

## THE CHILDREN'S COURT

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**S**ection 8 of the Judicial Officers Act 1986 charges the Judicial Commission of NSW with the task of providing criminological assistance to the State's courts in order to promote consistency of approach in the sentencing of offenders. This new series, to be published periodically, focuses on an analysis of statistical data relevant to sentencing.

The present study, which seeks to identify some general patterns and characteristics in the sentencing of juveniles in the Children's Court since 25 September 1989 (the commencement date of the Sentencing Act 1989), has been made possible as a result of data provided to the Commission by the Research and Analysis Unit of the Department of Family and Community Services (FACS). As additional data becomes available it will be possible to monitor, and in subsequent publications, report upon the patterns or "trends" in sentencing in the Children's Court.

These publications will not attempt to indicate the precise type or quantum of sentence which should be imposed in a particular case for, ultimately, each case must be determined in the light of its own particular circumstances. However, they are intended to provide an insight into, what is often described as, "the collective wisdom" of the courts, revealing the broad parameters or benchmarks of sentencing established by practice. In turn, it is hoped that this information will contribute to the maintenance of a just and fair system of sentencing throughout NSW.

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### The Nature of the Data

All juvenile justice matters heard in the Children's Court on or after the 25th of September 1989, the date of commencement of the *Sentencing Act 1989*, were obtained from statistical data collected by FACS. These data were analysed in terms of features pertaining to the type of court matter, type of offence, offender characteristics, and sentencing outcomes.

The data consist of some 17,745 records. Each record is an entry made in relation to the principal matter for a final appearance of an individual in the Children's Court.

The majority of records (16,479 or 92.9%) pertain to criminal matters. The remaining records (1,266 or 7.1%) relate to welfare matters with a very small number of welfare cases (25 or 0.1%) involving criminal matters as well. Only those records strictly relating to criminal matters were analysed. Consequently, the data detailed in this report are comprised of the following records:

- 16,479 juveniles before the Children's Court on criminal matters;
- 15,400 juveniles (93.4%) who pleaded guilty or were found guilty of criminal offences;
- 11,079 juveniles (67.2%) sentenced in relation to their principal offence;
- 4,232 juveniles (25.7%) with their principal charge proved and dismissed;
- 89 juveniles (0.5%) committed for trial.

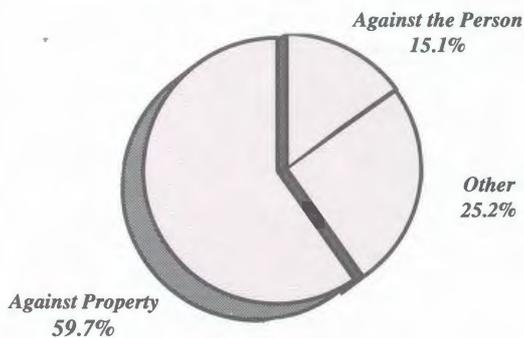
### Type of Offence

Figure 1 shows that juveniles predominantly commit property offences. Around 60% of proven offences involved crimes against property, whereas offences against the person comprised



only 15% of the offences. The remaining 25% of offences involved those against good order, driving and drug offences.

