

# Absconding on bail

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*In this paper, trends in bail refusal, patterns of granting bail, and the rate of failing to appear in court while on bail were estimated for both NSW Local and Higher Courts. In addition, the factors associated with failure to appear while on bail were examined for each jurisdiction. The proportion of persons on bail in cases finalised in both the Local and Higher Courts has generally decreased since 1995, while the rate of bail refusal has increased. In 14.6 per cent of Local Court finalisations in 2000 for persons on bail, the defendant failed to appear and a warrant was issued by the court. In terms of distinct persons this represents 14.9 per cent of all persons on bail at the time of case finalisation. Persons with prior convictions are far more likely to have a warrant issued against them for failing to appear while on bail and, in the Local Courts, persons with multiple concurrent offences are more likely to have a warrant issued against them for non-appearance. Persons charged with theft offences, receiving, break and enter, and disorderly conduct offences in the Local Courts are more likely to fail to appear while on bail. In the Higher Courts, the highest probability of failing to appear occurs for persons charged with serious drug offences or burglary (although the numbers are very small in each category).*

## INTRODUCTION

Little research has been conducted in Australia on the characteristics of persons who have been granted bail, or on the rate at which people granted bail fail to appear. In June 2001, the NSW Police Commissioner expressed concern about the operation of the *NSW Bail Act* and recommended that the Act be changed so as 'to keep repeat offenders off the streets and from committing property crimes'.<sup>1</sup>

This paper provides information on the bail status and general profile of persons granted bail for cases which were finalised in the NSW Criminal Courts between 1995 and 2000. Firstly, we examine the proportion of persons who have been formally charged by NSW police and who are on bail at the time of their final appearance before a court. Secondly, we present information on trends in the likelihood of persons with a particular offence profile or offending history being granted bail. Thirdly, we

estimate the incidence of non-appearance before the courts by alleged offenders who have been granted bail. Finally, we examine the conviction and imprisonment rates of persons who are in custody (refused bail) at the time of case finalisation.

## WHO GETS BAIL?

In NSW, legal proceedings against alleged offenders are initiated by police in one of three ways. A person may either be formally charged by police, be given a Court Attendance Notice (or Field Court Attendance Notice), or be issued with a summons. There are also a number of procedures used by the NSW Police Service which are alternatives to the initiation of formal criminal court prosecutions. These procedures include the issuing of warnings, cautions and infringement notices, and Youth Conferencing.<sup>2</sup>

Only those persons against whom police initiated legal proceedings and who

entered the criminal courts system by way of formal charge are considered in this, and the next section, of this paper. This is because questions of bail and failure to appear while on bail are primarily relevant to those persons who enter the court system by way of formal charge. The majority of persons who come to court by way of a Court Attendance Notice (CAN) or a summons have bail dispensed with, and are therefore unaffected by the application of the *Bail Act*.

When considering whether or not to grant bail, Judges and Magistrates take a number of factors into account, such as the seriousness of the offence and the criteria outlined in section 32 of the *Bail Act*.<sup>3</sup> For example, if a crime is not punishable by a gaol term the person has a right to be granted bail; whilst for serious offences such as drug trafficking there is a presumption against granting bail. Other factors taken into account include: the risk of absconding, the likelihood of committing further offences if granted bail, and the protection of the public and alleged victims.

**Table 1: Persons proceeded against by police, by method of proceeding, Local Courts, 1995 to 2000**

<i>Method of proceeding</i>		<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
Charge	<i>No.</i>	53,404	53,634	39,160	41,686	44,568	44,824
	<i>%</i>	52.0	48.3	34.9	35.6	33.6	36.1
CAN	<i>No.</i>	26,453	30,712	43,651	46,086	61,186	58,170
	<i>%</i>	25.8	27.7	38.9	39.4	46.1	46.8
Summons	<i>No.</i>	22,816	26,699	29,418	29,281	26,881	21,225
	<i>%</i>	22.2	24.0	26.2	25.0	20.3	17.1
<b>Total</b>	<b><i>No.</i></b>	<b>102,673</b>	<b>111,045</b>	<b>112,229</b>	<b>117,053</b>	<b>132,635</b>	<b>124,219</b>
	<b><i>%</i></b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

The data in the sections below is drawn from the Local Courts and Higher Courts databases administered by the NSW Bureau of Crime Statistics and Research (BOCSAR). It should be noted that, while the counting units in what follows are persons (rather than court cases or charges), a distinct person may contribute more than one count to an annual total. This is because a person may be a defendant in more than one court appearance in a single calendar year.

**NUMBER OF PERSONS CHARGED AND ON BAIL**

Table 1 shows the numbers and proportions of persons who were brought to court by formal charge, CAN or summons, for cases finalised in NSW Local Courts between 1995 and 2000. It is clear that the method of entry to the Local Courts has changed over this time period. In 1995, more than half of the persons whose cases were

finalised in the Local Courts were proceeded against by charge, requiring a bail determination to be made. In more recent years, however, only about a third of case finalisations were commenced by formal charge, as a result of a deliberate movement by NSW police towards the use of CANs to bring defendants to court.<sup>4</sup>

Table 2 details the bail status at finalisation for all persons who were brought to NSW Local Courts by charge, and whose matter was finalised between 1995 and 2000. In 2000, 70.3 per cent of such persons were on bail at the time of case finalisation, while 12.8 per cent were in custody, bail refused. These proportions have changed considerably over the time period shown in Table 2. In particular, the proportion of persons on bail at case finalisation in the Local Courts decreased between 1995 and 1998, and has risen slightly since then. Complementing this trend is an increase in the rate of bail refusal.

