

SENTENCING DISPARITY AND THE  
GENDER OF JUVENILE OFFENDERS

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## DISCLAIMER

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## EXECUTIVE SUMMARY

This study grew out of a larger project, being conducted jointly by the Judicial Commission and the Department of Juvenile Justice, which is seeking to examine what impact on sentencing, if any, has the ethnic background of a juvenile offender. The present study, in many ways a pilot to this larger study, seeks to determine whether the specialist Children's Courts unjustly discriminate on the basis of the gender of the offender in the exercise of their sentencing discretion.

The sample of cases in this study was derived by matching decisions handed down by the New South Wales specialist Children's Courts during the period January – December 1995. In total, 364 cases were selected, consisting of 182 pairs of male and female juveniles. Each of these pairs were matched by reference to the following variables: type of offence; age; plea; number of counts; criminal history; bail status; court; and type of case. This then enabled the gender variables to be analysed in the light of the sentencing outcomes in order to determine whether there was evidence of any unjustified disparities in the penalties imposed.

In summary, the study found as follows —

- There were no significant gender-based differences in the type of penalty imposed. When penalties were ranked, taking into account the duration/amount of sentences as well as the type, there were still no statistically significant gender-based differences.
- Seven juveniles received a control order and, of those, six were male; however this only represented 1.9% of the entire sample.
- A similar number of male and female juvenile offenders were fined. Although not statistically significant, male juvenile offenders tended to be fined more severely than female juvenile offenders (a median of \$150 versus \$100). However, male juvenile offenders were also more likely to be employed.
- While convictions were recorded in less than one-third of cases (28%), male juvenile offenders were more likely than female juvenile offenders to have a conviction recorded (33.5% versus 22.5%).
- Male juvenile offenders were more likely to have a principal or co-principal role in the offence, while female juvenile offenders were more likely to have only an assisting role, particularly with motor vehicle theft.
- Although not statistically significant, male juvenile offenders had more matters dealt with at appearances than female juvenile offenders (a median of two additional matters, compared with one for female juvenile offenders).
- Background reports were requested in one-fifth of cases but more commonly for male juvenile offenders than female juvenile offenders (26.7% versus 17.7%).
- Of those juveniles with any prior convictions, males were more likely than females to have more than one previous proven appearance (70% versus 43.1%).

Ivan Potas

*Research Director*

# I INTRODUCTION

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## THE CENTRAL ISSUES

The main aim of this study is to examine the following question: in terms of sentencing, do the specialist Children's Courts treat female and male juvenile offenders differently, all else being equal? In conducting this study, it becomes necessary to establish which factors are properly taken into account by sentencers and which other factors, appropriately or otherwise, influence the sentencing decision. There is, of course, no comprehensive list of such variables — each criminal case is unique and comes with its own set of circumstances which must be taken into account.

## BACKGROUND

As a result of the New South Wales Government's White Paper on Juvenile Justice,<sup>1</sup> the Judicial Commission of New South Wales and the New South Wales Department of Juvenile Justice are jointly examining the role of ethnicity in the sentencing of juvenile offenders. However, the issue of gender is also of interest, as evidenced by a series of articles appearing in *The Sydney Morning Herald*<sup>2</sup> which suggest that the Children's Courts discriminate against male juvenile offenders in their sentencing decisions. As this issue raises many of the same concerns and methodological problems as the study on ethnicity, it was decided that gender should be studied as a prelude to the main project.

In order to obtain a sample with sufficient numbers of female offenders, it is necessary to select from the most common offences arising in the Children's Courts; so the study incidentally reflects the most prevalent offences for this jurisdiction. Cases considered for this study were selected from the specialist Children's Court of New South Wales during the period January 1995 – December 1995.

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1 *Breaking the Crime Cycle: New Directions for Juvenile Justice in New South Wales* (White Paper), 1994, New South Wales Government, Sydney.

2 M Gliksman, "Found Guilty — of Being a Boy," *The Sydney Morning Herald*, 18 December 1995; M Gliksman, "Justice is Gender-based," *The Sydney Morning Herald*, 22 January 1996.

## SENTENCING DISPARITY

Sentence disparity is a complicated issue, partly owing to a lack of thorough discussion and understanding about what is meant by the phrase. It may well involve evaluative concepts, and the relevant concepts may be many and conflicting. For example, with the factor of gender, it may be reasonable for like offences to receive unlike penalties because the overall threat to the community, or perceived need for deterrence, is deemed to be less for female offenders. Alternatively, life situations might be incommensurably different; a prime example being that female offenders, although juveniles, may have dependants or a pregnancy to cope with. The question, of course, is whether these factors are relevant sentencing considerations.

Disparity implies a lack of equality. Sentence disparity in the broader sense presupposes an agreed list of influential factors, an agreed scale of measurements for each factor (for example, how remorseful is “very remorseful”) and an agreed hierarchy of penalties. These concepts often rely on a subjective assessment. For instance, is a custodial penalty inevitably more severe than a non-custodial one? More particularly, is a day in gaol more severe than a \$20,000 fine? The New South Wales Law Reform Commission, for example, argues that a claim of net widening regarding the use of Community Service Orders (CSOs) assumes that this penalty is higher on a measuring scale of severity than certain other penalties;<sup>3</sup> but what if they are viewed as equally severe but qualitatively different?

It is commonly argued that parity does not imply exact equality, but similarity within a range; the proper sentence is always to be understood as falling within such a range and not as equating to a single point in the range. Statistical significance reflects variation and distinguishes cases which are at the extremes of such a range. Differences within the acceptable range may be quantifiable variations in a statistical sense,<sup>4</sup> but may fail to constitute disparity in the accepted legal sense. In other words, there may be valid legal reasons — not apparent to the statistical analyst — why a certain sentence is imposed.

The problem addressed in this monograph is gender disparity. This involves a comparison of sentences imposed upon male and female juvenile offenders, controlled for confounding factors. Other types of disparity, such as alleged differences between the sentencing behaviour of different magistrates, may feature indirectly, in so far as they offer competing explanations of the variation in sentences imposed. The gender of the magistrate could also be a factor, but this is not examined due to the small number of female magistrates involved.

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<sup>3</sup> *Sentencing* (Discussion Paper 33), 1996, New South Wales Law Reform Commission, Sydney, p 337.

<sup>4</sup> The problem arising from this is that, with large enough sample sizes, just about any variation may register as statistically significant but be legally, and in other senses, quite insignificant.

## VIEWS ON GENDER DISPARITY IN COURT OUTCOMES

Logically, gender disparity lends itself to at least five viewpoints —

- (1) male and female offenders are treated the same, just as legal principles indicate they should be;<sup>5</sup>
- (2) male offenders are generally treated more harshly than female offenders;<sup>6</sup>
- (3) female offenders are generally treated more harshly than male offenders;
- (4) female offenders are treated more leniently when their offence is consistent with traditional gender stereotypes, but more harshly when it conflicts with the stereotypes;<sup>7</sup> and
- (5) male and female offenders seem to be treated reasonably fairly but cannot be compared easily because they offend in different ways; that is, all else is rarely equal.<sup>8</sup> This view has emerged from recent feminist paradigms which propose that all behaviour is gendered.

The conflicting results of various criminological studies<sup>9</sup> illustrate the difficulty of analysing this particular question. Whether there is gender bias in the sentencing patterns and procedures of the courts in general, and in relation to the Children's Courts in particular, remains debatable after some 20 years of empirical study. The assumption often made is that equality, as measured by gender neutrality, is the desired outcome of sentencing.

Some studies have found no significant gender bias.<sup>10</sup> Other studies have indicated that women are treated differentially; for example, that women are sentenced relatively leniently when they adhere to stereotypically feminine behaviour, and relatively harshly when they violate traditional expectations of femininity.<sup>11</sup>

Until recently, most studies have indicated that, in the realm of offences committed by juveniles, there is an imbalance between the number of male and

5 F Heidensohn, *Women and Crime*, 1985, Macmillan Publishers, London.

6 M Gliksman, *Gender-based Differences in the Treatment of Young Offenders by the Police and the Children's Court in New South Wales, Australia*, 1995, Department of Public Health and Community Medicine, University of Sydney, Westmead Hospital, Sydney.

7 M Chesney-Lind, "The Judicial Enforcement of the Female Sex Role: the Family Court and the Delinquent" (1973) 8 *Issues in Criminology* 51–69; cited in L Gelsthorpe and A Morris (Eds), *Feminist Perspectives in Criminology*, 1989, Open University Press, Milton Keynes.

8 K Daly, *Gender, Crime and Punishment*, 1994, Yale University Press, New Haven.

9 R Horowitz and A Pottieger, "Gender Bias in Juvenile Justice Handling of Seriously Crime Involved Youth" (1991) 28 (1) *Journal of Research in Crime and Delinquency* 75.

10 K Daly, op cit n 8; F Heidensohn, op cit n 5; B Naylor, "Sentencing Female Offenders in the Magistrates' Court: Preliminary Report on a Pilot Study" in P Eastaer and S McKillop (Eds), *Women and the Law: Proceedings of a Conference Held 24–26 September 1991*, 1993, Australian Institute of Criminology, Canberra, pp 179–191; R Douglas, "Is Chivalry Dead? Gender and Sentence in the Victorian Magistrates' Courts" (1987) 23 (3) *Australian and New Zealand Journal of Sociology* 343.

11 L Hancock and M Chesney-Lind, "Juvenile Justice Legislation and Gender Discrimination" in A Borowski and J Murray (Eds), *Juvenile Delinquency in Australia*, 1985, Methuen, Sydney; C Visher, "Gender, Police Arrest Decisions and Notions of Chivalry" (1983) 21 *Criminology* 5.

female offenders, with the ratio being 5:1 (male:female). An analysis of sentencing statistics in the Children's Court of New South Wales from 1989–1994<sup>12</sup> indicates that, of the top 20 offences, males were the predominant offenders (85%).

Recently, several studies have questioned the 5:1 male:female ratio. Ogilvie<sup>13</sup> contends that, overall, the male:female ratio is closer to 2:1, which indicates that there is a much higher likelihood of male juvenile offenders being caught by the police and processed via the courts. Gliksman's<sup>14</sup> study also suggests that the 5:1 male:female ratio is questionable, and supports Ogilvie's proposition that male juvenile offenders are treated more harshly than female juvenile offenders due to gender-based differences which influence the sentencing behaviour of magistrates. On the other hand, some of the earlier studies suggest that female juvenile offenders are in some instances treated more leniently, and in other cases more harshly, than male juvenile offenders at the sentencing stage.<sup>15</sup> If the offence is seen as transgressing the traditional female stereotype (for example, armed robbery) a female offender may be penalised more harshly than a comparable male offender, while a relatively lenient outcome may ensue for an offence like shoplifting.

