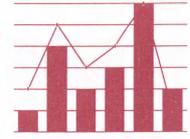


Sentencing Trends

An Analysis of New South Wales Sentencing Statistics



Judicial Commission of New South Wales



Editor: Donna Spears, Research Director

COMMON OFFENCES IN THE HIGHER COURTS

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Introduction

This paper is the second in a series examining commonly occurring offences. The first paper examined the twenty most common offences in the Local Court (*Common Offences in the Local Court*, Number 5, March 1994). The current paper will describe the twenty most common offences dealt with in the higher courts of New South Wales from January 1990 to July 1993.

Although the higher court statistics used here include statistics for both District and Supreme Courts, the relatively narrow (and more serious) jurisdiction of the Supreme Court results in the "top-twenty" offences being dealt with in the District Court. A future paper will examine the sentencing practice of the Supreme Court.

The "top-twenty" offences account for almost two-thirds of the criminal matters dealt with in the higher courts. Consequently, this paper can be regarded as both an overview of general sentencing practice in the higher courts, as well as a source of information on the sentencing of particular offences that, because of their wide incidence, are of significant interest to higher courts, criminal justice agencies, the legislature, and the general public.

The information is presented in much the same way as previously and it is anticipated that a number of judicial officers and legal officers in various public sector criminal justice agencies may benefit from a summary of higher court sentencing patterns, by way of comparison to Local Court sentencing patterns.

In particular, by focussing on the more common offences, this study may enable individual judges to compare their own sentencing practices with those of the judiciary as a whole.

Definitions and qualifications

The statistics refer to cases sentenced between January 1990 and July 1993. This is a longer time-frame than for the Local Court analysis because the number of cases that occur in the higher courts is much smaller than the number of cases occurring in the Local Courts. The data is composed of first instance sentencing results and has not been corrected by variations made by the Court of Criminal Appeal. Such variations are not statistically significant overall (*Sentencing in the Court of Criminal Appeal*, Number 4, February 1993).

The expression "offence" describes the *principal offence* in each case. The principal offence is the offence that receives the most severe penalty. Any other (ie. less serious) offences sentenced in the same hearing are omitted. As well, all cases involving *cumulative sentences* have been excluded from this study.

When comparing types of penalty within a particular offence, the expression "average" is used to denote the median, or the mid-point of a range of penalties. "Vast majority" refers to the middle 80% of penalties, that is "more than most" penalties.

A "typical range" refers to the middle 50% of penalties or the inter quartile range, ie there is an even chance of any given result falling in that range, and an even chance of falling above as below.

The most common offences in the higher courts

Three-quarters of all offences dealt with in the higher courts between January 1990 and July 1993 were prosecuted under the Crimes Act 1900 (NSW). A further 15% were dealt with under the Drug Misuse and Trafficking Act 1985 (NSW). Also significant were the Crimes Act 1914 (Cth), Prisons Act 1952 (NSW) and Customs Act 1901 (Cth).

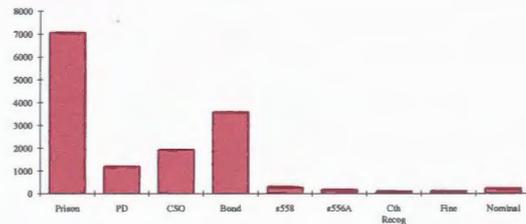
The following table shows the "top-twenty" common offences dealt with in the higher courts in order of frequency.