**Figure 1**  
Offence Type (Grouped), Proven Matters – Children's Court (25. 9. 89 to 1. 10. 90)

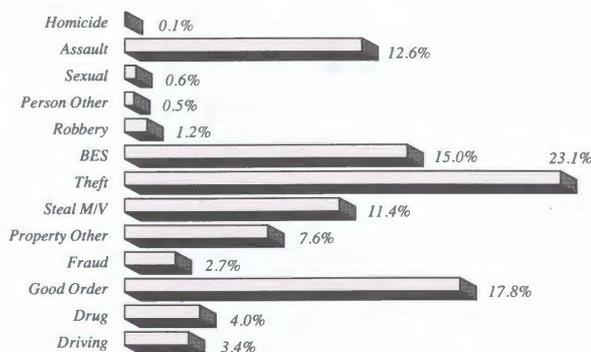


A more detailed breakdown of offence type is provided in Figure 2. Here it is seen, that the most common offences committed by juveniles in the twelve month period involved the theft of property (23.1%), with the stealing of motor vehicles comprising 11.4% of offences. Break, enter and steal offences were also prominent (15.0%), as were assaults (12.6%), and offences against good order (17.8%). Proven drug offences comprised only 4% of criminal matters dealt with by the Children's Courts, and sexual offences represented less than one percent (0.6%) of all cases. There were nineteen (0.1%) recorded homicides during the surveyed period<sup>1</sup>.

**Note 1**

Although these figures are intended to include juveniles committed for trial in the higher courts, it has been advised that the outcomes of some of these cases may not have been recorded due to administrative difficulties.

**Figure 2**  
Offence Type, Proven Matters – Children's Court (25. 9. 89 to 1. 10. 90)

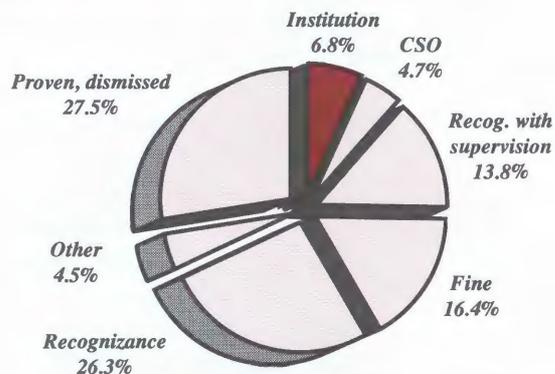


**Type of Sentence**

The question is regularly posed, "How many juveniles are given custodial sentences?" Figure 3

reveals that 6.8% of juveniles who were found guilty of a criminal offence received a custodial sentence. An even smaller proportion (4.7%) had been ordered to perform community service work. As can be seen, the majority of juveniles who were found guilty did not receive these "higher range" penalties.

**Figure 3**  
Outcomes, Proven Matters – Children's Court (25. 9. 89 to 1. 10. 90)



Given these sentencing trends in the Children's Court, is there a difference in the proportion of children committed to an institution by the Children's Court and the proportion of adults sentenced to a term of imprisonment by the Local Court? Tables 1 and 2 provide some assistance in answering this question, although caution should be exercised because the figures do not relate to totally comparable time periods<sup>2</sup>.

Almost one in every fifteen juveniles (6.8%) guilty of a criminal offence in the Children's Court was committed to an institution. However, only one in twenty adult offenders (5%) convicted of a criminal offence in the Local Court received a custodial sentence. The difference in the relative numbers of juveniles and adults detained in custody is significant<sup>3</sup> and suggests that juveniles sentenced in the Children's Court are more likely to receive a custodial sentence than adults convicted in the Local Court. There may be many reasons for this, including the following:

- a system of formal police cautions operates in relation to relatively minor offences committed by juveniles, consequently, juveniles are less likely to be brought before a court unless the criminal matter is considered relatively serious;
- the Children's Court is empowered to deal with certain indictable offences - hence, one may expect a higher percentage of custodial dispositions to be imposed in the Children's Court than in the Local Court;

**TABLE 1 Outcomes, Proven Matters - Children's Court (25. 9. 89 to 1. 10. 90)**

Court outcome	Juveniles	
	freq	%
Proven, dismissed <sup>a</sup>	4232	27.5
Recognizance	4053	26.3
Rise of court	36	0.2
Fine	2532	16.4
Recog. with supervision	2119	13.8
CSO	724	4.7
Committed to institution	1045	6.8
Committed to higher courts	89	0.6
Other <sup>b</sup>	570	3.7
<b>Total</b>	<b>15400</b>	<b>100.0</b>

<sup>a</sup>Typically with a caution or admonishment.

<sup>b</sup>Includes FACS care, detention, compensation and disqualified from driving.