The suggestion from these studies is not only that male offenders are treated more harshly than female offenders, but that male juvenile offenders are more likely than female juvenile offenders to be caught by the police and far more likely to go to court. However, neither Ogilvie's nor Gliksman's studies make any attempt to measure the effect of the relative seriousness of the offence or to assess the effect, if any, of the prior record of offenders. Not only are in-depth biographical details lacking in these studies, but there is also a weighty reliance on self-report data.

Some of the difficulties involved in making an adequate assessment of much of the research in the area of gender bias arise from the fact that child welfare and juvenile justice have never constituted wholly separate domains. In New South Wales, the Children's Court has developed in response to the unique needs of young offenders, and in particular, to prevent such young offenders from being caught up in the criminal justice system. Juvenile offenders in New South Wales sometimes appear before a Community Aid Panel (CAP) prior to sentencing and may have completed community service or participated in rehabilitative programmes as a result. Once such programmes have been completed satisfactorily, the Children's Court may impose a nominal penalty, such as dismissal with a caution. Thus it is important to note that, unlike other jurisdictions, the incidence of nominal penalties cannot be interpreted as leniency.

It should also be noted that the Children's Court of New South Wales deals mostly with cases of "admitted" or "negotiated" guilt, and that magistrates must

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12 I MacKinnell, "Common Offences in the Children's Court" (1995) 9 *Sentencing Trends*.

13 E Ogilvie, "Masculine Obsessions: an Examination of Criminology, Criminality and Gender" (1996) 29 (3) *Australian and New Zealand Journal of Criminology* 205.

14 M Gliksman, op cit n 6.

15 C Visher, op cit n 11.

give consideration to the details set out in background reports. To this extent the various agencies associated with the criminal justice process often have more impact on judicial decision-making than the actual court process.

Notions of gender bias depend on the application of particular stereotypes. Feminist researchers, particularly in the 1970s, contributed to making female offenders more visible by devoting their attention to the nature and effects of such stereotyping.<sup>16</sup> The wording in legislation pertaining to welfare (status) matters in both overseas and Australian jurisdictions was, and often still is, extremely vague. Irrespective of the stated intention of legislators, vague wording enables social control agents and professionals to intervene in incidents of "juvenile misconduct" (for instance, confining girls thought to be in "moral danger").

The "paternalistic" thesis posits that women are preferentially treated in the criminal justice system because magistrates and other criminal justice system agents, who are usually men, find it difficult to be punitive towards women due to notions of chivalry. On the other hand, the "evil woman" thesis posits that women are responded to more negatively because their criminal deviance violates stereotypical gender role expectations; that is, females are not expected to engage in criminal activities and if they do so they are considered to be deviant.

The various studies which have been conducted relating to these two hypotheses are ambivalent and sometimes contradictory.<sup>17</sup> A variety of sample types have been used and different variables controlled for in the various studies. Also, the type of data source used, such as official arrest or court records, can result in methodological limitations. In a carefully controlled British study, Farrington and Morris<sup>18</sup> found that the gender of the defendant did not provide evidence to support a "chivalry" hypothesis when sentence severity was controlled for by variables such as the seriousness of the offence and the number of previous convictions.

The Judicial Commission of New South Wales<sup>19</sup> found that the sentencing patterns of the Children's Court vary significantly according to the seriousness of the offence type, and that the more serious offences were more likely to be committed by offenders with a prior record, resulting in more severe penalties actually being imposed. The Western Australian Report of the Chief Justice's Task Force on Gender Bias<sup>20</sup> indicated that the likelihood of a prison sentence depends

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16 For a review of such studies, see L Gelsthorpe and A Morris (Eds), op cit n 7.

17 C Pope and W Feyerherm, "Gender Bias in Juvenile Court Dispositions" (1982) 61 (2) *Journal of Social Service Research* 1; S Datesman and F Scarpitti, "Women in the Criminal Justice System" in S Datesman and F Scarpitti (Eds), *Women, Crime and Justice*, 1980, Oxford University Press, New York; R Douglas, op cit n 10; M Chesney-Lind, "Juvenile Delinquency and the Sexualisation of Female Crime" (1974) July *Psychology Today* 43.

18 D Farrington and A Morris, "Sex, Sentencing and Reconviction" (1983) 23 *British Journal of Criminology* 229.

19 I MacKinnell, op cit n 12.

20 Government of Western Australia, *Report of the Chief Justice's Taskforce on Gender Bias*, 1994, Government Printer, Western Australia.

on the offence type and the level of court involved, as much as it does upon the gender of the offender. Some evidence of gender bias evident in pre-sentence reports was complicated by the factor of race. Douglas' study<sup>21</sup> examined the relationship between gender and the reasons given by magistrates in Victoria to justify their sentences. Typically, the sentence was justified in terms of the seriousness or otherwise of the offence and the defendant's prior record. Gender was unrelated to reasons for sentence. A project concerning gender and sentencing in the Victorian Magistrates' Courts<sup>22</sup> supports Douglas'<sup>23</sup> findings that magisterial sentencing considerations were primarily concerned with "legally relevant" factors, such as the circumstances and seriousness of the offence.

At the same time it cannot be assumed that all magistrates weigh up penalties in the same way. Further, sentencing is only one aspect of the criminal justice process and one whose effect is inextricably linked to the processes that come before and after, such as policing, bail and probation. Wundersitz et al<sup>24</sup> found that police discrimination at the pre-arrest stage strongly influenced charge and arrest patterns, and that this increased the chances of Aboriginal juveniles being brought before the courts.

There is some evidence of seemingly more lenient treatment of adult female offenders who have committed less serious offences.<sup>25</sup> Women, for example, are fined less than men. Whilst this may suggest gender bias, it does appear that magistrates are taking into account the economic circumstances of offenders, and women, as well as young people, often lack the capacity to pay fines.

Gender bias is difficult to analyse because, thus far, most delinquency studies show major differences in female and male levels and patterns of illegal behaviour. Also, females have comprised too few cases for well controlled gender comparisons to be made. The use of different sample types and control variables also appears to add to the difficulties encountered with gender bias studies. Added to this is a paucity of juvenile studies. Overall, there have been few gender studies conducted with non-adult offenders.

It may be that the effect of gender at the sentencing stage is relatively small compared to other factors. While sentencing outcomes are not determined by gender, the different pathways followed by offenders to the point of sentencing can be understood as gendered. To date the literature appears to indicate that issues of race and ethnicity affect sentencing decisions as much as gender.<sup>26</sup>

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21 R Douglas, op cit n 10.

22 B Naylor, op cit n 10.

23 R Douglas, op cit n 10.

24 J Wundersitz, R Bailey-Harris and F Gale, "Aboriginal Youth and Juvenile Justice in South Australia" (1990) 2 (44) *Aboriginal Law Bulletin* 12.

25 I Nagel and J Hagan, "Gender and Crime: Offence Patterns and Criminal Court Sanctions" in M Tonry and N Morris (Eds), *Crime and Justice: An Annual Review*, 1983, University of Chicago Press, Chicago.

26 C Cunneen and R White, *Juvenile Justice: An Australian Perspective*, 1995, Oxford University Press, Melbourne; K Daly, op cit n 8.

## II METHODOLOGY

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The relationship between the gender of the offender and the penalty imposed is confounded by many factors; including the type of offence, and the prior record and age of the offender. Therefore, when measuring disparity in sentence outcome, these factors must be taken into account. When male offenders are carefully matched with female offenders who had committed the same offence, share similar background characteristics and had similar circumstances surrounding their offence and arrest, any differences in sentencing between the groups can be attributed either to less obvious influencing factors or to disparity based on gender.

The matching process was one which could have become interminable. To begin with, records were selected which, according to the electronic data available from the Juvenile Crime Index of the New South Wales Department of Juvenile Justice, matched on the relevant characteristics. However, when extra data was collected manually, it became evident that many purported matches in fact differed greatly in terms of variables such as the role of the offender in the offence (active or passive/principal or assisting) or the gravity of the offence (for example, the value of the goods stolen). Apart from the logistical problems involved in repeating the matching process, each additional matching variable reduces the potential sample size. Therefore, although not used in matching, the additional information was collected and used in the analysis.

A total of 490 records were selected from the population of offenders at eight specialist Children's Courts<sup>27</sup> in 1995. This represented 245 pairs of male and female offenders, matched on the following variables: offence type; prior record; plea group (guilty or other); count group (one or multiple counts of the principal offence); police bail; court bail; age; type of case (that is, charge/summons/court attendance notice); and court location.

Where more than one case matched the criteria, the most recent case was selected in order to make the data as up to date as possible.<sup>28</sup> This provided a broad empirical base rather than a limited investigation of atypical matters. Extra data for each of

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27 We concentrated upon metropolitan courts, and hence upon the specialist Children's Courts, for logistical reasons.

28 At the time of sampling no data were available for 1996.

these records were collected manually and this, incidentally, served as an auditing exercise for the data provided electronically.<sup>29</sup> Unfortunately, errors in any critical matching variables resulted in the loss of both records if they could not be re-matched. Therefore, so as not to severely deplete the size of the sample, it was decided to include a pair as a match when they differed only slightly. Overall, 148 pairs (81.8%) matched perfectly on each of the relevant variables and 32 pairs (17.6%) were retained, although males differed from females on one of the nine matching variables. One pair had slight discrepancies on two of the matching variables, and another pair on three.<sup>30</sup> Following corrections to the data, the final sample consisted of 364 individual records or 182 pairs.