There are several factors which contribute to the increase in bail refusal rates for the early part of the time period shown in Table 2. Firstly, the increase in the number of people brought to court through CANs rather than through formal charges (see Table 1) resulted in persons with more serious offences becoming a progressively larger proportion of charged persons. Secondly, some offences which had previously been heard only in the District Court were diverted to the Local Courts over this time period, resulting in a more serious offence profile in each jurisdiction in the late 1990s. Thirdly, it has been shown that the NSW police targeted repeat offenders after the commencement of the Operation and Crime Review in early 1998, resulting in a greater likelihood of bail refusal.<sup>5</sup> Finally, there is some evidence that police and magistrates have been less willing to grant bail in recent years.<sup>6</sup>

Table 3 shows the bail status at finalisation for all persons whose matter

**Table 2: Percentage of persons brought to Local Courts by charge, by bail status at finalisation, 1995 to 2000**

<i>Bail status</i>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	
	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	
On bail	79.5	76.1	67.1	66.6	68.2	70.3	
In custody, bail refused	7.5	8.4	11.9	12.2	13.7	12.8	
In custody, prior offence	1.6	1.6	1.8	1.9	2.3	2.3	
Bail dispensed with	9.7	11.5	16.8	14.7	15.8	14.5	
Unknown	1.7	2.4	2.4	4.6	0.0	0.2	
<b>Total</b>	<b><i>No.</i></b>	<b>53,404</b>	<b>53,634</b>	<b>39,160</b>	<b>41,686</b>	<b>44,568</b>	<b>44,824</b>
	<b><i>%</i></b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

**Table 3: Percentage of persons in Higher Court appearances, by bail status at finalisation, 1995 to 2000**

<i>Bail status</i>		<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
		%	%	%	%	%	%
On bail		68.3	64.8	63.9	60.3	60.1	57.8
In custody, bail refused		25.8	28.3	29.3	33.3	34.7	37.0
In custody, bail not met		0.7	0.9	0.9	0.8	0.6	0.5
Bail dispensed with		3.3	4.3	4.0	4.3	3.1	3.4
Unknown / other*		1.8	1.7	1.9	1.4	1.5	1.3
<b>Total</b>	<b>No.</b>	<b>4,131</b>	<b>3,792</b>	<b>3,633</b>	<b>3,998</b>	<b>3,912</b>	<b>3,831</b>
	<b>%</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

\* 'Other' includes persons in shelter, warrant issued, or case involving a company rather than an individual.

was finalised in the Higher Courts between 1995 and 2000. In 2000, 57.8 per cent of persons whose cases were finalised in the Higher Courts were on bail at the time of case finalisation. The proportion of persons who were refused bail has increased steadily in the Higher Courts while the proportion granted bail has decreased slightly.

In terms of absolute numbers, the proportions in Tables 2 and 3 in recent years mean that more than 30,000 persons annually in the Local Courts and a further 2,000 in the Higher Courts, were granted bail and undertook to attend court hearings as required. The characteristics of these persons and the subset of persons who fail to appear at their court hearing are described below. (As noted above, these are not distinct persons within each counting period.)

### PROFILE OF PERSONS ON BAIL

In this section, the probability of being on bail at the time of case finalisation, in terms of criminal history, offending

frequency and type of principal offence charged, is detailed for persons who were charged and whose cases were finalised in NSW Local and Higher Courts between 1995 and 2000. The probability of being on bail is calculated as the number of persons who have been granted bail, as a proportion of all persons for whom a bail consideration is made (i.e. the sum of (1) persons who were granted bail, and (2) those who were refused bail and are on remand). That is, persons who have bail dispensed with, or who are in custody for a previous offence are not included in the calculation. Persons who are on remand because bail was not met, however, are included in the count of persons who have been granted bail.

#### (1) Prior convictions

Table 4 shows the proportion of persons with prior convictions and with no prior convictions, respectively, who were on bail at the time that their case was finalised.<sup>7</sup> It is clear from Table 4 that, in both jurisdictions, persons with no

prior record are more likely to be on bail at the time of case finalisation than persons with a prior record. Furthermore, for each category, the likelihood of being on bail is greater for cases finalised in the Local Courts than for cases finalised in the Higher Courts. This should be expected given the more serious nature of the offences dealt with by the Higher Courts. The difference between jurisdictions is most marked for persons who have prior convictions.

The upper line in Figure 1 shows the trend in the proportion of persons with no prior convictions being granted bail in cases finalised in the Local Courts between 1995 and 2000. This proportion decreased from 98.3 per cent of persons in 1995, to 93.2 per cent of persons in 1999. In 2000, there was a slight increase in the likelihood of persons with no prior convictions being on bail, with 95.1 per cent of such persons having bail at the time of case finalisation.

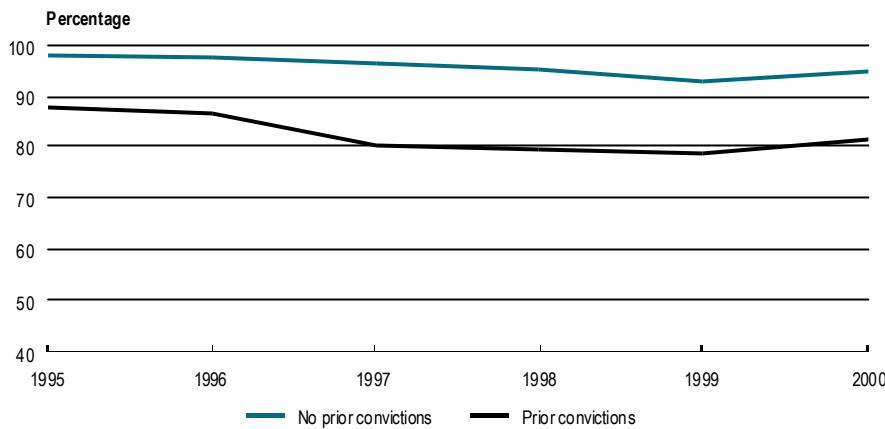
**Table 4: Percentage of persons on bail<sup>†</sup> at finalisation, with and without prior convictions, 1995 to 2000**

<i>Prior conviction status</i>		<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
		%	%	%	%	%	%
<b>Local Courts*</b>							
Prior convictions		88.1	86.6	80.4	79.9	78.8	81.4
No prior convictions		98.3	97.9	96.3	95.7	93.2	95.1
<b>Higher Courts</b>							
Prior convictions		61.6	56.0	55.3	51.7	47.8	47.8
No prior convictions		84.4	81.5	80.3	76.0	77.5	74.6

\* Excludes persons who were brought to Local Courts by CAN or summons.