**TABLE 2 Outcomes, Proven Matters - Local Court (1. 1. 89 to 31. 12. 89)<sup>a</sup>**

Court outcome	Adult	
	freq	%
Proven, dismissed	7163	10.5
Recognizance	5273	7.7
Rise of court	288	0.4
Fine	37211	54.5
Recog. with supervision	11974	17.5
CSO	2473	3.6
Periodic detention	434	0.6
Imprisonment	3441	5.0
<b>Total</b>	<b>68257</b>	<b>100.0</b>

<sup>a</sup>Local Courts statistics for 1990 were unavailable at the time of writing.

- a greater proportion of juveniles may be homeless or itinerant and, therefore, there may be a greater likelihood of their breaching probation or absconding;
- a belief by sentencers that a custodial term may aid in the rehabilitation, welfare or education of the juvenile;
- some sentencing alternatives may be less suitable for juveniles (eg fines) or, alternatively, may not be available (eg periodic detention is unavailable to offenders under the age of eighteen - s.5(2)(a) of the Periodic Detention of Prisoners' Act 1989).

Whatever the reasons for the higher proportion of custodial sentences for juvenile offenders, sentencers must keep in mind the principle "that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind" (s.6(e) of the Children (Criminal Proceedings) Act 1987).

It may also be noted from the above tables that fines are not imposed upon juvenile offenders as frequently as they are for adults. Only 16.4% of juveniles found guilty, compared to 54.5% of adult offenders, were fined. This could be explained by the fact that most juveniles are not in employment and, generally, do not have the financial resources which would make fines a viable option.

Juveniles with offences proved in the Children's Court received a slightly higher percentage of CSOs than adult offenders sentenced in the Local Court. If CSOs are treated by the juvenile justice system as an "alternative" to the imposition of custodial sanctions, then proportionally more juveniles than adults are receiving this penultimate penalty<sup>4</sup>.

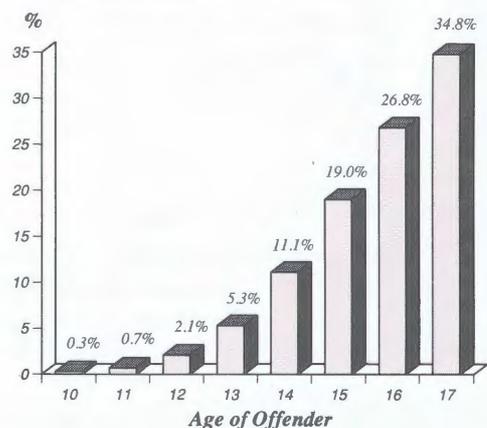
The same appears true for sanctions involving various forms of non-supervised recognizance. Over one quarter (26.3%) of all juveniles found guilty of an offence were released on recognizance *without* supervision, whereas only 7.7% of adults were similarly sentenced. Conversely, proportionally more adults (17.5%) than juveniles (13.8%) were released on recognizance *with* supervision.

## Offender Characteristics

**Age** Section 5 of the Children (Criminal Proceedings) Act 1987 provides that no child under ten years of age can be guilty of a criminal offence. In addition, a child between the ages of 10 and

**Figure 4**

Age of Juvenile Offenders - Children's Court (25. 9. 89 to 1. 10. 90)



14 is presumed to be incapable of crime (*doli incapax*) unless there is evidence that the accused knew that the act was wrong, *malitia supplet aetatem*, (malice supplies the want of

**Note 2**

At the time of writing, Local Court statistics for 1990 were not available.

**Note 3**

$\chi^2 = 103.4, df = 1, p < .005.$

**Note 5**

Some offenders (1.4%) were older than 18 years of age at the time of sentencing but were under that age at the time of offending and were included in the '17 year old' group.

age). An offender is considered to be a child if at the time of committing the offence he/she is under the age of 18 years<sup>5</sup>. Figure 4 indicates that an exponential relationship exists between age of juvenile offenders and criminal activity, as measured by court appearances.