As mentioned in the introduction, sentence disparity implies a hierarchy of penalties. The difficulties inherent in such an assumption became obvious when we tried to measure disparity more accurately by compiling a scale for measuring severity, both between and within penalty types.<sup>31</sup> Firstly, the qualitative differences between penalties proved difficult to reconcile. For example, CSOs are normally secondary in severity to detention because they are intended to be imposed only as an alternative to a custodial sentence. However, a dismissal following CAP involvement is usually ranked just above a dismissal because a dismissal of the first kind is, in theory, dependent on satisfactory completion of the CAP initiative. However, these two outcomes do not differ in terms of what is actually required of the offender. Secondly, as it is possible to have a recognizance (supervised or unsupervised) together with a fine as one penalty, the question arose as to whether a supervised recognizance alone is more or less severe than an unsupervised recognizance with a fine. Taking the duration of the penalty (or amount in the case of fines) into account also presented difficulties for grading severity of punishment. For example, in the case of control orders, the response may be different depending on whether the duration is measured by the full term or the minimum/fixed term. With recognizances, as well as the duration, there may be other conditions set which could influence the severity of the sanction, but this is not measurable. With fines, presumably the magistrate has already taken into account the ability of the offender to pay. Therefore, even the amount of a fine may be a poor indicator of severity of sentence.

As “role” information is not available from the statistical database, it was not possible to match on this variable; however, future studies on sentence disparity should attempt to control for the level of involvement.

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<sup>29</sup> Appendix 1 contains the results of this audit.

<sup>30</sup> Details in Appendix 2.

<sup>31</sup> The agreed hierarchy of penalty rankings, taking the severity of each type into account, is detailed in Appendix 5.

## III RESULTS OF ANALYSIS

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This section begins by presenting the statistics for court processes, including elements which may indirectly influence the sentencing decision. It then outlines the characteristics of offenders selected for the study. Offences are examined individually and in detail, as the type of offence and the circumstances surrounding it are pivotal in the sentencing decision. The section on sentencing presents the results of statistical testing on disparity, as well as details of the penalties for male and female offenders.

The following analysis refers only to the sample selected for this study, which is not random. It should not be understood, therefore, as indicating any general characteristics of offences or offenders in the Children's Court. Also, when the data were disaggregated by offence, this resulted in some very small samples. In such cases, the results should be treated with caution.

As the sample was selected to match pairs of males and females, there could be no significant gender differences on any of the matching variables (that is, offence type, prior record, plea group, count group, police bail, court bail, age, type of case, and court location), although there were some differences on non-matching variables.

### PROCEEDINGS

Approximately one-half of the cases (50.8%) were dealt with by way of a court attendance notice (CAN). Charges accounted for 42.3%, and summonses were the least used (6.9%). As this was a matching variable there could be no gender-based difference.

Most cases were dealt with by specialist children's magistrates (83.3%).<sup>32</sup> There were no gender-based differences.

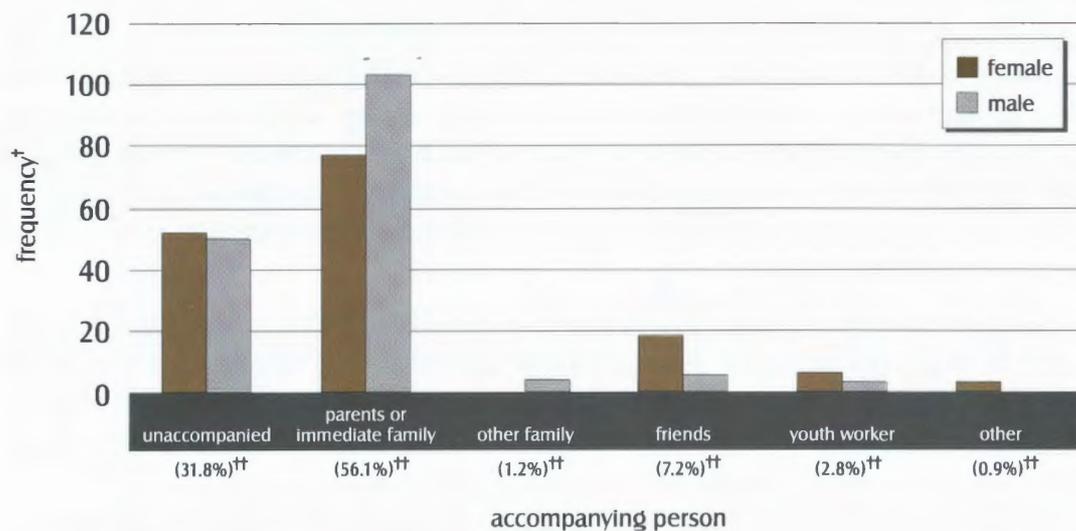
Most juveniles appeared in person (328 or 90.6%). A further 19 juveniles (5.2%) were in custody at the time of appearance. Fifteen juveniles (4.1%) failed to appear.

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<sup>32</sup> Cases can also be dealt with by visiting Local Court magistrates.

Most juveniles (180 or 56.1%) were accompanied by a parent or other member of their immediate family. However, a large number were unaccompanied (102 or 31.8%). Figure 1 shows figures for other categories, as well as the gender breakdown. Male juvenile offenders were more likely to be accompanied by immediate family than were female juvenile offenders<sup>33</sup> and, although the numbers were much smaller, proportionally more female juvenile offenders were accompanied by friends, boyfriends or youth workers.

— FIGURE 1 —  
Accompanying person for female and male juvenile offenders



† The frequency relates to the actual number of individual cases.

†† The percentages relate to the sum of female and male juvenile offenders relative to the entire sample.

## POLICE AND COURT BAIL

If police charged a juvenile, data were collected on whether police bail was granted or not, and on the bail status of offenders immediately prior to their final court appearance.

Most juveniles were granted police bail (90.9%) or court bail (51% unconditional, 41.3% conditional). As this was a matching variable there could be no gender-based difference.

## PRE-SENTENCE DIVERSION — COMMUNITY AID PANELS (CAP)

A CAP is an informal diversionary sentencing option, designed for minor and first offenders, following a plea of guilty. The CAP programme, administered by police, provides an opportunity for first offenders to make restitution to the community

<sup>33</sup> Chi-square test,  $p < 0.0184$ .

by participating in community projects, or by undertaking skills or living courses which are designed to remedy personal difficulties which may have led to the offence. CAPs presently have no legislative base; they exist only as the result of local community arrangements, sanctioned by a magistrate.

CAPs, and other diversionary programmes, were particularly common at Worimi Children's Court. In our sample, this court accounted for 8.8% of cases but was responsible for almost one-half of all referrals to a CAP (47.5%). Worimi also had a weekend attendance programme operating, to which one of the juveniles in our sample was referred. On the other hand, Cobham Children's Court made no referrals to a CAP, although they accounted for 25.8% of cases.

A CAP or similar programme was used in relation to 40 juveniles (20 males and 20 females), which represents 11.1% of the sample. This is slightly more than the number of dismissals with a CAP involvement, as some CAPs were given with different penalties; for example, there were six recognizances without supervision (four males and two females) and one with a fine (a male). The reports from supervisors were generally satisfactory (82.1%). There were no gender-based differences.

## BACKGROUND REPORTS

Background reports were requested in approximately one-fifth of cases, but were more common for male offenders. Overall, 80 cases (22.1% of the sample) had a background report requested, 60% of which were for male offenders and 40% for female offenders. A request for a background report was made in relation to more than one-quarter of male offenders (26.7%), while less than one-fifth of female offenders (17.7%) had a background report prepared.<sup>34</sup>

Of the 80 cases where a background report was requested, over two-thirds of offenders were given the same penalty as recommended by the report (67.5%). In about one-fifth of the cases (18.8%), the offender received a more lenient penalty than was recommended. The remaining 11 cases (13.8%) received a harsher penalty. There were no differences based on gender.

## PLEA

There were 327 juveniles (89.8% of the sample) who pleaded guilty. No plea was entered in 14 cases and seven were dealt with *ex parte*, leaving 16 juveniles (4.4%) who pleaded not guilty. As this was a matching variable there could be no gender-based difference.

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<sup>34</sup> Chi-square test,  $p < 0.03982$ .

## OFFENDERS

As this was not a random sample, the characteristics of these offenders may not be representative of juvenile offenders in general. In order to obtain a sample of matched males and females, offences were restricted to those for which at least one female was charged. This excluded, for instance, sexual assault; and the sample was inclined towards less serious offences, with fewer cases where bail was refused, than would be exhibited in the juvenile justice population in general.<sup>35</sup> The sample was selected from Children's Court cases; therefore, the more serious offences committed by juveniles which would be dealt with in the higher courts are unrepresented.

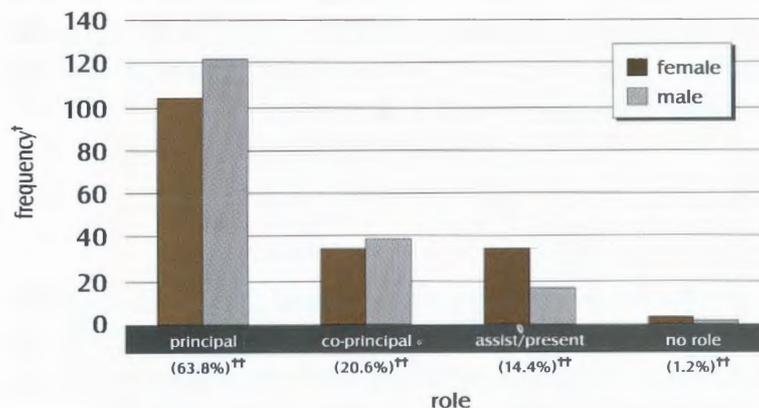
### Age

The median age of the matched pair sample was 16 years. The range was 13–17 years. As this was a matching variable there could be no gender-based difference.

### Role in the Offence

Male juvenile offenders were more likely to have a principal or co-principal role in the offence, while female juvenile offenders were more likely to have only an assisting role, if any<sup>36</sup> (for example, being a passenger in a stolen vehicle). Figure 2 shows the role played by offenders in the offence, arranged according to the gender of the offender.

— FIGURE 2 —  
Role of female and male juvenile offenders



† The frequency relates to the actual number of individual cases.

†† The percentages relate to the sum of female and male juvenile offenders relative to the entire sample.

<sup>35</sup> For a profile of all offences dealt with in Children's Courts, see *New South Wales Department of Juvenile Justice Annual Children's Court Statistics, Criminal Matters 1995–1996*, 1996, New South Wales Department of Juvenile Justice, Sydney.

<sup>36</sup> Chi-square test,  $p < 0.00177$ .

## Priors

Over one-third (40.1%) of the sample had a prior record, with 2.2% involving a prior detention. As this was a matching variable there could be no gender-based difference.

Of those with priors, 43.1% had one previous proven criminal appearance and 56.9% had two or more.<sup>37</sup> Male juvenile offenders were more likely to have more than one previous proven appearance (70.9% as opposed to 43.1% of female juvenile offenders), while female juvenile offenders were more likely to have just the one (56.9% as opposed to 29.1% of male juvenile offenders).

