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Crimes (Sexual Assault) Amendment Act, 1981
Monitoring and Evaluation

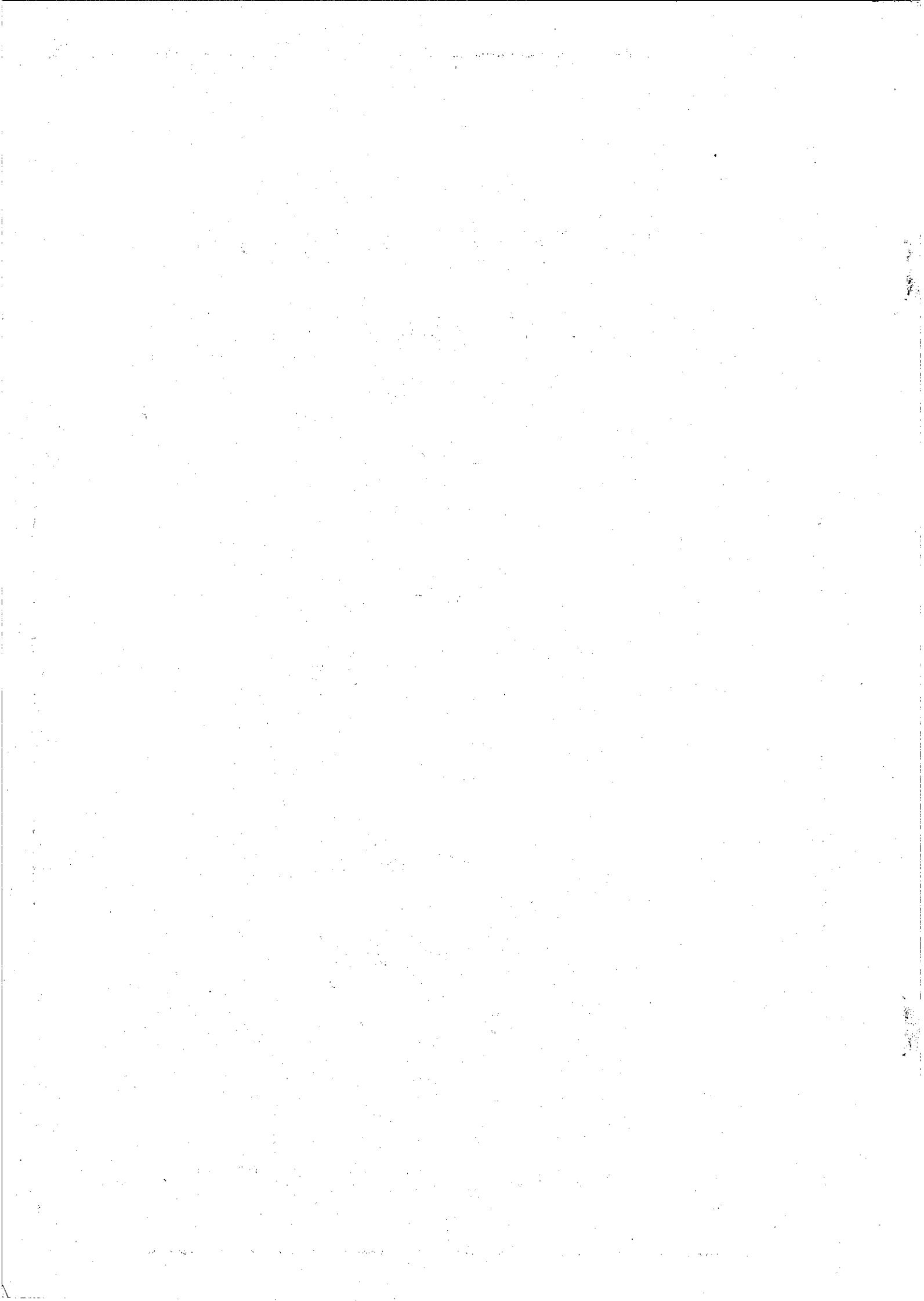
INTERIM REPORT 2

SEXUAL ASSAULT - COURT OUTCOME
ACQUITTALS, CONVICTIONS & SENTENCE

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REPORT SERIES

This report is one of a series of interim reports produced by the Bureau of Crime Statistics and Research as part of its monitoring of the Crimes (Sexual Assault) Amendment Act, 1981.

Interim Report No. 1 established the characteristics of the complainant, the defendant and the offences which are discussed in Interim Report Nos. 2 and 3.

Interim Report No. 2 analyses acquittals, convictions, sentences and the change in sentence structure after the 1981 amendments to the Crimes Act.

Interim Report No. 3 will examine the court process at both Committal and Trial with particular emphasis on the application of s.409B of the Crimes (Sexual Assault) Amendment Act.

GLOSSARY OF TERMS AND ABBREVIATIONS

For brevity, the Crimes (Sexual Assault) Amendment Act of 1981 will henceforth be referred to as the Amended Crimes Act. Section and sub-sections mentioned in this report will, unless otherwise stated, be sections and sub-sections of the Amended Crimes Act.

The Study or post-legislation population refers to cases dealt with under the Amended Crimes Act.

The Control or pre-legislation population refers to cases, dealt with under the Crimes Act, 1900, prior to the 1981 amendments.

SUMMARY OF RESULTS

The principal empirical findings can be summarised briefly as follows:

The Offences

1. Sexual intercourse without consent (s.61D) plus attempts was the principal offence in 59.9% of cases presented at Committal in the Study group. It was predicted when the Crimes Amendment Act was passed that the bulk of offences would be in this offence category.
2. Analyses of the type of penetration involved in the offences in the Study group and the Control group demonstrated that the two groups were rather dissimilar in these terms. Only half of the Study group involved penis/vagina penetration compared to 81.1% of the Control group. More of the offences in the Study group than in the Control group involved no penetration at all.
3. In about half of both the Study group and the Control group, two charges were laid in relation to each complainant/defendant pair. The new legislation has therefore not led to a greater multiplicity of charges being necessary because of the gradations of the new offence structure. Even when the offence was rape it appears that additional charges were laid.
4. There were more lone offenders in the Study group than in the Control group and this is consistent with relative youthfulness of the Control group defendants. (Group attacks or those involving more than one defendant were shown to feature a greater proportion of younger offenders than attacks involving only one person.)

The Committal

5. Slightly more people proceeded to trial in the Study group than in the Control group (Study: 81.6%, Control: 74.7%).
6. Cases involving charges under s.61D under the Amended Crimes Act or rape under the old legislation were most likely to lapse before trial (20.8% and 28.2% respectively). Cases involving charges under s.61C(1)(a) or attempted rape were least likely to lapse (13.9% and 13.1% respectively).
7. Cases which lapsed because of nolle prosequis or No Bills were slightly more common in the Study group than in the Control group.

Higher Court Proceedings

8. The expectation that there would be an increase in guilty pleas under the Amended Crimes Act was realised but only in a modest way. There was an 11.5% increase in guilty pleas in the Study group.
9. Guilty pleas varied according to the nature of the principal offence. In the Study group they ranged from 48.3% (s.61D) to 67.6% (s.61C(1)(a)). In contrast, less serious offences in the Control group had higher guilty plea rates. Guilty pleas ranged from 28.8% (rape) to 100.0% (non-sexual offences) in the Control group.
10. Slightly more than half (51.7%) of people charged with sexual intercourse without consent pleaded not guilty (71.2%).
11. Compared with other offences dealt with in higher courts, both the Study group and the Control group have higher rates of not guilty pleas.

Acquittals

12. Half of those who pleaded not guilty to an offence were found not guilty by a jury decision. This is similar to jury acquittals for rape offences in the Control group (47.9%).
13. Overall, however, there was a 14.2% reduction in acquittals between the Study group and the Control group. Acquittals were recorded for 55.1% of not guilty pleas in the Control group and 40.9% of not guilty pleas in the Study group.

Convictions

14. In both the Study group and the Control group the rate of conviction varies according to the offence tried. In the Control group, of those who pleaded not guilty to rape, 40.6% were found guilty of the principal offence. In the Study group 45.6% of the people pleading not guilty to sexual intercourse without consent were convicted of that offence. Higher conviction rates were recorded in the Study group for offences involving either the infliction or the threat of infliction of bodily harm.
15. Compared to other offences against the person heard in higher courts, the overall conviction rate for the Study group of 82.7% corresponds to the conviction rates for murder (83.3%), major assault (80.7%) and sexual offences as a whole (85.6%). Control group conviction rates of 70.3% were generally lower than those recorded for other offences.

Sentences

16. More convicted persons are imprisoned for their offences since the introduction of the Amended Crimes Act than was previously the case. In the Study group 17.8% of the offender population received non-custodial sentences compared to 30.0% of the offender population in the Control group.
17. Study group offenders who went to jail were almost twice as likely to be sentenced to middle-range periods of imprisonment of between three and five years, as were Control group offenders.
18. Of the Control group offenders who received non-custodial sentences only 23.3% were actually sentenced for rape or attempted rape offences, although such offences were 100.0% of the population entering committal. By comparison, 64.0% of the Study group were sentenced in terms of the offences originally charged. The figures suggest that many charges originating as rape and attempted rape were re-labelled and the offenders sentenced for other, usually less serious, offences. The offences in the Amended Crimes Act could be said to provide a more accurate labelling of offences.

INTRODUCTION

The Crimes (Sexual Assault) Amendment Act was introduced to Parliament on July 14, 1981. At this time the then Attorney-General, the Hon. Mr Frank Walker, QC, MP, instructed the Bureau to monitor the operations of the legislation for an 18-month period, with a view to bringing to light any anomalies in its operation and recommending any amendments requisite to giving fuller effect to its intentions.

The aims of the legislation were to rectify perceived major defects in the law relating to rape and sexual assault. In particular, it was anticipated that the new laws would protect complainants from further victimization under the legal process; encourage victims to report offences; facilitate the administration of justice and the conviction of guilty offenders whilst preserving the traditional rights of the accused; and serve an educative function in further changing community attitudes to sexual assault victims (Hansard 1981).

Major Provisions of the Act

The common law offences of rape and attempted rape were abolished and replaced with three categories of sexual assault of differing seriousness and correspondingly varying sentence structures. (Under the old legislation the only penalty available for rape of all kinds was life imprisonment.)

The amended Act broadened the definitions of sexual intercourse to include the penetration of the vagina and anus of any person by any part of the body of another person. Foreign objects inserted into the anus and vagina, except where the penetration was carried out for proper medical purposes, would also constitute sexual intercourse within the meaning of the Act, as would the introduction of any part of the penis into another person's mouth.

The immunity from prosecution of husbands, and youths aged less than fourteen years, was removed. Perhaps, most importantly, the Act provided for severe limitations to be imposed on the admission of the complainant's sexual biography in any court proceedings. Reference to the complainant's sexual reputation prior to the alleged offence was to be totally prohibited.

Unlike the English law, which allows complete judicial discretion in the admission of prior sexual history, the New South Wales legislation clearly articulated the conditions which must be satisfied before a judge or magistrate could agree to any such information being tendered. Their reasons for admitting information were to be recorded and counsel making applications were to do so in the absence of the jury.

The major provisions of the Crimes (Sexual Assault) Amendment Act of 1981 are shown in Appendix 2 in Interim Report No. 1 - Characteristics of the Complainant, the Defendant and the Offence. The reader is further referred to that Interim report for details of the sample descriptions, methodology and data sources used in this project.

THE SAMPLES AND THE STUDY

The cases which satisfied the entry criteria in the "before" or common law sample are referred to as the Control Group. The cases which entered the "after" or Amended Crimes Act sample are referred to as the Study group. There are 194 complainant/defendant pairs or cases in the Control group and 228 complainant/defendant pairs in the Study group*.

This report traces the above cases through the criminal justice system from committal proceedings to sentence imposition. Of course not all defendants proceed to sentence, and this report is just as interested to document the points at which a case leaves the system as it is to describe the sentences imposed on guilty offenders. Specifically, the present report examines characteristics of the cases in each group under the following headings:

Committals

- Type of charges laid
- Number of charges and defendants
- Committal outcome for each group
- Comparative committal outcomes for other offences
- Characteristics of cases lapsing before trial or sentence procedures

* The complainant/defendant pair has been chosen as the basic unit of analysis because one defendant charged in relation to several complainants will not necessarily face the same type or number of charges for each complainant. The same point applies to several defendants charged over one complainant. The analyses which follow are based on complainant/defendant pairs unless otherwise stated.

Trials and Outcomes

- Type of charges laid on indictment
- Plea entered to principal offence
- Outcome - acquittals and convictions
- Orifice/organ nexus
- Comparative rates of convictions for other offences

Sentence

- Aggregate sentences
- Non-parole periods
- Non-custodial sentences
- Custodial sentences

THE BUREAU STUDY

The aim of this study is to measure the impact of the Amended Crimes Act on charging and processing by the courts of certain offences covered by the Act, and then compare this with the way in which the common law offences of rape and attempted rape were handled prior to the introduction of the reform legislation. It is a "before" and "after" study and looks at two 18-month periods for the purposes of research.

The "before" period - relating to common law offences of rape and attempt rape - is January 14, 1979, to July 13, 1980. The "after" period - relating to sexual assaults as defined in ss.61B, C, D and F of the Amended Crimes Act of 1981 - is July 14, 1981, to January 13, 1983*.

Within these time frames two things must happen before a case is included in either the control or study sample: The alleged offence will have been committed and in connection to that offence a formal committal hearing will have been committed. Each case then, had to satisfy a double criteria of entry in its relevant time frame.

In the two 18-month periods, 207 common law cases of rape and attempt rape, and 327 Amended Crimes Act cases of ss.61B, C, D or F sexual assaults resulted in the arrest of at least one of the persons alleged to have committed the offence/s.** These cleared cases, with additional cases located from the indictment files at the Prothonotary's Office of the New South Wales Supreme Court, provide the populations from which the samples in this project were selected.