**Sex** The majority (85.6%) of juveniles sentenced for criminal activity during the period September 1989 to October 1990 were male. This mirrors the proportion of male adult offenders (84.6%) sentenced in the Local Court for the 1989 calendar year.

**Prior record** In relation to the "criminal history" of juvenile offenders, a record is kept of previous matters brought to the attention of authorities. This information does not simply pertain to the number of previous Children's Court appear-

ances, but also to the sentence imposed for the most serious prior offence (if any). In addition, statistics are kept on the number of times a juvenile has been cautioned by the police, and the number of times a community service order was imposed.

- 7.9% of juvenile offenders had previously been ordered to perform community service work.

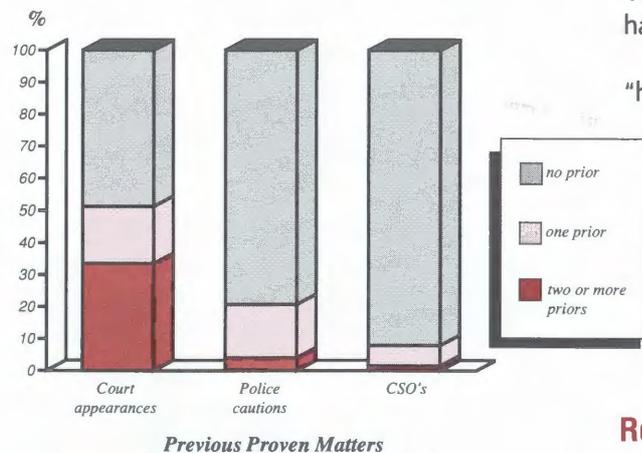
An even more comprehensive analysis of these data show that just under one half (48.8%) of the juveniles found guilty in the Children's Court were first offenders. Of the others, a little less than 18% had only one previous criminal appearance, 10% had two prior appearances, and 14% had three to five previous appearances. Furthermore, almost seven percent of all juveniles (1,400 individuals) had more than five previous appearances on criminal matters, with a small number of individuals (6) having thirty or more prior appearances.

Another aspect of a juvenile's criminal history is the recorded number of times he/she has been formally cautioned by the police<sup>6</sup>. While the majority (79.3%) of convicted juveniles do not have any such cautions recorded on their file, 16.7% had one prior police caution, and 4.1% had two or more cautions.

The Community Service Order (CSO) is a "higher range" penalty which, theoretically, is imposed as an alternative to a custodial sentence. Just under eight percent of juveniles found guilty had previously been sentenced to perform community service work, with less than two percent of offenders having been previously sentenced to a CSO on more than one occasion.

**Figure 5**

**Prior 'Record' of Juvenile Offenders - Children's Court (25. 9. 89 to 1. 10. 90)**



ances, but also to the sentence imposed for the most serious prior offence (if any). In addition, statistics are kept on the number of times a juvenile has been cautioned by the police, and the number of times a community service order was imposed.

Figure 5 contains data on three aspects of past criminal activity - previous court appearances, previous police cautions, and previously ordered community service work - of juvenile offenders found guilty by the Children's Court. It shows that:

- over half (51.2%) the juvenile offenders had previously appeared in the Children's Court on criminal charges;
- one in every five juvenile offenders (20.1%)

**Recidivism**

As already demonstrated, there is a high probability that juveniles who have had a criminal charge finalised in the Children's Court will reappear, at a later date, in relation to a new criminal matter. Over half (51.2%) the offenders found guilty in the Children's Court had previously been found guilty of a criminal offence in the Children's Court. Given this high rate of re-appearance, it is of interest to examine the most serious previous outcome for proven juvenile offenders.

Table 3 shows that the most common previous outcome was recognizance without supervision (15.4%). Furthermore, one in ten proven offenders (10.5%) had previously served time in an institution, while one in twenty-five (4.0%) had previously been ordered to perform commu-

**Note 4**

$\chi^2 = 54.1$   $df = 1$ ,  $p < .005$ .