Unsupervised orders were the most serious prior outcome for over one-third of those offenders with priors (39.6%). The next largest category was supervised orders (28.5%), followed by fines and dismissals (both 13.2%) and, lastly, control orders (5.6%). There were no significant gender-based differences. Unfortunately, neither the number of matters dealt with, nor the type of offences, were known.

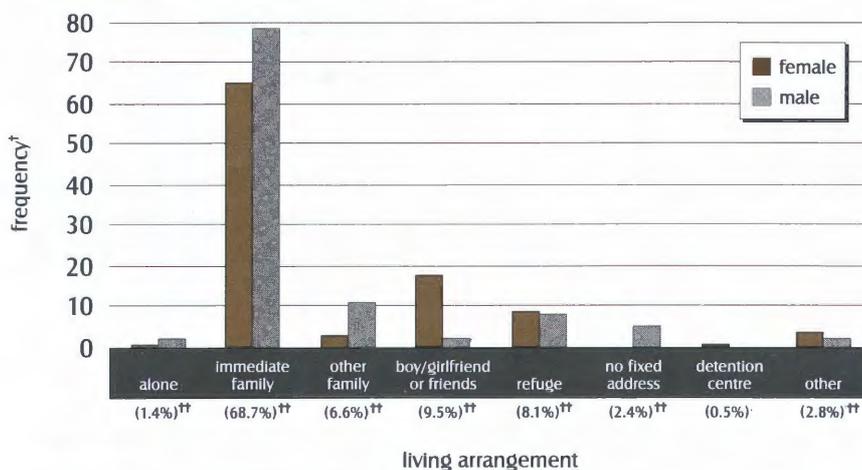
Of those offenders without priors, 10.1% had a previous court appearance which resulted in an outcome without a plea or finding of guilt (that is, where the charge was not proven).

## Domestic Situation

Data on living arrangements were only available for 211 juveniles. Most offenders (145 or 68.7%) lived with their immediate family. Of those living with their family, a larger proportion were males (54.5%). Figure 3 shows the various living arrangements by gender.

— FIGURE 3 —

Living arrangements of female and male juvenile offenders



† The frequency relates to the actual number of individual cases.

†† The percentages relate to the sum of female and male juvenile offenders relative to the entire sample.

<sup>37</sup> Median equals 3, range equals 2–13.

## Employment

Only 44 juveniles (13.5%) were employed (excluding part time employment by students); this figure was comprised of 29 males and 15 females. The remainder were evenly divided between students (high school or TAFE) and those juveniles who were unemployed or on a pension (44.2% and 42.3% respectively). More male juvenile offenders were employed than female juvenile offenders, who were more likely to be unemployed or on a pension and slightly more likely to be school students.<sup>38</sup> Data were unavailable for 40 juveniles (10.4%).

Occupational data were available for 33 males and 14 females (some unemployed juveniles may have had their usual occupation recorded). Most male juvenile offenders were equally divided between the two categories of unskilled/labouring and trade apprenticeships (14 and 12 respectively). A further seven were employed in sales. Sales was, however, the largest category for female juvenile offenders (with six of the 14 females in this group) followed by four females in a trade.

## Education

Data on education were available for only 97 juveniles. The median number of years completed was nine for both males and females; the lowest was six (one male and one female), and the highest 12 (one female). One male had apparently never attended school.

## Ethnicity

Ethnicity data were available for 234 juveniles. Of these, most were from an English speaking background (151 or 64.5%), but over one-quarter were from non-English speaking backgrounds (63 or 26.9%), and 20 juveniles (8.6%) were Aboriginal. Although the ethnic group of juvenile offenders was not a matching variable, males and females were almost equally represented in each group.

## State Wards

As this information was usually only available if there was a background report, we were only able to determine that there were nine wards in the sample (four females and five males).

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<sup>38</sup> Chi-square test,  $p < 0.05410$ .

## OFFENCES

### Offence Quantity

Most juveniles were only charged with one count of the principal offence (93.4%). Twenty-four juveniles (6.6%) had multiple counts, of which the median was three for both males and females. The largest number of counts for a juvenile was 15 (this was a male). As this was a matching variable there could be no gender-based difference.

Most juveniles (235 or 64.6%) were only sentenced for their principal offence (eight of these for multiple counts).

In addition to the number of counts of the principal offence, data were collected for other matters finalised at the same court appearance (those matters may or may not be directly related to the principal offence). Of those juvenile offenders who had other matters proven at the same time (129 or 35.4%) —

- 18.6% had other charges of the same offence type proven, which resulted in the same penalty as the principal penalty;
- 57.4% had other charges of a different offence type proven, which resulted in the same penalty as the principal penalty;
- 10.1% received a lesser (secondary) penalty for other proven charges of the same offence type; and
- 35.7% received a lesser (secondary) penalty for other proven charges of a different offence type.

Apart from their principal offence, a similar number of male juvenile offenders (64 or 35.2%) and female juvenile offenders (65 or 35.7%) had at least one other offence proven at the same court appearance. Although not statistically significant, male juvenile offenders had more matters dealt with, having a median of two additional offences compared with one for females.<sup>39</sup>

### Offence Type

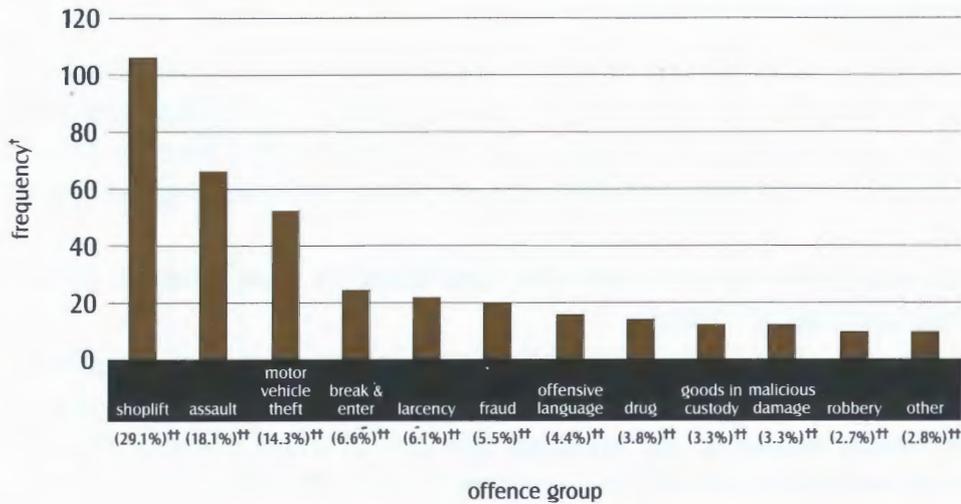
Figure 4 shows the frequencies of the various types of offence. The most common category was shoplifting.

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<sup>39</sup> Details in Appendix 3.

— FIGURE 4 —

Offence group (equal female and male juvenile offenders)



† The frequency relates to the actual number of individual cases.

†† The percentages relate to the sum of female and male juvenile offenders relative to the entire sample.

### Assaults

- There were 66 juveniles (33 matched pairs) charged with assault; it was the second most frequent offence type, exceeded only by shoplifting.
- Assault offenders did not differ from the whole sample in terms of the matching or the non-matching variables, except that juveniles who committed assaults were more likely to be charged by police (69.7%) rather than to proceed to court via a CAN or summons.
- There were no significant gender-based differences on any variables.

### Circumstances

- Over one-half of the assaults were committed in a public space, particularly on the street (18.8%) or in (or near) shops or shopping malls (12.5%).
- Offenders were usually in company with other young people (65.6%); just under one-half of these were co-offenders in the assault.
- The majority of offenders (83.3%) were either the principal or a co-principal in the assault.
- In about 40% of assaults the victim was someone known to the offender (31.1% not family and 8.2% family). In over one-third of assaults the victim was a stranger (36.1%) and in almost one-quarter of assaults the victim was someone in authority, such as a police officer or youth worker (24.6%).
- There were no significant gender-based differences in the circumstances of the offence.

### Outcome

- An unsupervised order was the most common penalty imposed (45.5%). A fine was given in almost one-quarter of assaults (22.7%).

- The median duration for unsupervised orders was 11 months and the median amount of a fine was \$200. Although not found to be significant, male juvenile offenders were given longer orders (a median of 12 months compared with ten months for female juvenile offenders) and higher fines (a median of \$200 compared with \$75 for female juvenile offenders).
- There were no significant gender-based differences in the type or severity of the penalty imposed.

### Robberies

- There were ten juveniles (five matched pairs) charged with robbery (as this is a relatively small sample size, the results should be treated with caution).
- Robbery offenders were younger than the sample as a whole (median equals 14 years); none had any prior convictions; they were more likely to be charged by police (80%) than to receive a CAN or summons; and all who were charged were granted conditional bail.
- Due to their younger age, these offenders were more likely to be students (70%) and more likely to be living at home with their immediate family (90%).
- They were also more likely to have a background report prepared (90%).
- Not one offender had a conviction recorded, as they were all under 16 years of age.<sup>40</sup>
- There were no significant gender-based differences on any variables.

### Circumstances

- All cases of robbery occurred in a public space, especially in (or near) shops and shopping malls (37.5%) or on the street (25%).
- All offenders were in company and 80% were with co-offenders.
- Only one-half of the offenders were principally involved in the robbery; the other half were present and assisted in the robbery.
- The victim of a robbery was most likely to be a stranger (77.8%).
- Cash and/or cheques were the main items stolen (62.5%). Offenders also stole clothing and clothing accessories (25%), as well as alcohol and tobacco (12.5%).
- The median value of items robbed was \$18.50, although one male juvenile offender was responsible for stealing items such as clothes, shoes and watches from three victims, the value of which totalled \$1,743.
- There were no significant gender-based differences in the circumstances of the offence.

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40 See discussion of s 14(1) of the *Children (Criminal Proceedings) Act 1987* at p 28.

*Outcome*

- One-half of the offenders were given a supervised order (median equals 12 months for both male and female juvenile offenders), and 30% were given a CSO (median equals 70 hours).
- There were no significant gender-based differences in the type or severity of the penalty imposed.