* The reason that the two periods do not butt each other temporally is that overseas experience has shown that where reform legislation is anticipated this will, in the period immediately preceding its introduction have an impact on charging and sentencing practices (Home Office, U.K.: 1963).

** For full details of the total number of offences reported in the two periods see Interim Report No. 1 Characteristics of the Complainant, the Defendant and the Offence (September 26, 1985) pp.9 & 10.

COMMITTAL PROCEEDINGS

COMMITTAL PROCEEDINGS

The text below is not meant to be an exhaustive description of the elements of a committal proceeding but simply a brief summary of its main features at the time this study was done.

The committal is not a trial but an administrative and quasi-judicial procedure, the main aim of which is to establish whether a prima facie case against the accused has been made out by the prosecution. Even where a prima facie case has been established the magistrate is not compelled to commit the accused for trial if he judges that the evidence is such that a jury at the trial could not convict.*

The defendant is not required to enter a plea to the charge/s against him in a committal, but, if the offence with which he is charged is not one which has a maximum penalty of life imprisonment, he may plead guilty under s.51A of the Justices Act, 1902, and dispense with the committal hearing.**

The prosecution evidence in committals is presented by members of the Prosecuting Branch of the New South Wales Police Department. The accused will generally be represented, but this representation would have to be at the defendant's expense, as state assistance for legal costs at committals is not provided.***

* According to Howie (1985) the Justices (Amendment) Act, 1985, "creates a discretion in the magistrate not to commit notwithstanding that he has found that there is evidence upon which a jury could convict". However, all of the cases described in this report were dealt with before these amendments came into force.

** The Justices (Amendment) Act, 1985 amended s.51A so that defendants charged with offences carrying life penalties are no longer precluded from submitting guilty pleas at committal. However, for the purposes of this report what is stated in the text was correct at that time the cases were heard.

*** The exception to this rule is the Aboriginal Legal Service which does provide legal aid at committals.

At the end of a committal a magistrate will either commit the defendant for trial, or if he has pleaded guilty, for sentence, or dismiss the charge/s which were the subject of the committal. In some cases, the charge/s are such at the end of committal that the defendant may exercise an option to have the case heard summarily before the magistrate.

PRINCIPAL OFFENCE CHARGED AT COMMITTAL

Tables 1 and 2 below show the types of offences in the Study and Control groups which were brought before a magistrate in the committal hearing. The offences are classified according to the principal offence charged which is the offence which would attract the heaviest penalty if a conviction resulted.

Table 1 Principal Offence Charged at Committal - Study Group
No. = Complainant/Defendant Pairs

| PRINCIPAL OFFENCE | STUDY | |
|---|-------|-------|
| | NO. | % |
| Inflict G.B.H. (s.61B(1)) | 1 | 0.4 |
| Attempt s.61B(1) | 1 | 0.4 |
| Inflict A.B.H. (s.61C(1)(a)) | 43 | 18.9 |
| Threaten A.B.H. (s.61C(1)(b)) | 44 | 19.2 |
| Sexual Intercourse Without Consent (s.61D(1)) | 125 | 54.9 |
| Attempt S.61D(1) (S.61F) | 11 | 4.9 |
| Buggery (s.79) | 2 | 0.9 |
| Carnal Knowledge (s.71) | 1 | 0.4 |
| Total | 228 | 100.0 |

Table 2 Principal Offence Charged at Committal - Control
Group
No. = Complainant/Defendant Pairs

| PRINCIPAL OFFENCE | CONTROL | |
|-------------------|---------|-------|
| | NO. | % |
| Rape | 156 | 80.4 |
| Attempt Rape | 38 | 19.6 |
| Total | 194 | 100.0 |

As predicted when the Amended Crimes Act was introduced (Woods: 1981), the largest single category of charges in the Study group involves s.61D - sexual intercourse without consent (54.9%).

The proportion of charges in terms of s.61B and C infliction or threat of infliction of either grievous or actual bodily harm with intent to have sexual intercourse - (38.9%) is consistent with the levels of physical injury to the complainant reported in Interim Report No. 1.

The presence of the two s.79 buggery, and one s.71 carnal knowledge charge/s require some explanation. As already stated, to enter consideration in the Study group a defendant must be charged with offences defined in ss.61B, C, D or F of the Amended Crimes Act. However, other sexual or non-sexual charges might also be laid. In these cases, the buggery and the carnal knowledge charges were accompanied by charges under s.61D. But because buggery and carnal knowledge have longer maximum sentences they are shown as the principal offence. If these charges have been the only charges they would not have been included in the Study group sample.

Rape was the principal charge in 80.4 per cent of the Control group with the remainder of the defendants being charged with Attempt rape.

CHARGES LAID AT COMMITTAL

Table 3 below shows the number of charges and counts of charges laid at the committal for each complainant/defendant pair.

Table 3 Number of charges laid by Group
No. = Complainant/Defendant Pairs

| | STUDY | | CONTROL | |
|------------|-------|-------|---------|-------|
| | NO. | % | NO. | % |
| One charge | 73 | 32.0 | 56 | 28.9 |
| 2 charges | 117 | 51.3 | 97 | 50.0 |
| 3 charges | 25 | 11.0 | 22 | 11.4 |
| 4 charges | 6 | 2.6 | 11 | 5.7 |
| 5 charges | 4 | 1.8 | 4 | 2.0 |
| 6 charges | 3 | 1.3 | 4 | 2.0 |
| TOTAL | 228 | 100.0 | 194 | 100.0 |

The two groups are remarkably similar in terms of the numbers of charges which were presented to the committal court. The only differences - and they are marginal ones - are that there are slightly more cases involving four or more charges in the Control group than in the Study group (Study: 5.7%; Control: 9.7%).

In approximately half of both samples, two charges were laid in relation to each defendant/complainant pair (Study: 51.3%; Control: 50.0%), and more cases in the Study group than in the Control group involved only one charge (Study: 32.0%; Control: 28.9%).

At the time the Amended Crimes Act was introduced, a police prosecutor expressed the opinion that one of the consequences of phrasing the new offences in different categories would be that more charges would have to be laid to encompass the full range of behaviour which comprises a sexual assault event (Fisher interview: 1982). He thought that formerly a single charge of rape could cover a whole range of behaviour and that where violence attached to the rape event it could be subsumed in that single charge but find its expression in sentence.

The figures in Table 3 demonstrate that while more than one charge was laid in half of the Study group sample that this was equally the case in the Control group.

NUMBERS OF DEFENDANTS

Table 4 below shows the numbers of defendants in each case for both the Study group and the Control group. The basis for analysis in this table is distinct cases and not complainant/defendant pairs.

Table 4 Number of defendants in each case by group
No. = Distinct cases

| | STUDY | | CONTROL | |
|--------------|-------|-------|---------|-------|
| | NO. | % | NO. | % |
| 1 Defendant | 153 | 85.4 | 99 | 73.9 |
| 2 Defendants | 15 | 8.3 | 21 | 15.7 |
| 3 Defendants | 8 | 4.5 | 7 | 5.2 |
| 4 Defendants | 1 | 0.6 | 5 | 3.8 |
| 5 Defendants | 1 | 0.6 | 2 | 1.4 |
| 6 Defendants | 1 | 0.6 | - | - |
| TOTAL | 179 | 100.0 | 134 | 100.0 |

Note: The sum of the figures above does not add to the number of complainant/defendant pairs because of more than one complainant in some cases.

Most rapes and sexual assaults involve one defendant and one complainant, although there were more of these cases in the Study group than in the Control population (Study: 85.4%; Control: 73.9%). Approximately, 26 per cent of the Control group featured multiple defendants, but only 14.6 per cent of the cases in the Study group involved more than one defendant.

Many studies have reported that group offences involve younger men than those participating in single attacks (Sutton: 1983; McFadyyn et al., 1972; McCaldon: 1967). Consequently, the higher proportion of cases involving more than one defendant in the Control group could have been anticipated to some extent from the age characteristics of this group which were outlined in the first report in this series. The mean age of the Control group defendant is 23.3 compared to 25.3 for the Study group.

OUTCOME OF COMMITTAL

We now turn to consider committal outcomes. As Table 5 below illustrates, the crude difference between the Study and Control group populations is that fewer cases in the former group lapse before trial (Study: 18.4%; Control: 25.3%); and more cases in that group involve defendants who plead guilty to the major charge on the indictment (Study: 46.0%; Control: 34.5%).

Table 5 Committal outcome by group
No. = Complainant/Defendant Pairs

| | STUDY | | CONTROL | |
|--|-------|-------|---------|-------|
| | NO. | % | NO. | % |
| <u>Not proceeded with to trial or sentence</u> | | | | |
| Not committed for trial | 19 | 8.3 | 24 | 12.3 |
| Nolle Prosequi | 20 | 8.7 | 19 | 9.8 |
| Accused died/absconded | 3 | 1.4 | 1 | 0.6 |
| New trial ordered | - | - | 5 | 2.6 |
| Total not proceeded with to trial or sentence | 42 | 18.4 | 49 | 25.3 |
| <u>Proceeded with to trial or sentence</u> | | | | |
| Accused pleaded guilty | 105 | 46.0 | 67 | 34.5 |
| Accused pleaded not guilty | 81 | 35.6 | 78 | 40.2 |
| Total proceeded with to trial or sentence | 186 | 81.6 | 145 | 74.7 |
| Total all outcomes | 228 | 100.0 | 194 | 100.0 |

OUTCOME OF COMMITTAL FOR TRIAL OR SENTENCE FOR ALL MATTERS

Table 6 below shows the outcome of committals and pleas entered for all criminal matters in higher courts in New South Wales between 1977 and 1983.

Table 6 Committal outcome for all matters by year
No. = Distinct defendants appearing before Higher
Courts in New South Wales

| YEAR | NOT PROCEEDED WITH | | PROCEEDED TO TRIAL | | | | TOTAL TO TRIAL | | TOTAL ALL OUTCOMES | |
|------|--------------------------|------|--------------------|------|-----|------|-------------------|------|--------------------------|-------|
| | TO TRIAL/ SENTENCE | | NOT GUILTY PLEA | | | | | | | |
| | NO. | % | NO. | % | NO. | % | NO. | % | NO. | % |
| 1977 | 540 | 15.8 | 2211 | 64.5 | 674 | 19.6 | 2885 | 84.2 | 3425 | 100.0 |
| 1978 | 491 | 12.0 | 2811 | 68.9 | 774 | 18.9 | 3585 | 88.0 | 4076 | 100.0 |
| 1979 | 582 | 13.7 | 2989 | 70.2 | 684 | 16.0 | 3673 | 86.3 | 4255 | 100.0 |
| 1980 | 658 | 14.3 | 3236 | 70.5 | 697 | 15.2 | 3933 | 85.7 | 4591 | 100.0 |
| 1981 | 691 | 12.8 | 3873 | 71.4 | 858 | 15.8 | 4731 | 87.2 | 5422 | 100.0 |
| 1982 | 868 | 15.2 | 4051 | 71.1 | 773 | 13.5 | 4824 | 84.8 | 5692 | 100.0 |
| 1983 | 1156 | 17.5 | 4475 | 67.8 | 966 | 14.6 | 5441 | 82.5 | 6597 | 100.0 |

Source: Australian Bureau of Statistics
Higher Criminal Courts: New South Wales

Notwithstanding certain differences in the mode of collection* the proportion of cases committed for trial in the Study group is similar to that recorded for the general population of defendants in the higher criminal courts in 1982 and 1983 - the years in which most Study group cases were considered by higher courts. However, there the similarity ends.

* There is not an exact comparability between the figures in Table 6 and others presented for the Study and Control groups. This is because of the different bases for collection of the two sets of information. Those in the Australian Bureau of Statistics are calculated on distinct defendants and those this Bureau study are based on complainant/defendant pairs.

In terms of the plea entered within the populations committed for trial or sentence, the levels of not guilty pleas shown in Table 6 for the general population in 1982 and 1983 are decidedly lower than those in the Study group. In 1982, 13.5 per cent of distinct defendants dealt with by higher courts entered not guilty pleas compared to 35.6 per cent of the Study group.

Differences between the Control group levels of not guilty pleas and those of the general population of defendants are only slightly higher than the differences recorded between the Study group and the general higher court defendants. In 1979 and 1980 - the years in which the bulk of the Control group cases came before a higher court - not guilty pleas in general higher court matters were respectively 16.0 per cent and 15.2 per cent. By comparison, 40.2 per cent of the Control group entered pleas of not guilty.

Offence characteristics of cases lapsing before trial

Table 7 below shows the committal outcome by group in the cases which failed to enter trial and the various reasons for non-entry.

Table 7 Cases lapsing before trial or sentence by group
No. = Complainant/Defendant Pairs

| | STUDY | | CONTROL | |
|------------------------|-------|-------|---------|-------|
| | NO. | % | NO. | % |
| No Prima Facie Case | 19 | 45.2 | 24 | 48.9 |
| Nolle Prosequi | 20 | 47.7 | 19 | 38.8 |
| Accused Died/Absconded | 3 | 7.1 | 1 | 2.0 |
| New Trial Ordered | - | - | 5 | 10.3 |
| TOTAL | 42 | 100.0 | 49 | 100.0 |

Tables 8 and 9 following show that there is not an even distribution of offences within the populations which do not enter trial.