† Excludes persons for whom a bail determination was not made (i.e. bail dispensed with or in custody for prior offence).

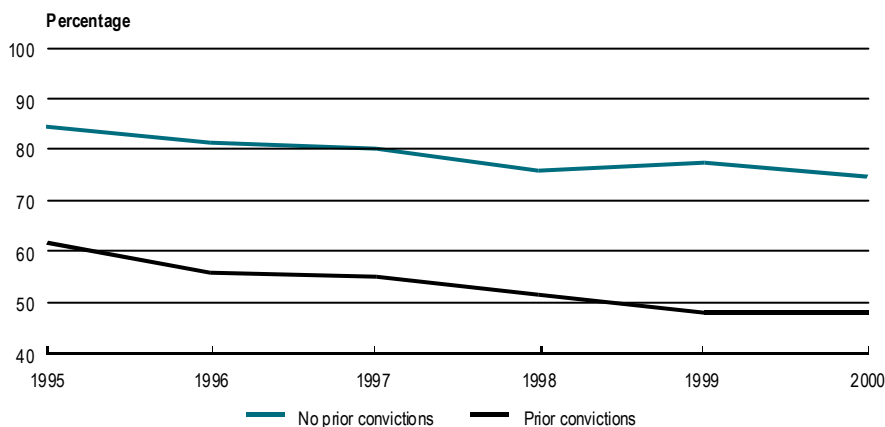
**Figure 1: Percentage of persons on bail at finalisation, with and without prior convictions, Local Courts, 1995 to 2000**



The trend in the likelihood of bail for persons with prior convictions in Local Court finalisations is similar. In 1995, 88.1 per cent of such persons were on bail, decreasing steadily to 78.8 per cent in 1999. Again, there was an increase in 2000, up to 81.4 per cent of all persons charged and who had prior convictions.

Figure 2 shows the trend in the proportion of persons with and without prior convictions being granted bail in cases finalised in the Higher Courts between 1995 and 2000. For each series, there is a downward trend in the proportion of persons on bail at the time of case finalisation. The proportion of persons without prior convictions who were on bail decreased from 84.4 per cent in 1995 to 74.6 per cent in 2000. For persons with prior convictions, the proportion on bail decreased from 61.6 per cent in 1995 to 47.8 per cent in 2000.

**Figure 2: Percentage of persons on bail at finalisation, with and without prior convictions, Higher Courts, 1995 to 2000**



**(2) Number of concurrent offences charged**

A single criminal court hearing may involve more than one charge against the defendant. Table 5 details the proportion of persons on bail at the time of case finalisation, by the number of offences charged, for Local and Higher Court finalisations between 1995 and 2000.<sup>8</sup>

Table 5 shows that, with the exception of Higher Court finalisations in 2000, persons with four or more concurrent offences have the lowest likelihood of being granted bail. Furthermore, for

**Table 5: Percentage of persons on bail† at finalisation, by number of concurrent offences, 1995 to 2000**

Number of concurrent offences	1995	1996	1997	1998	1999	2000
	%	%	%	%	%	%
<b>Local Courts*</b>						
Single offence only	94.5	93.7	89.5	89.3	87.5	88.9
Two offences	91.5	90.5	85.1	86.0	85.5	86.2
Three offences	88.2	86.3	81.5	81.1	81.5	83.0
Four or more offences	77.6	75.7	71.6	69.7	68.5	70.2
<b>Higher Courts</b>						
Single offence only	75.8	71.2	71.5	64.4	64.0	59.3
Two offences	72.5	72.3	70.7	68.0	66.2	62.7
Three offences	69.3	66.4	65.6	65.2	61.8	66.2
Four or more offences	65.3	62.3	62.1	57.2	57.4	60.6

\* Excludes persons who were brought to Local Courts by CAN or summons.

† Excludes persons for whom a bail determination was not made (i.e. bail dispensed with or in custody for prior offence).

each category of persons, the likelihood of being granted bail was greater in the Local Courts than in the Higher Courts.

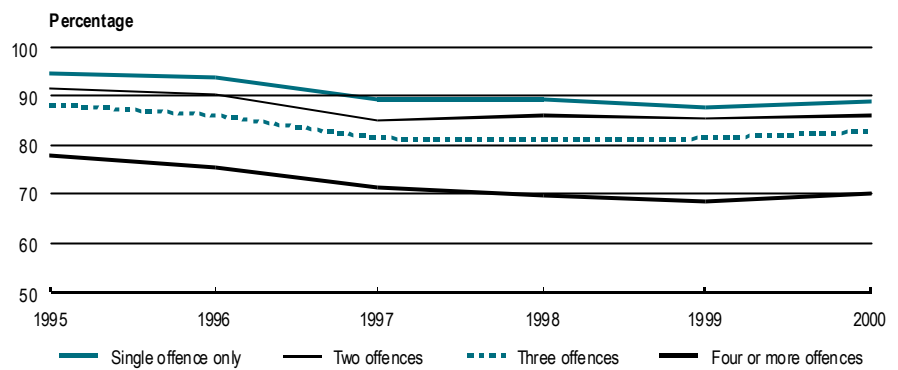
Figure 3 shows the trend in the proportion of persons in the Local Courts between 1995 and 2000 with one, two, three, or four or more concurrent offences, who were on bail at the time of case finalisation. For each series, there is a downward trend over this time period in the proportion of persons on bail at the time of case finalisation. The proportion on bail declines as the number of concurrent offences increases.