**Break, enter and steal**

- There were 24 juveniles (12 matched pairs) charged with break, enter and steal.
- These offenders were similar to the whole sample on matching variables.
- Of the non-matching variables, these offenders were more likely to be required to have a background report prepared (50%).
- There was one significant gender-based difference — a conviction was more likely to be recorded for male juvenile offenders (41.7% compared with no female juvenile offenders).<sup>41</sup>

*Circumstances*

- One-half of the offenders broke into and stole from private dwellings, and one-quarter broke into and stole from shops.
- Offenders were usually in company (66.7% with co-offenders), although one-quarter were alone.
- Over two-thirds of offenders (70.9%) were the principal or co-principal in the offence.
- Victims were mainly strangers (37.5%) and the proprietors of shops or businesses (33.3%).
- Many types of item were stolen; however, jewellery and household items were the most popular (both 22.7%).
- The median value of the items stolen was \$600 (range \$2 – \$15,000). Female juvenile offenders stole items worth slightly more (median of \$600 compared with \$550 for male juvenile offenders), although the top value of \$15,000 was by a male juvenile offender.
- There were no significant gender-based differences in the circumstances of the offence.

*Outcome*

- The most common penalties imposed on break, enter and steal offenders were unsupervised orders (33.3%), followed by supervised orders (29.2%).
- The median duration for unsupervised orders was 12 months. Although not

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41 Chi-square test,  $p < 0.01197$ .

statistically significant, male juvenile offenders were given longer orders (median of 12 months compared with six months for female juvenile offenders). The median duration for supervised orders was 18 months for both male and female juvenile offenders.

- There were no significant gender-based differences in the type or severity of the penalty imposed.

### Deception

- There were 20 juveniles (ten matched pairs) charged with deception offences.
- In terms of the matching variables, these offenders were older than the sample as a whole (median equals 17 years); most had no prior convictions (90%); and they were proportionately more likely to have multiple counts of the principal offence (20%).
- These offenders were the most likely to be accompanied to court by family members (94.7%).
- They were also less likely to have a conviction recorded (10%).
- Proportionately more offenders were employed (33.3%).
- There were no significant gender-based differences.

### *Circumstances*

- Over one-half of all deception offences occurred in shops (52.6%). Banks were also a likely place (15.8%) for deception offences to occur.
- Deception offences were usually committed alone (52.6%); however, a substantial number of juveniles were in company with co-offenders (42.1%).
- The majority of offenders (94.7%) were either the principal or a co-principal in the offence.
- In almost two-thirds of cases the victim was the proprietor of a shop or business (64.7%). Otherwise, the victim was either a stranger (23.5%) or someone known to the defendant but not a family member (11.8%).
- Cash or cheques were the main items involved (58.8%).
- The median value of items was \$260 (range \$20 – \$4,180). Although not found to be significant, the median value of items was higher for male juvenile offenders (\$307 compared with \$212.50 for female juvenile offenders).
- There were no significant gender-based differences in the circumstances of the offence.

### *Outcome*

- One-half of the offenders were given an unsupervised order, while 20% were given a fine, and a further 20% were dismissed with or without a caution.
- The median duration for unsupervised orders was seven months and the median amount of a fine was \$125. Although not found to be statistically significant,

male juvenile offenders were given longer orders (median of 12 months compared with six months for female juvenile offenders).

- There were no significant gender-based differences in the type or severity of the penalty imposed.

### Stolen goods

- There were 12 juveniles (six matched pairs) charged with receiving stolen goods (this is a relatively small sample size, therefore the results should be treated with caution).
- In terms of the matching variables, these offenders were older than the sample as a whole (median equals 17 years) and, if charged by the police, they were more likely to have bail refused by the police and by the court (33.3%).
- The only gender-based difference was that male juvenile offenders were more likely to have a background report requested (50% compared with no female juvenile offenders).
- Two of the three male juvenile offenders who had a background report prepared received a penalty which was less severe than that recommended in the background report (66.7%).
- Proportionately more offenders were employed (33.3%).
- One-half of offenders came from non-English speaking backgrounds.
- They were more likely to have a conviction recorded (58.3%).

### Circumstances

- Two-thirds (66.7%) of offenders acted alone.
- Every offender was either the principal (75%) or a co-principal (25%) in the offence.
- Victims were mainly strangers (71.4%). The proprietors of shops and businesses were also victims (28.6%).
- Cash or cheques unlawfully obtained were the main items involved (25%). Household goods, clothing and accessories, and power tools, were also popular items (each 16.7%).
- The median value of stolen goods was \$437.50 (range \$130 – \$800). Although statistically insignificant, female juvenile offenders stole goods worth more (\$526 compared with \$300 for male juvenile offenders).
- There were no gender-based differences in the circumstances of the offence.

### Outcome

- A fine was the most likely penalty to be imposed (33.3%), closely followed by unsupervised orders (25%).
- The median amount of a fine was \$125 and the median duration for unsupervised orders was six months.

- There were no gender-based differences in the type or severity of the penalty imposed.

### Motor vehicle theft

- There were 52 juveniles charged with motor vehicle theft (26 matched pairs).
- It was the third most frequent offence type after shoplifting and assaults.
- Offenders were similar to the whole sample on matching variables except that these offenders were more likely to be charged by the police (61.5%).
- These offenders were more likely to come from an English speaking background (84.9%).
- They were also more likely to be living at home with their immediate family (86.5%).
- The only gender-based difference in non-matching variables was that male juvenile offenders were more likely to have a background report requested (42.3% compared with 11.5% for female juvenile offenders).<sup>42</sup>

### *Circumstances*

- Juveniles were more likely to steal motor vehicles which were parked in the street (55.3%). Some offenders stole motor vehicles parked at the victim's home (12.8%) or from car parks (10.6%).
- The majority of offenders were in the company of co-offenders (80.8%).
- Less than one-half of the offenders played a principal role in the offence (42.2%). However, male juvenile offenders were significantly more likely than female juvenile offenders to be the principal or a co-principal (65.4% compared with 19.2%).<sup>43</sup> Female juvenile offenders were more likely to simply be assisting; for example, as passengers or by being on guard for the police or for vehicle owners.
- Most of the stolen motor vehicles belonged to strangers (90.4%).
- The only gender-difference in the circumstances of the offence was that male juvenile offenders were more likely to play a principal role in the offence.

### *Outcome*

- More than one-half of the offenders were given an unsupervised order (57.7%). A further 17.3% of the offenders received a supervised order.
- The median duration was nine months for unsupervised orders and ten months for supervised orders. Although not found to be significant, male juvenile offenders were given slightly longer orders (median of 12 months for unsupervised orders, compared with nine months for female juvenile offenders; and a median of 11 months for supervised orders, compared with ten months for female juvenile offenders).

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<sup>42</sup> Chi-square test,  $p < 0.01238$ .

<sup>43</sup> Chi-square test,  $p < 0.00076$ .

- There were no gender-based differences in the type or severity of the penalty imposed.

### Shoplifting

- There were 106 juveniles (53 matched pairs) charged with this offence.
- It was by far the most frequent offence type.
- Shoplifting offenders were similar to the whole sample on matching and non-matching variables, except that most of these offenders were issued with a CAN (74.5%) rather than being charged by the police. Also, if charged by the police, they were more likely to be released on unconditional bail (68.4%).
- The only gender-based difference in non-matching variables was that a conviction was twice as likely to be recorded for male juvenile offenders (32.1% compared with 15.1% for female juvenile offenders).<sup>44</sup>

### *Circumstances*

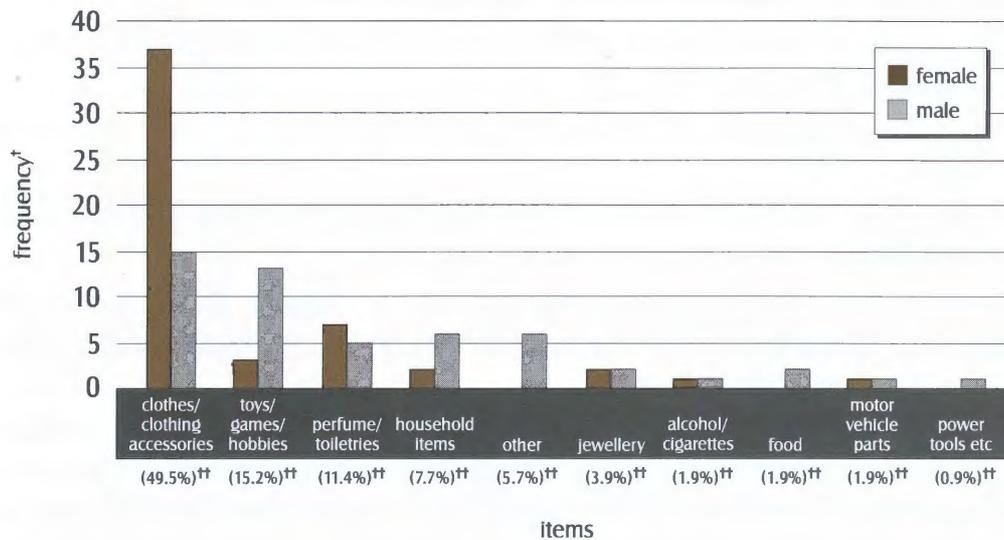
- About one-half of the offenders acted alone (49.5%). Almost one-third acted with co-offenders (31.1%) and 19.4% shoplifted while in the company of non-offending juveniles.
- The majority of offenders were either the principal (75.7%) or a co-principal (21.4%) in the offence.
- The main item stolen from shops was clothes and clothing accessories, accounting for 49.5% of items stolen from shops. This particular category of items was favoured by female juvenile offenders (69.8% compared with 28.8% of male juvenile offenders). The next most popular items stolen were toys, games and hobbies (15.2%). Male juvenile offenders showed a preference for these items (25% compared with 5.7% of female juvenile offenders). See Figure 5 for further details.
- The median value of items stolen was \$59 (range \$2 – \$623). Although not statistically significant, female juvenile offenders stole items worth more (median of \$76.50 compared with \$40 for male juvenile offenders).
- The only gender-based difference in the circumstances of the offence was in the type of goods stolen.

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44 Chi-square test,  $p < 0.03948$ .

— FIGURE 5 —

Main item for shoplifting by female and male juvenile offenders



† The frequency relates to the actual number of individual cases.

†† The percentages relate to the sum of female and male juvenile offenders relative to the entire sample.