Table 8 Cases lapsing before trial or sentence by charge
No. = Complainant/Defendant Pairs - Control group

| PRINCIPAL CHARGE | | NO PRIMA FACIE CASE* | NOLLE PROSEQUI | ACCUSED DIED/ ABSCONDED | NEW TRIAL ORDERED | TOTAL |
|------------------|-----|-------------------------------|-------------------|-------------------------------|-------------------------|-------|
| Rape | No. | 22 | 17 | - | 5 | 44 |
| | % | 50.0 | 38.6 | - | 11.4 | 100.0 |
| Attempt Rape | No. | 2 | 2 | 1 | - | 5 |
| | % | 40.0 | 40.0 | 20.0 | - | 100.0 |
| TOTAL | | 24 | 19 | 1 | 5 | 49 |

* Includes cases in which prima facie case established but Magistrate declines to commit for trial.

Table 9 Cases lapsing before trial or sentence by charge
No. = Complainant/Defendant Pairs - Study group

| PRINCIPAL CHARGE | NO PRIMA FACIE CASE* | NOLLE PROSEQUI | ACCUSED DIED/ ABSCONDED | NEW TRIAL ORDERED | TOTAL |
|---------------------------|-------------------------------|-------------------|-------------------------------|-------------------------|-------|
| Inflict A.B.H. No. | 2 | 4 | - | - | 6 |
| (s.61C(1)(a) % | 33.3 | 66.7 | - | - | 100.0 |
| Threaten A.B.H. No. | 4 | 3 | 1 | - | 8 |
| (s.61C(1)(b) % | 50.0 | 37.5 | 12.5 | - | 100.0 |
| Sexual Intercourse No. | 13 | 11 | 2 | - | 26 |
| Without Consent % | 50.0 | 42.3 | 7.7 | - | 100.0 |
| (s.61D(1)) | | | | | |
| Attempt s.61d No. | - | 1 | - | - | 1 |
| (s.61F) % | - | 100.0 | - | - | 100.0 |
| Carnal No. | - | 1 | - | - | 1 |
| Knowledge % | - | 100.0 | - | - | 100.0 |
| (s.71) | | | | | |
| TOTAL | 19 | 20 | 3 | - | 42 |

* Includes cases in which prima facie case established but Magistrate declined to commit for trial.

Rape in the Control group and s.61D - Sexual Intercourse without Consent - in the Study group represents the highest proportions of cases which lapsed before trial (Study: 62.0%; Control: 89.8%). Fifty per cent of both those offences lapsed because no prima facie case was established, or, one was established but the magistrate declined to commit the case for trial.

Similar proportions of the two offence categories resulted in a discontinuance of the prosecution - a nolle prosequi - after the case had been committed for trial. Overall, there were more nolle prosequis in the Study group than in the Control group.

These figures, however, do not reflect the relative likelihood of a case lapsing in each category of charge because certain charges are more likely in some categories than others. The relative likelihood of a case lapsing was highest for s.61D cases under the Amended Crimes Act (20.8%) and rape under the old legislation (28.2%). The lapsing rates of s.61C(1)(a) and s.61C(1)(b) cases were 13.9% and 18.2% respectively. The lapsing rate of attempted rape cases was 13.1%.

TRIAL OUTCOME

TRIAL OUTCOME

The offences which qualify a case to enter the Study group or the Control group have already been stated. However, it should be stressed that it is only necessary that these offences be charged initially. We expected that the charges would change to some extent as the case moved through the stages of prosecution. Indeed, one of the aims of the study is to measure both the extent and the nature of those changes.

To illustrate this point more fully, consider the following example. A magistrate on hearing the prosecution evidence at a committal for, say, a s.61D charge of sexual intercourse without consent, might decide that while there is insufficient evidence to support such a charge being committed for trial, there is a prima facie case of a lesser, s.61E - indecent assault offence which might be referred to a higher court.

Equally, even if the magistrate has committed the defendant for trial for the offences which were initially charged, the Crown is not bound to prosecute only, or exactly in those terms. They may add, subtract or alter in other ways the charges committed from the lower court.

The data in Tables 10 and 11 following, show the populations and offences in each of the groups which went to trial and were convicted. 'Trial' is here a collective term embracing court procedures both for contested cases and sentence matters.

Separate analyses of guilty and not guilty pleas are presented in later sections of this report: This part relates only to broad trial and conviction patterns.

Table 10 below shows the outcome of the trial by principal offence in the Control group. This table indicates the changing nature of the principal offence as it moves through the courts.

Table 10 Outcome of trial by principal offence - CONTROL
GROUP
No. = Complainant/Defendant Pairs

| PRINCIPAL OFFENCE | TRIED* | | CONVICTED PRINCIPAL OFFENCE | | CONVICTED LESSER/ OFFENCE | | TOTAL CONVICTED | |
|----------------------|--------|-------|-----------------------------------|-----------------|---------------------------------|----------------|--------------------|-----------------|
| | NO. | % | NO. | % | NO. | % | NO. | % |
| | | | | | | | | |
| Rape | 97 | 66.9 | 56 | 56.0 (57.7) | 2 | 100.0 (2.0) | 58 | 56.8 (59.7) |
| Attempt Rape | 19 | 13.1 | 15 | 15.0 (78.9) | - | - | 15 | 14.7 (78.9) |
| Other Sexual | 25 | 17.2 | 25 | 25.0 (100.0) | - | - | 25 | 24.6 (100.0) |
| Non-Sexual | 4 | 2.8 | 4 | 4.0 (100.0) | - | - | 4 | 3.9 (100.0) |
| TOTAL | 145 | 100.0 | 100 | 100.0 (69.0) | 2 | 100.0 (1.3) | 102 | 100.0 (70.3) |

* Includes persons who pleaded guilty.

** Percentages in brackets express proportions in each offence category of the trial population who were convicted.

Although 100.0 per cent of the principal charges in the Control group would have been rape and attempt rape at the beginning of the committal proceedings, the figures in Table 10 above show that by the commencement of the higher court proceedings the principal offence is classified as "Other" sexual charges or "non-sexual" charges in 20.0 per cent of cases. The nature of these "other" charges will be discussed later in this report.

Table 11 shows the outcome of the trial by principal offence in the Study group. As with Table 10 above it also examines the extent to which the principal offence changes by the time it reaches trial.

Table 11 Outcome of trial by principal offence - STUDY GROUP
No. = Complainant/Defendant Pairs

| PRINCIPAL OFFENCE | TRIED* | | CONVICTED PRINCIPAL OFFENCE | | CONVICTED LESSER/ OFFENCE | | TOTAL CONVICTED | |
|---|--------|-------|-----------------------------------|-------|---------------------------------|-------|--------------------|-------|
| | NO. | % | NO. | % | NO. | % | NO. | % |
| Inflict G.B.H. (s.61B(1)) | 1 | 0.6 | 1 (100.0)** | 0.8 | - | - | 1 (100.0) | 0.7 |
| Inflict A.B.H. (s.61C(1)(a)) | 29 | 15.6 | 26 (89.7) | 18.9 | 1 (3.4) | 6.2 | 27 (93.1) | 17.6 |
| Threaten A.B.H. (s.61C(1)(b)) | 29 | 15.6 | 22 (75.9) | 16.0 | 6 (20.6) | 37.6 | 28 (96.5) | 18.1 |
| Sexual Intercourse Without Consent (s.61D(1)) | 93 | 50.0 | 64 (68.8) | 46.3 | 5 (5.3) | 31.2 | 69 (74.1) | 44.9 |
| Attempt 61D (s.61F) | 10 | 5.3 | 5 (50.0) | 3.6 | 2 (20.0) | 12.5 | 7 (70.0) | 4.5 |
| Indecent Assaults (s.61E) | 7 | 3.8 | 7 (100.0) | 5.0 | - | - | 7 (100.0) | 4.5 |
| <u>Other</u> <u>Sexual +</u> | 13 | 7.0 | 9 (69.3) | 6.5 | 2 (15.3) | 12.5 | 11 (84.6) | 7.1 |
| <u>Non-Sexual</u> | 4 | 2.1 | 4 (100.0) | 2.9 | - | - | 4 (100.0) | 2.6 |
| TOTAL | 186 | 100.0 | 138 (74.1) | 100.0 | 16 (8.6) | 100.0 | 154 (82.7) | 100.0 |

* Includes persons who pleaded guilty.

** Percentages in brackets express proportions in each offence category of the trial population who were convicted.

+ The category of "Other" sexual offences should not be construed as necessarily lesser sexual charges.

Table 11 above shows that by comparison to the Control group 12.9 per cent of the Study group cases had as principal charge at trial offences, which if charged alone at committal would have precluded their inclusion in the study. That is because they are offences not covered by ss.61B, C, D or F of the Amended Crimes Act. (To qualify for admission into the Study group a defendant had to have been charged at committal with at least one of the offences just mentioned.)

Outcome of trial - conviction rates

As Table 11 shows, the Study group recorded higher conviction rates overall than the Control group (Study: 82.7%; Control: 70.3%), although 8.6 per cent of the trial population in the study group were convicted for offences less serious than the principal offence charged. In the Control group, 1.3 per cent of the trial population were convicted of lesser offences than those charged.

In both the Control group and the Study group rates of conviction vary according to the offence tried. In the Control group, the lowest conviction rate, expressed as a proportion of the trial population, was for rape (59.7%). In the Study group the lowest conviction rates were for 61F/61D - attempt sexual intercourse without consent (70.0%), and 61D - sexual intercourse without consent (74.1%).

The highest conviction rates in the Study group were for offences involving either the infliction or the threat of infliction of bodily harm, grievous or actual, with the intent to have sexual intercourse. Conviction rates for these s.61B and C offences ranged from 93.1 per cent (s.61C(1)(a)) to 100.0 per cent (s.61B(1)). Where the injury was threatened rather than inflicted (s.61C(1)(b)) 20.6 per cent of defendants were convicted of lesser offences.

Conviction rates for other offences

Conviction rates for sexual offences, particularly rape, are generally considered to be too low (LeGrand: 1972; Chappell & Singer: 1977). However, as Loh (1980) rightly observes:

"A criminal statistic cannot be adjudged high or low by itself but only in relation to other figures used as baselines. The "very low" rape conviction rate must be measured over time and against conviction rates for equivalent violent offences."

Conviction rates for other offences

Table 12 below details the conviction rates for some other offences against the person and all sexual offences combined in one category. Conviction rates in the higher courts in 1983 ranged from 70.0 per cent (attempt murder) to 93.6 per cent (minor assault).

Table 12 Distinct persons tried and distinct persons convicted by higher courts in 1983: Selected offences

No. = Distinct defendants

| OFFENCE | TRIED* | CONVICTED | |
|------------------------------|--------|-----------|--------|
| | | NQ. | % |
| Murder | 30 | 25 | (83.3) |
| Attempt Murder | 10 | 7 | (70.0) |
| Major Assault | 380 | 307 | (80.7) |
| Minor Assault | 125 | 117 | (93.6) |
| <u>Total Sexual Offences</u> | 268 | 230 | (85.6) |

* Includes guilty pleas

Source: Australian Bureau of Statistics

Higher Criminal Courts: 1983

The overall conviction rate for the Study group of 82.7 per cent corresponds to the conviction rates shown in Table 12 for murder (83.3%), major assault (80.7%) and sexual offences as a whole (85.6%). However, within specific Study group offence categories there is greater variation as has already been noted in discussing the figures in Table 11.

Not only are the overall conviction rates recorded in the Control group lower than those in the Study group, they bear few resemblances to the conviction rates for the other offences detailed in Table 12.

The conviction rate for attempt murder (70.0%) is all but identical to the overall conviction rate for the Control group. (Although, the numbers involved in attempt murder are so small they really preclude valid comparison.)

The conviction rate for attempt rape (78.9%) is very close to that for major assault (80.7%). However, the conviction rate for rape alone in the Control group (59.8%) is 25.9 per cent lower than for sexual offences as a whole in 1983, and 21.0 per cent lower than the conviction rate for major assault.

Having looked at the broad conviction rates in both the Study group and Control group the report will now examine conviction rates in rather more detail in terms of the plea which the defendant entered when he went to trial. The next section considers guilty pleas.

GUILTY PLEAS

GUILTY PLEAS

One of the expected results of the introduction of the Amended Crimes Act was that there would be more guilty pleas to offence covered by the Act than had been the case for rape offences.

In the second reading of the Act in the Legislative Assembly, on March 18, 1981, the then Attorney-General, the Hon. Mr. Frank Walker, QC, MP, stated:

"In short, it is expected that there will be more pleas of guilty, in proper cases, under the new law than under the old."

In the same speech he argued that the main reason why guilty pleas had been so low for rape offences was the high statutory maximum penalty of life imprisonment; and although life sentences were rarely imposed for rape it was still a legal possibility that such sentences could be imposed. He noted that the maximum penalty of life had been imposed in a rape case only once between 1972 and 1979, and that the average sentence for rape and attempt rape over the same period was seven years. Mr. Walker then observed that many accused "had been artificially dissuaded from a plea of guilty" in some cases because of the possibility of a life term.

By introducing a new sentence structure of 20, 12, 10 and 7 years maximum penalty for the section 61B, C and D offences respectively, in the Amended Crimes Act, the Attorney said that the legislation was recognising that rape, now to be called sexual assault, involved crimes of differing seriousness which should be reflected in different sentence maxima. Moreover, that if an accused is confronted with a maximum penalty of say, 7 years for a s.61D offence, he might be more likely to enter a guilty plea if he has in fact committed the offence. The Attorney stressed that nothing in the new law would "coerce an accused into a plea of guilty".

Table 13 below shows the total trial population of the Study group and guilty and not guilty pleas entered to the principal offence within that population.

