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## Adult Sexual Assault in NSW

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The term 'sexual assault' means different things to different people. These meanings are influenced by factors such as personal experiences, attitudes, and media images. Under the law in New South Wales (NSW), a variety of sexual behaviours constitute sexual assault offences. This bulletin describes the major types of recorded sexual assault offences committed against adults. It reports on how often, where and when sexual assaults against adults occur in NSW, according to police records. The bulletin also examines the characteristics of adult sexual assault victims, the characteristics of proven sexual assault offenders, and the types of penalties imposed for sexual assault. Finally, a discussion of possible prevention strategies is provided, and the services available to victims of sexual assault in NSW are outlined.

### INTRODUCTION

Written laws governing sexual behaviour can be traced back two and a half thousand years to the Old Testament. In the patriarchal society of the time, women were essentially the property of men, namely the property of either the father if the woman was unmarried or the husband if the woman was married. As a result, when a woman was raped, it was the father or the husband who was 'seen to have been wronged by the rape', more so than the woman herself.<sup>1</sup> Over the ages, the sexual rights of women underwent very little change. Accordingly, the sexual exploitation of women, including the most serious type of sexual exploitation, rape, went largely unnoticed by society for a long time.

In the 1970s substantial reforms were made in the area of sexual assault in Australia and many other Western countries. These reforms were largely prompted by an outcry against rape as a

result of the Women's Movement.<sup>2</sup> The reforms included changes to the law, changes to police and court procedures, and the creation of sexual assault centres to cater for the needs of victims. Reforms continue to be made in the 1990s as the problem of sexual assault gains more social and political significance.

### WHAT IS SEXUAL ASSAULT?

The law regarding sexual assault in NSW has changed several times since the late 1970s. Up until 1981, sexual assaults were divided into rape offences, on the one hand, and related sexual offences, on the other. The main features of the legislation included a very narrow definition of rape (penile penetration of the vagina of a non-consenting woman), a single maximum penalty of life imprisonment, and no restrictions on the admittance in evidence of the victim's sexual history. In an attempt to 'remedy major defects' in this legislation the then State Government introduced the *Crimes (Sexual Assault) Amendment Act 1981*.<sup>3</sup> This Act saw the common law offences of rape and attempted rape replaced with a series of graduated offences of sexual assault, as well as significant evidentiary and procedural changes to the law.<sup>4</sup> Among other things, the reforms sought to 'place less emphasis on the sexual aspect and more on the aspect of violence in sexual assault cases'.<sup>5</sup> The new categories of sexual assault were: 'sexual assault category 1 – inflicting grievous bodily harm with intent to have sexual intercourse'; 'sexual assault category 2 – inflicting actual bodily harm, etc., with intent to have sexual intercourse'; 'sexual assault category 3 – sexual intercourse without consent'; and 'sexual assault category 4 – indecent assault and act of indecency'.

The NSW *Crimes (Amendment) Bill 1989*, which became operative in 1991, replaced

the previous four categories of sexual assault with a new offence structure. Under the new law, there were three basic offences ('sexual assault', 'indecent assault' and 'act of indecency'), each having an aggravated and a non-aggravated version, and an additional offence of 'assault with intent to have sexual intercourse'. The aim of these changes was to 'bring the sexual assault laws into line with community expectations by increasing the penalties, extending their scope, and introducing a new, simplified scheme of offences to clarify the law'.<sup>6</sup>

The frequent changes to the sexual assault laws in recent years make it impossible to analyze police and court data using a consistent set of legal definitions of sexual assault. For the purposes of this bulletin, sexual assault will be discussed in terms of three categories which were derived after careful consideration of the 1981 and 1989 legislative categorizations.<sup>7</sup> The three chosen categories provide a classification of sexual assault that is simpler than any of the legislative categorizations and allows comparison of the available data on sexual assault. The chosen categories differentiate offences by degree of seriousness according to whether sexual intercourse and violence were involved. The three categories are:

1. *Aggravated sexual assault.* This category refers to the most serious type of sexual assault, namely sexual assault involving sexual intercourse (whether actual or intended) under aggravated circumstances. For the purposes of this category, an aggravated circumstance is any one of the following: the offender maliciously inflicted or threatened to inflict grievous or actual bodily harm on the victim or any other person who was present or nearby; the offender was in the company of one or more persons; the victim was

under the authority of the offender; the victim had a serious intellectual or physical disability.<sup>8</sup>

2. *Sexual intercourse without consent.* This category refers to sexual intercourse with a person without the person's consent and with the knowledge that the person did not consent.<sup>9</sup>
3. *Indecent assault.* This category refers to the assault of a person, and the commission of an act of indecency on or in the presence of the person either during, or immediately before or after, the assault.<sup>10</sup>

Under the present law, sexual intercourse has a broad definition. It is the penetration of either the female genitalia or the anus of any person by any part of the body of another person. The insertion of foreign objects into the female genitalia or into the anus by another person is included as sexual intercourse, except when carried out for proper medical purposes. The introduction of any part of the penis into another person's mouth, and the act of cunnilingus also constitute sexual intercourse.

## THE INCIDENCE OF SEXUAL ASSAULT

### UNDER-REPORTING

It is difficult to provide precise estimates of the incidence of sexual assault because a very large number of sexual assaults are not reported to the police. The high level of under-reporting to police exists despite the fact that sexual assault can have a profound effect on the lives of victims for many years after the assault.

Estimates of the level of under-reporting vary. The available estimates of the extent to which sexual assault is under-reported in Australia are based exclusively on samples of women. According to the 1992 Crime and Safety survey, the most recent victim survey conducted by the Australian Bureau of Statistics (ABS), about one-quarter of the sexual assaults committed against women aged 18 years and over in the 12 months leading up to April 1992 were reported to police.<sup>11</sup> The 1989 International Crime Survey estimated that only 5.4 per cent of the sexual offences committed against women in Australia in 1988 were reported to police.<sup>12</sup> Although the ABS survey suggested a considerably higher rate of reporting than did the international survey,

both surveys indicated that the majority of women victims did not report the incident.

The different estimates of under-reporting by the ABS survey and the international survey may reflect differences in methodology. For example, the ABS survey had the following characteristics compared with the international survey: it canvassed women aged 18 years and over across NSW rather than women aged 16 years and over across Australia; it involved mail-back paper-and-pencil questionnaires rather than telephone interviews; it had a more recent counting period (i.e. 1991/1992 rather than 1988); and it employed a narrower definition of sexual assault which, unlike the international survey's definition, did not include less serious incidents involving offensive behaviour and sexual harassment. The inclusion of less serious incidents in the international survey's definition would be expected to lower the overall level of reporting, and, indeed, the major reason given in the international survey for not reporting to police was that the incident was 'not serious enough'.

It is likely that the ABS estimate is the more reliable of the two estimates for the following reasons. Firstly, the ABS sample was probably more representative of the population because selection of a household (from which the victim was surveyed) did not depend on whether it had a telephone. Secondly, the ABS survey had a much higher response rate (80.5% compared with 45.5%). Thus, the best available estimate suggests that about one-quarter of the sexual assaults committed against women in NSW are reported to police.

A separate estimate of the level of under-reporting by male sexual assault victims in Australia is not available. It has been suggested that the level of under-reporting by male victims may be even higher than that by female victims because the stigma attached to being the victim of sexual assault is likely to be greater for males.<sup>13</sup>

Although there have been no systematic and comprehensive studies into the reasons why sexual assault victims often do not report the incident to authorities, the information available suggests there are numerous reasons. According to victim surveys, two common reasons are that victims believe that the police can't or won't do anything about it, or that the incident is 'too trivial' to report.<sup>14</sup> Other suggested reasons have been that sexual assault victims feel guilt and shame over the incident, fear repercussions from the offender, fear the police will not believe them, or fear the scrutiny and interrogation

that they may have to face in the court room.<sup>15</sup> It has been suggested that many of these reasons for not reporting arise from a set of false cultural beliefs or 'myths' about sexual assault.<sup>16</sup> Among these myths, for example, is the misconception that rape requires some sort of physical force on the part of the rapist.<sup>17</sup>

### VICTIMIZATION RATE

Because of the high level of under-reporting, actual victimization rates for sexual assault have proved difficult to estimate. Numerous measures of the victimization rate have been published, some of which adjust for the level of under-reporting and some of which do not. The victimization rate estimates have been highly variable. In addition to the variable treatment of under-reporting, the victimization rate estimates are affected by factors such as the time period in which the sexual assault occurred, the way the incident of sexual assault is defined (e.g. culturally and/or legally), and whether the seasonal variation in sexual assault rates is taken into account.

#### Annual victimization rate

Information on the annual victimization rate for sexual assault in Australia is obtainable from police statistics and victim surveys. Unlike victim surveys, which provide measures of both the number of victims reporting to police and the number of victims not reporting to police, police statistics are necessarily based only on victims recorded by the police. As a result, the value of police statistics as a means for gauging the incidence of sexual assault is somewhat restricted. On the other hand, police statistics provide more information on different types of sexual assault than do victim surveys.

According to police records, during the three year period from 1989 to 1991 there were a total of 5,203 adult sexual assault victims (i.e. victims aged 16 years and over) in NSW.<sup>18</sup> This number represented an average annual recorded rate of 38.8 adult victims per 100,000 population or 0.04 per cent. Table 1 shows the breakdown of recorded sexual assault victims for 1989-1991 by type of sexual assault offence.<sup>19</sup>

It can be seen that about half (51.1%) of the recorded sexual assault victims experienced the least serious type of sexual assault, namely indecent assault. Sexual intercourse without consent was the next most common category, accounting for just over one-third (37.1%) of all recorded sexual assault victims. The

**Table 1: Number, percentage and average annual rate of recorded sexual assault victims, NSW, 1989 - 1991**

Sexual assault category	Number of victims	Percentage	Average annual recorded rate per 100,000 population
Aggravated sexual assault	613	11.8	4.6
Sexual intercourse without consent	1930	37.1	14.4
Indecent assault	2660	51.1	19.8
<b>Total</b>	<b>5203</b>	<b>100</b>	<b>38.8</b>

Source: NSW Bureau of Crime Statistics and Research (unpublished data).

most serious type of sexual assault, namely aggravated sexual assault, was experienced by a minority of recorded victims (11.8%).