Act	Section	Offence	Cases
Crimes Act 1900 (NSW)	s.112	Breaking, entering and stealing	1,556
Drug Misuse and Trafficking Act 1985	s.25	Supplying prohibited drug	1,405
Crimes Act 1900	s.97	Armed robbery	907
Crimes Act 1900	s.59	Assault occasioning actual bodily harm	791
D. M. T. Act	s.23(1)(a)	Cultivating prohibited plant	683
Crimes Act 1900	s.61	Common assault	583
Crimes Act 1900	s.94	Robbery	547
Crimes Act 1900	s.154A	Taking conveyance without consent	463
Crimes Act 1900	s.188	Receiving	381
Crimes Act 1900	s.61E(1)*	Sexual assault (category 4) - indecent assault	350
Prisons Act 1952	s.34	Escape	280
Crimes Act 1900	s.117	Larceny	274
Crimes Act 1900	s.178BA	Obtaining money by deception	266
Crimes Act 1900	s.52A(1)(f)	Culpable driving, speeding or in a manner dangerous, resulting in death	226
Crimes Act 1900	s.61D(1)*	Sexual assault (category 3) - sexual intercourse without consent	190
Crimes Act 1900	s.35(a)	Malicious wounding	187
Crimes Act 1914 (Cth)	s.29B	False representation	180
Crimes Act 1900	s.113	Breaking and entering with intent to commit a felony	161
Crimes Act 1900	s.52A(1)(f)	Culpable driving, speeding or in a manner dangerous, resulting in grievous bodily harm	149
Crimes Act 1900	s.94	Stealing from the person	144

* Repealed

The twenty most frequent offences account for 65.7% of all higher court cases dealt with during January 1990 to July 1993.

An overview of sentencing patterns in higher courts



The graph above shows the distribution of penalties for all offences in the higher courts during January 1990 to July 1993. Commonwealth recognisances include s.20 and s.19B recognisances while nominal penalties include "rise of court", s.556A dismissals and s.19B dismissals. Further points to note are as follows:

- Almost half (48.9%) the offenders sentenced received a full-time *prison* term. The average full term was 30 months while the average minimum term was 18 months. The vast majority of full terms fell between six months and six years, eight months, while the vast majority of minimum terms ranged from six months to 4½ years.
- Imprisonment to be served by way of *periodic detention* accounted for 8.1% of sentences. The average term of periodic detention was 15 months and the vast majority of offenders received sentences between six and 30 months.
- *Community service orders* were imposed on 13.4% of offenders. The vast majority of community service orders were in the range 100 to 500 hours. The duration of the average order was 300 hours. Typically, community service orders were between 200 and 400 hours.
- One quarter of offenders received a *common law bond* or *Griffith's bond*. Other types of *recognisances* (s.556A and s.558) account for 3.0% of penalties, and *Commonwealth recognisances* account for 0.5% of penalties.

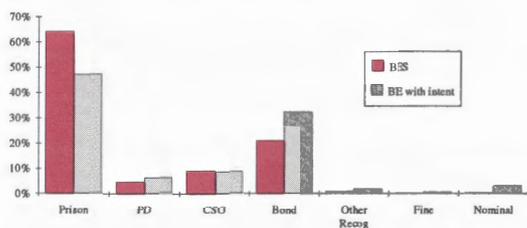
The average term of a common law bond was three years while offenders typically received bonds between two and four years.

- Around 1.5% of offenders received a *nominal sentence*.
- Less than 1% of offenders received a *fine*. This was typically between \$500 and \$2,500 and averaged \$1,000.

In summary, the graph shows the heavy reliance that the higher courts placed on custodial dispositions and bonds. Fines and nominal penalties were used less frequently. These findings support the view that it is the more serious offences that are dealt with by the higher courts. Such offenders are unlikely to be dealt with by way of a fine or nominal penalty.

Breaking and entering

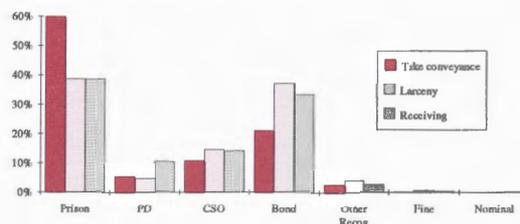
The most commonly occurring offence in the higher courts is breaking, entering and stealing which accounted for almost 10.8% of all offences occurring in that jurisdiction. A further 161 offenders appeared for breaking and entering with intent to commit a felony.