Table 13 Plea entered by principal offence - Study group
No. = Complainant/Defendant pairs who entered trial

| PRINCIPAL OFFENCE | | GUILTY | NOT GUILTY | TOTAL |
|----------------------|-----|--------|---------------|-------|
| Inflict G.B.H. | No. | 1 | - | 1 |
| (s.61B(1)) | % | 100.0 | - | 100.0 |
| Inflict A.B.H. | No. | 23 | 11 | 34 |
| (s.61C(1)(a)) | % | 67.6 | 32.4 | 100.0 |
| Threaten A.B.H. | No. | 15 | 15 | 30 |
| (s.61C(1)(b)) | % | 50.0 | 50.0 | 100.0 |
| Sexual Intercourse | No. | 43 | 46 | 89 |
| Without Consent | % | 48.3 | 51.7 | 100.0 |
| (s.61D(1)) | | | | |
| Attempt s.61D | No. | 5 | 5 | 10 |
| (s.61F/61D)) | % | 50.0 | 50.0 | 100.0 |
| <u>Other sexual</u> | No. | 16 | 3 | 19 |
| | % | 84.2 | 15.8 | 100.0 |
| <u>Non-sexual</u> | No. | 2 | 1 | 3 |
| | % | 66.7 | 33.3 | 100.0 |
| TOTAL | | 105 | 81 | 186 |
| | | 56.5 | 43.5 | 100.0 |

Sexual intercourse without consent (s.61D(1)) is the largest single category of offence within the Study group to enter trial and defendants facing this charge are slightly more likely to plead not guilty (51.7%) than to plead guilty (48.3%).

There is a relationship between the presence of injury in the complainant and a plea of guilty by the defendant. Guilty pleas were entered in 67.6 per cent of the s.61C(1)(a) charges which entered trial. This section covers the infliction of actual bodily harm with the intention to have sexual intercourse.

The fact that 'Other sexual' and 'non-sexual' offences are more likely to result in guilty pleas than not not guilty pleas may represent or indicate that a measure of plea-bargaining exists, since the majority (66.7%) of the 'Other sexual' or 'non-sexual' category are less serious offences than those initially charged. Pleas of guilty were entered to 84.2 per cent of cases of 'Other sexual' offences and 66.7 per cent of 'non-sexual' offences. (The offences which make up these categories of 'Other sexual' and 'non-sexual' offences are shown in Table 15 for the Study group and Table 16 for the Control group.

Table 14 below shows the total trial population of the Control group and guilty and not guilty pleas entered to the principal offence within that population.

Table 14 Plea entered by principal offence - Control group
No. = Complainant/Defendant pairs who entered trial

| PRINCIPAL OFFENCE | | GUILTY | NOT GUILTY | TOTAL |
|----------------------|----------|--------------|---------------|----------------|
| Rape | No. % | 28 (28.8) | 69 (71.2) | 97 (100.0) |
| Attempt Rape | No. % | 12 (63.1) | 7 (36.9) | 19 (100.0) |
| <u>Other</u> sexual | No. % | 23 (92.0) | 2 (8.0) | 25 (100.0) |
| <u>Non-sexual</u> | No. % | 4 (100.0) | - - | 4 (100.0) |
| TOTAL | No. % | 67 (46.2) | 78 (53.8) | 145 (100.0) |

Like sexual intercourse without consent in the Study group, more of the not guilty pleas are likely to involve rape defendants than are guilty pleas. In 71.2 per cent of rape charges a plea of not guilty was entered, as compared with only 36.9 per cent of attempted rape charges.

The comments made about the guilty plea rate for 'other' sexual and non-sexual offences in the Study group are even more pertinent to the Control group. Ninety-two per cent of defendants in the 'other' sexual offence category, and 100.0 per cent of those charged with non-sexual offences entered guilty pleas compared to 28.8 per cent of rape defendants.

If, as asserted the category of 'Other' sexual and non-sexual offences involves negotiated pleas of guilty there is a major difference between the Study and the Control group. Proportionately, there are fewer people in this category in the Study group than in the Control group. Forty per cent of guilty pleas in the Control group apply to offences in this category compared to 17.2 per cent in the Study group.

In broad terms then the government's prediction that there would be more guilty pleas under the new law than previously applied to rape offences, is supported by the above figures.

Because no offence within the Amended Crimes Act has a maximum penalty of life imprisonment it is possible to enter a plea of guilty at committal in terms of s.51A of the Justices Act. Table 15 below shows the point in the prosecution procedure at which a guilty plea was entered in the Study group. This table also details the type of offences included in the 'other' sexual and non-sexual offence category discussed earlier.

Table 15 Guilty plea to principal offence by point at which
plea entered - Study group
No. = Complainant/Defendant Pairs

| | GUILTY PLEAS | | | | | |
|---|--------------|-------|----------|-------|-------|-------|
| | AT | | AT TRIAL | | TOTAL | |
| | NO. | % | NO. | % | NO. | % |
| Inflict G.B.H. (s.61B(1)) | 1 | 2.2 | - | - | 1 | 1.0 |
| Inflict A.B.H. (s.61C(1)(a)) | 9 | 20.0 | 14 | 23.3 | 23 | 21.9 |
| Threaten A.B.H. (s.61C(1)(b)) | 9 | 20.0 | 6 | 10.0 | 15 | 14.2 |
| Sexual Intercourse without Consent (s.61D(1)) | 24 | 53.4 | 19 | 31.7 | 43 | 40.9 |
| Attempt s.61D (s.61F/61D) | - | - | 5 | 8.3 | 5 | 4.8 |
| <u>Other Sexual</u> | | | | | | |
| Indecent Assault (s.61E(1)(2)) | 1 | 2.2 | 8 | 13.3 | 9 | 8.5 |
| Indecent Assault Male (s.81) | - | - | 2 | 3.3 | 2 | 1.9 |
| Buggery (s.79) | - | - | 3 | 5.0 | 3 | 2.8 |
| Carnal Knowledge (s.71) | - | - | 1 | 1.7 | 1 | 1.0 |
| Abduction (s.89) | 1 | 2.2 | - | - | 1 | 1.0 |
| <u>Non-Sexual</u> | | | | | | |
| Break and Enter and Commit Felony (s.112) | - | - | 1 | 1.7 | 1 | 1.0 |
| Common Assault (s.61) | - | - | 1 | 1.7 | 1 | 1.0 |
| TOTAL | 45 | 100.0 | 60 | 100.0 | 105 | 100.0 |

Table 16 below shows the point in the prosecution at which a guilty plea is entered for the Control group as well as the specific offences in the 'other' sexual and non-sexual offence categories. Because rape defendants could, if convicted receive a maximum penalty of life imprisonment it was not possible for a guilty plea to a rape charge to be entered at the committal under s.51A of the Justices Act.

Table 16 Guilty plea to principal offence by point at which
plea entered - Control group
No. = Complainant/Defendant Pairs

| PRINCIPAL OFFENCE | GUILTY PLEAS | | | | | |
|--|-----------------|-------|----------|-------|-------|-------|
| | AT COMMITTAL | | AT TRIAL | | TOTAL | |
| | NO. | % | NO. | % | NO. | % |
| Rape | N/A | N/A | 28 | 45.1 | 28 | 41.8 |
| Attempt Rape | 2 | 40.0 | 10 | 16.1 | 12 | 18.0 |
| <u>Other Sexual</u> | | | | | | |
| Indecent Assault Female | 3* | 60.0 | 8 | 13.0 | 11 | 16.5 |
| Carnal Knowledge | - | - | 9 | 14.5 | 9 | 13.5 |
| Attempt Carnal Knowledge | - | - | 3 | 4.9 | 3 | 4.4 |
| <u>Non-Sexual</u> | | | | | | |
| Common Assault (s.61) | - | - | 1 | 1.6 | 1 | 1.4 |
| Assault with intent to Commit Felony (s.58) | - | - | 1 | 1.6 | 1 | 1.4 |
| Assault Occasioning A.B.H. (s.59) | - | - | 2 | 3.2 | 2 | 3.0 |
| TOTAL | 5 | 100.0 | 62 | 100.0 | 67 | 100.0 |

Superficially, there is a substantial difference in the levels of guilty pleas entered at committal between the Study group and the Control group. In the Study group, of all the guilty pleas entered, 42.8 per cent were entered at the committal. By comparison, only 7.4 per cent of the guilty pleas which were submitted in the Control group were made at the committal stage.

* These three indecent assaults initially involved rape charges at the beginning of the committal. The rape charges were dismissed and guilty pleas were entered to the indecent assaults as principal offence.

However, there are certain factors which must be considered in assessing the real difference between the Study group and the Control group in terms of the point at which each group enters a guilty plea.

Most importantly of course is that the 28 rape cases in the Control group were simply ineligible to plead guilty at committal. Consequently, we cannot know what proportion of this population would have pleaded guilty at this stage if the option to do so had been available.

Secondly, as has been mentioned earlier, and will be discussed again in the next section, a proportion of offences in the Study group would, if charged prior to the introduction of the Amended Crimes Act, have been prosecuted not as rape or even attempt rape, but rather as indecent assault.* Unfortunately, the level of guilty pleas for indecent assault generally at committal (or trial for that matter), has not been established in this study.

This is not to say that there are no indecent assault charges in the Control group. Table 16 shows that there are 11 indecent assault charges within the guilty plea population of the Control group. The point is rather that these indecent assaults, whilst they might have been one of the charges presented at the committal could not have been the principal offence, which had to have been rape or attempt rape.

* Because of the expanded definitions of sexual intercourse in the provisions of the Amended Crimes Act, a number of offences covered by this Act in the Study group would have been previously classified as indecent assault and not rape or attempt rape. For example, a finger or a foreign object forced into a vagina would, under the Amended Crimes Act, signify a s.61D offence - sexual intercourse without consent. If such behaviour was charged before the Amended Crimes Act came into force it would have been charged as indecent assault, and not as rape.

One way of gauging the similarity (or dis-similarity) of the respective populations of the Study group and the Control group is to examine not the offences charged, which will of necessity have different labels, but the type of behaviour or penetration alleged against the defendant, which constitutes the offences charged.

Table 17 below shows the various types of penetration alleged by the complainant in the cases which entered trial in both the Study group and the Control group. Table 17 also shows guilty and not guilty pleas for each group and for each category of penetration. It should not be assumed that all cases in the Control group which involve penis/vagina penetration and in which a guilty plea was entered, are necessarily rape charges. Some of these cases were prosecuted as carnal knowledge.

Table 17 Type of penetration by plea and group
No. = Complainant/Defendant Pairs

| TYPE OF PENETRATION | | STUDY | | | CONTROL | | |
|------------------------|-----|---------|---------------|---------|---------|---------------|---------|
| | | GUILTY | NOT GUILTY | TOTAL | GUILTY | NOT GUILTY | TOTAL |
| Penis/Vagina | No. | 33 | 61 | 94 | 49 | 69 | 118 |
| | % | (35.1) | (64.9) | (100.0) | (41.5) | (58.5) | (100.0) |
| Penis/Anus | No. | 9 | 2 | 11 | - | - | - |
| | % | (81.9) | (18.1) | (100.0) | - | - | - |
| Penis/Mouth | No. | 16 | 3 | 19 | - | - | - |
| | % | (84.2) | (15.8) | (100.0) | - | - | - |
| Tongue/ Vagina | No. | 4 | - | 4 | 1 | - | 1 |
| | % | (100.0) | - | (100.0) | (100.0) | - | (100.0) |
| Finger/ Vagina | No. | 4 | 2 | 6 | 1 | - | 1 |
| | % | (66.6) | (33.4) | (100.0) | (100.0) | - | (100.0) |
| No penetration | No. | 39 | 13 | 52 | 16 | 9 | 25 |
| | % | (75.0) | (25.0) | (100.0) | (64.0) | (36.0) | (100.0) |
| TOTAL | | No. | 81 | 186 | 67 | 78 | 145 |
| | | % | (43.6) | (100.0) | (46.2) | (53.8) | (100.0) |

The level of guilty and not guilty pleas in both groups for offences in which the form of penetration is penis/vagina is quite similar proportionately. The main difference is that numerically there are 25.5 per cent more offences with this type of penetration as a feature in the Control group than in the Study group. This difference may be explained by annual variations. For example, the number of rapes, all of which would involve penis/vagina penetration, brought to trial in higher courts in New South Wales in 1978, was 61.8 per cent higher than the number of rapes brought to trial in 1977, and the number of rapes brought to trial in 1979, was 26.9 per cent lower than the number for 1978 (Australian Bureau of Statistics: Higher Criminal Courts, 1979).

Offences which involved no penetration, but only attempts at penetration, pose problems of interpretation when they occur in the Study group, although it can be inferred that this category in the Control group refers to attempts to penetrate the vagina. But because of the expanded definitions of sexual intercourse in the Amended Crimes Act, one can only conjecture which orifice might have been penetrated, and with what, if the attempted act had been completed in the no penetration category of the Study group.

What Table 17 does clarify, however, with considerable certainty is that the Study group contains a larger variety of behaviour in its offence structure than does the Control group. This is of course to be expected given the expanded definitions of sexual intercourse in the Amended Crimes Act. This table also demonstrates that the increase of guilty pleas in the Study group compared to the Control group (Study: 56.4%; Control: 46.2%) is not explained by an increase in the number of defendants pleading guilty to what would have been traditional penis/vagina rape or carnal knowledge charges. (In fact, only 31.4 per cent of the guilty pleas entered in the Study group involve penis/vagina penetration compared to 73.1 per cent of the guilty pleas in the Control group.)

The modest increase of 10.2 per cent in the guilty pleas recorded for the Study group compared to the Control group can best be explained by the inclusion in the Study group of cases which would have been formerly labelled as either buggery or indecent assault charges. Almost a third of the guilty pleas in the Study group would fall into these offence categories had they been charged prior to the introduction of the Amended Crimes Act.

NOT GUILTY PLEAS

NOTE ON PRINCIPAL OFFENCE

As already mentioned in connection with the guilty pleas, the principal offence which was charged and which enters committal will not necessarily be the same principal offence which enters the trial. This is because a magistrate at a committal hearing of say, a rape charge and an indecent assault charge might conclude on the basis of the evidence presented to him or her that there are insufficient grounds to commit the rape charge for trial, but that there is ample evidence to justify a committal for trial on the charge of indecent assault. If the Solicitor for Public Prosecutions agrees with the magistrate's assessment of the evidence, the principal offence on the indictment would be then a charge of indecent assault and not rape which had been the principal offence or charge at the beginning of the committal.