The number of recorded sexual assault victims for 1989-1991 (5,203) was very similar to the number of victims of sexual assault who presented to sexual assault services across NSW over the same period (5,024).<sup>20</sup> It is unknown whether the recorded victims were the same people as those who presented to the sexual assault services.

Recent estimates of the annual victimization rate for sexual assault in Australia are also obtainable from the victim survey conducted by the ABS in 1992 and from the 1989 International Crime Survey. For the methodological reasons outlined earlier, the ABS estimate of the victimization rate is likely to be the more accurate of the two estimates. The ABS estimated that the annual rate of sexual assault in women aged 18 years and over in NSW was about 600 victims per 100,000 population or 0.6 per cent.<sup>21</sup> The ABS estimate is about 15 times larger than the estimate based on police figures. A large part of the disparity between the police data and the ABS data is probably due to the under-reporting in police figures as already discussed. In addition, part of the disparity may have arisen from differences in the sexual behaviours examined. The definition of sexual assault used in the ABS survey was more general.

**Repeat victimization**

The 1992 ABS survey indicated that repeat victimization is high. The ABS estimated that about one-third of the victims of sexual assault reported more

than one incident of sexual assault in the previous 12 months, with about one-quarter of all victims reporting three or more incidents.<sup>22</sup>

**Trend in the victimization rate**

Presently, the most complete available data for calculating trends in the rate of sexual assault in NSW are recorded police statistics. The ABS has only reported the victimization rate for sexual assault for 1983 and 1992. The fact that police figures understate the true incidence of sexual assault does not necessarily mean that they cannot be used to gauge trends in sexual assault over time. However, if

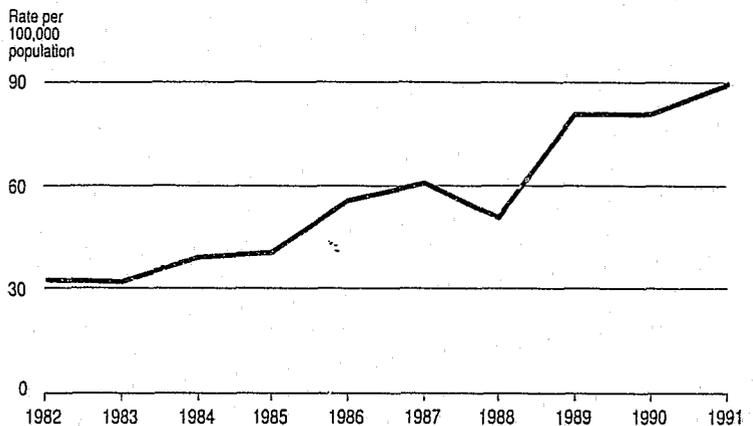
they are used to gauge sexual assault trends over a given period, it is necessary to assume that both the level of non-reporting by victims and the relevant recording practices of police have remained unchanged over that period.

Figure 1 presents the rate of recorded sexual assault offences per 100,000 population in NSW from 1982 to 1991.<sup>23</sup> Over this period, there was a fairly steady increase in the rate of recorded sexual assault offences. Unfortunately, it is not possible to determine the extent to which this trend reflects an increase in the actual victimization rate as opposed to either a change in the recording practices of police or an increase in the level of reporting by victims. According to the ABS victims surveys, the reporting rate in 1983 was similar to the rate in 1992. However, because the two surveys used different definitions of sexual assault, it is not possible to determine whether the reporting rate for any given type of sexual assault changed from 1983 to 1992.

**Lifetime risk of victimization**

The estimates of the annual risk of sexual assault raise the question of whether it is possible to calculate the lifetime risk of sexual assault, that is, the risk of being sexually assaulted at least once during one's lifetime. Unfortunately, although estimates of the lifetime risk of sexual assault have been attempted, they have all been based on estimates of the annual

**Figure 1: Number of recorded sexual assault offences per 100,000 population, NSW, 1982 - 1991**



Source: NSW Police Statistics Unit (n.d.), *New South Wales Crime Statistics 1988/89*, New South Wales Police Service, Sydney; NSW Bureau of Crime Statistics and Research 1992, *New South Wales Recorded Crime Statistics 1991*, NSW Bureau of Crime Statistics and Research, Sydney.

victimization rate which do not distinguish between persons who have been sexually assaulted for the first time and persons who have been sexually assaulted for a second or subsequent time. Given that, as discussed previously, there appears to be a high rate of repeat victimization in sexual assault, any such estimates of lifetime risk are likely to overestimate the average lifetime risk of sexual assault. Accurate estimates of the lifetime risk of sexual assault will have to await information on the proportion of persons in each age group in a given year who have been sexually assaulted for the first time.

The data presented in the remaining sections are based on sexual assaults recorded by the police. It must be kept in mind that these recorded assaults comprise only about one-quarter of all sexual assaults and therefore may not be representative of sexual assaults that are not recorded by the police.

**WHERE DOES SEXUAL ASSAULT OCCUR?**

**REGIONS**

Table 2 shows the average annual rates of sexual assault incidents recorded by police for 1989-1991 in different regions of NSW using the ABS classification of Statistical Divisions (SDs).<sup>24</sup> Because of its large population, the Sydney SD is also examined in 14 Statistical Subdivisions (SSDs). The table lists the regions in rank order of their annual average recorded rates for sexual assault. The average annual rate of sexual assault recorded in the Sydney SD (38.9 incidents per 100,000 population) was about the same as that recorded in the other SDs on average (37.3).<sup>25</sup> Furthermore, for each category of sexual assault, the Sydney SD had rates comparable to the average rates for the remaining NSW SDs.

Table 2 shows that the recorded rates of sexual assault differed across regions. Despite the low level of reporting to police, these regional differences in recorded sexual assault rates are likely to reflect, at least in part, regional differences in actual sexual assault rates for a number of reasons. Firstly, because the regions generally had large populations (over 82,000 persons in 1990), the regional rates are fairly reliable: small changes in the number of sexual assault incidents would not have appreciably altered the rates. Probably the only region which had a population small enough to be of concern was the Far West SD (which had a population of about 20,000 in 1990). Secondly, although it is possible that

**Table 2: Average annual rate of recorded sexual assault incidents per 100,000 population in each Statistical Division (SD) and in each Sydney Statistical Subdivision (SSD), NSW, 1989 - 1991**

Region	Sexual assault category			Total
	Aggravated sexual assault	Sexual intercourse without consent	Indecent assault	
Inner Sydney SSD	15.2	33.1	50.5	98.8
Central Western Sydney SSD	5.6	18.9	26.6	51.1
Fairfield - Liverpool SSD	4.6	17.4	23.3	45.3
Outer South Western Sydney SSD	3.9	20.6	18.2	42.7
Inner Western Sydney SSD	6.1	13.2	20.9	40.2
Blacktown - Baulkham Hills SSD	4.7	17.3	17.5	39.5
Eastern Suburbs SSD	7.8	13.2	14.2	35.2
Gosford - Wyong SSD	4.8	14.5	14.9	34.3
Canterbury - Bankstown SSD	4.4	9.6	17.0	31.0
Outer Western Sydney SSD	2.0	13.1	15.8	30.9
Lower Northern Sydney SSD	3.2	5.6	20.7	29.5
Manly - Warringah SSD	1.9	8.4	18.3	28.6
St George - Sutherland SSD	2.0	6.4	14.2	22.5
Hornsby - Ku-ring-gai SSD	1.8	6.6	11.2	19.6
Sydney SD	4.8	13.9	20.2	38.9
Far West SD	16.5	34.6	37.9	89.0
Murrumbidgee SD	8.0	20.8	26.4	55.2
North Western SD	7.6	23.9	20.3	51.8
Central West SD	5.8	18.3	16.5	40.7
Illawarra SD	3.0	13.6	21.5	38.0
South Eastern SD	2.6	14.2	19.2	36.1
Murray SD	3.2	17.8	15.0	36.0
Richmond - Tweed SD	3.3	11.0	19.3	33.5
Hunter SD	2.4	14.2	16.2	32.8
Mid-North Coast SD	2.4	12.0	15.9	30.4
Northern SD	6.1	12.1	11.6	29.8
All NSW SDs other than Sydney	4.0	15.1	18.2	37.3
NSW	4.5	14.3	19.5	38.3

Source: NSW Bureau of Crime Statistics and Research (unpublished data).

regional differences in sexual assault rates reflect, to some extent, regional differences in reporting bias, it is unlikely that reporting bias had a large effect. There is evidence that for personal crimes (including rape) the seriousness of the offence is a more powerful determinant of whether the offence is reported than are factors which may vary across regions such as income, poverty, town or city size and education level.<sup>26</sup> Thirdly, because police recording practices across NSW do not vary substantially, it is unlikely that such recording practices were substantially responsible for regional differences in recorded crime rates,<sup>27</sup> including recorded sexual assault rates.

When the three categories of sexual assault are combined, the highest average annual rate of sexual assault was recorded by the Inner Sydney SSD (98.8 incidents per 100,000 population) and was closely followed by the Far West SD (89.0) (see Table 2). Furthermore, these two regions had the highest rates for each category of sexual assault. It is noteworthy that the rates for these two regions, for each category of sexual assault and overall, were about two to three times higher than the corresponding rates for the State as a whole. It should be remembered, however, that the high rates for the Far West SD could be somewhat unreliable because its small population means that relatively few incidents are required to produce a high rate. The overall rate of sexual assault for the Far West SD was based on 54 recorded sexual assault incidents over three years.

The other regions with rates of overall sexual assault that were noticeably higher than the average rate for NSW (38.3 incidents per 100,000 population) were the Murrumbidgee SD (55.2), the North Western SD (51.8), the Central Western Sydney SSD (51.1) and the Fairfield - Liverpool SSD (45.3).