Figure 4 shows the trends in the proportion of persons with one, two, three, or four or more concurrent offences who were on bail at the time of case finalisation in the Higher Courts between 1995 and 2000. As with persons appearing in the Local Courts, there is a general downward trend in the proportion of persons on bail at the time of case finalisation. There is little distinction in the probability of being granted bail for the categories graphed in Figure 4, other than for persons charged with four or more concurrent offences, who are less likely to be granted bail.

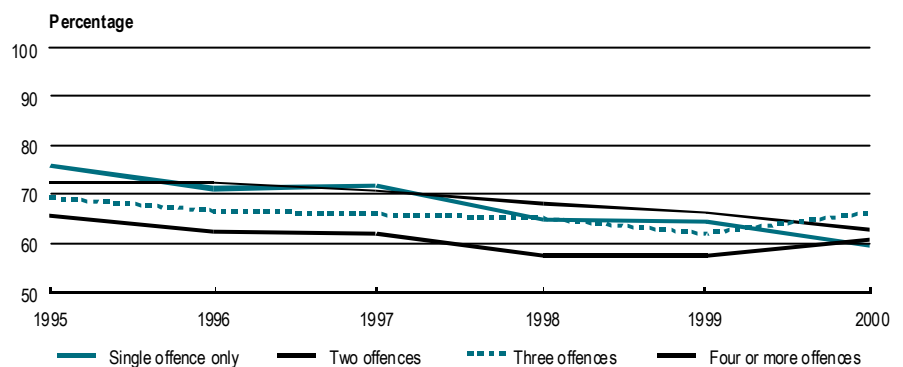
### (3) Principal offence charged

When a case is finalised in the courts, the outcomes and penalties may be determined concurrently for a number

**Figure 3: Percentage of persons on bail at finalisation, number of concurrent offences, Local Courts, 1995 to 2000**



**Figure 4: Percentage of persons on bail at finalisation, number of concurrent offences, Higher Courts, 1995 to 2000**



**Table 6: Percentage of persons on bail<sup>†</sup> at finalisation for most frequently charged offences, Local Courts\*, 1995 to 2000**

Offence	1995 %	1996 %	1997 %	1998 %	1999 %	2000 %
Assault	93.3	93.5	92.2	91.9	90.2	91.3
Breach of justice order	79.1	78.9	79.4	80.8	81.6	85.3
Theft (except motor vehicle)	88.7	85.1	77.3	72.7	72.8	74.0
Driving licence offences	91.5	89.8	80.4	81.3	79.0	80.9
Regulatory driving offences	98.2	98.1	91.8	92.2	90.1	90.9
Receiving or handling proceeds of crime	86.7	85.9	76.9	78.4	78.7	79.8
Unlawful entry with intent/ burglary/break and enter	77.3	74.9	69.1	68.8	67.0	68.6
Disorderly conduct	92.2	90.8	85.7	84.8	83.9	86.3
Property damage	94.2	93.3	89.2	89.3	88.3	89.9
Possess and/or use illicit drugs	92.9	91.7	84.1	88.1	84.8	86.3

\* Excludes persons who were brought to Local Courts by CAN or summons.

† Excludes persons for whom a bail determination was not made (i.e. bail dispensed with or in custody for prior offence).

**Figure 5: Percentage of persons on bail at finalisation, most frequently charged offences, Local Courts, 1995 to 2000**

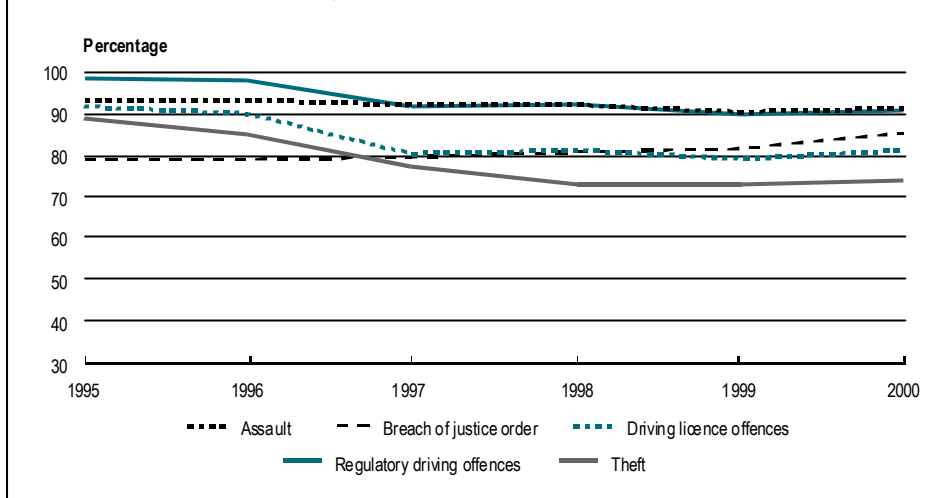


Figure 5 for the five most frequently charged offences in the Local Courts.

The general pattern evident in both Table 6 and Figure 5 is a decrease in the likelihood of bail over the first few years of the series, thereafter levelling out or increasing slightly. Between 1999 and 2000, there was an increase in the proportion of persons granted bail for each offence category shown in Table 6. For most offences, however, the proportion of persons on bail in 2000, remains well below the proportion at the start of the series. For example, in 1995, 98.2 per cent of persons who had been charged with regulatory driving offences as the principal offence in the Local Courts were on bail at the time of case finalisation. (Most regulatory driving offences involve charges against persons for exceeding the prescribed concentration of alcohol limit.) By 2000, the proportion of persons granted bail for regulatory driving offences had fallen to 90.9 per cent. The pattern for persons charged with theft as principal offence is similar, falling from 88.7 per cent in 1995, to 72.8 per cent by 1999, though rising slightly to 74.0 per cent in 2000. (The theft category includes theft from a person and theft from retail store offences, but excludes theft of motor vehicles.)

of offences. Although each of these offences and associated outcomes is recorded on the BOCSAR database, offending patterns are generally described and analysed according to the 'principal offence' of each defendant, so that a person is counted only once for each finalised case. The principal offence is defined as the offence charged which received the most serious penalty for a conviction.<sup>9</sup> If there was no conviction recorded, then

the first offence listed as charged is considered to be the principal offence for the purposes of this paper.