With regards to the ss.61B, C, D and F offences contained in the Amended Crimes Act, which are the subject of this study, and with one of which the defendant must have been charged at committal in order to enter consideration in the study, it is not always the case that these offences would have been classified as the principal offence either at committal or trial.

This is because the principal offence is deemed to be that offence which would, if a conviction resulted, attract the longest potential sentence or penalty. For example, a defendant facing charges of abduction (s.89) and sexual intercourse without consent (s.61D) would have as his principal offence or charge, abduction. Abduction has a maximum penalty of 14 years and sexual intercourse without consent has a maximum penalty of 7 or 10 years, depending on the age of the complainant. (However, had the abduction charge been the only charge to enter the committal, the case would not have been included in the sample.)

OUTCOME OF TRIAL - NOT GUILTY PLEAS

This section of the report describes those cases in which defendants denied the allegations made against them, and exercised their right to have the accusations tested in a trial by jury.

Table 18 below shows the outcome of the trials for each group in which not guilty pleas were entered.

Table 18 Trial outcome by not guilty plea and group
No. = Complainant/Defendant Pairs

| | STUDY | | CONTROL | |
|------------------------------|-------|-------|---------|-------|
| | NO. | % | NO. | % |
| Not guilty/acquittal by jury | 29 | 36.0 | 37 | 47.4 |
| Not guilty by direction | 4 | 4.9 | 6 | 7.7 |
| Guilty to principal offence | 40 | 49.3 | 33 | 42.3 |
| Guilty to lesser offence | 8 | 9.8 | 2 | 2.6 |
| TOTAL. | 81 | 100.0 | 78 | 100.0 |

Overall there was a 14.2% per cent reduction in acquittals - either by the jury or at the direction of the judge at the trial - between the Control group and the Study group. Acquittals were recorded in 55.1 per cent of the Control group sample of not guilty pleas but in only 40.9 per cent of the Study group.

Of those defendants who were found guilty, there were slightly more in the Study group than in the Control group who were found guilty of a lesser offence than that which was charged as the principal offence (Study: 9.8%; Control: 2.6%).

Table 19 below and Table 20 on the following page show the principal offence to which a not guilty plea was entered for both groups and the outcome of the trials in terms of convictions and acquittals.

Table 19 Outcome of contested trials by principal offence
No. = Complainant/Defendant Pairs - Study group

| PRINCIPAL OFFENCE | | TRIAL OUTCOME | | | |
|--|----------|-----------------------------|----------------------------------|--------------------------------|---|
| | | NOT GUILTY BY JURY | NOT GUILTY BY DIRECTION | GUILTY PRINCIPAL OFFENCE | GUILTY OTHER/LESSER OFFENCES ON INDICTMENT |
| Inflict A.B.H. with intent to have sexual intercourse s.61C(1)(a) | No. % | - - | 2 8.1 | 8 72.9 | 1 9.0 |
| Threaten A.B.H.with intent to have sexual intercourse s.61C(1)(b) | No. % | 2 13.3 | - - | 8 53.4 | 5 33.3 |
| Sexual intercourse without consent s.61D | No. % | 23 50.0 | 1 2.2 | 21 45.6 | 1 2.2 |
| Attempt s.61D (s.61F) | No. % | 3 60.0 | - - | 1 20.0 | 1 20.0 |
| Buggery s.79 | No. % | - - | - - | 1 100.0 | - - |
| Abduction s.79 | No. % | 1 50.00 | 1 50.0 | - - | - - |
| Enter & Commit Felony (s.112) | No. % | - - | - - | 1 100.0 | - - |
| TOTAL | No. % | 29 36.0 | 4 4.9 | 40 49.3 | 8 9.8 |

Table 20 Outcome of contested trials by principal offence
No. = Complainant/Defendant Pairs - Control group

| PRINCIPAL OFFENCE | | TRIAL OUTCOME | | | |
|----------------------|----------|-----------------------------|----------------------------------|--------------------------------|---|
| | | NOT GUILTY BY JURY | NOT GUILTY BY DIRECTION | GUILTY PRINCIPAL OFFENCE | GUILTY OTHER/LESSER OFFENCES ON INDICTMENT |
| Rape | No. % | 33 47.9 | 6 8.6 | 28 40.6 | 2 2.9 |
| Attempt Rape | No. % | 4 57.1 | - - | 3 42.9 | - - |
| Indecent Assault | No. % | - - | - - | 2 100.0 | - - |
| TOTAL | No. % | 37 47.4 | 6 7.7 | 33 42.3 | 2 2.6 |

Table 19 shows that acquittal rates in the Study group are not evenly distributed across the different categories of sexual assault charges of the Amended Crimes Act. The highest acquittal rate in the Study group (in which the numbers are sufficiently large to justify valid comment) is recorded for sexual intercourse without consent (s.61D). The level of acquittal by jury for this offence is slightly higher than that shown for rape in the Control group (Study: 50.0%; Control: 47.9%). However, one should take into account that a further 8.6 per cent of rape cases were found not guilty by direction of the judge but only 2.2 per cent of s.61D charges resulted in not guilty findings by direction. These figures suggest that the chances of acquittal, at least so far as s.61D is concerned, are much the same as when the charge was rape.

Three of the five attempt sexual intercourse without consent charges (s.61F/61D) resulted in jury acquittals; and two of the 15 s.61C(1)(b) charges - threaten to inflict actual bodily harm with intent to have sexual intercourse - were also acquitted by a jury.

Another similarity in outcome between s.61D charges in the Study population, and rape charges in the Control group, is in the proportion which was found guilty as charged of the major offence. That is, a not guilty plea was entered to rape or s.61D and the guilty finding was also in terms of rape or s.61D rather than to another or lesser offence. In the Study group 45.6 per cent of those entering pleas to s.61D charges were also convicted of that charge. By comparison, 40.6 per cent of those charged with rape were convicted of rape.

Of all the offence categories in the Study group, s.61C(1)(b) - Threaten to inflict actual bodily harm with intent to have sexual intercourse - resulted in more findings of guilty in terms of lesser offences than the principal offence charged. Five of the 13 cases, or 33.3 per cent, in which s.61C(1)(b) was the principal offence concluded with a finding of guilt to a lesser offence. Two of the lesser offences were sexual intercourse without consent (s.61D), another two were for assault with an act of indecency (s.61E(1)), and the remaining one was a conviction for common assault. Common assault was also the lesser offence for which the defendant charged with s.61C(1)(a) - Inflict actual bodily harm with intent to have sexual intercourse - was convicted.

The type of defence presented in each of the contested matters will be discussed in detail in Interim Report No. 3 - Court Process. The remainder of this report concerns the sentences imposed on those defendants who were either found guilty by a jury or who pleaded guilty to the charges against them.

PENALTIES IMPOSED

PENALTIES IMPOSED

The two preceding sections of this report have examined the passage of the Study group and Control group through the Higher Courts; the cases in which guilty pleas are entered; and, in contested matters, the levels of guilty and not guilty findings.

This last section deals with those defendants who, on conviction, become offenders, and the penalties which the courts impose on them and for which offences. Principally, this section discusses sentencing in terms of non-custodial sentences, prison terms and non-parole periods. The principal offence for which the sentence was imposed is described, and there are separate analyses of the types of offences which receive prison terms and those which attract non-custodial treatment.

The basis of analyses in the earlier sections of this report is complainant/defendant pairs. But this part, because it involves the sentences imposed for each case, which might involve more than one complainant, moves to the base of distinct offender. The difference between the two classifications is this: if one person rapes, say, three women, and these three rape events are heard at one trial, that person will be counted only once as a distinct offender.

In the previous sections, because we were interested in the specific pleas entered and the outcomes recorded in relation to the allegations made by each complainant the data were analysed according to the complainant/defendant pair. That is, for each complainant with whom a defendant was alleged to have had contact a separate entry would be made. In the example noted in the previous paragraph the defendant would have been counted three times.

PRINCIPAL OFFENCE AT SENTENCE

We now turn to the offences for which the offender was sentenced. Table 21 below shows the principal or most serious offence for which each offender was sentenced in the Study group. The principal offence in this context is that offence which received the most severe penalty.

Table 21 Principal offence sentenced - STUDY GROUP
No. = Distinct offenders

| PRINCIPAL OFFENCE | NO. | % |
|--|-----|-------|
| Inflict G.B.H. with intent (s.61B(1)) | 1 | 0.8 |
| Inflict A.B.H. with intent (s.61C(1)(a)) | 26 | 18.5 |
| Threaten to inflict A.B.H. with intent (s.61C(1)(b)) | 19 | 13.4 |
| Sexual Intercourse Without Consent (s.61D) | 59 | 41.9 |
| Attempt Sexual intercourse without consent (s.61D/61F) | 9 | 6.3 |
| <u>Other Sexual</u> | | |
| Indecent Assault (s.61E(1)(2)) | 10 | 7.0 |
| Indecent Assault male (s.81) | 2 | 1.4 |
| Buggery (s.79) | 3 | 2.1 |
| Carnal Knowledge (s.71) | 2 | 1.4 |
| Attempt Carnal Knowledge (s.68) | 2 | 1.4 |
| Abduction (s.89) | 1 | 0.8 |
| <u>Non-Sexual</u> | | |
| Break and Enter and commit a felony (s.112) | 3 | 2.1 |
| Common assault (s.61) | 4 | 2.9 |
| Total | 141 | 100.0 |

Table 22 below shows the principal or most serious offence for which each offender was sentenced in the Control group.

Table 22 Principal offence sentenced - CONTROL GROUP
No. = Distinct offenders

| PRINCIPAL OFFENCE | NO. | % |
|---|-----|-------|
| Rape (s.63) | 53 | 53.0 |
| Attempt rape (s.65) | 18 | 18.0 |
| <u>Other Sexual</u> | | |
| Indecent Assault female (s.76) | 12 | 12.0 |
| Carnal Knowledge (s.71) | 8 | 8.0 |
| Attempt Carnal Knowledge (s.68) | 3 | 3.0 |
| Buggery (s.79) | 1 | 1.0 |
| Abduction (s.89) | 1 | 1.0 |
| <u>Non-Sexual</u> | | |
| Common assault (s.61) | 1 | 1.0 |
| Assault with intent to commit felony (s.58) | 1 | 1.0 |
| Assault occasioning actual bodily harm (s.59) | 2 | 2.0 |
| Total | 100 | 100.0 |

The largest single category of offence for which an offender was sentenced in the Study group was s.61D - sexual intercourse without consent (41.9%). In the Control group, rape was the largest single category of offence on sentence (53.0%). As mentioned at other places in this report, sexual intercourse without consent, because of the expanded definitions of sexual intercourse in the Amended Crimes Act, is not exactly analogous to rape, and contains acts which because of their nature would have been previously charged as indecent assault.

Overall, 80.9 per cent of the Study group were sentenced for offences covered by sections 61B, C, D and F of the Amended Crimes Act, and 71.0 per cent of the Control group were sentenced for either rape or attempt rape.

AGGREGATE SENTENCES

There are several methods which can be used to analyse sentence data. No method is completely without its limitations or difficulties in studies such as this one. In its Higher Criminal Courts statistical collection the Australian Bureau of Statistics records the penalty which is imposed for the most serious offence. The most serious offence is defined as that offence which attracts the longest sentence on conviction in a higher court.

As an index of the kinds of penalties handed down for specific offences, the principal sentence approach used by the Australian Bureau of Statistics is appropriate. As an index of the levels of sentencing for sexual offenders, however, it is not. To gain an idea of the severity with which sexual assault offenders are dealt with by the courts we need to know the aggregate sentence they receive.

To illustrate this point further, take the example of a person indicted on three counts of say, s.61D - sexual intercourse without consent, and found guilty of each count. The judge might impose three years for one count, two years for the second count and two years for the third count. If the sentences imposed were cumulative on each other, the total would be seven years, but would be shown in the Australian Bureau of Statistics' figures as three years.

If it was the case that most defendants faced only one charge, principal sentence would not in fact distort the reality of sentencing to any great extent. But as Table 3 has shown, 68.0 per cent of defendants in the Study group, and 71.1 per cent of the Control group faced two or more charges when entering committal. While there is an attrition rate, or a fall-off between committal and sentence, sufficient numbers of cases still involve multiple offences at sentence to make the Australian Bureau of Statistics' classification of sentence inappropriate to this study.

Because of the reasons stated, the aggregate sentence has been adopted as the base for sentence comparison between the Study and Control groups. This method is not completely without its own problems* but, nonetheless, generates a more accurate picture of sentencing than any of the other methods considered.

The aggregate sentences here reported will include, where they occur, sentences for non-sexual offences which are cumulative on those imposed for the sexual offences. The reason for this is that if a person rapes another and then steals the other's television or car, the theft is one aspect of the rape event. It is a qualitatively different type of rape from one in which only the rape occurs. In sentencing, the courts will take this aggravating factor into account. If the non-sexual elements of the sentence in cases such as the one described above are excluded from the aggregate there would be some distortion of the actual sentences being imposed.

Appendix 1 shows that non-sexual offences were initially charged in 25.4 per cent of the Study group and in 21.6 per cent of the Control group. After conviction non-sexual offences represented a component of the sentence imposed in 12.7 per cent of the Study group and in 21.0 per cent of the Control group. However, such offences only increased the aggregate sentence imposed in 4.2 per cent of the Study group and 3.0 per cent of the Control group. The non-sexual offences which were present at sentence are shown in Appendix 2.