During 1989-1991, the lowest average annual rate of overall sexual assault was recorded by the Hornsby - Ku-ring-gai SSD (19.6 incidents per 100,000 population) and was closely followed by the St George - Sutherland SSD (22.5). It is interesting that these two low rating regions, and the next two lowest rating regions (the Manly - Warringah SSD and the Lower Northern Sydney SSD) were all in the Sydney SD. However, it should be noted that not far behind these four Sydney SSDs were the Northern SD and the Mid-North Coast SD.

## PLACES

About half (2,550 incidents or 49.6%) of the sexual assault incidents recorded by police in 1989-1991 occurred in dwellings.

Of these incidents that occurred in dwellings, almost three-quarters (70.9%) occurred in private houses, and a further 21.4 per cent occurred in flats and home units. The present data could not be used to determine the proportions of victims and offenders comprising the residents of these dwellings. Others have found, however, that more than half of the sexual assaults that occur in homes do so in the victim's home, and in many of these cases the victim allows the offender to enter.<sup>28</sup> This finding is not surprising given that the offender is often known to the victim (see section 'What is known about the offenders?').

After dwellings, outdoor areas such as streets, parks, parking areas and grass areas were the next most frequent locations for sexual assault incidents (30.0% of all recorded sexual assault incidents).<sup>29</sup> Of the sexual assaults occurring in outdoor areas, almost half (49.0%) occurred in the street.

A small but notable proportion of recorded sexual assault incidents during 1989-1991 occurred in vehicles (8.5%). Of these, about half (45.3%) occurred in cars followed by about a further quarter (25.7%) on trains.

The remaining 11.9 per cent of sexual assault incidents occurred in other venues such as business, recreation, transport, educational and government service premises.

The places where sexual assault incidents occurred did not vary much according to the type of sexual assault committed. Thus, all three types of sexual assault were most likely to occur in dwellings followed by outdoor areas. Although all types of sexual assault were most likely to occur in dwellings, the percentage of indecent assault incidents occurring in dwellings (40.5%) was notably smaller than the corresponding percentage of sexual intercourse without consent incidents (62.2%). (The corresponding percentage of aggravated sexual assault incidents fell in between at 49.1 per cent.)

## WHEN DOES SEXUAL ASSAULT OCCUR?

### MONTH

Is sexual assault more likely to occur at certain times of the year? A common finding is that sexual assault is most likely to occur in the summer months.<sup>30</sup>

Figure 2 shows the percentage of recorded sexual assault incidents during 1989-1991 that occurred each month. It can be seen that the percentage of sexual assault incidents varied across months.

January, February and March, the months with the highest percentages, accounted for 9.8, 9.1 and 9.5 per cent of all recorded sexual assaults, respectively. September and October, the months with the lowest percentages, accounted for 6.9 and 7.3 per cent of all recorded sexual assaults, respectively. This variation across months was generally similar for each of the years 1989, 1990 and 1991.

It has been suggested that this seasonality in sexual assault reflects a fairly linear relationship between ambient temperature and sexual assault rate.<sup>31</sup> However, the seasonality evident in police figures should not be taken to indicate that variations in temperature 'explain' trends in sexual assault. It is possible that the higher percentages of sexual assault in summer months simply reflect the fact that more people are socializing at this time of the year, and therefore, that more people are at risk of either stranger sexual assault or date/acquaintance sexual assault.<sup>32</sup> Interestingly, the seasonality evident in sexual assault trends is also found in police figures on non-sexual assault and offensive behaviour.

### DAY

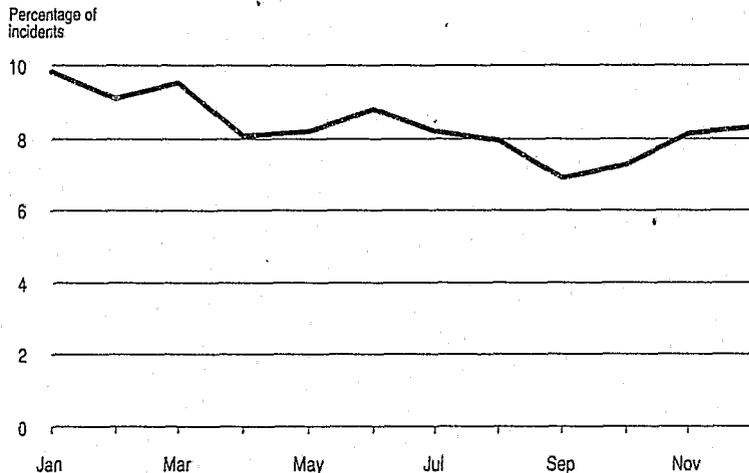
As can be seen in Figure 3, during 1989-1991, the percentage of recorded sexual assault incidents varied somewhat across days of the week. The most notable variation in overall sexual assault was a higher percentage on Fridays and Saturdays (15.4% and 15.7%, respectively) compared with the other days (which ranged from 12.4% to 14.9%). An increase in sexual assault on Fridays and Saturdays is not uncommon,<sup>33</sup> and like the seasonal trend in sexual assault, may be partly due to people socializing more.

In keeping with the pattern for overall sexual assault, aggravated sexual assault was more likely to occur on Fridays (17.0%) and Saturdays (17.7%). Similarly, sexual intercourse without consent was more likely to occur on Fridays (15.6%) and Saturdays (18.5%). Indecent assault, however, displayed a different pattern, being more likely to occur on weekdays (which ranged from 14.1% to 16.3%) than on Saturday (13.2%) or Sunday (10.8%).

### TIME

Sexual assaults are more likely to occur at night (6pm to 6am) than during the day (6am to 6pm). Typically, about 60 to 80 per cent of sexual assaults are recorded as occurring at night.<sup>34</sup> At present there are no reliable data on the extent to which each type of sexual assault occurs at night.

**Figure 2: Percentage of recorded sexual assault incidents occurring each month, NSW, 1989 - 1991**



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

**WHAT ARE THE EFFECTS OF SEXUAL ASSAULT?**

Sexual assault for most victims is a violating and traumatic experience. Occasionally victims suffer very serious physical injuries, but serious physical injury is not typical of sexual assault in Australia.<sup>35</sup> Most victims do not sustain any physical injuries. According to NSW police records for 1989-1991, only 21.9 per cent of the sexual assaults against

adults resulted in injury. Furthermore, when physical injuries are sustained during sexual assault, they are largely minor, such as bruises and scratches which do not require medical attention.

The absence of physical injury in most cases of sexual assault ought not to be taken as evidence that the victim suffers no long-term ill effects as a result of the assault. Often more damaging than any physical injury is the wide range of psychological symptoms that victims

frequently experience. These symptoms include fear, anxiety, depression, anger, shame, a feeling of powerlessness, and problems in subsequent intimate sexual relationships. Furthermore, psychological harm is sometimes manifested in the form of sleeping or eating disorders. In fact, victims of rape reportedly suffer more psychological harm than do victims of many other offences, including assault, robbery and burglary.<sup>36</sup>

**WHAT IS KNOWN ABOUT THE VICTIMS?**

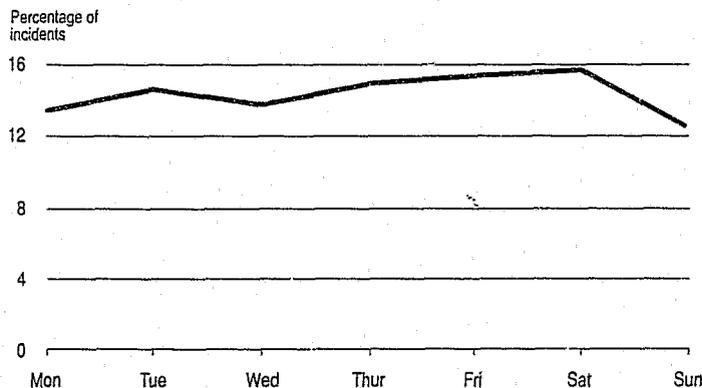
The police record a number of details about sexual assault victims and the present section provides the age and gender characteristics of these victims. The data presented below are based on the 5,203 adult victims recorded by the NSW police in 1989-1991. It must be remembered, however, that these recorded victims may not be representative of the large number of sexual assault victims who do not report to police. The rates of victimization recorded by the police varied considerably according to both the gender and age of the victim.<sup>37</sup>

**GENDER**

During 1989-1991, the majority (90.2%) of adult sexual assault victims recorded by police in NSW were female.<sup>38</sup> The average annual rate of sexual assault for females was about nine times higher than that for males (66.8 victims per 100,000 population compared with 7.5). The recorded victims of each type of sexual assault were also mostly women. For aggravated sexual assault, the average annual victimization rate for females was about 12 times greater than the rate for males (8.1 victims per 100,000 population compared with 0.7). Females also had a victimization rate for sexual intercourse without consent that was about 12 times greater than the rate for males (25.8 victims per 100,000 population compared with 2.1). The category of sexual assault with the highest proportion of male victims was that of indecent assault. For this category, the rate for females (32.8 victims per 100,000 population) was about seven times that of the rate for males (4.7 victims per 100,000 population). The rates of each type of sexual assault for both males and females did not change appreciably over the period 1989-1991.

It should be remembered however, that the relative victimization rates for males

**Figure 3: Percentage of recorded sexual assault incidents occurring on each day of the week, NSW, 1989 - 1991**



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

and females derived from police data do not take into account the relative levels of under-reporting by male and female victims. Because there is no available estimate of the level of under-reporting of sexual assault in NSW by male victims, it is not known whether the level for males differs from the level for females. Consequently, the extent to which police-derived victimization rates accurately represent the relative proportions of male and female victims of sexual assault cannot be determined. However, given that, as previously noted, the level of under-reporting for males may be higher than the level of under-reporting for females, it is likely that police figures under-estimate the proportion of male victims.

**AGE**

Figure 4 shows the average annual rates of recorded sexual assault victims in different age groups for the period 1989-1991.<sup>39</sup> The age breakdown for male adult victims of sexual assault was similar to that for female adult victims. Because of the small number of male victims, the age breakdown of sexual assault victims is provided for males and females combined. As can be seen in Figure 4, there was a decrease in the rate of reported sexual assault with increasing victim age. The decrease was initially dramatic, tapering off with increasing age. The youngest age group, namely 16-20 years, had a risk (113.1 victims per 100,000 population) that was about three times the average annual risk. The next youngest age group, namely 21-25 years, also had a higher than average risk (58.3 victims per 100,000 population). The risk for all age groups over 40 years was very low. The pattern of risk across age groups for each category of sexual assault was similar to that for sexual assault overall.