Table 6 shows the principal offences which occur most frequently for persons charged in the Local Courts (in descending order of frequency).<sup>10</sup> For each of these offences, the proportion of persons on bail at the time of case finalisation between 1995 and 2000 is shown. These trends are graphed in

**Table 7: Percentage of persons on bail\* at finalisation for most frequently charged offences, Higher Courts, 1995 to 2000**

Offence	1995 %	1996 %	1997 %	1998 %	1999 %	2000 %
Robbery	50.2	51.3	45.7	43.7	41.4	37.1
Sexual assault	89.6	87.4	89.2	84.1	88.9	87.6
Deal or traffic in illicit drugs	80.8	77.8	82.4	78.1	71.3	70.7
Assault	74.1	70.0	71.6	71.3	69.8	68.6
Unlawful entry with intent/ burglary/break and enter	54.8	55.8	53.8	48.7	40.9	42.8
Fraud, forgery or false financial instrument	88.6	90.9	80.0	88.7	80.6	83.9
Manslaughter and driver causing death	81.8	86.6	80.0	74.2	76.6	75.8
Theft (except motor vehicle)	77.5	71.2	75.4	69.9	64.7	65.6
Offences against justice procedures (other than breach of justice order)	78.7	72.4	67.7	63.2	73.2	70.1
Import or export drugs	28.6	13.2	28.0	25.7	28.6	31.8

\* Excludes persons for whom a bail determination was not made (i.e. bail dispensed with or in custody for prior offence).



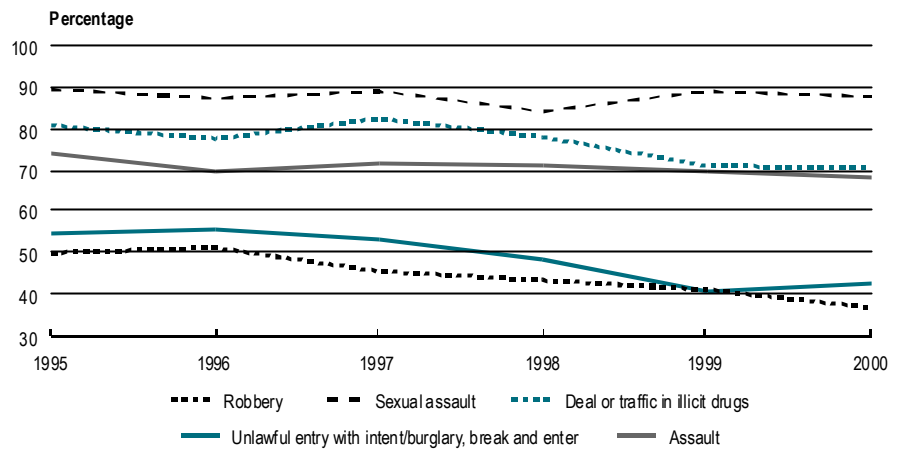
Table 6 shows that the persons who are most likely to be granted bail in the Local Courts are those charged with assault offences (91.3% on bail in finalisations in 2000), regulatory driving offences (90.9% on bail) and property damage offences (89.9%). Of the most frequently charged offences shown in Table 6, persons least likely to be granted bail in 2000 were those charged with break and enter (68.6% on bail in Local Court finalisations in 2000), theft offences (74.0% on bail) and receiving offences (79.8% on bail).

Table 7 shows the most frequent principal offences for persons charged in the Higher Courts (in descending order of frequency). For each of these offences, the proportion of persons on bail at the time of case finalisation between 1995 and 2000 is shown. These trends are graphed in Figure 6 for the five most frequently charged offences in the Higher Courts. The trends in the likelihood of bail being granted for particular offences are more varied across offences in the Higher Courts, compared with the trends in the Local Courts. This difference may be partly due to the smaller number of defendants being charged in the Higher Courts.

Overall, there was a general reduction in the likelihood of being granted bail for most offences over this time period. For example, in 1995, 50.2 per cent of persons who were charged with robbery as principal offence were on bail at the time of case finalisation, while in 2000 there were 37.1 per cent of such offenders on bail, following a steady annual decrease. Similarly, the proportion of persons with deal or traffic in illicit drugs who were on bail declined from 80.8 per cent to 70.7 per cent between 1995 and 2000.

Table 7 shows that the persons who are most likely to be granted bail in the Higher Courts are those charged with sexual assault offences (87.6% on bail in finalisations in 2000), and fraud and forgery offences (83.9% on bail). Of the most frequently charged offences, shown in Table 7, persons least likely to be granted bail in 2000 were those charged with import or export drugs offences (31.8% on bail in Higher Court

**Figure 6: Percentage of persons on bail at finalisation, most frequently charged offences, Higher Courts, 1995 to 2000**



finalisations in 2000), robbery offences (37.1% on bail), and break and enter offences (42.8% on bail).

### WHO FAILS TO APPEAR WHILE ON BAIL?

#### ESTIMATE OF PROPORTION OF PERSONS ON BAIL WHO FAIL TO APPEAR

In the courts database maintained by BOCSAR, a 'finalised court appearance' occurs when a group of one or more charges against an individual has been fully determined by the court. Some cases are finalised in the absence of the person charged. This occurs when the

accused either (1) pleads guilty and is convicted in his / her absence, or (2) fails to appear and is convicted by the court on the evidence presented. In these instances, if the penalty imposed on the defendant does not involve imprisonment, the defendant may not be required for attendance at the court. However, if the defendant is required by the court to appear for either conviction or sentencing, a warrant for the arrest of the individual is issued and the matter is counted as finalised in the BOCSAR statistics.