- For breaking, entering and stealing, 64.0% of offenders were sentenced to imprisonment. The average full term was 27 months while the vast majority of offenders received terms of nine to 56 months.
- Breaking and entering with intent was less likely to receive a prison term with 47.0% of offenders receiving a term of imprisonment. The average term was 20 months and the vast majority of offenders received terms of six to 48 months.

Larceny-related offences

Other forms of larceny which appeared in the "top-twenty" offences included taking a conveyance without consent, larceny (s.117) and receiving. Including breaking, entering and stealing, about 20% of the "top-twenty" offences in the higher courts between January 1990 and July 1993 involved some form of property theft.

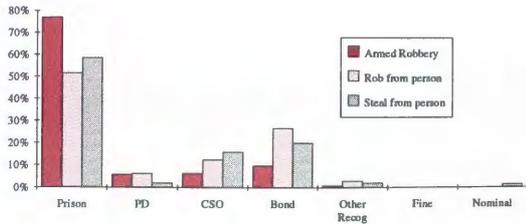


The most common penalty for larceny-related offences was a custodial sentence, however for larceny and receiving, common law bonds were also frequently imposed.

- For taking a conveyance the average full term imposed was two years. Typically offenders received a term between 10 and 32 months.
- For larceny, the average full term imposed was 16 months. Full terms typically ranged between eight and 32 months.
- When a common law bond was imposed for larceny, the average duration was three years and the vast majority of bonds ranged between two and five years.
- For receiving, the average full term imposed was 16 months. Typically offenders received terms between 10 and 30 months.
- As was the case with larceny, the average common law bond for receiving was three years and the vast majority of offenders received terms of two to five years.

Robbery

Three of the "top-twenty" offences include stealing from the person and robbery, both created under s.94 of the Crimes Act 1900, and armed robbery created under s.97 of the Crimes Act 1900.

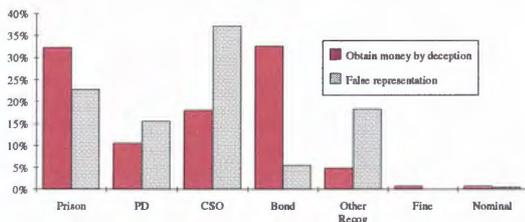


- Offenders sentenced for robbery received a higher average full term (30 months) than those who stole from the person (24 months).
- The vast majority of offenders sentenced for robbery received 12 to 64 months, while the typical range was 18 months to four years.
- For stealing from the person the vast majority of offenders received six to 56 months, while the typical range was 12 to 42 months.
- The average full term for armed robbery was 49 months with a typical range of 36 to 72 months.

Less serious cases of stealing from the person can be heard in the Local Court. Therefore, the higher proportion of offenders receiving a prison term for stealing from the person compared with that of robbery can be explained by the more serious nature of the stealing from the person offences.

White collar crime

Two of the "top-twenty" common offences include making false representation under s.29B Crimes Act 1914 (Cth) and obtaining money etc by deception under s.178BA Crimes Act 1900 (NSW).



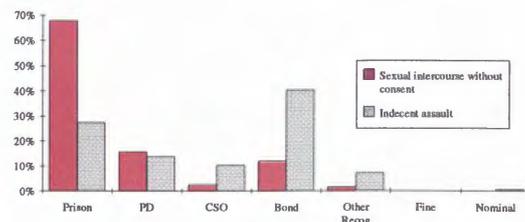
Unlike many of the other "top-twenty" offences in the higher courts, these white collar crimes do not usually attract a custodial sentence. In fact, the most common disposition for making false

representation was a community service order (37.0%), while the most common sentence for obtaining money by deception was a common law bond (33.0%) followed by prison (32.0%).