The age distribution of recorded victims of adult sexual assault was similar to that of victims who presented to sexual assault services in NSW during 1989-1991.<sup>40</sup>

**WHAT IS KNOWN ABOUT THE OFFENDERS?**

The data presented below on the age and gender of persons convicted of sexual assault against adults in NSW are based on court statistics for 1991.<sup>41</sup> Although these data are representative of sexual assault offenders who are apprehended by police and subsequently convicted, they are not necessarily representative of persons who are guilty of sexual assault but are not apprehended by police.

**GENDER**

In 1991 in NSW, 740 persons charged with an offence involving sexual assault against adults appeared before the Children's Courts, the Local Court or the Higher Courts.<sup>42</sup> In 1991, a total of 311 persons were found guilty of sexual assault as their principal offence.<sup>43</sup> Of these 311 proven offenders, 7.7 per cent were convicted of offences involving aggravated sexual assault, 31.8 per cent were convicted of offences involving sexual intercourse without consent and 60.5 per cent were convicted of offences involving indecent assault. With one exception, all of these proven offenders of sexual assault were male. The 310 male proven offenders for 1991 represented a rate of 12.4 per 100,000 male population.<sup>44</sup>

**AGE**

Because only one of the proven sexual assault offenders in 1991 was female, the variation in the number of proven offenders across age groups is discussed only for males. Figure 5 shows the average annual rates for male proven sexual assault offenders across age groups for 1991.<sup>45</sup>

Noticeably higher than average rates of offenders (i.e. higher than 12.4 per 100,000 population) were evident between 18 and 40 years of age, with a peak at around 21 to 30 years of age. The 21-25 year age group had the highest rate of offenders (23.5 per 100,000 population),

although the rate for the 26-30 year old age group was not far behind (23.1 per 100,000 population). Adult males over 40 years of age had lower than average rates (ranging from 1.6 to 8.2 per 100,000 population).

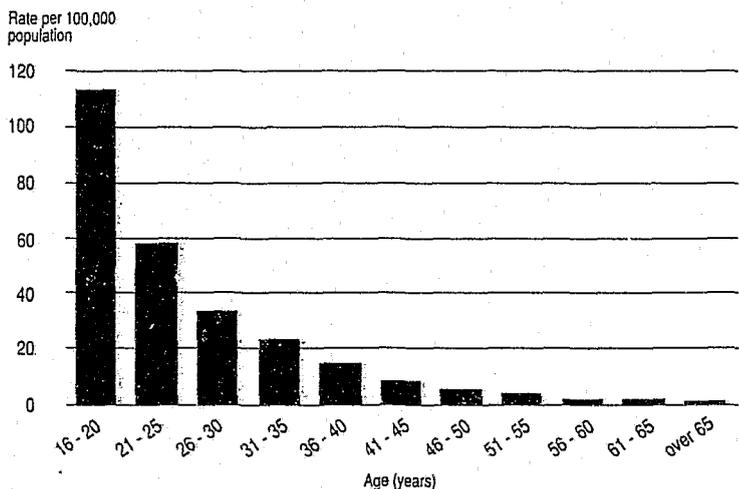
**RELATIONSHIP TO VICTIM**

Sexual assault offenders usually know their victims in one way or another, and quite often they are trusted by the victim. Bonney (1985) suggested that about half of the offenders in NSW were known to the victims and included 'family members', 'friends/acquaintances' and 'work associates'. A further one-fifth of the offenders were persons the victim had met for the first time in a social setting the day or night of the assault.<sup>46</sup> Clearly, sexual assault is not usually a crime committed by total strangers. This fact may in part explain the high rate of repeat victimization.

**RE-OFFENDING**

There are no available data on the re-offending rate for persons who commit sexual assault against adults in NSW. There is information, however, on the re-offending rate for sex offenders in general, including offenders who commit sexual assault against adults, those who commit sexual assault against children, and those who commit other types of sex offences. Of the 487 persons convicted of a sex offence as their principal offence in 1991 in the Higher Courts, 57.3 per cent had some sort of prior conviction. These 57.3

**Figure 4: Average annual recorded victimization rate by age of victim, NSW, 1989 - 1991**



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

per cent comprised 12.9 per cent who had prior convictions for sex offences and 44.4 per cent who had prior convictions for other offences of any type.

The 1991 Higher Courts data indicate that the re-offending rate for sex offenders in general is not as high as that for offenders who commit non-sexual offences against the person. Thus, 74.4 per cent of the persons convicted of a non-sexual offence against the person as a principal offence in 1991 had some sort of prior conviction. These 74.4 per cent of persons comprised 50.6 per cent who had prior convictions for non-sexual offences against the person and 23.8 per cent who had prior convictions for other offences of any type.

An estimate of the re-offending rates for persons convicted of sexual assault is available from a study conducted in Western Australia.<sup>47</sup> This study followed up sex offenders released from prison in Western Australia between July 1975 and June 1987. During the study period, 264 'rape' or 'indecent assault' offenders were released from prison. By the end of the study period, 41.3 per cent of these released sexual assault offenders had returned to prison. This 41.3 per cent comprised 4.5 per cent returning for the same type of sexual assault offence, another 4.5 per cent returning for a different type of sex offence, 26.1 per cent returning for a violent (non-sexual) offence, and 6.2 per cent returning for an offence that was neither sexual nor violent. It was estimated that about 55 per cent of imprisoned 'rape' offenders would return to prison for some offence during their lifetime.

The 41.3 per cent of sexual assault offenders returning to prison during the study period compared with 39.3 per cent of the offenders imprisoned for robbery and grievous bodily harm and 58.1 per cent of the offenders imprisoned for non-sexual assault.<sup>48</sup>

### WHAT IS THE RATE OF ARREST?

A cleared offence is usually one where an arrest has been made, but is occasionally one where the police have been unable to make an arrest despite having sufficient evidence to support a charge against at least one identified person (e.g. because the person has died or has been committed to a psychiatric institution indefinitely or has diplomatic immunity, etc.).

Of the 2,419 sexual assault offences recorded by NSW police in 1991, about half (54.1%) were cleared in that year.<sup>49</sup> Same-year clear-up rates differed only slightly across categories of sexual assault. During 1991, 45.0 per cent of the 258 recorded offences involving aggravated sexual assault were cleared that year, compared with 59.6 per cent of the 1,063 recorded offences involving sexual intercourse without consent, and with 50.9 per cent of the 1,098 recorded offences involving indecent assault.

The same-year clear-up rate for sexual assault was somewhat lower than the same-year clear-up rate for non-sexual assault. During 1991, the same-year clear-up rate for sexual assault of 54.1 per

cent compared with that of 60.7 per cent for aggravated assault and with that of 67.4 per cent for non-aggravated assault.<sup>50</sup>

In addition, a substantial number of offences that occurred before 1991 were also cleared in 1991. In 1991, a total of 1,543 sexual assault offences were cleared, but 15.2 per cent of these offences had occurred before 1991.

### WHAT ARE THE COURT OUTCOMES?

The outcome of sexual assault charges is discussed firstly for the Children's Courts and secondly for the Local Court and Higher Courts.

#### CHILDREN'S COURTS

##### Appearances in 1991

In 1991, 47 juveniles appeared before the Children's Courts charged with principal offences involving sexual assault against adults.<sup>51</sup> Of these principal offences, only three (6.4%) involved aggravated sexual assault and only six (12.8%) involved sexual intercourse without consent. The majority (38 or 80.9%) involved indecent assault.

##### Convictions in 1991

Of the juveniles who appeared before the Children's Courts for principal offences of sexual assault, 87.2 per cent were convicted. This overall conviction rate represented a conviction rate of 66.7 per cent (or 2 juveniles) for aggravated sexual assault, 100 per cent (or 6 juveniles) for sexual intercourse without consent and 86.8 per cent (or 33 juveniles) for indecent assault.

##### Penalties in 1991

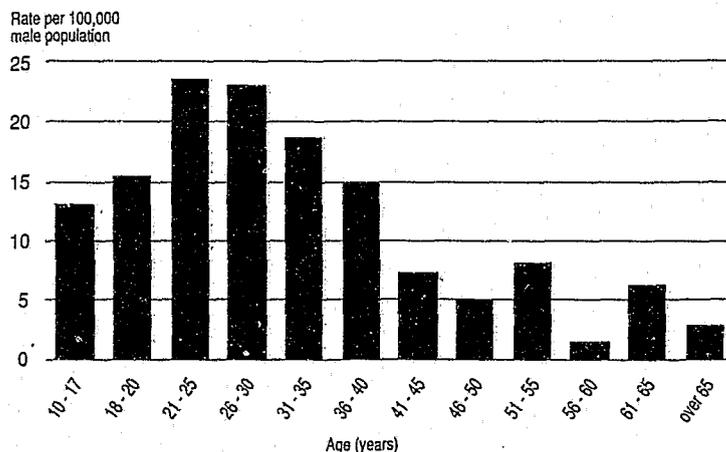
Fewer than 10 per cent of the juveniles convicted of sexual assault in 1991 received either detention (4.9%) or a community service order (4.9%). The majority received a bond (80.5%) or no penalty (9.8%).

#### LOCAL COURT AND HIGHER COURTS

##### Appearances in 1991

Generally, the Higher Courts hear all of the charges involving aggravated sexual assault or sexual intercourse without consent, and the majority of charges involving indecent assault. The remaining charges, involving indecent assault, are heard in the Local Court. Of the sexual

Figure 5: Number of proven sexual assault offenders per 100,000 population, by age of offender, NSW, 1991



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

assault charges against adult offenders heard in 1991, 86.0 per cent were heard in the Higher Courts.<sup>52</sup>

In 1991, there were 1,075 charges disposed of in the NSW Local Court or Higher Courts involving the sexual assault of adults. Of these charges, 15.3 per cent involved aggravated sexual assault, 34.8 per cent involved sexual intercourse without consent and 50.0 per cent involved indecent assault.