**Note 6**

The cautioning provision is designed to divert first and less serious offenders from the court system. It should be noted, however, that there is no statutory right to a caution in place of a conviction even for a first offence. Furthermore, a police caution cannot be issued if the offence committed is indictable, or involves the theft of a motor vehicle, or is a traffic offence ('Juvenile Justice and the Children's Court in NSW', NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin, No 9, 1990, p.2).

**TABLE 3 Most Serious Previous Outcome for Juvenile Offenders Children's Court (25. 9. 89 to 1. 10. 90)**

Court outcome	freq	%
Proven, dismissed <sup>a</sup>	1084	7.0
Recognizance	2374	15.4
Rise of court	4	0.0
Fine	414	2.7
Recog. with supervision	1613	10.5
CSO	617	4.0
Committed to institution	1623	10.5
Committed to higher courts	18	0.1
Other <sup>b</sup>	152	1.0
<b>Sub-total</b>	<b>7899</b>	<b>51.2</b>
Acquitted/none/unknown	7501	48.8
<b>Total</b>	<b>15400</b>	<b>100.0</b>

<sup>a</sup>Typically with a caution or admonishment.

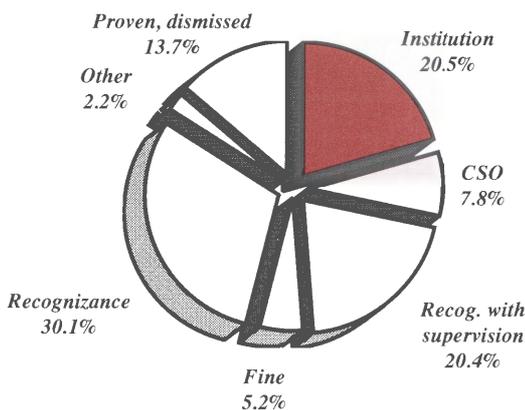
<sup>b</sup>Includes FACS care, detention, compensation and disqualified from driving.

nity service work, and one in ten (10.5%) had previously been disposed by means of supervised recognizance.

The figures in Table 3 refer to the most serious previous outcomes for all juveniles found guilty during the period surveyed. If we exclude first offenders, that is those with no prior record and those previously acquitted (48.8%), then we are left with only those offenders who have a record of prior proven offences (ie recidivists). Figure 6 shows that almost half the juvenile recidivists (48.7%) had previously received either a custodial sentence, CSO, or supervised probation.

The ratio of re-offending juveniles who had previously been committed to an institution for a prior criminal offence is one in five (20.5%). A little less than one in twelve (7.8%) juvenile

**Figure 6**  
Most Serious Previous Outcome for Juvenile Recidivists – Children's Court (25. 9. 89 to 1. 10. 90)



offenders had previously been ordered to perform community service. One in five (20.4%) had previously been under supervised recognizance.

To further clarify the relationship between offending and a history of prior proven offences, the following points are made in relation to the surveyed period:

- 1394 offenders, or about 10% of the total number of juveniles brought before the Children's Court for a criminal offence, had previously spent time in an institution;
- of the 1045 juveniles given a custodial sentence, 623 had previously spent time in custody - this indicates that 59.6% of those detained in custody had previously been committed to an institution;
- the remaining detainees (40.4%) are largely comprised of those who had previously been given a recognizance with supervision (14.4%), or had previously received a community service order (9.7%);
- only 5% of juveniles committed to an institution were first offenders.

### Juveniles Committed to an Institution

The data show that, in terms of age, sex and criminal history, juveniles committed to an institution differ markedly from juveniles who receive non-custodial sentences.

**Age** Juveniles committed to an institution tend to be older than those who receive non-custodial sanctions. This difference could be a function of the principle, also operating in the adult criminal courts, that youth is a mitigating factor in assessing criminal responsibility. Equally, it may reflect the circumstance that the older the juvenile the greater the likelihood of his or her graduating to a crime of a type or seriousness which would warrant the imposition of a custodial penalty.