### Outcome

- A fine was the most common penalty handed down (35.8%), and was closely followed by unsupervised orders (31.1%).
- The median amount of a fine was \$150 and the median duration for unsupervised orders was nine months. Although not found to be significant, male juvenile offenders were given slightly higher fines (\$150 compared with \$130 for female juvenile offenders) and female juvenile offenders received longer orders (median of 12 months compared with 7.5 months for male juvenile offenders).
- There were no gender-based differences in the type or severity of the penalty imposed.

### Other larceny

- There were 22 juveniles (11 matched pairs) charged with this offence.
- These offenders were similar to the whole sample on matching variables except that they were proportionately more likely to be issued with a summons to appear in court (18.2%).
- These offenders were more likely to be students (65%) rather than unemployed. This was especially true for male juvenile offenders (80% compared with 50% for female juvenile offenders). Female juvenile offenders, on the other hand, were more likely than male juvenile offenders to be unemployed (50% compared with no male juvenile offenders).
- The only gender-based difference in non-matching variables was that female juvenile offenders were more likely than male juvenile offenders to be unemployed.

### *Circumstances*

- One-third of other larcenies were thefts from motor vehicles (33.3%). Stealing from homes (19%) and shops (14.3%) was also common.
- About six out of ten offenders were in company (57.1% with co-offenders). Over one-third acted alone (38.1%).
- The majority of offenders (90.5%) were either the principal or a co-principal in the offence.
- Strangers were the main victims of other larcenies (75%). The proprietors of shops and businesses were also victims (20%).
- A variety of items were stolen, including: cash or cheques (20%); household items (15%); clothing and clothing accessories (15%); toys, games and hobbies (10%); and mobile phones (10%).
- The median value of items stolen was \$200 (although one female juvenile offender was responsible for stealing two briefcases containing many commercial computer programme diskettes, the value of which totalled \$4,000). The median value of items stolen for female juvenile offenders was \$410 while for male juvenile offenders it was \$150.
- There were no gender-based differences in the circumstances of the offence.

### *Outcome*

- Almost one-half of the offenders received an unsupervised order (45.5%). The same proportion were dismissed with or without a caution, or dismissed following CAP involvement (both 13.6%).
- The median duration for unsupervised orders was 12 months. Although statistically insignificant, male juvenile offenders were given longer orders (12 months compared with six months for female juvenile offenders). The median duration for a CAP programme was 25 hours.
- There were no gender-based differences in the type or severity of the penalty imposed.

### *Malicious damage*

- There were 12 juveniles (six matched pairs) charged with this offence (this is a relatively small sample size, therefore the results should be treated with caution).
- As regards the matching variables, these offenders were more likely to have prior convictions (66.7%) and more likely to be issued with a CAN rather than being charged or summonsed (83.3%).
- These offenders were proportionately more likely to be accompanied to court by youth workers/district officers (22.2%).
- They were also proportionately more likely to live in a refuge (28.6%) and to be a ward of the state (28.6%).
- Aboriginal juveniles were over-represented (28.6%).
- There were no gender-based differences in non-matching variables.

*Circumstances*

- The majority of offences occurred on the street, in (or near) shops or shopping malls, at railway stations, and at youth hostels or refuges (each 16.7%).
- Two-thirds of offenders acted alone (66.7%).
- Every offender was either the principal (91.7%) or a co-principal (8.3%) in the offence.
- Public property (50%) and shops or businesses (33.3%) were damaged the most.
- There were no gender-based differences in the circumstances of the offence.

*Outcome*

- One-third of offenders received an unsupervised order. A further third were dismissed following a CAP initiative.
- The median duration for unsupervised orders was 10.5 months. The median duration for CAP programmes was 30 hours.
- There were no gender-based differences in the type or severity of the penalty imposed.

**Offensive language**

- There were 16 juveniles (eight matched pairs) charged with this offence (this is a relatively small sample size, therefore the results should be treated with caution).
- These offenders were more likely to have prior convictions (62.5%); more likely to be issued with a CAN rather than being charged or summonsed (87.5%); and proportionately more likely not to plead guilty to the offence (37.5%).
- A significant proportion of offenders failed to appear before the court (43.8%); these juveniles were sentenced *ex parte*.
- Most of the juvenile offenders who appeared before the court were unaccompanied (62.5%).
- Over three-quarters of the juvenile offenders who were charged with this offence were unemployed (76.9%).
- They were proportionately more likely to live in a refuge (25%).
- They were also more likely to have a conviction recorded (87.5%).
- There were no gender-based differences in other non-matching variables.

*Circumstances*

- Juveniles were most commonly apprehended for using offensive language in the street (31.3%) and near shops or shopping malls (18.8%).
- Offenders were usually in the company of other young people (18.8% with co-offenders and 43.8% with non-offenders); however, over one-third acted alone (37.5%).
- Every offender was either the principal (87.5%) or a co-principal (12.5%) in the offence.

- Police, youth workers and other people in positions of authority were the main victims of offensive language (64.3%). Almost one-quarter of victims were strangers (21.4%).
- There were no gender-based differences in the circumstances of the offence.

#### *Outcome*

- A fine was the most common penalty handed down (75%). Dismissals following a CAP initiative accounted for 18.8% of outcomes.
- The median amount of a fine was \$87.50. Although statistically insignificant, male juvenile offenders were given higher fines (median of \$100 compared with \$62.50 for female juvenile offenders). The median duration for CAP programmes was 20 hours.
- There were no gender-based differences in the type or severity of the penalty imposed.

#### **Drug offences**

- There were 14 juveniles (seven matched pairs) charged with this offence (this is a relatively small sample size, therefore the results should be treated with caution).
- These offenders were similar to the whole sample on matching variables.
- They were proportionately more likely to live with friends (27.3%).
- Most offenders came from non-English speaking backgrounds (66.7%).
- There were no gender-based differences in other non-matching variables.

#### *Circumstances*

- More than one-half of the drug offences took place in motor vehicles (33.3%) or homes (25%).
- Offenders were usually in the company of other young people (7.1% with co-offenders and 57.1% with non-offenders). Just over one-third of offenders acted alone (35.7%).
- Every offender was the principal in the offence.
- There were no gender-based differences in the circumstances of the offence.

#### *Outcome*

- An unsupervised order was the most common penalty imposed (50%). A fine was given in almost one-quarter of cases (21.4%).
- The median duration for unsupervised orders was 12 months and the median amount of a fine was \$300. Although not found to be significant, male juvenile offenders were given longer orders (median of 12 months compared with six months for female juvenile offenders).
- There were no gender-based differences in the type or severity of the penalty imposed.

### Other offences

- There were ten juveniles (five matched pairs) charged with other offences, such as: resist arrest; breach offences; prostitution; enter enclosed lands; and negligent driving. (This is a small sample size, therefore the results should be treated with caution.)
- As regards the matching variables, these offenders were: older (median equals 17 years); more likely to have prior convictions (60%); more likely to be summonsed to court rather than given a CAN (40%); and, if charged by the police, they were more likely to have bail refused by the police and by the court (50%).
- Most of the offenders who appeared before the court were unaccompanied (62.5%).
- Many of the offenders were unemployed (80%).
- They were proportionately more likely to live with friends (33.3%) or to have no fixed place of abode (33.3%).
- They were also more likely to have a conviction recorded (60%).
- There were no gender-based differences in non-matching variables.

### *Circumstances*

- It is not possible to report on variables such as location, victim, main item and impact for this offence group, because it comprises five different offences with only one pair in each.
- Sixty per cent of offenders acted alone; whilst 30% were in company with co-offenders and 10% were in company with non-offenders.
- Every offender was either the principal (70%) or a co-principal (30%) in the offence.
- There were no gender-based differences in the circumstances of the offence.

### *Outcome*

- One-half of the offenders were given a fine; while 20% were given an unsupervised order and a further 20% were dismissed with or without a caution.
- The median amount of a fine was \$140 and the median duration for unsupervised orders was nine months.
- There were no gender-based differences in the type or severity of the penalty imposed.

## IV SENTENCING

### SENTENCING LAW

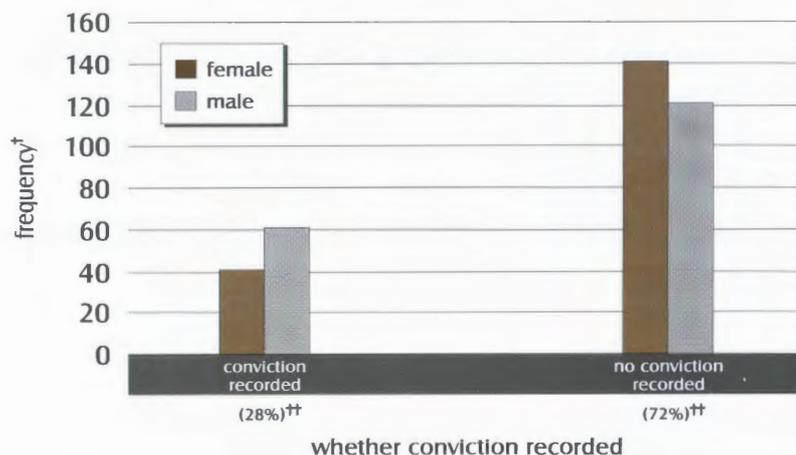
#### Recording of conviction

Section 14(1), in Division 3 of Part 2 of the *Children (Criminal Proceedings) Act 1987*, deals with the discretion of the Children's Court to either record or not record a conviction in criminal proceedings. This section relies on the age of the offender and whether offences are disposed of summarily. It states that the court shall not record a conviction, in respect of any offence, in relation to a child under the age of 16 years; but that there is reposed in the court a discretion to either record or not record a conviction, in respect of an offence which is disposed of summarily, in relation to a child who is 16 years of age or above.

In most cases (262 or 72%) a conviction was not recorded. As Figure 6 shows, there were significant differences according to gender, with female juvenile offenders being less likely than male juvenile offenders (22.5% and 33.5% respectively) to have a conviction recorded.<sup>45</sup>

— FIGURE 6 —

Conviction status of female and male juvenile offenders



† The frequency relates to the actual number of individual cases.

†† The percentages relate to the sum of female and male juvenile offenders relative to the entire sample.