**Convictions in 1991**

Just over one-third (36.7%) of the sexual assault charges heard in 1991 in either the Local Court or Higher Courts were proven. These proven charges were against 270 offenders, with some offenders having been convicted of more than one charge.

**Penalties in 1991**

The penalties handed down by the Local Court and Higher Courts for these 270 persons convicted of sexual assault in 1991 are presented in Table 3.

As would be expected, the severity of the court penalties depends on the type of sexual assault offence. As shown in Table 3, the more serious sexual assault offences were more likely to result in prison sentences. All but one or 95.5 per cent of the persons convicted of offences involving aggravated sexual assault

received prison sentences, compared with 75.3 per cent of those convicted of offences involving sexual intercourse without consent, and with 19.4 per cent of those convicted of indecent assault offences.

Furthermore, the duration of prison sentences also depended on the type of the sexual assault. In 1991, 59.1 per cent of the persons convicted of offences involving aggravated sexual assault received prison sentences of at least four years, compared with 17.2 per cent of those convicted of offences involving sexual intercourse without consent, and none of those convicted of offences involving indecent assault.

How do penalties for sexual assault compare with those for other types of assault? Table 4 compares penalties handed down by the Higher Courts for the most serious offences of sexual assault, namely offences involving aggravated sexual assault, with those for the more serious offences of non-sexual assault, namely assault occasioning grievous or actual bodily harm.<sup>53</sup> In 1991, 95.5 per cent of persons convicted of offences involving aggravated sexual assault in the Higher Courts received prison sentences compared with only 61.7 per cent of persons convicted of non-sexual assault occasioning grievous bodily harm. Furthermore, prison sentences of at least four years were received by only 10.8 per

cent of persons convicted of assault occasioning grievous bodily harm, whereas 59.1 per cent of persons convicted of offences involving aggravated sexual assault received prison sentences of at least four years.

**Local Court trends**

*Trend in appearances*

Figure 6 presents the trend in Local Court appearances for indecent assault offences between 1982 and 1989.<sup>54</sup> It can be seen that the number of appearances was fairly stable between 1982 and 1985 (ranging from 50 to 56 appearances), but approximately doubled from 1985 (51 appearances) to 1989 (110 appearances).

*Trend in convictions*

Figure 7 presents the Local Court trend in the percentage of persons convicted of indecent assault offences between 1982 and 1989.<sup>55</sup> It can be seen that the percentage increased from 1982 to 1985, and then stabilized after a slight decrease from 1986 to 1987.

**Higher Courts trends**

*Trend in persons charged*

Figure 8 presents the trend in persons charged with sexual assault offences, including the three sexual assault categories, for cases finalised in Higher Courts between 1988 and 1992.<sup>56</sup> Over this period, the number of Higher Courts

**Table 3: Number of offenders convicted of sexual assault as their principal offence: sexual assault category and type of penalty, Local Court and Higher Courts, NSW, 1991**

Sexual assault category	Penalty													
	Prison 4 - 8 years		Prison < 4 years		Periodic detention		Community service order		Recognizance		Fine		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Aggravated sexual assault	13	59.1	8	36.4	0	0.0	1	4.5	0	0.0	0	0.0	22	100
Sexual intercourse without consent	16	17.2	54	58.1	15	16.1	3	3.2	5	5.4	0	0.0	93	100
Indecent assault	0	0.0	30	19.4	14	9.0	21	13.5	85	54.8	5	3.2	155	100
<b>Total</b>	<b>29</b>	<b>10.7</b>	<b>92</b>	<b>34.1</b>	<b>29</b>	<b>10.7</b>	<b>25</b>	<b>9.3</b>	<b>90</b>	<b>33.3</b>	<b>5</b>	<b>1.9</b>	<b>270</b>	<b>100</b>

Source: NSW Bureau of Crime Statistics and Research (unpublished data).

appearances for sexual assault generally increased, almost doubling by the end of the period.

*Trend in guilty pleas*

Figure 9 presents the Higher Courts trend in the percentage of persons pleading guilty to sexual assault, including the three sexual assault categories, between 1988 and 1992.<sup>57</sup> Generally there was an increasing trend in the percentage of persons pleading guilty.

*Trend in convictions*

Figure 10 presents the Higher Courts trend in the percentage of persons convicted of sexual assault, including all three sexual assault categories, between 1982 and 1989.<sup>58</sup> Generally, the percentage of persons convicted did not vary substantially, ranging from 37.4 to 46.7 per cent.

**ADDRESSING THE PROBLEM OF SEXUAL ASSAULT**

**RECENT INITIATIVES**

A number of recent initiatives have aimed to assist with the prevention of sexual assault and/or with the responses to sexual assault once it has occurred.

*Government initiatives*

A recent Commonwealth-State government initiative involved setting up the National Committee on Violence Against Women (NCVAW) in 1990. The

aim of the NCVAW is to develop a national strategy on violence against women, including sexual assault, which would guide research, policy development, legislation, law enforcement, community services and community education.<sup>59</sup>

*Police initiatives*

A recent (1989) NSW Police Service initiative involves a program called Initial Response Officers Course (IROC) which provides training for police officers in dealing with adult sexual assault victims and with child abuse victims. The six-month course includes training on developing a network of contacts with sexual assault workers, and on appropriately taking statements from sexual assault complainants (i.e. alleged victims). The course is designed to 'raise awareness of participants, to challenge attitudes and introduce police to counsellors and medical personnel involved in sexual assault care'.<sup>60</sup>

There is at least one IROC trained officer on staff at each NSW police station.<sup>61</sup> The role of the IROC trained officer is to take the statement from the sexual assault complainant; to provide the complainant with information on the available sexual assault services in the area; and to support the complainant when investigation officers take over the case.

*Legal initiatives*

Legislative initiatives since 1981 have included changes which have aimed to

'protect the victims ... from victimization under the legal process, to encourage ... victims to report offences, ... to facilitate ... the conviction of guilty offenders, ... and to serve an educative function in further changing community attitudes to sexual assault'.<sup>62</sup> For example, the legal definition of sexual assault has been broadened to include assaultive acts involving fellatio or cunnilingus, and to include the possibility of sexual assault in marriage; a sexual incident no longer requires physical resistance by the victim to constitute sexual assault; information identifying sexual assault victims may not be published without court approval; there are now restrictions on the admission of evidence of the victim's sexual experience; and the judge is no longer required to warn the jury against convicting on the uncorroborated testimony of the victim. Furthermore, the law allows offences involving indecent assault to be heard summarily which reduces the number of times the victim is required to recount in minute detail the usually traumatic experience of sexual assault.<sup>63</sup>

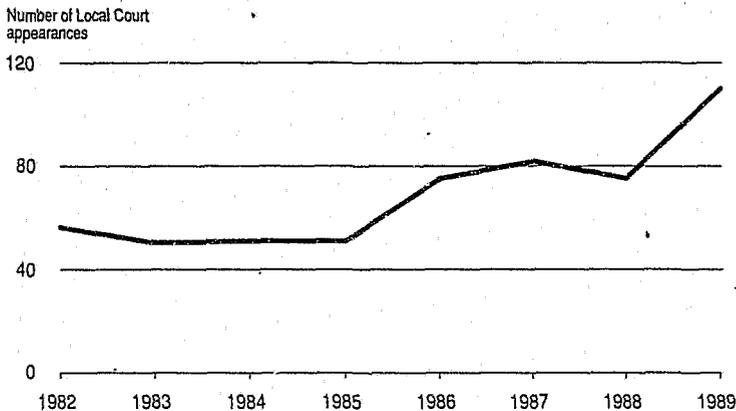
Despite such recent initiatives in the legal arena, it has been argued by some that further reforms are warranted. Firstly, it has been suggested that the restrictions on the admissibility of evidence of the victim's sexual experience should be extended. In NSW, as in Victoria, two exceptions to the restrictions on the admissibility of the victim's sexual

**Table 4: Number of offenders convicted of assault as their principal offence: assault category and type of penalty, Higher Courts, NSW, 1991**

Assault category	Penalty															
	Prison ≥ 4 years		Prison < 4 years		Periodic detention		Community service order		Recognizance		Fine		Other		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Aggravated sexual assault	13	59.1	8	36.4	0	0.0	1	4.5	0	0.0	0	0.0	0	0.0	22	100
Assault: grievous bodily harm	13	10.8	61	50.8	10	8.3	12	10.0	24	20.0	0	0.0	0	0.0	120	100
Assault: actual bodily harm	0	0.0	74	27.5	18	6.7	52	19.3	121	45.0	3	1.1	1	0.4	269	100
<b>Total non-sexual assault</b>	<b>13</b>	<b>3.3</b>	<b>135</b>	<b>34.7</b>	<b>28</b>	<b>7.2</b>	<b>64</b>	<b>16.5</b>	<b>145</b>	<b>37.3</b>	<b>3</b>	<b>0.8</b>	<b>1</b>	<b>0.3</b>	<b>389</b>	<b>100</b>

Source: NSW Bureau of Crime Statistics and Research (unpublished data).

**Figure 6: Appearances for indecent assault offences, Local Court, NSW, 1982 - 1989**



Source: NSW Bureau of Crime Statistics and Research publications entitled *Court Statistics* for years 1982, 1983, 1984, 1985 and 1986, and *Lower Criminal Courts and Children's Courts Statistics* for years 1987 and 1988; NSW Bureau of Crime Statistics and Research unpublished data for 1989.

experience are that the complainant's sexual experience can be raised under cross-examination and that evidence can be admitted in relation to the complainant's prior sexual experience with the accused. The Law Reform Commission of Victoria has recently suggested that the prior approval of the court be required before such exceptions are made.<sup>64</sup>

In the absence of physical injury it is often difficult to prove an offence of sexual assault beyond reasonable doubt. Complainants in such sexual assault cases often find it difficult to rebut claims that they consented to sexual intercourse. As a result, the issue of consent has been the subject of considerable recent debate. For example, it has been argued that consent should be better defined<sup>65</sup> and that consent should be removed from the definition of sexual assault and replaced with a list of specific situations amounting to sexual assault.<sup>66</sup> So that consent is not assumed simply because the victim did not resist, Victoria has recently introduced a 'negative' definition of consent whereby sexual assault is deemed to have occurred if consent was not freely given (i.e. consent was not 'positively communicated either verbally or by unequivocal non-verbal behaviour').<sup>67</sup> It is too early to say whether or not the Victorian 'negative' definition of consent will have an impact on the running of sexual assault trials or on the conviction rate.