Table 8 shows three categories of finalisation in the Local Courts in 1999 and 2000. Firstly, there are those persons against whom a warrant has been issued, as described above. The

**Table 8: Persons on bail, by type of finalisation, 1999 and 2000**

Type of finalisation	1999		2000	
	No.	%	No.	%
<b>Local Courts*</b>				
Failed to appear and warrant issued	3,818	12.6	4,597	14.6
Convicted ex parte	2,168	7.1	2,321	7.4
Appeared or otherwise finalised	24,394	80.3	24,606	78.1
<b>Total</b>	<b>30,380</b>	<b>100.0</b>	<b>31,524</b>	<b>100.0</b>
<b>Higher Courts</b>				
Failed to appear and warrant issued	146	6.2	118	5.3
Appeared or otherwise finalised	2,207	93.8	2,095	94.7
<b>Total</b>	<b>2,353</b>	<b>100.0</b>	<b>2,213</b>	<b>100.0</b>

\* Excludes persons who were brought to Local Courts by CAN or summons.

**Table 9: Distinct persons charged and on bail at finalisation who fail to appear, by number of warrants issued, Local Courts\*, 2000**

<i>No. of 'fail to appear' finalisations per person</i>	<i>No. of distinct persons</i>	<i>% of all distinct persons in cases finalised</i>	<i>% of all distinct persons finalised 'fail to appear'</i>
1	3,149	12.4	83.4
2	499	2.0	13.2
3	95	0.4	2.5
4	28	0.1	0.7
5	7	0.03	0.2
<b>Total distinct persons finalised 'fail to appear'</b>	<b>3,778<sup>†</sup></b>	<b>14.9</b>	<b>100.0</b>
<b>Total distinct persons charged and on bail in cases finalised</b>	<b>25,406</b>	<b>100.0</b>	

\* Excludes persons who were brought to Local Courts by CAN or summons.

† See endnote 12.

second category includes those persons who were convicted in their absence, and upon whom a penalty was imposed. The third category represents the remainder of defendants, most of whom appeared in court and had their matter finalised. The other defendants in this category had their charges otherwise disposed of, e.g. all charges were dismissed by the court without a hearing, or the accused died prior to finalisation of the case.

Statistics prior to 1999 could not be examined due to changes in recording practices for persons who failed to appear. As there are no ex parte convictions recorded in the Higher Courts, there are only two categories shown in Table 8 for this jurisdiction.

Table 8 shows that 14.6 per cent of cases finalised in the Local Courts in 2000 (for persons on bail) involved the non-appearance of a defendant for whom a warrant was issued by the court. In the majority of these cases, there was no plea entered, nor was there a legal representative present at the court hearing.<sup>11</sup> In the Higher Courts, the proportion of case finalisations where the defendant failed to appear is much smaller. In 2000, the defendant failed to appear in 5.3 per cent of Higher Court finalisations.

In order to check the accuracy of the BOCSAR records, a sample of 100 cases identified as 'fail to appear' in 2000 were followed up in the General Local Courts (GLC) computer system. For each case checked, the GLC record showed that a warrant had been issued

on the date specified. The accuracy of the data was also checked for Higher Court finalisations. A sample of 50 'fail to appear' finalisations in 2000 were checked in the Higher Courts computerised Case Tracking System. Without exception, each case was verified as one where the defendant failed to appear and had a warrant issued.

It should be noted that the 4,597 persons in Local Court cases finalised in 2000 who comprise the 14.6 per cent of cases where defendants fail to appear are not all separate individuals over the counting period. A single person may be involved in several court cases in a particular time period, and may fail to appear at some or all of them.

Furthermore, when a person against whom a warrant has been issued is found and brought to court, a new case is commenced and subsequently finalised. If the person again absconds for the same set of offences in the same year, and another warrant is issued, the matter will again be counted in the statistics. It is possible, therefore, that the count for any particular year is inflated by recidivist offenders. In order to assess this potential explanation of the high rate of failure to appear in the Local Courts, the proportion of distinct persons who failed to appear, and against whom a warrant was issued at a finalised Local Court hearing in 2000, is given below.

Table 9 shows the number of distinct persons for whom a 'fail to appear' finalisation episode, as described

above, occurred, and the number of distinct persons who had one or more cases finalised in the Local Courts in 2000.<sup>12</sup> Table 9 shows that 14.9 per cent of persons who had at least one case finalised in the Local Courts in 2000 failed to appear and had a warrant issued against them at least once. This percentage is similar to that calculated in Table 8 for all cases finalised in the Local Courts which involved failure to appear (14.6%). Of the persons who failed to appear in 2000, 83.4 per cent had a warrant issued once during the year, a further 13.2 per cent failed to appear twice, and 3.4 per cent failed to appear three or more times during the year.

### PROFILE OF PERSONS WHO FAIL TO APPEAR

In this section, the characteristics of persons who are on bail and who fail to appear are described. In particular, the likelihood of failing to appear while on bail is examined by prior conviction status, by the number of concurrent offences charged, and by the principal offence category. Note that in this section we are looking at all fail to appear episodes counted in Table 8, not at one episode for each distinct person as counted in Table 9 above.

#### (1) Prior convictions

Table 10 shows the number and proportion of persons on bail who fail to appear and have a warrant issued, by prior conviction status. The information in Table 10 is for Local Court



finalisations only, as information on the prior conviction status of such defendants is not available from the Higher Courts database.<sup>13</sup> Table 10 shows that persons with prior convictions are far more likely to have a warrant issued against them for failing to appear when on bail. In 2000, approximately 17.4 per cent of persons who had prior convictions had their case finalised in the Local Courts by having a warrant issued against them. For persons without prior convictions, only 4.0 per cent of cases were so finalised.