* The problem related to using aggregate sentences is this: Four cases, two in the Study group and two in the Control group, involved joint trials for separate offences and separate victims. In each case, because of temporal constraints, one of the victims did not qualify for entry to the study samples. That is, the offence occurred outside the relevant time frame. However, because of the joint trial, the sentence imposed in relation to the excluded victim makes up a part of the aggregate sentence and is therefore included. Any distortion of the results is evenly distributed between both Study and Control groups.

Table 23 below shows the aggregate sentences imposed for each group classified by non-custodial sentences and periods of imprisonment.

Table 23 Aggregate sentence imposed by group
No. = Distinct offenders

| AGGREGATE SENTENCE | STUDY | | CONTROL | |
|----------------------------------|-------|-------|---------|-------|
| | NO. | % | NO. | % |
| Non-custodial sentence | 25 | 17.8 | 30 | 30.0 |
| <u>IMPRISONMENT</u> | | | | |
| Periodic Detention | - | - | 2 | 2.0 |
| Less than 1 year | 7 | 4.9 | 1 | 1.0 |
| One year less than two years | 5 | 3.5 | 3 | 3.0 |
| Two years less than three years | 8 | 5.7 | 6 | 6.0 |
| Three years less than four years | 12 | 8.6 | 4 | 4.0 |
| Four years less than five years | 15 | 10.7 | 6 | 6.0 |
| Five years less than ten years | 48 | 34.0 | 31 | 31.0 |
| More than ten years | 21 | 14.8 | 17 | 17.0 |
| TOTAL | 141 | 100.0 | 100 | 100.0 |

The figures in Table 23 above show that more convicted persons are imprisoned for their offences since the introduction of the Amended Crimes Act than was previously the case. While 17.8 per cent of distinct offenders received non-custodial sentences after the legislation changed, 30.0 per cent of offenders who were initially charged with either rape or attempt rape, were not jailed.

Study group offenders who went to jail were almost twice as likely to be sentenced to middle-range periods of imprisonment, between three and five years, than Control group offenders (Study: 19.3%; Control: 10.0%).

Almost half of both groups had terms of more than five years imprisonment imposed, with 14.8 per cent of the Study group and 17.0 per cent of the Control group receiving jail periods of more than 10 years.

NON-PAROLE PERIODS SET

Since February, 1984, it has been possible to earn remissions on the non-parole periods set by the court. Most of the offenders in both samples in this study were sentenced well before 1984 and any remissions on the non-parole periods set would be at the discretion of the Parole Board. We do not know in what proportion of cases the Parole Board did exercise its discretion favourably in relation to the non-parole periods detailed here.

Table 24 below details the range of non-parole periods specified by the courts for the offenders in the Study group and the Control group.

Table 24 Non-parole periods imposed by group
No. = Distinct offenders who were imprisoned

| | STUDY | | CONTROL | |
|----------------------------------|-------|-------|---------|-------|
| | NO.* | % | NO.** | % |
| Less than one year | 33 | 28.6 | 12 | 18.0 |
| One year less than two years | 26 | 22.7 | 12 | 18.0 |
| Two years less than three years | 12 | 10.4 | 22 | 32.9 |
| Three years less than four years | 25 | 21.8 | 6 | 8.9 |
| Four years less than five years | 5 | 4.3 | 4 | 5.9 |
| Five years less than ten years | 13 | 11.3 | 9 | 13.4 |
| More than ten years | 1 | 0.9 | 2 | 2.9 |
| TOTAL | 115 | 100.0 | 67 | 100.0 |

* Non-parole period not established in one case.

* Non-parole period not established in one case.

Although more Study group offenders than Control group offenders were sent to jail, as shown in the previous table, and for somewhat longer periods of time, there was a tendency for them to receive shorter non-parole periods.

Slightly more than half of the Study group, 51.3 per cent, received non-parole periods of less than two years. By contrast, 36.0 per cent of the Control group had non-parole terms in this range.

Fewer Study group offenders received non-parole periods of between two and four years (Study: 32.2%; Control: 41.8%). There were no substantial differences between the two populations as far as non-parole periods of more than four years.

NON-CUSTODIAL SENTENCES

The remainder of this report considers separately the two categories of sentence imposed on offenders in this study. The two categories are non-custodial sentences and custodial sentences. This part deals with non-custodial sentences by group and the offences which attracted such sentences.

(a) CONTROL GROUP

The fascinating finding in Table 23 that approximately one in three distinct offenders who were initially charged with either rape or attempt rape received non-custodial sentences reveals an aspect of sentencing in rape cases not revealed in other official court statistics. This is because court statistics only note the offence for which the defendant is convicted and not the offence with which he is initially charged.

In this study all of the distinct offenders who received non-custodial sentences had to have been charged with either rape or attempt rape at the beginning of the committal to enter consideration in this study.

Table 25 below shows Control group offenders who received non-custodial sentences and the offences for which non-custodial sentences were given. It also shows the charges which were laid at different stages of the prosecution.

Table 25 Principal offence variation by non-custodial sentences - CONTROL GROUP
No. = Distinct offenders

| | PRINCIPAL OFFENCE | | | | | | | |
|---|----------------------|------|-----------------------|------|------------------|------|----------------|------|
| | ENTERING COMMITAL | | AT END OF COMMITAL | | ON INDICTMENT | | ON SENTENCE | |
| | NO. | % | NO. | % | NO. | % | NO. | % |
| Rape | 16 | 53.3 | 14 | 46.7 | 10 | 33.3 | 3 | 10.0 |
| Attempt Rape | 14 | 46.7 | 10 | 33.3 | 6 | 20.0 | 4 | 13.3 |
| <u>Other Sexual</u> | | | | | | | | |
| (s.76) Indecent Assault (Less than 14) | - | - | 1 | 3.3 | 1 | 3.3 | 2 | 6.7 |
| (s.76) Indecent Assault (14 and over) | - | - | 3 | 10.0 | 7 | 23.4 | 9 | 30.0 |
| (s.71) Carnal Knowledge | - | - | - | - | 2 | 6.7 | 7 | 23.4 |
| (s.68) Attempt Carnal Knowledge | - | - | 2 | 6.7 | 2 | 6.7 | 2 | 6.7 |
| <u>Non-Sexual</u> | | | | | | | | |
| (s.61) Common Assault | - | - | - | - | - | - | 1 | 3.3 |
| (s.58) Assault with intent commit felony | - | - | - | - | 1 | 3.3 | 1 | 3.3 |
| (s.59) Assault occasioning Actual bodily harm | - | - | - | - | 1 | 3.3 | 1 | 3.3 |

| | | | | | | | | |
|-------|----|-------|----|-------|----|-------|----|-------|
| TOTAL | 30 | 100.0 | 30 | 100.0 | 30 | 100.0 | 30 | 100.0 |
|-------|----|-------|----|-------|----|-------|----|-------|

Of the 30 people who received non-custodial penalties, only seven, or 23.0 per cent, were sentenced in relation to rape or attempt rape charges, although all 30 people were initially charged with such offences.

The proportion of principal offences labelled as 'Other Sexual' and 'Non-Sexual' increases from nothing at the beginning of committal to 77.0 per cent of principal offences resulting in non-custodial outcomes. What can be inferred from this is that the attrition rate of rape and attempt rape charges as they pass through the various phases of the criminal justice system, is lower than official statistics suggest. The cases don't leave the system, they are just re-labelled as other offences. The significance of this finding will be discussed in the concluding chapter.

(b) STUDY GROUP

Table 26 below shows Study group offenders who received non-custodial sentences and for which principal offence.

Table 26 Principal offence variation by non-custodial
sentences - STUDY GROUP
No. = Distinct offenders

| | PRINCIPAL OFFENCE | | | | | | | |
|--|-------------------|-------|-----------|-------|------------|-------|----------|-------|
| | ENTERING | | AT END OF | | ON | | ON | |
| | COMMITTAL | | COMMITTAL | | INDICTMENT | | SENTENCE | |
| | NO. | % | NO. | % | NO. | % | NO. | % |
| Inflict actual bodily harm 61C(1)(a) | 5 | 20.0 | 4 | 16.0 | 3 | 12.0 | 3 | 12.0 |
| Threaten actual bodily harm 61C(1)(b) | 7 | 28.0 | 7 | 28.0 | 7 | 28.0 | 4 | 16.0 |
| 61D (16 and over) | 6 | 24.0 | 5 | 20.0 | 5 | 20.0 | 5 | 20.0 |
| 61D (under 16) | 6 | 24.0 | 5 | 20.0 | 3 | 12.0 | 2 | 8.0 |
| 61F/61D | 1 | 4.0 | 1 | 4.0 | - | - | 2 | 8.0 |
| <u>Other Sexual</u> | | | | | | | | |
| 61E(1) (16 and over) | - | - | 2 | 8.0 | 2 | 8.0 | 3 | 12.0 |
| 61E(1) (under 16) | - | - | 1 | 4.0 | 3 | 12.0 | 3 | 12.0 |
| 61E(2) (under 14) | - | - | - | - | 1 | 4.0 | 1 | 4.0 |
| Buggery s.79 | - | - | - | - | 1 | 4.0 | 1 | 4.0 |
| <u>Non-Sexual</u> | | | | | | | | |
| s.61 Common Assault | - | - | - | - | - | - | 1 | 4.0 |
| TOTAL | 25 | 100.0 | 25 | 100.0 | 25 | 100.0 | 25 | 100.0 |

By comparison to the Control group, only 36.0 per cent of the Study group non-custodial population were sentenced for 'Other Sexual' or 'non-sexual' offences. Sixty-four per cent of the principal offences at sentence were in terms of the principal offences originally charged. The provisions of the Amended Crimes Act would seem then to provide more precise labels for the offences which are initially charged in this category of sentence.

As with the Control group, the non-custodial penalty is not the total reserve of minor sexual offences in the Study group. Some quite serious offences are dealt with by way of a non-custodial sentence. Twenty-eight per cent of such sentences are for s.61C offences, involving either the infliction or threat of infliction of actual bodily harm with the intent to have sexual intercourse. A similar proportion of these sentences were for s.61D offences - sexual intercourse without consent.

CUSTODIAL SENTENCES

The figures in Table 23 have shown that more distinct offenders in the Study group than in the Control group are imprisoned for their offences and are more likely to receive middle ranging prison terms of between three to five years.

This remaining section of the report deals with the principal or most serious offence which caused these penalties to be imposed in both groups.

The aggregate sentence has been used to classify these data and includes sentences imposed for offences which are additional to the principal offence. Readers interested in the individual sentences imposed for principal; offences in rape and sexual assault cases are referred to the publications of the Australian Bureau of Statistics: Higher Criminal Courts - New South Wales, 1979 to 1983.

(a) CONTROL GROUP

Table 27 below shows Control group offenders who received terms of imprisonment and the principal offences for which prison sentences were imposed. It also shows the charges which were laid at different stages of the prosecution.

Table 27 Principal offence variation by non-custodial sentences - CONTROL GROUP
No. = Distinct offenders

| | PRINCIPAL OFFENCE | | | | | | | |
|---|-------------------|-------|-----------|-------|------------|-------|----------|-------|
| | ENTERING | | AT END OF | | ON | | ON | |
| | COMMITTAL | | COMMITTAL | | INDICTMENT | | SENTENCE | |
| | NO. | % | NO. | % | NO. | % | NO. | % |
| Rape (3.63) | 57 | 81.4 | 56 | 80.0 | 56 | 80.0 | 50 | 71.6 |
| Attempt Rape (s.65) | 13 | 18.6 | 14 | 20.0 | 13 | 18.6 | 14 | 20.0 |
| <u>Other Sexual</u> | | | | | | | | |
| Indecent Assault (s.76) Female | - | - | - | - | 1 | 1.4 | - | 1.4 |
| Buggery (s.79) | - | - | - | - | - | - | 1 | 1.4 |
| Carnal Knowledge (s.71) | - | - | - | - | - | - | 1 | 1.4 |
| Attempt Carnal Knowledge (s.68) | - | - | - | - | - | - | 1 | 1.4 |
| Abduction (s.89) | - | - | - | - | - | - | 1 | 1.4 |
| <u>Non-Sexual</u> | | | | | | | | |
| Assault occasioning Actual bodily harm (s.59) | - | - | - | - | - | - | 1 | 1.4 |
| TOTAL | 70 | 100.0 | 70 | 100.0 | 70 | 100.0 | 69 | 100.0 |

As might be expected, when custodial sentences are involved the diminution of the seriousness of the charge from the point of committal to sentence is less pronounced than when non-custodial sentences are imposed.

As Table 27 shows, the drift to 'Other Sexual' and 'Non-Sexual' charges occurs in only 8.4 per cent of custodial cases.

The proportion of cases in which rape or attempt rape is the principal offence does not change substantially from the beginning of committal, and by sentence is still the principal offence in 91.6 per cent of custodial cases.

(b) STUDY GROUP

The fact that the Study group attracted more prison terms, and in some instances longer prison terms, than the Control group is not really so surprising. This is because some offences which are now designated sexual assault have longer maximum sentences than they previously did.

Although the maximum penalty for rape was reduced from life imprisonment by the Amended Crimes Act, a proportion of redefined indecent assaults would now be called s.61D - sexual intercourse without consent because of the expanded definitions of what constitutes sexual intercourse in the Amended Crimes Act. Whereas, indecent assault as defined in s.76 of the Amended Crimes Act had a maximum sentence range of four to six years, if charged as sexual intercourse without consent it would be subject to maximum sentences ranging from seven to ten years, depending on the age of the complainant.

In some extreme cases an 'old' indecent assault could constitute a more serious s.61C offence. For example, if a person threatened to inflict bodily harm on another with the intention of inserting his finger into the other's vagina, he could be prosecuted in terms of s.61C(a)(b), but in all likelihood he would have previously been charged with indecent assault. Section 61C offences have a maximum penalty of 12 years.

Table 28 below shows Study group offenders who received prison terms and the principal offences for which the prison sentence was imposed.