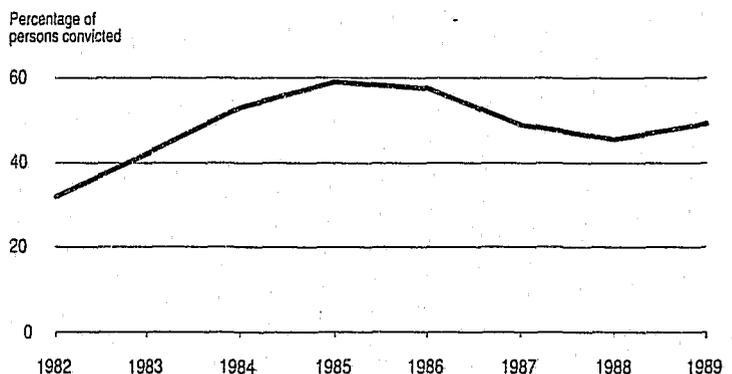
There has also been concern with the powers and suitabilities of judges and magistrates, particularly with respect to their remarks to the jury or during sentencing.<sup>68</sup> For example, there have been instances where the judge's remarks have been alleged to condone sexual violence in marriage,<sup>69</sup> and instances where the judge has suggested that a sexual assault on a prostitute should be dealt with less seriously than a sexual assault on a 'chaste' woman.<sup>70</sup>

**SUGGESTIONS FOR REDUCING THE INCIDENCE OF SEXUAL ASSAULT**

How can people be prevented from committing sexual assault? The successful prevention of any crime is much more likely if the crime is stigmatized by all sections of society. The National Committee on Violence (NCV) found that 'the degree to which many Australians condone violence is one of the fundamental impediments to achieving a non-violent society'.<sup>71</sup> For example, an Australian survey of attitudes towards domestic violence found that about one in five people considered that the use of physical force by a man against his wife was acceptable under some circumstances.<sup>72</sup> The NCV recommended that a national strategy to promote non-violent attitudes be adopted.<sup>73</sup>

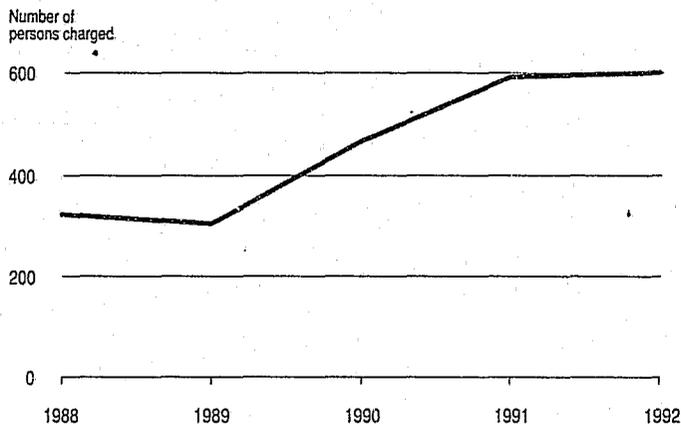
A comprehensive and reliable survey of community attitudes towards sexual assault is yet to be conducted. Community attitudes towards sexual assault deserve special research attention. The attitudes and behaviours of people who are likely to commit sexual assault are unlikely to change if such attitudes and behaviours are condoned by the community. The extent to which particular community education programs or particular offender treatment programs may reduce the incidence of sexual

**Figure 7: Percentage of persons convicted of indecent assault offences, Local Court, NSW, 1982 - 1989**



Source: NSW Bureau of Crime Statistics and Research publications entitled *Court Statistics* for years 1982, 1983, 1984, 1985 and 1986, and *Lower Criminal Courts and Children's Courts Statistics* for years 1987 and 1988; NSW Bureau of Crime Statistics and Research unpublished data for 1989.

**Figure 8: Number of persons charged with sexual assault offences in trial and sentence cases finalised in the Higher Courts, NSW, 1988 - 1992**



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

assault might be gauged in part by the extent to which current attitudes condone sexual assault or involve mistaken 'myths' about it. Examples of such 'myths' are: sexual assault requires physical force or the use of a weapon; women mean 'yes' even when they say 'no' and they enjoy being sexually assaulted; women are often to blame for sexual assault because they in some way provoke sexual assault by their appearance and/or their behaviour; and men have the right to expect sexual intercourse from a woman simply, for example, because they are in a long-term relationship with the woman or because they have paid for dinner.<sup>74</sup> If offenders commonly commit sexual assault because they harbour such false 'myths', dispelling them might be expected to reduce the rate of sexual assault.

Although unequivocal societal rejection of sexual assault is an important step towards prevention, on its own it is unlikely to inhibit all individuals from committing the offence. As is the case for the prevention of crime generally, the prevention of sexual assault requires a high risk of detection and prosecution. Presently, the low level of reporting means that the risk of arresting and subsequently prosecuting sexual assault offenders is quite low. A high level of reporting requires both that victims recognize that a crime has been committed against them and that victims have enough confidence in the legal system to report the crime to police and to give evidence in court. Victims may not always recognize sexual

assault, particularly if myths about sexual assault are widespread. Community awareness programs may therefore help victims to recognize sexual assault. As discussed earlier, there have been no comprehensive studies examining the specific apprehensions of victims about reporting to the police and giving evidence

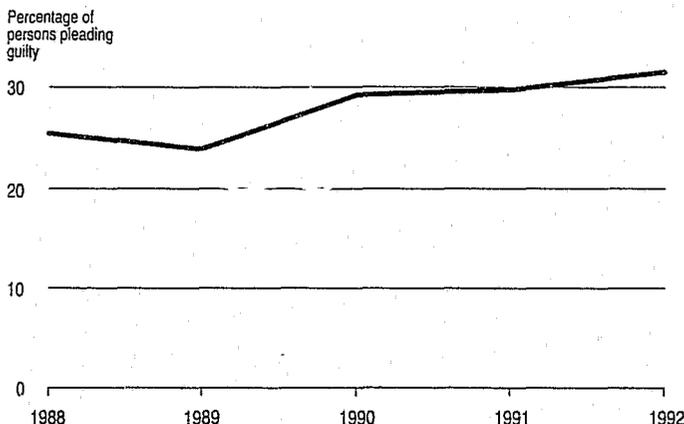
in court, and the extent to which these apprehensions are warranted. To the extent that victims' apprehensions are unjustified, education programs targeting such apprehensions would be expected to raise the level of reporting and willingness to give evidence. On the other hand, to the extent that victims' apprehensions are justified, reducing the negative consequences of reporting and the negative experience of giving evidence would be important.

Raising the level of reporting, and consequently, the risk of detection, may also substantially fail to deter potential sexual assault offenders if they are largely unconcerned about the likely penalties. The deterrent value of the present penalties for sexual assault in NSW has not been examined. Although the 1989 legislation did increase the penalties for sexual assault, it is too soon after this legislation became operative (in 1991) to evaluate the effect on the sexual assault rate.

**SUGGESTED PRECAUTIONS INDIVIDUALS MAY CHOOSE TO ADOPT**

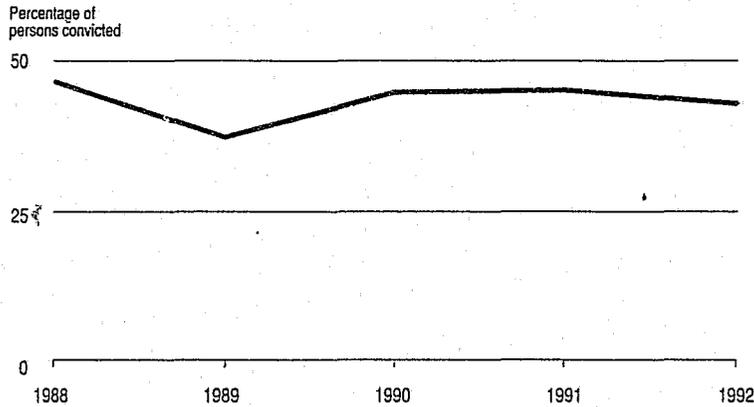
It is important to note that every precaution that can be taken by an individual involves at least some restriction on that individual's civil liberties (e.g. freedom and independence). The precautions presented below are not suggested as an alternative to the more fundamental strategies that are required to

**Figure 9: Percentage of persons pleading guilty to sexual assault offences in trial and sentence cases finalised in the Higher Courts, NSW, 1988 - 1992**



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

**Figure 10: Percentage of persons convicted of sexual assault offences in trial and sentence cases finalised in the Higher Courts, NSW, 1988 - 1992.**



Source: NSW Bureau of Crime Statistics and Research (unpublished data).

reduce the incidence of sexual assault in the community. Furthermore, it should be stressed that the decision not to take any precaution in no way places any blame for the sexual assault on the victim.

In the same way that taking certain precautions may reduce the risk of other crimes (e.g. installing security devices to reduce house break-ins), the following precautions are put forward simply to allow individuals to make informed judgments about any actions they can take which may reduce their risk of sexual assault. It should be stressed that these precautions do not guarantee that a person will avoid being sexually assaulted.

The suggested precautions that can be taken by individuals in an attempt to prevent sexual assault differ for 'stranger' sexual assault and 'acquaintance/date/partner' sexual assault.