### (2) Number of concurrent offences charged

Table 11 shows the number and proportion of persons who are on bail and who have a warrant issued for failing to appear, categorised by the number of concurrent offences charged. The pattern generally differs between the two jurisdictions. In the Local Courts, persons with several concurrent offences are more likely to have a warrant issued against them for non-appearance. For example, in 2000, 20.0 per cent of persons on bail with four or more offences had their cases finalised by the issue of a warrant for non-appearance, compared with approximately 11.9 per cent of persons with a single offence. In the Higher Courts, where there are fewer such finalisations, there is no clear pattern emerging. Overall, failure to appear is more frequent for persons with a single offence rather than multiple offences in the Higher Courts.

### (3) Principal offence charged

Table 12 details the number and proportion of persons who failed to appear in the Local Courts for those offences with the highest numbers of persons on bail (in descending order of frequency). The proportions vary across these ten offences, and again may reflect the tendency of the courts to issue a warrant for failing to appear for specific offences. In addition, as noted earlier, a warrant is less likely to be issued (and an ex parte conviction more likely) for offences which do not attract custodial penalties. Overall, persons charged with theft offences, receiving offences, break and enter offences, and disorderly conduct in the Local Courts are more likely to fail to appear.

**Table 10: Persons charged and on bail at finalisation who fail to appear and have a warrant issued, with and without prior convictions, Local Courts\*, 1999 and 2000**

<i>Prior conviction status</i> <sup>†</sup>	1999		2000	
	No.	%	No.	%
Prior convictions	2,399	13.8	3,575	17.4
No prior convictions	171	5.0	150	4.0

\* Excludes persons who were brought to Local Courts by CAN or summons.

† Excludes persons for whom prior conviction status was unknown.

**Table 11: Persons on bail at finalisation who fail to appear and have a warrant issued, by number of concurrent offences, 1999 and 2000**

<i>Number of concurrent offences</i>	1999		2000	
	No.	%	No.	%
<b>Local Courts*</b>				
Single offence only	1,518	10.2	1,900	11.9
Two offences	1,082	14.2	1,174	15.3
Three offences	551	14.4	716	18.6
Four or more offences	667	16.8	807	20.0
<b>Higher Courts</b>				
Single offence only	78	7.4	75	7.1
Two offences	43	5.8	25	3.7
Three offences	16	5.5	8	3.0
Four or more offences	9	3.5	10	4.6

\* Excludes persons who were brought to Local Courts by CAN or summons.

**Table 12: Persons on bail at finalisation who fail to appear for offences with highest number of persons on bail, Local Courts\*, 1999 and 2000**

<i>Principal offence</i>	1999		2000	
	No.	%	No.	%
Assault	746	8.4	849	9.3
Breach of justice order	310	9.2	351	10.2
Theft (except motor vehicle)	535	26.7	670	28.8
Driving licence offences	239	14.4	328	15.7
Receiving or handling proceeds of crime	335	22.4	408	25.4
Property damage	155	11.5	163	10.4
Regulatory driving offences	138	7.9	120	7.9
Disorderly conduct	207	14.2	292	20.4
Unlawful entry with intent/burglary/ break and enter	244	18.9	324	24.7
Possess and/or use illicit drugs	153	12.1	175	14.1

\* Excludes persons who were brought to Local Courts by CAN or summons.

Table 13 details the number and proportion of persons who failed to appear in the Higher Courts for those offences with the highest number of persons on bail (in descending order of frequency). Only five offences are listed in Table 13, due to the relatively small proportion of persons who fail to appear in this jurisdiction. The highest probability of failing to appear occurs for serious drug offences and for break and enter. It should be noted, however, that the numbers are very small in each category.

**Table 13: Persons on bail at finalisation who fail to appear for offences with highest number of persons on bail, Higher Courts, 1999 and 2000**

<i>Principal offence</i>	<b>1999</b>		<b>2000</b>	
	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>
Sexual assault	20	3.1	13	2.6
Deal or traffic in illicit drugs	38	12.1	31	8.9
Robbery	10	3.0	19	6.7
Assault	22	7.6	16	6.0
Unlawful entry with intent/burglary/ break and enter	23	17.2	12	8.1

**CONVICTION AND IMPRISONMENT RATES FOR PERSONS REFUSED BAIL**

Since those refused bail are sometimes acquitted of the charges against them or given a non-custodial sentence, it is worth examining the likelihood of conviction and the probability of imprisonment for persons who are refused bail and who are held on remand.

Table 14 details the conviction and imprisonment rates of all persons who were on remand (bail refused) at the time of case finalisation in the Local and Higher Courts between 1995 and 2000. Overall, conviction rates for these persons in both jurisdictions have remained high and stable. On average, in the Local Courts over this time period, more than 85 per cent of persons refused bail were eventually convicted. In the Higher Courts, the average conviction rate was almost 88 per cent.

The proportion of persons who were eventually sentenced to a period of imprisonment after having bail refused is lower, particularly in the Local Courts. On average, just over half (51%) of all

persons in custody (bail refused) at the time of final appearance in the Local Courts were sentenced to imprisonment between 1995 and 2000. In the Higher Courts, approximately 81 per cent of persons on remand at the time of case finalisation were imprisoned.

**DISCUSSION**

In 14.6 per cent of Local Court finalisations in 2000 for persons on bail, the defendant failed to appear and a warrant was issued by the court. This represents almost 3,800 distinct persons who were charged with criminal offences in NSW.

This bulletin shows that, in the Local Courts, an association exists between a defendant's likelihood of absconding whilst on bail and their: prior conviction record, number of concurrent offences, and the type of offence charged. In particular, one in five persons on bail at finalisation who were charged with four or more concurrent offences were issued with a warrant for failing to

appear. Similarly, one-quarter of defendants charged with theft (except motor vehicle theft), receiving/handling proceeds of crime, or burglary/break and enter failed to appear and a warrant was issued for their arrest.

In the Higher Courts fewer defendants abscond whilst on bail. Warrants were issued for just 5 per cent of finalisations, and there were no ex parte convictions.