**Sex** Males have a very high profile in the population of juveniles committed to an institution. Whereas 85.6% of all young offenders coming before the Children's Court are male, the composition of male detainees is 92.1%.

**Prior record** It was mentioned earlier that the majority (59.6%) of detained juveniles had been

committed to an institution on a prior occasion. Furthermore, given the tacit hierarchy of sentences available in the Children's Court, it is not surprising to find that many juveniles receiving a custodial term had previously had the benefit of less severe sanctions such as CSOs and supervised probations;

One in three (33.3%) juveniles committed to an institution had previously been ordered to perform community service work. Over one quarter (27%) had been sentenced to one period of community service work on an occasion prior to being ordered into custody and 6% had been previously ordered to perform community service work on two or more occasions.

The vast majority of juvenile offenders in custody have a history of prior offending, with 95% having at least one criminal matter previously recorded against them. Approximately 12% had one prior proven offence, over 40% had two to five priors, over one-quarter (28.2%) had six to ten priors, and the remainder (17.7%) had between eleven and thirty-four offences on record.

In addition, juveniles committed to an institution were more likely to have been formally cautioned by police, with 25% having received one caution and 10% two or more cautions.

### Time to be Served in Custody

The *Sentencing Act 1989* aims to promote "truth in sentencing" by requiring convicted offenders to serve in prison, without reduction, the minimum or fixed term of imprisonment set by the court. As the Act also applies to juvenile offenders, a custodial term specified by the Children's Court designates the actual minimum period that the offender must serve in custody.

Figure 7 shows the distribution of custodial terms imposed by the Children's Court since the commencement of the *Sentencing Act 1989*. In particular, it indicates:

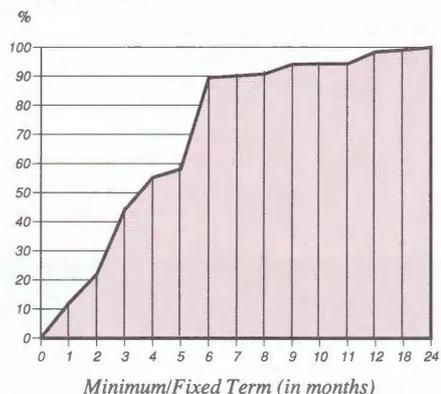
- the majority (90%) of custodial sentences are for fixed terms of six months or less;
- the average length of minimum or fixed term is approximately 4 months 3 weeks;
- the median custodial term (ie the point below which half the specified terms of custody fall) is just under 4 months;
- the most frequently ordered custodial term, representing 31% of all custodial terms

specified for juveniles, is for a period of six months;

- only 10% of custodial terms are greater than six months in length, and less than 2% are greater than twelve months.

Figure 7

Distribution of Custodial Sentences (25. 9. 89 to 1. 10. 90) (cumulative percentage)



It should be noted that the maximum term of custody that may be ordered for a juvenile offender by the Children's Court for any one offence is two years<sup>7</sup>.

### Conclusion

This report has provided information on the sentencing of juvenile offenders in the Children's Court since the commencement of the *Sentencing Act 1989*.

It was found, generally, that juvenile offenders are males, between 15 and 17 years of age, and mainly commit property offences. In comparison to adult offenders in the Local Court, juveniles appear to be treated less harshly by the Children's Court, often receiving either supervised probation or having their offence proved and the charge dismissed (usually with a caution).

The use of CSOs for juvenile offenders is relatively low (4.7%) although a small but significant percentage (6.8%) are sentenced to an institution.

Typically, offenders who are committed to an institution have previously spent time in custody or, at the very least, have a history of prior offending.

The majority (90%) of juveniles committed to an institution receive custodial terms of six months or less.

#### Note <sup>7</sup>

Additional custodial sentences for other offences may be accumulated to a maximum period of 3 years.