**Avoiding situations where 'stranger' sexual assault may occur**

The traditional sort of advice about cautionary behaviour by potential victims is applicable almost exclusively to preventing 'stranger' sexual assault. Such traditional advice includes:

- don't go out on your own at night;
- don't travel on public transport late at night.<sup>75</sup>

These pieces of traditional advice (particularly the first) impose very large restrictions on civil liberties. Rather than advising such extreme measures, it is more customary today to advise taking greater care when out alone, particularly at night, such as:

- avoid carrying too many objects or wearing clothing that impedes running;
- wait for public transport in well-lit areas;
- in trains, sit in the guard carriage or near the aisle;
- leave your car in an area that is well-lit and not deserted;
- avoid walking down deserted or badly lit streets;
- avoid crossing parks or other large or unlit areas.<sup>76</sup>

Furthermore, given that a substantial percentage of 'stranger' sexual assaults occur in dwellings,<sup>77</sup> it has also been suggested that the following measures may help prevent 'stranger' sexual assault:

- install deadlocks and a peephole;
- be wary of strangers at your door.<sup>78</sup>

**Avoiding situations where 'acquaintance/date/partner' sexual assault may occur**

It must be remembered that the majority of sexual assaults are not committed by strangers but rather by acquaintances/dates/partners. A number of authors have suggested that the following precautions may help prevent 'acquaintance/date/partner' sexual assault:

- know your sexual rights and what constitutes sexual assault (e.g. that physical force is not necessary and that no-one has the right to have sexual intercourse with you at any time for any reason without your consent);
- be assertive and know how to communicate what you do and do not want sexually;
- be cautious about going to a date's home or having the date come to yours, particularly if alcohol has been consumed;
- consider paying your own way on a date so that the date cannot be misconstrued as you 'owing' something;
- consider taking your own car on a date because it is not uncommon for 'date' sexual assault offenders to drive their victims to the assault site;
- trust any misgivings you may have about a date and leave the situation.<sup>79</sup>

**What to do when faced with an attacker**

The above strategies are concerned with avoiding situations where a sexual assault is likely to occur. Sound advice concerning what to do once an assault has begun is more difficult to provide than advice about avoiding potential sexual assault situations. There is some evidence that fleeing is the most effective way of avoiding sexual assault once faced with an attacker.<sup>80</sup> However, flight is not always possible. Some of the suggestions about what to do if flight is not possible have been the following: use noise-making devices or yell; use physical resistance (e.g. use self-defence techniques such as judo, or use weapons such as keys, clubs, or stickpins); use verbal resistance (e.g. buy time with conversation, or use the pretext of pregnancy or AIDS or venereal disease).<sup>81</sup>

Unfortunately, there is no clear-cut answer about which of the above techniques is likely to be the most effective in any

particular situation because 'different motives operate in different offenders and, therefore, what might be successful in dissuading one type of assailant might, in fact, only aggravate the situation with a different type of offender'.<sup>82</sup> There are cases where fighting back is effective and other cases where fighting back results in the attacker becoming more violent. Some studies have found that women who avoided sexual assault tended to use a combination of strategies rather than a single strategy.<sup>83</sup> There are instances, however, where no strategies are likely to be useful.

### SERVICES FOR VICTIMS

Sexual assault services exist in suburban and regional areas throughout NSW and are based in certain hospitals and community health centres.<sup>84</sup> Many of the sexual assault services are open 24 hours a day. For information on sexual assault services you may contact the service nearest you (listed in the telephone book) or contact the Sydney Rape Crisis Centre, your nearest community health centre or your nearest Department of Community Services office.

Sexual assault services offer a range of free and confidential services to the victim: counselling immediately after, and in the weeks/months after, the occurrence of the assault; and information on, and assistance with, reporting to police, legal procedures, medical treatment, court support, sexual assault support groups and victim compensation. Sexual assault services also provide support and information for the partners, family and friends of the victim.

### NOTES

- 1 Shapcott, D. 1988, *The Face of the Rapist*, Penguin, Auckland, p. 201.
- 2 For an account of the involvement of the Women's Movement, see: Carmody, M. 1992, 'Uniting all women: A historical look at attitudes to rape', in *Crimes of Violence: Australian Responses to Rape and Child Sexual Assault*, eds J. Breckenridge & M. Carmody, Allen & Unwin, Sydney; Largent, M.A. 1976, 'History of women's movement in changing attitudes, laws, and treatment toward rape victims', in *Sexual Assault: the Victim and the Rapist*, eds M.J. Walker & S.L. Brodsky, Lexington Books, Lexington.
- 3 New South Wales Legislative Assembly 1981, *New South Wales Parliamentary Debates*, Second Reading, Crimes (Sexual Assault) Amendment Bill, p. 4758.
- 4 Brown, D., Farner, D., Neal, D. & Weisbrot, D. 1990, *Criminal Laws: Materials and Commentary on Criminal Law and Process in New South Wales*, The Federation Press, Sydney.
- 5 New South Wales Legislative Assembly 1981, op. cit., p. 4760.

- 6 id. 1983, *New South Wales Parliamentary Debates*, Second Reading, Crimes (Amendment) Bill, p. 13569.
- 7 These categories encompass most of the sexual offences committed against 'adults' (i.e. persons aged 16 years or over). There are several other sexual offences in the *Crimes Act 1900* (as amended), such as 'procuring, etc., carnal knowledge by fraud' (see s. 66), that might be considered as adult sexual assault. These offences are however in the minority and generally have not been included in the bulletin. Sexual assault offences against children (i.e. persons under 16 years of age) have not been included in the bulletin. Readers interested in child sexual assault offences should refer to: Goodwin, A. 1989, *Child Sexual Assault: The Court Response II*, NSW Bureau of Crime Statistics and Research, Sydney; Cashmore, J. & Horsky, M. 1987, *Child Sexual Assault: The Court Response*, NSW Bureau of Crime Statistics and Research, Sydney.
- 8 The category of 'aggravated sexual assault' includes offences under the following sections of the Crimes Act as amended: 61B ('sexual assault category 1' under the 1981 legislation), 61C ('sexual assault category 2' under the 1981 legislation), 61J ('aggravated sexual assault' under the 1989 legislation), 61K ('assault with intent to have sexual intercourse' under the 1989 legislation) and 65 ('assault with intent to rape' under the pre-1981 legislation). For the purposes of this bulletin, the aggravated circumstances used in the present category correspond to the 'circumstances of aggravation' listed in s. 61J(2) of the Crimes Act, with one exception. The circumstance 'the alleged victim is under the age of 16 years' is not included in the present category because the bulletin concentrates on adult victims aged 16 years or over. Section 61J makes explicit reference to the sexual intercourse being without consent whereas the other sections do not.
- 9 The category of 'sexual intercourse without consent' includes offences under the following sections of the Crimes Act as amended: 61D ('sexual assault category 3' under the 1981 legislation), 61I ('sexual assault' under the 1989 legislation), 63 ('rape' under the pre-1981 legislation), 65 ('attempt etc., to commit rape' under the pre-1981 legislation) and 80A ('sexual assault by forced self-manipulation' under the 1989 legislation). It should be noted that sexual assault offences where the offender was in the company of others or where the victim was under the authority of the offender are treated differently by the 1981 and 1989 legislations. The 1989 legislation includes these 'company' and 'authority' offences in the category 'aggravated sexual assault' (s. 61J), whereas the 1981 legislation includes these offences in the category 'sexual intercourse without consent' (s. 61D). In the bulletin, wherever possible, these 'company' and 'authority' offences were included in the category of 'aggravated sexual assault'. However, due to incomplete information about some specific s. 61D offences, a number of 'company' or 'authority' offences may have been included in the bulletin category of 'sexual intercourse without consent'.
- 10 The category 'indecent assault' includes offences under the following sections of the Crimes Act as amended: 61E ('sexual assault category 4' under the 1981 legislation), 61L ('indecent assault' under the 1989 legislation) and 61M ('aggravated indecent assault' under the 1989 legislation). Section 61M refers to indecent assault involving any one of the following aggravated circumstances: the offender was in the company of one or more persons; the victim was under the authority of the offender; the victim had a serious intellectual or physical disability. Although s. 61M includes 'the alleged victim is under the age of 16 years' as an aggravated circumstance, the present category excludes this circumstance because the bulletin concentrates on persons aged 16 years and over. Sections 61N ('act of indecency') and 61O ('aggravated act of indecency') under the 1989 legislation have not been included in the present category because they refer solely to offences against children aged under 16 years.
- 11 Australian Bureau of Statistics 1992, *Crime and Safety, New South Wales, April 1992*, Cat. no. 4509.1, ABS, Sydney. In this victim survey, 'sexual assault' included any incident of a sexual nature involving physical contact, including rape, attempted rape, indecent assault and assault with intent to sexually assault, but excluded sexual harassment which did not lead to an assault.
- 12 van Dijk, J.J.M., Mayhew, P. & Killias, M. 1990, *Experiences of Crime Across the World: Key Findings of the 1989 International Crime Survey*, Kluwer Law and Taxation, Deventer, Netherlands.
- 13 Poropat, P. & Rosevear, W. 1992, 'Sexual assault of males', Paper presented to Without Consent: Confronting Sexual Violence Conference, Melbourne, 27-29 Oct.
- 14 Australian Bureau of Statistics 1986, *Victims of Crime, Australia, 1983*, Cat. no. 4506.0, ABS, Canberra; van Dijk et al., op. cit.
- 15 Eastaale, P.W. 1992, 'Rape', *Violence Prevention Today*, No.1, Australian Institute of Criminology, Canberra.
- 16 Grabosky, P.N. 1989, *Victims of Violence*, Australian Institute of Criminology, Canberra.
- 17 See Eastaale, op. cit. and Shapcott, op. cit., for a comprehensive discussion of the common false beliefs about rape.
- 18 NSW Bureau of Crime Statistics and Research (unpublished data). The number of adult victims recorded by police may have been smaller than 5,203 because the counting procedures used sometimes required that the one victim was counted more than once.
- 19 The population data for the rate calculations were based on persons aged 16 years or over and were obtained from the Australian Bureau of Statistics publication *Estimated Resident Population by Sex and Age, States and Territories of Australia*, Cat. no. 3201.0, ABS, Canberra. The 5,203 recorded victims represented 5,141 sexual assault incidents (because some incidents involved more than one victim) and 6,704 sexual assault offences (because some victims had more than one offence committed against them).
- 20 Women's Health Unit 1993, *Victims of Sexual Assault: Initial Contact at NSW Sexual Assault Services 1989, 1990, 1991*, NSW Health Department, Sydney.
- 21 Australian Bureau of Statistics 1992, op. cit.
- 22 These estimates are subject to a relative standard error of 25 per cent or more.
- 23 The population data for the rate calculations were based on persons aged 16 years or over and were obtained from the Australian Bureau of Statistics publication *Estimated Resident Population by Sex and Age, States and Territories of Australia*, Cat. no. 3201.0, ABS, Canberra. All population estimates are based on final estimates for each year except for 1991, for which the population estimates are preliminary estimates. The police data used for this trend include some sexual assault offences against children (younger than 16 years of age), and therefore do not directly correspond to the recorded sexual assault offences reported elsewhere in the bulletin.
- 24 For an outline of SDs, see Australian Bureau of Statistics 1991, *Regional Statistics 1991, New South Wales*, Cat. no. 1304.1, ABS, Sydney.
- 25 The population data used for the rate calculations were based on persons aged 16 years or over and were obtained from the Australian Bureau of Statistics publication *Estimated Resident Population by Age and Sex in Statistical Local Areas, New South Wales, 30 June 1990*, Cat. no. 3209.1, ABS, Sydney.