In light of these findings and the concerns of the NSW Police in regard to repeat offenders committing crimes whilst on bail, the NSW Government has amended the Bail Act so as to remove the presumption in favour of bail for persons who:

- commit another offence while already on bail;
- commit another offence while on parole;
- commit another offence while serving a community based sentence;
- have a previous conviction for an indictable offence; or
- have a previous conviction for a fail to appear offence.

**Table 14: Persons convicted and imprisoned as a proportion of persons on remand (refused bail) at finalisation, 1995 to 2000**

	<b>1995</b> <b>%</b>	<b>1996</b> <b>%</b>	<b>1997</b> <b>%</b>	<b>1998</b> <b>%</b>	<b>1999</b> <b>%</b>	<b>2000</b> <b>%</b>	<b>1995-2000</b> <b>Average</b>
<b>Local Courts</b>							
Convicted	84.3	85.4	84.4	86.6	85.5	85.0	85.2
Imprisoned	54.0	51.2	50.8	54.5	49.0	48.3	51.3
<b>Higher Courts</b>							
Convicted	88.4	89.5	88.8	82.9	86.7	89.3	87.6
Imprisoned	80.9	83.7	81.7	76.8	81.8	83.1	81.3

## NOTES

- 1 NSW Police Commissioner Peter Ryan, as quoted in an article by Rachel Morris: 'Bail 'tripwire' against repeat offenders' in *The Daily Telegraph*, Tuesday June 19 2001.
- 2 For more information about trends in proceedings against alleged offenders in NSW, see: Chilvers, M. 2001 'Trends in formal charges and the use of alternative processes by NSW Police', *Unpublished working paper*, NSW Bureau of Crime Statistics and Research, Sydney.
- 3 Summary of the 1978 Bail Act.  
According to current NSW law, the decision of whether or not to grant bail depends to a large extent on the seriousness of the offence the person is alleged to have committed. If the crime is relatively less serious, for example, not punishable by a gaol term, the person has a right to be granted bail. For serious offences such as drug trafficking, there is a presumption against granting bail. Other serious sexual and violent offences, including armed robbery do not have a presumption in favour of bail. For most other offences the accused person has a presumption in favour of bail.  
In all of these cases the accused person may still be granted bail if they show good reason why bail should be granted. In determining whether bail should be granted, the police officer or Court must consider the criteria outlined in s 32 of the Act. The four main factors to consider in deciding whether or not to grant bail are:  
1) the probability that the person will later appear in court, e.g. assessing any prior criminal history and previous breaches of bail; 2) the interests of the person e.g. the need to prepare a defence; 3) the protection and welfare of the victim and the victim's close relatives; and 4) the protection and welfare of the community e.g. the likelihood that the person will commit a further serious offence while on bail.  
The police officer or Court may impose conditions on the accused person (as set out in s 36 and s 36A) for the purpose of promoting further effective law enforcement, or for the protection and welfare of any specially affected person or the community. Conditions may not be imposed that are any more onerous for the accused person than is required by the nature of the offence or for the protection and welfare of any specially affected person or by the circumstances of the accused person (s 37).
- 4 Chilvers, M. op.cit. See also Lind B., Chilvers M. and Weatherburn D. 2000, *Simulating the New South Wales Criminal Justice System: A Stock and Flow Approach*, NSW Bureau of Crime Statistics and Research, Sydney.
- 5 Chilvers, M. and Weatherburn, D. 2001 *Do targeted arrests reduce crime?*, Crime and Justice Bulletin No. 63, NSW Bureau of Crime Statistics and Research, Sydney.
- 6 Fitzgerald, J. 2000 'Increases in the NSW remand population', *Unpublished working paper*, NSW Bureau of Crime Statistics and Research, Sydney.
- 7 The recording of the criminal history of defendants on the Local Courts and Higher Courts databases differs between the two jurisdictions. In the Local Courts, information on the presence of a criminal history record on the defendant's court file is recorded by the courts and provided to BOCSAR for its statistical collection. Note that in the Local Courts database, there was no information on the criminal history of 23 per cent of persons whose cases were finalised in 2000. This is because there are many cases where the police report of the defendant was not on the court file from which the statistical information was coded, and hence the criminal history could not be determined. In the Higher Courts database, it is not possible to distinguish between persons with no prior convictions, and those for whom prior offence information has not been coded. The latter group is therefore included in the 'no prior convictions' category.
- 8 Note that where there are multiple counts of the same offence (i.e. charged under the same Act and Section) the multiple counts are treated as a single charge. Table 5 therefore shows only the distinct number of charges for each defendant whose case was finalised.
- 9 For further details about the definition of 'principal offence' and the hierarchy of penalties applied, see the Explanatory Notes and Appendix sections of the report *NSW Criminal Courts Statistics 1999* or *NSW Criminal Courts Statistics 2000*, NSW Bureau of Crime Statistics and Research, Sydney.
- 10 The offence categories shown are the Australian Standard Offence Classification (ASOC) subdivisions within which the individual offences fall. Further details on ASOC classifications are available from the publications *NSW Criminal Courts Statistics 2000*, NSW Bureau of Crime Statistics and Research, Sydney, and from the Australian Bureau of Statistics publication: *Australian Standard Offence Classification*, Catalogue No. 1234.0, ABS 1997.
- 11 In 81.5 per cent of the 4,597 fail to appear cases finalised in 2000, there was no plea recorded, nor was a legal representative present at the hearing; in 5.8 per cent, there was no plea but the defendant was represented. In a further 10.7 per cent, a plea was entered, but there was no legal representation, while in the remaining 2.0 per cent, both a plea and legal representation were recorded.
- 12 Table 9 includes only those persons charged for whom a Central Names Index (CNI) number was available. The CNI number was necessary for the purposes of matching persons within the BOCSAR courts database. Only a very small number of persons did not have a CNI number recorded in the database.
- 13 Information about prior convictions is not available to BOCSAR for persons who fail to appear in the Higher Courts because when the details of the case are recorded on the Higher Courts Case Tracking System (CTS), a partial file is used. This partial file does not include the police record.

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