed or remitted to a Local Court, or involve the accused absconding or dying. The term has a wider currency than this among court staff and is used by them to refer to any occasion on which a matter set down for hearing is listed for mention in court by a judge.

7 The offence types used to categorise cases in this bulletin represent the most serious offence charged. The most serious offence charged does not necessarily correspond to the most serious offence for which there was a conviction. It is, however, the principal offence charged, not the offence for which there was a conviction, which determines the duration of a court hearing.

8 'Attempt murder' includes the following offences: wound with intent to murder, shoot with intent to murder, solicit to murder, aid and abet suicide.

9 The 924 mentions sampled were selected from all mentions held in 'short matters' courts in the Downing Centre in the first six months of 1991. All mentions for which the relevant data were available were included in the sample.

10 These 231 trials were trials completed in Sydney in the first nine months of 1989. The files from which hearing duration estimates were obtained are held by the Criminal Listing Directorate.

11 The criterion value chosen for substitution was less than five cases in an offence category.

12 Note that for the purposes of converting court hours of hearing time into court days of hearing time the court day is assumed to last five hours.

13 This is somewhat longer than might have been expected by experienced court observers. The point will be returned to in the SUMMARY AND DISCUSSION section.

14 Note that there were no cases actually involving extortion in the sample from which the average duration of proceedings in the offence category of robbery/extortion was calculated.

15 The average of the 924 mention durations sampled gives a value of $T_m$ = 3.2 minutes.

16 The total court time estimated to have been consumed by defended matters, sentence matters and mentions in all offence categories gives us a useful check on the accuracy of the hearing time estimates in Tables 1 and 2 and the offence type frequencies shown in Tables 3 and 4. If these values are reasonably accurate then the total estimated hearing time of all cases should be less than the known available District Criminal Court time. The total estimated hearing time based on Table 8 is 27,329 hours. The total available hearing time for all District Criminal Court matters in 1990, according to the District Criminal Court Registry staff, was 31,167 hours. The difference is to be expected as District Criminal Court time is also consumed in hearing conviction, sentence and Crown appeals from the Local Courts.

17 The median delay between committal and case finalisation for persons held in custody but ultimately acquitted of all charges currently exceeds eight months.

18 See Section 444, NSW Crimes Act (1900), as amended. Note that where a sentence is already being served the magistrate can impose an additional sentence of two years, as long as the resulting total sentence does not exceed three years.

19 One way of achieving an expansion of the summary jurisdiction without changing either the specific range of offences which may be dealt with summarily or the two year sentence restriction would be to allow Local Courts to impose additional terms of up to two years on pre-existing sentences of any length (Personal Communication, Mr Ian Pike, Chief Magistrate).

20 Recent amendments to the Crimes Act 1900 and the Children (Criminal Proceedings) Act 1987 now require the courts to take into account a plea of guilty when imposing sentence. It will be interesting to observe the impact of the new provisions on the proportion of persons pleading guilty.

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