Table 28 Principal offence variation by non-custodial sentences - STUDY GROUP
No. = Distinct offenders

| | PRINCIPAL OFFENCE | | | | | | | |
|---|-------------------|-------|-----------|-------|------------|-------|----------|-------|
| | ENTERING | | AT END OF | | ON | | ON | |
| | COMMITTAL | | COMMITTAL | | INDICTMENT | | SENTENCE | |
| | NO. | % | NO. | % | NO. | % | NO. | % |
| Inflict G.B.H. with intent (s.61B(1)) | 1 | 0.9 | 1 | 0.9 | 1 | 0.9 | 1 | 0.9 |
| Attempt to inflict G.B.H. with intent (s.61B/61F) | 1 | 0.9 | 1 | 0.9 | - | - | - | - |
| Inflict A.B.H. with intent (s.61C(1)(1)) | 27 | 23.2 | 27 | 23.2 | 25 | 21.6 | 23 | 19.9 |
| Threaten A.B.H. with intent (s.61C(1)(b)) | 22 | 19.0 | 22 | 19.0 | 19 | 16.4 | 15 | 13.0 |
| Sexual intercourse without consent (s.61D) | 56 | 48.2 | 57 | 49.0 | 53 | 45.7 | 52 | 44.9 |
| Attempt s.61D (s.61D/61F) | 6 | 5.1 | 5 | 4.3 | 6 | 5.1 | 7 | 6.1 |
| <u>Other Sexual</u> | | | | | | | | |
| Indecent Assault (s.61E(1)(2)) | - | - | - | - | 1 | 0.9 | 3 | 2.5 |
| Indecent Assault male (s.81) | - | - | - | - | 1 | 0.9 | 2 | 1.7 |
| Buggery (s.79) | 1 | 0.9 | 1 | 0.9 | 3 | 2.5 | 2 | 1.7 |
| Carnal Knowledge (s.71) | 1 | 0.9 | 1 | 0.9 | 1 | 0.9 | 2 | 1.7 |
| Attempt Carnal Knowledge (s.68) | - | - | - | - | 2 | 1.7 | 2 | 1.7 |
| Abduction (s.89) | - | - | - | - | - | - | 1 | 0.9 |
| <u>Non-Sexual</u> | | | | | | | | |
| Break & Enter & Commit Felony (s.112) | 1 | 0.9 | 1 | 0.9 | 3 | 2.5 | 3 | 2.5 |
| Common Assault (s.61) | - | - | - | - | 1 | 0.9 | 3 | 2.5 |
| TOTAL | 116 | 100.0 | 116 | 100.0 | 116 | 100.0 | 116 | 100.0 |

Table 28 shows that like the Control Group, Study group custodial cases retain their initial committal labelling more frequently than the non-custodial cases in both groups.

Sections 61B, C, D and F offences, as defined in the Amended Crimes Act, are present as principal offence in 84.8 per cent of cases at the point of sentence. By comparison, 91.6 per cent of the Control group custodial cases had as the principal offence at sentence rape or attempt rape.

'Other sexual' and 'Non-sexual' offence categories account for 15.2 per cent of the principal offences at sentence which is almost twice the proportion which these categories make up in the Control group at sentence.

As with non-custodial sentences in the Study group, the largest single category of offence to receive custodial sentences is the s.61D - sexual intercourse without consent. Such offences account for 44.9 per cent of the distinct offenders who receive prison terms and together with attempt s.61D offences (61D/61F) make up approximately half (51.0%) of the custodial sample.

The more serious offences, which involve the infliction or threat of infliction, of bodily harm and which are defined in ss.61B and C of the Amended Crimes Act, make up 33.8 per cent of the principal offences which received custodial sentences. This proportion is quite close to the proportion of the non-custodial sentences which involved these offences as principal offence which was 28.0 per cent.

DISCUSSION

The Crimes (Sexual Assault) Amendment Act, 1981 was presented to Parliament as a remedy to the "major defects in the law relating to rape and sexual assault". (Hansard: 18th March, 1981). In more specific terms, what the Government hoped to achieve by the passage of this reform legislation was:

- to protect victims of rape from further victimisation under the legal process;
- to produce an increase in offences reported to the police, and as an extension of this, the numbers of offences prosecuted in the courts;
- to facilitate the administration of justice;
- to increase the numbers of convictions of guilty offenders; and
- to change community attitudes to sexual assault.

The discussion which follows proposes to assess the empirical findings in this report with reference to the aims and objectives of the Amended Crimes Act. However, the first of the aims stated above will not be discussed at all in this report, as it is the major topic to be examined in the next, and last, interim report in this series. The last interim report looks at the procedural and evidentiary changes introduced by the Amended Crimes Act.

Reportability

The issue of the number of offences reported to the police has already been discussed in Interim Report No. 1, but deserves further comment in this report. There was an increase of 15.4% in offences initially reported to the police. However, the

more dramatic increases were in terms of the offences which the police accepted as "genuine". Whereas, slightly more than half of the reports to police were accepted during the Control period (53.0%), this had increased to more than three-quarters of the reports in the Study period (78.3%). In other words, more of the reported offences in the Study period stayed in the system after the initial report than was previously the case.

The increase in reports in the Study period was probably influenced by a number of factors and it is difficult to assess the relative importance of each of these individually. For example, whilst there were more reports made overall, and more of these reports were accepted, the expanded definitions of sexual intercourse stated in the Amended Crimes Act caused Category 1 to 3 offences to include offences which previously would have been classified as indecent assault, buggery and a number of assaultive non-sexual offences. In other words, offences in the Study period were drawn from a bigger pool. This would, in itself, contribute to increased reports. However, it is more likely that a combination of the factors mentioned above contributed to the increase in reports.

Whether legislative change by itself would have an impact on reportability is debatable. The probable answer to this is that it would not. But if the legislation is looked at as one "part of a pattern of reform in relation to the entire area of violence against women" it assumes a different perspective (Woods: 1981). There are now much better hospital facilities for the sexual assault complainant and police are better trained for dealing with complainants. This may be one of the reasons why more of the initial complaints of sexual assault stay within the system and continue to prosecution than was previously the case.

Loh (1980) is one researcher who, in a comparable study to this one, comes to the tentative conclusion that the importance of counselling services, compensation provisions, better police hospital liaison should not be underestimated for its impact on victim reporting. He concludes:

"It may well be that these social service programs, in the long run, have a greater effect on victim reporting of the crime than any definitional or evidentiary changes (eg exclusion of prior sexual history) in the law itself."

Prosecutions

There were 17.5% more prosecutions in the Study group than in the Control group. This is consistent with the overall increase in initial reports made to the police. But there was a 57.9% increase in cases cleared by arrest in the Study period compared to the Control period and it might, at first blush, be expected that there would be a similar increase in prosecutions.

However, this expectation would be unrealistic for it assumes that the courts have a capacity to hear additional cases such that increases in clear-up rates will show up immediately in prosecutions figures. This is not the case. There will always be a time lapse between arrest and subsequent prosecution and, as a result, changes in the percentage of cleared cases will take time to be reflected in changes to the levels of prosecutions.

The Facilitation of the Administration of Justice

A consequence of the new sentence ranges in the legislation is that sexual assaults have been brought within the ambit of s.51A of the Justices Act, thereby allowing guilty pleas to be tendered at the committal.

Rape offences, in common with other offences having as a sentence maximum life imprisonment, were specifically precluded from the provisions of s.51A and a committal hearing was mandatory.* Hence, no person charged with rape could, even if so disposed, plead guilty to that charge at the committal, and rarely then could a complainant avoid testifying at that committal.

With the new sentence ranges provided by the Amended Crimes Act this changed and, of the 105 people in the Study group who pleaded guilty, 42.8% did so at the committal hearing.

The provisions of s.51A of the Justices Act apply to what is commonly referred to as "hand-up briefs". What this means is that the defendant will indicate to the magistrate that s/he wishes to plead guilty and then the police prosecutor will hand the magistrate a "brief" which contains the typed statements of the witnesses and, if one exists, the record of interview of the defendant. The magistrate need not accept the guilty plea, but if s/he does, the matter will be committed for sentence to a higher court. No witnesses need be examined or cross-examined where the "hand-up brief" is utilised.

The benefits of guilty pleas at this point in the proceedings go further than this saving in court time and cost. For the complainant it means that in many instances s/he never testifies in any criminal court; that the matter will be over in a much shorter period than previously; that compensation hearings will be expedited and that such compensation as is granted will be available that much sooner.

There was an 11.5% increase in guilty pleas in the Study group. However, the guilty plea increase was generally in terms of pleas to indecent assaults and other charges redefined as sexual assault by the Amended Crimes Act. There was no increase in the numbers of guilty pleas to sexual assaults which would previously have been prosecuted as rape (c.f. Table 17).

* In 1985, the Justices (Amendment) Act amended s.51A to allow for guilty pleas at committal to offences with a maximum penalty of life imprisonment. But, all of the cases in this study were heard well before these amendments were enacted.

Convictions

Whilst convictions increased in the Study group, the increase was in almost exact proportion to the increase in guilty pleas. Considering the total trial population to include guilty pleas, there was a 12.4% increase in convictions for the Study group. There was an 11.5% increase in guilty pleas.

In some categories within the Study group, where a not guilty plea was entered, the chances of acquittal were similar to those for rape in the Control group. This particularly applies to sexual intercourse without consent (s.61D). Acquittals were less common in cases in the Study group which involved injury or threat of injury.

What then can be said about the Amended Crimes Act in terms of the aims so far discussed?

1. There has been an increase in reporting of sexual offences.
2. There has been an increase in police acceptance of these reports.
3. There has been an increase in guilty pleas to charges of sexual assault.
4. A higher proportion of offenders are being sentenced in terms of the offence originally charged.
5. More offenders are being sent to prison for their offences.

All of these are desirable achievements, although it is difficult to say with any certainty to what extent these achievements can be attributed to the legislation. Nonetheless, there seems reason to be guardedly optimistic that the legislation reaches its main objectives.

The Educative Function

Changing the name of the offence from rape to sexual assault is one of the important philosophical underpinnings of the Amended Crimes Act. However, the literature and other information suggest that the significance of this change is less clear-cut than it was in the late '70s and early '80s.

The change resulted from a double incentive. The first was to depart from the undue sexual emphasis in the common law, "as distinct from the violence component of the prescribed behaviour" (Woods: 1981). The second, and perhaps more important, impetus came from the widely held belief "that the term 'rape' involved an unacceptable stigma for the victim" (Woods: 1981).

The first moves to change the name of the offence go back to the Model Penal Code in the United States which used terms such as "gross sexual imposition" and "unwanted sexual contact", while the landmark Michigan legislation of 1974 used the notion of "criminal sexual conduct".

But acceptance of the new terminology is far from universal. Backhouse (1982) in particular dissents, when she states:

"People think that changing the word rape (to sexual assault) will emphasise the violent aspect and de-emphasise the sexist attitudes about the crime. (But) there's no evidence to indicate that's true."

In Sydney, the Rape Crisis Centre (Interview: 1982) disputed that the name changes assisted the victim in any way. They further argued that to take away the tag "rape" from the offence was to lose the unique quality of the offence. Other writers (Lewis: 1979) have also queried whether the new labels signify anything more than semantic word play.

It is interesting to note that some American states which only recently changed their legislation have, while expanding the definition of what behaviour constitutes the offence of rape, retained the name and graded the offence according to the seriousness and sentence maxima provided by the legislation.

As with other aims of the legislation, it is difficult to determine to what extent the change of emphasis on the prescribed conduct has affected community attitudes. The presumed stigma associated with the term 'rape' was never a presumption grounded in empirical evidence. The change in public attitudes toward sexual assault, if there is a change, is a phenomenon yet to be evaluated.

CONCLUSION

The Amended Crimes Act sought to effect changes to the levels of reporting, prosecution and conviction of sexual assault offenders. Its success along these dimensions whilst not entirely clear cut gives rise to cautious optimism.

Reductions in sentence maxima allowed for the tendering of guilty pleas at committal which achieved a number of advantages both for the administration of justice and more particularly for the complainant who, in many cases, did not have to testify. More offenders were sentenced to prison than previously which perhaps signifies the seriousness the courts attach to the expanded categories of sexual assault.

In terms of ideological content, the Amended Crimes Act has substituted a contemporary notion of what behaviour constitutes rape or sexual assault for an out-dated and limited definition of the offence. This should not be undervalued as part of the importance of sexual assault law reform is philosophical and cannot be measured by various criminal justice statistics.

A P P E N D I C E S

APPENDIX I Non-sexual offences initially charged by group

No. = Complainant/defendant pairs

| | STUDY | | CONTROL | |
|---------------------------------|-------|-------|---------|-------|
| | No | % | No | % |
| Non-sexual offences charged | 58 | 25.4 | 42 | 21.6 |
| Non-sexual offences not charged | 170 | 74.6 | 152 | 78.4 |
| TOTAL: | 228 | 100.0 | 194 | 100.0 |

APPENDIX II Type of non-sexual offences present at sentence
by group

No. = Distinct defendants

| | <u>STUDY</u> <u>GROUP</u> | <u>CONTROL</u> <u>GROUP</u> |
|---|------------------------------|--------------------------------|
| <u>Offences against the person</u> | <u>No.=18</u> | <u>No.=24</u> |
| Murder | 1 | - |
| Kidnapping | 1 | 2 |
| Administer stupefying drug with intent to commit a felony | - | 1 |
| Assault occasioning grevous bodily harm | - | 1 |
| Assault occasioning actual bodily harm | 1 | 7 |
| Assault with intent to commit a felony | - | 1 |
| Common assault | 4 | 4 |
| <u>Robbery</u> | | |
| Robbery whilst armed | - | 1 |
| Robbery with striking | - | 1 |
| Assault and robbery | 4 | 1 |
| <u>Stealing</u> | | |
| Larceny | 4 | 1 |
| Steal motor vehicle | 1 | - |
| Steal from dwelling house | - | 1 |
| <u>Break-ins</u> | | |
| Break and enter <u>at night</u> with intent to commit a felony | - | 1 |
| Break and enter and commit a felony | 4 | - |
| Break and enter with intent to commit a felony | 1 | 1 |
| <u>Break-out</u> | | |
| Escape from lawful custody | 1 | 1 |
| <u>Other</u> | | |
| Malicious injury to property | 1 | - |
| TOTAL: | 23 | 24 |

* More than one charge in some cases.