<sup>45</sup> Chi-square test,  $p < 0.01959$

## PENALTIES

Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987* deals with the power of the Children's Court to impose penalties for proven offences. Specifically, s 33(1) lists the sanctions available to the Children's Court and has been described as a notional sentencing ladder. Only the making of a control order (s 33(1)(g)) is required to be accompanied by reasons for not utilising a lesser option (s 33(2) and s 35). From least to most severe, the penalties include —

- a dismissal, with or without a caution;
- a recognizance of up to two years, with or without supervision;
- a fine not exceeding \$1,000 or the maximum provided for the offence, whichever is the lesser amount;
- a recognizance of up to two years and a fine;
- a probation order of up to two years, with or without supervision;
- a CSO not exceeding 250 hours;<sup>46</sup> and
- a control order (for detention) not exceeding two years.

A CSO can only be imposed as a direct alternative to detention, and only after assessment as to suitability and availability of community work. Such an order may only be made if punishment provided for the offence at law includes imprisonment (s 34(1)).

A control order for detention can only be made if punishment provided for the offence at law includes imprisonment (s 34(1)); and can be for no longer than the maximum penalty of imprisonment provided by law for the offence (s 34(3)), and in any event, for no longer than two years, subject to the power to make one order accumulating sentence to a maximum of three years (s 33A). A control order may only be made after the sentencer has received and taken into account a background report concerning the offender (s 25).

Figure 7 shows the frequencies of the various penalties, according to the gender of the offender.

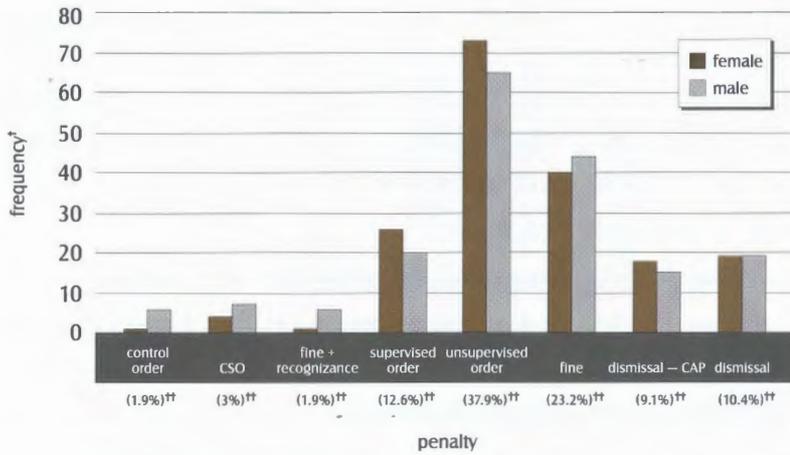
The penalties for each offender were ranked in order of severity, taking into account, firstly, the type of penalty and, secondly, the duration of each type of sentence or the amount of the fines.<sup>47</sup> A Wilcoxon Rank test showed that there were no statistically significant differences between the penalty rankings for male and female pairs overall.<sup>48</sup>

46 Prior to 25 November 1996, a CSO was limited to a maximum of 100 hours.

47 The agreed hierarchy of penalty rankings, taking the severity of each type into account, is in Appendix 5.

48 P equals 0.112.

— FIGURE 7 —  
Frequencies of outcome for female and male juvenile offenders



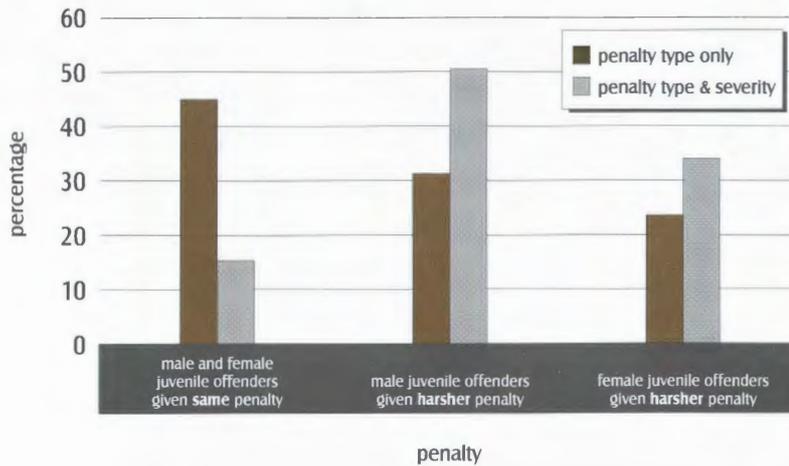
† The frequency relates to the actual number of individual cases.

†† The percentages relate to the sum of female and male juvenile offenders relative to the entire sample.

Figure 8 shows the percentage of matched male/female pairs where the penalties were equivalent, more harsh for male juvenile offenders, and more harsh for female juvenile offenders. Further, it shows this information by first looking solely at the penalty type and then taking the severity of each penalty type into account.

With respect to penalty type, in almost one-half of the cases paired, male and female juvenile offenders received the same penalty (45.1%). Male juvenile offenders were sentenced more harshly than female juvenile offenders in almost one-third of the cases (31.3%), while female juvenile offenders were given a harsher penalty in approximately one-quarter of the cases (23.6%). When the

— FIGURE 8 —  
Gender-based differences in the type and severity of penalties imposed



duration or the amount of the penalty was taken into consideration, the proportion of cases where male juvenile offenders were treated more harshly than female juvenile offenders increased to 50.5%, whereas 34.1% of female juvenile offenders were sentenced more severely than their male counterpart. Although male juvenile offenders do appear to have been treated more harshly, the fact that the statistical test was not significant suggests that the magnitude of the differences was insubstantial.<sup>49</sup>

## PENALTIES IN DETAIL

### Custodial Penalties

Only seven juveniles received a control order and, of these, six were male. The median length of a control order was three months. The range for male juvenile offenders was from 1–12 months. There was only one female juvenile offender with a control order, and the duration was for three months. Given that the data were matched on all critical variables, these results seem to suggest some gender bias for this outcome although, of course, the number of cases is very small. The following overview provides an indication of the differences between the male juvenile offenders who received control orders and the female juvenile offenders involved in the cases with which they were paired, which may have influenced the sentences given.

One matched pair resulted in a control order for both the male and female juvenile offender involved. In the case of the other five male juvenile offenders who received this outcome, the situation was as follows —

- One of the female matches received a recognizance with supervision. In this case, the male juvenile offender had seven other matters involving the same offence (robbery) dealt with at the same time. Also, the female juvenile offender had obtained a background report recommending the outcome given.
- Two of the female matches received probation with Juvenile Justice Centre supervision. In one of these cases, involving break and enter, the male juvenile offender had six matters (other than break and enter) dealt with at the same time, while for the female juvenile offender it was two other matters. Also, both the male and the female juvenile offenders had background reports recommending the outcome which was given. In the second case, also break and enter, the male juvenile offender had a principal role in the offence, and

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49 The Wilcoxon Rank test requires each outcome to have a ranking, and tests for a significant difference between overall male and female rankings. Another way of examining the question is to ask how often matched male and female pairs in our sample received the same type of penalty? A McNemar's test performed on each penalty type indicated that there were no significant sex differences for any outcome with the exception of control orders ( $p$  equals 0.025). However, as there were only seven offenders who received a control order, this result must be treated with caution. The odds-ratios for each penalty type are given in Appendix 4.

had three other matters dealt with at the same hearing. Nevertheless, his background report had recommended a less severe penalty (probation with supervision). The female juvenile offender had only an assisting role in her offence and there were no other matters involved.

- Two of the female matches received an unsupervised recognizance for motor vehicle theft. One female juvenile offender, like her male counterpart, had no role in the theft but had been a passenger knowing that the vehicle was stolen. However, with reference to the outcome, the court file referred to a need for control over the male juvenile offender's behaviour due to his itinerant lifestyle. In the second case, the male juvenile offender had eight other matters dealt with while the female juvenile offender had only one, and he was a co-principal in his offence, while she was merely present. The background report for the male juvenile offender had recommended a less severe penalty (a CSO).

### Community Service Orders

The second most severe penalty, only to be used as an alternative to detention, is a CSO. Here again there appeared to be some bias (though not statistically significant) in favour of female juvenile offenders. Four female and seven male juvenile offenders received this penalty. The median duration for CSOs was 50 hours, but the median for female juvenile offenders was 40 hours, while for male juvenile offenders it was 70 hours. The range was 20–100 hours.

### Fine with Recognizance

Only seven juveniles received this penalty (six males and one female). The duration of the recognizance for the female juvenile offender was 12 months. Of the males, three received recognizances of 12 months and three of six months. The median fine amount for the male juvenile offenders was \$100, ranging from \$50 – \$200, and the female juvenile offender was fined \$150.

### Supervised Community-Based Orders

This category comprises supervised probation and recognizances. Twenty-six female juvenile offenders and 20 male juvenile offenders received this penalty. The median duration for supervised orders (both recognizance and probation) was 12 months and there were no gender-based differences. The range was 6–24 months.

## Unsupervised Orders

This category comprises unsupervised probation and recognizances, and was the most common penalty. Seventy-three female juvenile offenders and 65 male juvenile offenders received an unsupervised order. The median duration (for both recognizance and probation) was 12 months. However, while the male median was also 12 months, the female median was nine months. The range was 3–24 months.

## Fines

This was the second most frequent outcome, with 40 female juvenile offenders and 44 male juvenile offenders receiving a fine. The median amount was \$100. Male juvenile offenders were fined more, with a median of \$150, compared with a median of \$100 for female juvenile offenders.

## Nominal Penalties

There were 38 dismissals (19 males and 19 females) and 33 dismissals following a CAP programme (15 males and 18 females). For the latter, most (87.5%) received a satisfactory report on their participation in a CAP programme. Four persons received an unsatisfactory report, but were nevertheless dismissed. The median duration for CAP programmes was 20 hours. There were no gender-based differences.

In the case of four male juvenile offenders and two female juvenile offenders, a recognizance was given following a CAP programme, and one male juvenile offender received a fine following a CAP programme. Three of these offenders (two males and one female) had received an unsatisfactory report.

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## V CONCLUSION

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The main aim of this study was to examine Children's Court outcomes for male and female juvenile offenders, to determine whether there was disparity in their sentencing. The evidence is far from convincing that the attitude of sentencers is gender biased. Rather, it would appear that each set of circumstances is unique and that these circumstances are taken into account in arriving at an equitable outcome. Consequently, of the five viewpoints outlined in the introduction, in terms of sentencing outcomes, our data seem to support the last; namely, that male and female juvenile offenders seem to be treated equitably but cannot be compared easily because they offend in different ways — most notably in terms of their role in the offence — and because of differences in their accumulation of a criminal history.