- The average duration of common law bonds for obtaining money by deception was three years, while the average full term of prison was 20 months. The vast majority of offenders received between six and 40 months imprisonment.
- Where community service orders were imposed for obtaining money by deception, the average duration was 300 hours. The average term for periodic detention was 15 months.
- For making false representation, the average community service order was 300 hours with a typical range of 200 to 500 hours.
- Prison terms for making false representation averaged one year with a typical range of six to 18 months. The average term of periodic detention was one year.

Sexual assault

The two sexual assault offences that appeared in the "top-twenty" were repealed in 1989. Although they have been replaced with similar provisions, the number of cases dealt with under the new sections are not yet sufficient to warrant inclusion in the analysis. Sexual intercourse without consent refers to the old section 61D(1) of the Crimes Act 1900 (NSW), which was sexual assault category 3 - sexual intercourse without consent, while indecent assault refers to the old section 61E(1) of the Crimes Act 1900 (NSW) - sexual assault category 4, indecent assault.



The most common disposition for indecent assault was a common law bond (41.0%), the average

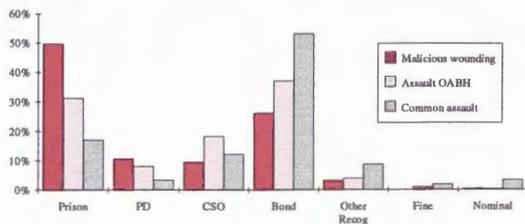
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duration of which was three years. Where prison was ordered the average sentence was 18 months and sentences were typically one to two years.

In contrast, most offenders convicted of sexual intercourse without consent (68.0%) were sentenced to prison. The average full term was three years and offenders typically received two to four year sentences. The average term of periodic detention, the next most common penalty for sexual intercourse without consent (16.0%), was 18 months, while the average duration of a common law bond was three years.

Assaults

Three of the "top-twenty" common offences include malicious wounding, assault occasioning actual bodily harm and common assault.

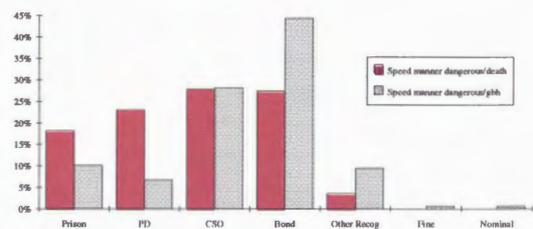


- In terms of severity of sentence, the most serious of these offences was malicious wounding where 50.0% of offenders received a prison term. The average full term was 32 months while the vast majority of prison terms were 12 to 54 months.
- The most common order for assault occasioning actual bodily harm was a common law bond (37.0%), the average duration of which was three years.
- Thirty one percent of offenders sentenced for assault occasioning actual bodily harm received a prison term. The average full term was 16 months while the vast majority of full terms were four to 36 months.
- Fifty three percent of offenders sentenced for common assault received a common law bond, with an average duration of three years.
- Seventeen percent of offenders sentenced for common assault received a prison term. The

average full term was six months with a typical range of three months to one year.

Culpable driving (speed or manner dangerous)

The two offences of culpable driving (speed or manner dangerous) causing death and culpable driving (speed or manner dangerous) causing grievous bodily harm, s.52A(1)(f) Crimes Act 1900 (NSW) appear in the "top-twenty". Culpable driving (driving under the influence) is somewhat less frequent and does not appear in the "top-twenty".



For culpable driving (speed or manner dangerous) resulting in death, the use of non-custodial sentences is widespread. Most offenders received a community service order (28.0%) or a common law bond (27.0%), followed by periodic detention (23.0%) and then prison (18.0%).

- The average community service order was 300 hours, while the average common law bond was three years.
- The average term of periodic detention was 15 months with a typical range of nine to 24 months.
- The average prison term was 18 months with a typical range of 13 months to two years.

For culpable driving (speed or manner dangerous) resulting in grievous bodily harm, the most common disposition was a common law bond (44.0%), with an average duration of three years.