COMMITTAL

1. Date of Committal Outcome
2. Court _____
3. Magistrate _____
4. Did victim give evidence
1. Yes 2. No 9. D/K
5. Was the victim cross examined
1. Yes 2. No 9. D/K
6. Total number of questions of victim concerning
PENETRATION
(Concerned with direct contact with sexual
organs.)
8. Sexual reputation of victim
(409 B[2])
 1. Not raised
 2. Raised by defence but disallowed
 3. Raised by defence and allowed
 4. Raised by prosecution but disallowed
 5. Raised by prosecution and allowed
 6. Raised in record of interview and allowed
 7. Raised in record of interview and disallowed/deleted
 9. D/K
9. Describe context in which raised (by whom; in evidence; cross examination; dock statement)
POSTCODE

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10. Describe information admitted or rejected
POSTCODE

26.

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11. Prior sexual behaviour, activity experience of victim

(NOTE : This includes absence of prior sexual behaviour etc.)

1. Not raised
2. Raised by defence - disallowed
3. Raised by defence - allowed
4. Raised by prosecution - disallowed
5. Raised by prosecution - allowed
6. In record of interview - allowed
7. In record of interview disallowed
9. D/K

27.

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12. Describe context in which raised (by whom; in cross examination; dock statement etc) POSTCODE

30.

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13. Describe information admitted/rejected

32.

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POSTCODE

14. The means by which it was admitted:

1. Sexual experience or activity "at or about the relevant time"
2. Sexual experience or activity in a connected set of circumstances"
3. "Existing or recent relationship" - how recent?
4. Sexual intercourse contested and history is evidence of the presence of semen, pregnancy, disease or injury
5. Disease in victim, absent in accused
6. Disease in accused, absent in victim
7. Where it is alleged that complaint was made after discovery of pregnancy or disease
8. Where prosecution argues victim had a certain sexual experience (or lack) or activity (or lack)
9. Allowed without challenge or justification. (This code will most often apply to the old legislation).
10. Other specify _____

NOTE: The Judge is required to record reasons for admitting evidence under 409 B (3). These reasons should be inspected to establish the codes to be used. If several gates were used list them together and post-code.

15. Were attacks made on victim's character in other ways? (e.g., circumstances preceeding offence; drinking together; going to remote place; hitch hiking; style of dress)

01 = No 99 = D/K

Specify : _____

16. If attacks made on victim's character - number of questions asked concerning character of victim

35.

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37.

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20. Were any of the proceedings heard in camera?

01 = No 99 = D/K

Specify contents and which part heard in camera

44.

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25. Total number of questions to victim - PROSECUTION

63

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26. Total number of questions to victim - DEFENCE

54

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27. Total number of questions to victim re: sexual experience (both prosecution and defence)

49

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34. Quantity of medical evidence (i.e. number of questions) TOTAL

71

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35. Quantity of medical evidence relating to prior sexual experience of victim (i.e. number of questions)

75

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36. Did defence bring medical witnesses to contest victim/3rd party injury?

1. No 9. D/K

If yes specify _____

76

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SENTENCE MATTERS

37. Date of sentence

82.

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38. Court _____
(state whether Local, District, Supreme)

85.

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39. Judge _____

Magistrate _____

88.

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40. Was victim called as witness?

1. Yes 2. No 9. D/K

89.

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41. Did she recount circumstances of offence

1. Yes 2. No 9. D/K

90.

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44. Were any of the proceedings heard in camera?

01 = No 99 = D/K

Specify contents and which part heard in camera

94.

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45. Mitigating circumstances as stated by judge in
summing up if applicable - describe

1. Subjective - relating to attributes of the
accused

(POSTCODE)

96.

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46. 2. Adverse aspects of victim behaviour

(POSTCODE)

98.

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TRIAL

56. Date trial commenced

12.1

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57. Date of trial outcome/verdict

12.7

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58. Date of sentence

12.8

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59. Court _____
(state whether Local, District, Supreme)

12.6

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60. Judge _____
Magistrate _____

12.9

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

14.0

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

14.1

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63. Total number of questions of victim concerning
PENETRATION
(Concerned with direct contact with sexual
organs)

14.2

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65. Sexual reputation of victim

- (409 B [2])
1. Not raised
 2. Raised by defence but disallowed
 3. Raised by defence and allowed
 4. Raised by prosecution but disallowed
 5. Raised by prosecution and allowed
 6. Raised by defendant in dock statement and judge warns jury immediately
 7. Raised by defendant in dock statement and judge warns jury later
 8. Raised by defendant in dock statement and no warning given to jury
 9. Raised in record of interview - allowed
 10. Raised in record of interview - disallowed/deleted
 11. D/K

14.7

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66. Describe context in which raised (by whom;
in evidence; cross examination; dock statement)
POSTCODE

157.

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67. Describe information admitted or rejected
(postcode)

158.

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68. Prior sexual behaviour, activity experience of
victim

(NOTE : This includes absence of prior sexual
behaviour etc.)

1. Not raised
2. Raised by defence - disallowed
3. Raised by defence - allowed
4. Raised by defendant in dock statement and
judge warns jury immediately
5. Raised by defendant in dock statement and
judge warns jury later
6. Raised by defendant in dock statement and
no warning given to jury
7. Raised by prosecution and allowed
8. Raised by prosecution and disallowed
9. Raised in record of interview - allowed
10. Raised in record of interview - disallowed/
deleted
11. D/K

159.

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69. Describe context in which raised (by whom; in cross examination; dock statement etc) POSTCODE

158.

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70. Describe information admitted/rejected

160

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161.

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POSTCODE

71. The means by which it was admitted

1. Sexual experience or activity "at or about the relevant time"
2. Sexual experience or activity "in a connected set of circumstances"
3. "Existing or recent relationship" - how recent?
4. Sexual intercourse contested and the evidence is relevant to the presence of semen, pregnancy, disease or injury
5. Disease in victim, absent in accused
6. Disease in accused, absent in victim
7. Where it is alleged that complaint is made after discovery of pregnancy or disease
8. Where prosecution argues that victim had certain sexual experience (or lack) or activity (or lack)
9. Allowed without challenge or explanation
10. Other (specify) _____

165.

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NOTE : That the judge is required to record his reasons (multiple codes to be added together and assigned separate codes)

72. If "existing or recent relationship" is argued record details of how "recent"/"existing" (e.g. how frequent/in what period)

(POSTCODE)

167.

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73. Were attacks made on victim's character in other ways? (e.g. circumstances preceeding offence; drinking together; going to remote place, hitch hiking; style of dress)

01 = No 99 = D/K

Specify : _____

(POSTCODE)

169.

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74. If attacks made on victim's character - number of questions asked concerning character of victim

171.

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77. Was delay in complaint raised?

1. Yes 2. No 9. D/K

173.

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78. Describe context in which raised (by whom; in evidence; cross examination; dock statement)
POSTCODE

175.

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79. Describe information admitted or rejected (postcode)

174.

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81. Was the two point warning given by judge?

1. Yes 2. No 9. D/K

182.

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82. Was the corroboration warning given by the judge?

1. Yes 2. No 9. D/K

183.

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83. What was the basis of the defence?

1. Alibi - accused not present at all and positively elsewhere
2. Fabrication or error - accused present but no intercourse with him - intercourse with (an)other(s)
3. Fabrication - no intercourse at all
4. Fabrication (i.e. mistaken belief in intercourse)
5. Duress/intoxication
9. D/K

185.

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84. If honest belief in consent what were the grounds for believing in consent? 88 N/A 99 D/K

POSTCODE

187.

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85. Did the accused give evidence or make dock statement?

1. Evidence in chief
2. Dock statement
3. Both
9. D/K

189.

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89. Were any of the proceedings heard in camera?
 01 = No 99 = D/K
 Specify contents and which part heard in camera

189.

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94. Total number of questions to victim - PROSECUTION

209.

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95. Total number of questions to victim - DEFENCE

200.

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96. Total number of questions to victim re: sexual experience (both prosecution and defence)

207.

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103. Quantity of medical evidence (i.e. number of questions)

220.

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104. Quantity of medical evidence relating to prior sexual experience of victim (i.e. number of questions)

223.

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105. Did defence bring medical witnesses to dispute victim/3rd party injuries?

1. Yes 2. No 9. D/K

220.

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131. Date of arrest

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|--|--|--|--|--|----|
| | | | | | 29 |
|--|--|--|--|--|----|

132. Was physical injury inflicted on victim?

No
G.B.H.
A.B.H.

Other (specify)

29

133. If physical injury sustained describe
(88 N/A)

29

134. Describe means of infliction
(88 N/A)

29

135. Was injury inflicted on a third party

01. No 03. A.B.H.
02. G.B.H. 08. N/A - No third party

Other (Specify)

| | |
|--|-----|
| | 29% |
|--|-----|

136. Who was third party injured? (i.e. relationship to victim) (8. N/A - No third party)

297

OFFENCE INFORMATION

124. Date of offence _____

240.

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125. Day of the week offence occurred

241

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126. Time offence committed (use 24 hour clock plus minutes)

246

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127. Location of offence (record fully and post-code)

248

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129. Relationship between victim and suspect (e.g. husband, stranger, acquaintance)

275

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130. Qualitative description of offence

POSTCODE

131. Date of arrest

| | | | | | | |
|--|--|--|--|--|--|-----|
| | | | | | | 298 |
|--|--|--|--|--|--|-----|

132. Was physical injury inflicted on victim?

No
G.B.H.
A.B.H.

Other (specify) _____

| | |
|--|-----|
| | 299 |
|--|-----|

133. If physical injury sustained describe
(88 N/A)

| | |
|--|-----|
| | 291 |
|--|-----|

134. Describe means of infliction
(88 N/A)

| | |
|--|-----|
| | 296 |
|--|-----|

135. Was injury inflicted on a third party

01. No 03. A.B.H.
02. G.B.H. 08. N/A - No third party

Other (Specify) _____

| | |
|--|-----|
| | 296 |
|--|-----|

136. Who was third party injured? (i.e. relationship to
victim) (8. N/A - No third party)

| |
|-----|
| 297 |
|-----|

137. If physical injury sustained describe
(88 N/A)

| | |
|--|-----|
| | 249 |
|--|-----|

138. Describe means of infliction
(88. N/A)

| | |
|--|-----|
| | 304 |
|--|-----|

139. Was A.B.H. threatened on victim by means of
offensive weapon or instrument? (61C [1] [b])
1. Yes 2. No 9. D/K

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|--|-----|
| | 842 |
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140. What was the weapon or instrument? (88 N/A)

| | |
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| | 302 |
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141. If victim threatened by weapon/instrument describe
threat (88 N/A)

| | |
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| | 305 |
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142. Was A.B.H. threatened on a third party (61C [2] [b])
1. Yes 2. No 8. N/A - No third party
9. D/K

| | |
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| | 304 |
|--|-----|

143. Who was third party threatened? (i.e. relationship to
victim) (88 N/A)

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| | 302 |
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144. If third party threatened describe threat
(88 N/A)

POSTCODE

310

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145. Was consent contested?

1. Non - consent positively denied
2. Non - consent not positively denied (code 2 includes cases where defence is reserved)
9. D/K

311

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146. Was it alleged that consent was vitiated by

1. Mistake as to identity
2. Mistake as to nature of act
3. Mistaken belief in marriage
4. Threat or terror
8. N/A
9. D/K

312

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147. Did the victim offer physical resistance?

1. Yes 2. No 9. D/K

313

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148. Did the victim offer verbal resistance?

1. Yes 2. No 9. D/K

314

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149. Total head sentence in months
(888 N/A)

317

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150. Non parole period in months
(888 N/A)

320

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151. Did compensation proceedings follow?

1. Yes 2. No 9. D/K

Amount awarded _____

321

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152. Mitigating circumstances as stated by judge in
summing up if applicable - describe

1. Subjective - relating to attributes of the accused

POSTCODE

323

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153. 2. Adverse aspects of victim behaviour

POSTCODE

325

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| COMMITTAL | | | | HIGHER CRIMINAL COURT | | | |
|---------------------|-------|---------------|-------|-----------------------|-------|-------------------|-------|
| BEGINNING Charge | Count | END Charge | Count | INDICTMENT Charge | Count | OUTCOME Charge | Count |
| 1. | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |
| 1. | | | | | | | |
| 2. | | | | | | | |
| 3. | | | | | | | |

Non-Sexual
Charges

Sexual
Charges

APPENDIX 111 - QUESTIONNAIRE

-21-

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

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2. INCIDENT NUMBER

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3. COURT HEARING NUMBER

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

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4. SEXUAL ASSAULT TYPE

(Pertaining to this victim - offender pair)

Single sexual assault incident = 1

Multiple sexual assault incident = 2

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5. VICTIM ID

1st victim = 1

2nd victim = 2 etc

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6. SUSPECT ID

1st suspect = 1

2nd suspect = 2 etc

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7. DISTINCT VICTIM FLAG

Code 1st form only = 1

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8. DISTINCT SUSPECT FLAG

Code 1st form only = 1

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9. DISTINCT VICTIM NUMBER

To 100

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|--|--|--|

10. DISTINCT SUSPECT NUMBER

To 100

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