- 26 Gottfredson, M. & Hindelang, M. 1979, 'A study of the behavior of law', *American Sociological Review*, vol. 44, pp. 3-18.
- 27 Devery, C. 1991, *Disadvantage and Crime in New South Wales*, NSW Bureau of Crime Statistics and Research, Sydney.
- 28 Bonney, R. 1985, *Crimes (Sexual Assault) Amendment Act, 1981, Monitoring and Evaluation, Interim Report No. 1 - Characteristics of the Complainant, the Defendant and the Offence*, NSW Bureau of Crime Statistics and Research, Sydney; Women's Health Unit 1993, op. cit.
- 29 Other locations included in the 'outdoor areas' category were beaches, public toilets, camping grounds, golf courses, vacant blocks, crown land, farms, anchorages, church grounds, forests, cemeteries, car yards, construction/demolition sites, and other outdoor enclosures.
- 30 Victorian Community Council Against Violence 1991, *A Profile of Rapes Reported to Police in Victoria 1987-1990*, Victorian Community Council Against Violence, Melbourne; Cohn, E.G. 1990, 'Weather and crime', *British Journal of Criminology*, vol. 30, pp. 51-64.
- 31 Cohn, op. cit.
- 32 'Acquaintances' include long-term acquaintances and persons the victim met for the first time the day of the assault.
- 33 Victorian Community Council Against Violence, op. cit.
- 34 Victorian Community Council Against Violence, op. cit.; Bonney, op. cit.
- 35 *ibid.*
- 36 Hanson, K. (n.d.), *The Psychological Impact of Crime: A Review 1990-1*, Solicitor General Canada Ministry Secretariat, n.p.
- 37 The population data for the rate calculations were based on persons aged 16 years or over and were obtained from the Australian Bureau of Statistics publication *Estimated Resident Population by Sex and Age, States and Territories of Australia*, Cat. no. 3201.0, ABS, Canberra.
- 38 NSW Bureau of Crime Statistics and Research (unpublished data). Gender was unknown for 177 victims who were therefore excluded from the analysis.
- 39 Age was unknown for 1,542 recorded victims who were therefore excluded from the analysis.
- 40 Women's Health Unit 1993, op. cit.
- 41 A small number of cases were included where it was not possible to determine whether the offence in question was committed against an adult or child victim.
- 42 NSW Bureau of Crime Statistics and Research (unpublished data). The 1991 figures are based on the calendar year of 1991 for the Local Court and Higher Courts and the financial year of July 1990 - June 1991 for the Children's Courts.
- 43 Throughout the bulletin, where Children's Courts statistics are concerned, 'principal offence' refers to the most serious offence.
- 44 The 1991 population data for the rate calculations were based on males aged 16 years or over and were obtained from the Australian Bureau of Statistics publication *Estimated Resident Population by Sex and Age, States and Territories of Australia, June 1990 and Preliminary June 1991*, Cat. no. 3201.0, ABS, Canberra.
- 45 Age was unknown for two male offenders who were therefore excluded from the analysis.
- 46 Bonney, op. cit. Bonney examined only those cases of sexual assault for which an arrest had been made and a prosecution launched. Sexual assault did not include 'indecent assault' offences.
- 47 Broadhurst, R.G., & Mailer, R.A. 1991, *Sex Offending and Recidivism*, Research Report No. 3, Crime Research Centre, University of Western Australia, Nedlands.
- 48 *id.* 1990, 'The recidivism of prisoners released for the first time: Reconsidering the effectiveness question', *Australian and New Zealand Journal of Criminology*, vol. 23, pp. 88-104.
- 49 NSW Bureau of Crime Statistics and Research (unpublished data).
- 50 *id.* 1992, *New South Wales Recorded Crime Statistics 1991*, NSW Bureau of Crime Statistics and Research, Sydney.
- 51 Department of Family and Community Services (n.d), *Annual Children's Court Statistics 1991*, Department of Family and Community Services, Sydney. 'Adults' here is used to refer to persons aged 16 years or more. However, it should be noted that some of these 47 principal offences may have included sexual offences against children. Figures for 1991 are based on final court appearances for the financial year from July 1990 to June 1991.
- 52 A small number of these offenders were juveniles (i.e. younger than 18 years). Occasionally charges against juveniles are heard in the Higher Courts rather than the Children's Courts.
- 53 The comparison of penalties for aggravated sexual assault and assault occasioning bodily harm is based only on cases heard in the Higher Courts because all of the cases involving aggravated sexual assault were heard in the Higher Courts. 'Assault occasioning grievous bodily harm' includes offences under the following sections of the Crimes Act as amended: 33, 35, 54, 96 and 98. 'Assault occasioning actual bodily harm' includes offences under the following sections of the Crimes Act as amended: 44, 53 and 59.
- 54 The Local Court trend is based on appearances for the most serious offence. The trend is based on victims 14 years and over rather than on victims 16 years and over. Victims aged 14-15 years are included because, during 1982-1985, a substantial number of the charges heard were based on the pre-1981 legislation which did not separate indecent assaults against 14 and 15 year olds from indecent assaults against victims 16 years and over. Data for 1990 and 1991 are not presented here because they are not available in a form comparable to the 1982-1989 data.
- 55 See Note 54.
- 56 There are no readily available data on Higher Courts trends before 1988. The data are not restricted to offences defined in the three categories of sexual assault used throughout the bulletin. These data include a variety of other sexual offences, such as homosexual offences and carnal knowledge.
- 57 See Note 56.
- 58 See Note 56.
- 59 National Committee on Violence Against Women (NCVAW) 1992, *The National Strategy on Violence Against Women*, NCVAW, Commonwealth of Australia, Canberra.
- 60 Nixon, C. 1992, 'A climate of change: Police responses to rape' in *Crimes of Violence: Australia Responses to Rape and Child Sexual Assault*, eds J. Breckenridge & M. Carmody, op. cit., p. 45.
- 61 Nixon, C., NSW Police Service, personal communication.
- 62 New South Wales Legislative Assembly 1981, op. cit., p. 4758.
- 63 *ibid.*; New South Wales Legislative Assembly 1987, *New South Wales Parliamentary Debates, Second Reading, Crimes (Personal and Family Violence) Amendment Bill*; New South Wales Legislative Assembly 1989, op. cit.
- 64 Law Reform Commission of Victoria 1991, *Rape: Reform of Law and Procedure, Interim Report, Report no. 42*, Law Reform Commission of Victoria, Victoria.
- 65 Wayne, V. 1992, 'Rape and the unconscionable bargain', *Criminal Law Journal*, vol. 16, pp. 94-105.
- 66 Bronitt, S.H. 1992, 'Rape and lack of consent', *Criminal Law Journal*, vol. 16, pp. 289-310.
- 67 McSherry, B. 1992, 'Legislating to change social attitudes: The significance of section 37 (a) of the Victorian Crimes Act 1958', Paper presented to Without Consent: Confronting Sexual Violence Conference, Melbourne, 27-29 Oct.
- 68 Chipp, D. 1993, 'Judging the judges: Despite our splendid democracy, they remain a law unto themselves', *The Sunday Telegraph*, 17 Jan.; Gosman, K. 1993, 'Judges on trial: are they asking for it?', *The Sydney Morning Herald*, 14 May, p. 9.
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- 70 Scutt, J.A. 1992, 'Judicial vision: Rape, prostitution and the "chaste" woman', Paper presented to Without Consent: Confronting Sexual Violence Conference, Melbourne, 27-29 Oct.
- 71 National Committee on Violence 1990, *Violence: Directions for Australia*, Australian Institute of Criminology, Canberra.
- 72 Public Policy Research Centre 1988, *Community Attitudes Towards Domestic Violence in Australia*, Australian Government Office of the Status of Women, n.p.
- 73 National Committee on Violence, op. cit.
- 74 Eastaer, op. cit.; Shapcott, op. cit.; Warshaw, R. 1988, *I Never Called it Rape*, Harper & Row, New York.
- 75 Smith, L.J.F. 1989, *Concerns About Rape*, Study 106, Home Office Research Studies, London.
- 76 Eastaer, op. cit.; Smith, op. cit.
- 77 According to the Victorian Community Council Against Violence, op. cit., 36.7 per cent of 'stranger' rapes occurred in homes.
- 78 Eastaer, op. cit.
- 79 *ibid.*; Warshaw, op. cit.
- 80 Smith, op. cit.
- 81 Hazelwood, R.R. & Harpold, J.A. 1986, 'Rape: The dangers of providing confrontational advice', *FBI Law Enforcement Bulletin*, June, pp. 1-5.
- 82 *ibid.*
- 83 Smith, op. cit.
- 84 New South Wales Health Department 1992, *Sexual Assault Services*, State Health Publication No. (HPA) 91-123, NSW Health Department, NSW.

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