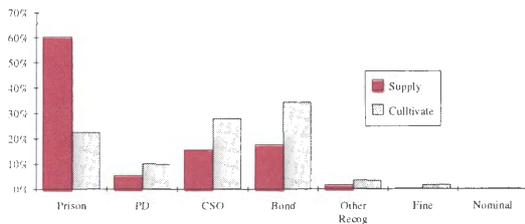
- The next most common disposition was a community service order (28.0%) with an average duration of 300 hours.
- Following this, 10.0% of offenders received prison terms. The average full term was 15

months and the typical range 10 months to 20 months.

- Seven percent of offenders received periodic detention with an average term of one year and a typical range of nine to 15 months.

Drug offences

Two offences under the Drug Misuse and Trafficking Act 1985 appeared in the "top-twenty". They were cultivating prohibited plant and supplying prohibited drug. It is useful to examine these offences by discussing the different types of drugs. Virtually all cases of cultivating a prohibited plant (99.6%) involve cannabis plant. This is in contrast to supplying a prohibited drug where just over 32.0% of cases involved heroin, 26.5% involved cannabis plants (cannabis resin accounted for a further 9.04% of cases and another 0.2% involved cannabis oil), 24.6% involved amphetamines and 5.8% involved cocaine. The remainder involved other drugs such as sedatives and hallucinogens.



The most common disposition for cultivating a prohibited plant was a common law bond (34.0%), the average duration of which was three years. The second most common penalty was a community service order (28.0%) averaging 300 hours. For prison, the average full term was 20 months.

In general, the average prison term for supplying a prohibited drug was two years, the average community service order 300 hours and the average common law bond three years.

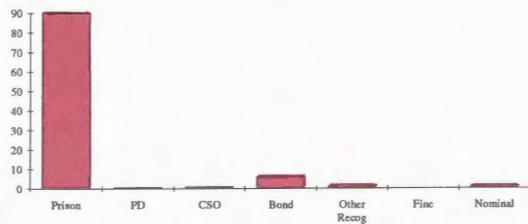
When the various drug groups within the offence of supplying a prohibited drug are examined further, the results show that:

- For heroin, 77.7% of offenders received a prison term and 8.0% received periodic detention. The average term for prison was three years. These sentences are more severe than those for supplying other types of drugs.
- For cocaine, the average full term was 32 months with 58.5% of offenders receiving a prison term. A further 15.9% received periodic detention, 12.2% received a community service order, and 11.0% received a common law bond.
- For cannabis resin, 48.8% of offenders received a prison term, averaging 24 months. A further 19.7% of offenders received periodic detention, 15.8% received a community service order and 14.2% received a common law bond.
- For amphetamines, 45.2% of offenders received a prison term. The average full term was 21 months. A further 13.0% of offenders received periodic detention, 17.1% received a community service order and 22.3% received a common law bond.
- For cannabis plant, 43.0% of offenders received a prison term with an average full term of 20 months. A further 13.0% of offenders received a term of periodic detention, 19.6% received a community service order and 21.0% received a common law bond. These results are slightly below the results for supply in general.

It is also interesting to note that 40.9% of offenders sentenced for supplying hallucinogens received a community service order. A further 31.8% received a common law bond and 27.3% received a prison term.

From these results it can be seen that the type of drug is significant in determining the severity of the sentence, with supplying heroin being treated most harshly, followed by supplying cocaine. Sentences for supplying hallucinogens were less severe than sentences for supplying the other major types of drugs.

Escape



Almost all offenders (90.0%) sentenced for escape received a prison term. The average duration was six months. Most offenders received between two months and two years (81.0%) while the typical range was four to 15 months.

Offences and the severity of penalties

The following table lists the "top-twenty" most common offences – this time in the order of the severity of the penalties imposed during the period January 1990 to July 1993. It indicates the manner in which those who commit the most common offences are dealt with by the higher courts. The term **Other Recog** includes both State and Commonwealth recognisances such as s.556A, s.558, s.19B (Cth) and s.20 (Cth); and **Nominal** refers to "rise of court", s.556A dismissals and s.20(Cth) deferred. The figures in the columns below the headings are the percentage of cases in which such a penalty was imposed.

	Prison	PD	CSO	Bond	Other Recog	Fine	Nominal
Escape	90%	1%	1%	6%	1%	0%	1%
Armed robbery	77%	6%	6%	10%	0%	1%	0%
Sexual intercourse without consent	68%	16%	3%	12%	0%	2%	0%
Breaking, entering and stealing	64%	5%	9%	21%	1%	0%	0%
Supply prohibited drug	60%	5%	15%	17%	0%	2%	0%
Taking conveyance without consent	60%	5%	11%	21%	3%	0%	0%
Stealing from the person	58%	2%	16%	20%	1%	2%	0%
Robbery	51%	6%	13%	27%	0%	3%	0%
Malicious wounding	50%	11%	10%	26%	1%	3%	0%
<i>AVERAGE for all offences</i>	<i>49%</i>	<i>8%</i>	<i>13%</i>	<i>25%</i>	<i>3%</i>	<i>1%</i>	<i>1%</i>
Breaking and entering with intent	47%	6%	9%	32%	2%	1%	3%
Receiving	39%	10%	14%	33%	3%	1%	0%
Larceny	39%	5%	15%	37%	4%	1%	0%
Obtaining money by deception	32%	11%	18%	33%	1%	5%	1%
Assault occasioning actual bodily harm	31%	8%	18%	37%	0%	4%	1%
Indecent assault	27%	14%	10%	41%	1%	7%	0%
Cultivating prohibited plant	23%	10%	28%	34%	2%	3%	0%
False representation	23%	16%	37%	6%	1%	18%	0%
Culpable driving (speed/manner dangerous) death	18%	23%	28%	27%	0%	4%	0%
Common assault	17%	3%	12%	53%	3%	9%	2%
Culpable driving (speed/manner dangerous) gbh	10%	7%	28%	44%	1%	9%	1%

- Unlike offences in the Local Courts, where the majority of the "top-twenty" common offences received less severe penalties than the average for all offences dealt with in the Local Court, the table shows that just under half the "top-twenty" common offences received more severe penalties than the average (see the row "AVERAGE for all offences").
- The offenders who received the least severe penalties tended to be those convicted of white collar crime and culpable driving; while those offenders receiving the most severe penalties tended to be those convicted of robbery or the more serious sexual offences.

Some conclusions

As with the Local Courts, the most common offences are not the most serious ones. For example while sentences for murder and manslaughter often receive intensive media coverage, they did not feature in the "top-twenty" offence list.

In short, the most common types of offences dealt with by the higher courts in the period January 1990 to July 1993 in order of frequency were -

- drug offences (13.5%)
- breaking and entering (11.9%)
- assault (10.8%)
- robbery (9.4%)
- theft (7.7%)
- sexual assault (4.1%)
- white collar crime (3.0%)
- culpable driving (2.6%)
- escape (1.9%)

These represent the following groups of offences: property offences; offences against the person; drug offences and offences against good order.

For thirteen of the "top-twenty" offences, a prison term was the most likely penalty to be imposed. In six more offences, common law bonds were the most likely penalty to be imposed. The only exception was culpable driving (speed or manner dangerous) resulting in death, where 28% of offenders received a community service order.

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Fifteen of the "top-twenty" offences can be dealt with summarily under s.476, s.495 and s.496 Crimes Act 1900. More than one third of the most frequent offences in the higher courts also appeared as frequent offences in the Local Court. These included common assault, larceny, cultivating a prohibited plant, breaking entering and stealing, stealing from the person and supplying a prohibited drug. On the other hand, the summary offence of driving in a speed or manner dangerous (s.4(1) Traffic Act 1909) appeared in the most frequent offences in the local courts, while the more serious

indictable offences of culpable driving (speed or manner dangerous) causing death or grievous bodily harm appeared in the most frequent offences in the higher courts.

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