The picture which emerges is that the sentencing stage is but one of several in the criminal justice process. Equity can only be reflected at the sentencing stage if it has been practised at the preceding stages. It is important to appreciate that often the police, when deciding whether or not to arrest a juvenile, may draw upon the expectations of others in the legal system, the material provided by other professionals, and perceived community attitudes. Moreover, the gender of an offender does not influence the legal process in a simple or direct manner, but involves a complex matrix of factors, which are both legal and social in nature.

As previously mentioned, sentence disparity implies a hierarchy of penalties. The difficulties entailed by this implication became obvious when attempts were made to measure disparity more accurately by compiling a scale for measuring severity, both between and within penalty types.<sup>50</sup> In many cases it was evident that the difference was qualitative rather than quantitative. Also, because the personal circumstances of offenders are taken into account in determining a sentence (such as their ability to pay a fine or availability to perform a CSO) the type of sentence is not an absolute indicator of severity of sentence.

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<sup>50</sup> The agreed hierarchy of penalty rankings, taking the severity of each type into account, is in Appendix 5.

Nevertheless, having compiled such a hierarchy and controlled for the factors which are thought to affect sentencing decisions, it was determined that there was no statistically significant disparity between the outcomes for male and female juvenile offenders.

However, it was apparent that, although offenders were matched on the pertinent sentencing variables, female juvenile offenders were less likely to get a control order, a CSO, or a fine with recognizance, and more likely to receive shorter durations for some penalties. The magnitude of the difference was insignificant and may be warranted in terms of their roles in the offences, which were on the whole less instrumental than those of male juvenile offenders. Male juvenile offenders were more likely to have a principal role in the offence, while female juvenile offenders were more likely to have merely an assisting or peripheral role. This may also explain why male juvenile offenders were more likely to have a conviction recorded. Also, male juvenile offenders tended to have more "other" matters being dealt with than female juvenile offenders, and more previous proven appearances. This could reflect a more extensive involvement in criminal behaviour generally, or alternatively, harsher sanctioning at preceding stages of the criminal justice system.

Control orders were almost exclusively a male outcome in this sample. However, being such a small proportion (1.9%) of the outcomes overall, this cannot be said to denote general disparity in sentencing. The issue of detention has been researched in its own right; it is considered to be a penalty of last resort, mainly used with chronic, entrenched offenders, of which relatively few are female.<sup>51</sup>

In conclusion, there are elements of each offence which are not apparent during the statistical processing of data, but which are, appropriately, taken into account in sentencing. These could be the result of differences in patterns of offending for male and female juveniles, or of bias at prior discretionary points in the criminal justice process. An appropriate evaluation of gender bias not only needs proper assessment at each of these stages, but also the careful appraisal of many factors, such as class, age and race; as well as a method of taking into account relevant distinctions in the gravity of the offence, and the specific role played by the offender.

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<sup>51</sup> M Cain, *Juveniles in Detention, Special Needs Groups*, 1994 (Information and Evaluation Series No 3), Department of Juvenile Justice, Sydney, p 47.

## APPENDIX 1

# AUDIT OF STATISTICAL DATA COLLECTED FROM CHILDREN'S COURTS

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This publication forms part of a project aimed at improving data collection for juvenile offenders, particularly information on their ethnicity. A certain amount of error is unavoidable with any data collection, and the criminal justice system suffers from some inconsistencies across jurisdictions, as well as historical difficulties with the collection of certain variables.

A number of initiatives are presently underway to improve the accuracy and validity of information collected in Children's Courts. Problems with Children's Court data found in the course of this project have been brought to the attention of the Department of Juvenile Justice. These problems are now in the process of being addressed by means of an updated data collection system and enhanced coding and auditing processes.

### OFFENCE TYPE

The largest number of errors occurred for this variable (72 records or 14.7%). Of great concern is the number of times common assaults (s 61 of the *Crimes Act* 1901) were incorrectly coded as the more serious form of assault occasioning actual bodily harm (43 records). In a further ten records, clear cases of shoplifting were incorrectly coded as other larceny.

### GENDER

Eight records (1.6%) had errors on gender.

### AGE

Age was derived from the date of the earliest offence and the date of birth. If either was wrong then the age of the juvenile would also be wrong. Approximately 2.4% of records had errors on age.

## PLEA

Twenty-five records (5.1%) had errors on plea. Most errors involved ex parte pleas (18 records of which ten were incorrectly coded as no plea and eight as guilty pleas).

## COUNT GROUP

Six records (1.2%) had errors on count group. Five of these involved multiple counts of the principal offence being coded as one count.

## CASE TYPE

The least number of errors occurred for this variable (five records or 1%).

## BAIL

There seemed to be some confusion regarding the bail status of juveniles immediately prior to their final court appearance. Errors occurred in 55 records (11.2%). In 20 cases bail was coded as unknown. In 18 cases conditional bail was incorrectly coded as unconditional bail. Also, unconditional bail was incorrectly coded as conditional bail (six records) and bail refused was incorrectly coded as conditional bail in four cases.

## POLICE BAIL

As with bail, some coders had difficulty determining whether police bail was granted or not, and coded it as unknown (19 records). In 12 cases, bail refused was incorrectly coded as bail granted, and in three cases bail granted was incorrectly coded as bail refused. Approximately 7.8% of records had errors on police bail.

## MOST SERIOUS PRIOR OUTCOME

As far as it could be determined from the court papers, 29 records (5.9%) were wrong in that a more serious previous outcome existed than the one specified. In a few cases, an outcome was recorded which had not been determined until after the commission of the current offence(s).

## SEVERITY OF THE MOST SERIOUS PRIOR OUTCOME

The severity of the most serious prior outcome was wrong in 26 records (5.9%).

## OUTCOME

It was discovered that 10.6% of penalties were wrong. In particular, some coders failed to include juveniles who were dismissed with a caution following a CAP initiative (27 records overall). Another penalty not included under s 33(1)(d) of the *Children (Criminal Proceedings) Act 1987* is the combination of a recognizance and a fine. In 14 cases this outcome was incorrectly coded as just a fine, and in two cases it was incorrectly coded as just a recognizance.

## SEVERITY OF OUTCOME

Twenty-three records (4.7%) had errors concerning the duration of the penalty or the amount of the fine. It should be noted that, presently, the number of CAP hours undertaken is not collected.

## APPENDIX 2

### UNIFORMITY OF MATCHING VARIABLES

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In order to maintain an acceptable sample size, it was necessary to include a pair as a match where they differed only slightly. For example, in a few cases age differed by one year; in one case a CAN was paired with a summons; in some cases conditional bail may have been paired with unconditional bail.

Consequently, the final sample resulted in —

- 100% match on offence type, court location, prior group and police bail;
- 99.5% match on case type;
- 97.8% match on count group;
- 95.1% match on age and plea group; and
- 92.3% match on court bail.

## APPENDIX 3 MATTERS OTHER THAN THE PRINCIPAL OFFENCE

— TABLE 1 —

Mean number of matters dealt with at the same court appearance, by gender

type of matters/gender	n	mean	median	range
<b>MATTERS DEALT WITH OTHER THAN THE PRINCIPAL OFFENCE</b>				
males	64	2.6	2.0	1-12
females	65	2.0	1.0	1-7
<b>Total</b>	<b>129</b>	<b>2.3</b>	<b>2.0</b>	<b>1-12</b>
<b>TOTAL MATTERS (INCLUDING COUNTS OF THE PRINCIPAL OFFENCE)</b>				
males	182	2.2	1.0	1-23
females	182	1.8	1.0	1-8
<b>Total</b>	<b>364</b>	<b>2.0</b>	<b>1.0</b>	<b>1-23</b>

## APPENDIX 4 RESULTS OF McNEMAR'S TEST

— TABLE 2 —  
Odds ratios for penalties

Penalty	Odds Ratio <sup>(a)</sup>	P Value
Control Order	0 <sup>(b)</sup>	0.025
CSO	0.4	0.257
Recognizance with fine	0.167	0.059
Supervised order	1.294	0.423
Unsupervised order	1.129	0.622
Fine	0.591	0.128
Dismissal (with or without CAP)	1.167	0.631

**Notes —**

- (a) Values below 1 indicate that male juvenile offenders were more likely to receive this penalty, while values above 1 indicate that females were more likely to receive it.
- (b) The odds ratio is calculated from the two cells containing the frequencies of discrepant pairs, therefore, if one of these cells is zero then the odds ratio will also be zero. In our data, there was no case where a female juvenile offender received a control order while her male counterpart did not, therefore that cell was zero.

## APPENDIX 5

### HIERARCHY OF PENALTY RANKINGS

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The penalties for each offender were ranked in order of severity, taking into account, firstly, the type of penalty and, secondly, the duration or amount of the penalty.

Following is a list of the penalties imposed in the Children's Court from most to least severe. For each type of penalty, a rank score was computed by scaling the duration or the amount of the penalty against the maximum duration or amount of that penalty permissible under law.

#### CONTROL ORDERS

*Penalty Rank equals 0–0.99*

Control orders may be made for a period of up to two years. As such, the penalty rank was computed as —

1 – (the minimum or fixed term of the control order / 24 months).

For example, a control order for six months was assigned a rank score of 0.75 and a control order for 12 months was given a rank score of 0.5.

#### COMMUNITY SERVICE ORDERS

*Penalty rank equals 1–1.99*

In 1995, the maximum number of hours that could be ordered was 100 hours of community service work. As such, the penalty rank was computed as —

2 – (the number of hours ordered / 100 hours).

For example, a CSO for ten hours was assigned a rank score of 1.9 and a CSO for 100 hours was given a rank score of 1.

## SUPERVISED RECOGNIZANCE AND A FINE

*Penalty rank equals 2–2.99*

A recognizance can be imposed for a maximum period of two years and the maximum amount of a fine in the Children's Court is \$1000. As such, the penalty rank was computed by —

taking the midpoint between  $[3 - (\text{the recognizance duration} / 24 \text{ months})]$  and  $[3 - (\text{the fine amount} / \$1000)]$ .

For example, a recognizance for six months with a fine of \$100 was assigned a rank score of 2.825 (that is, the midpoint between 2.75 and 2.9).

## SUPERVISED ORDERS

*Penalty rank equals 3–3.99*

Supervised recognizance orders and probation orders can be imposed for a maximum period of two years. As such, the penalty rank was computed as —

$4 - (\text{period ordered} / 24 \text{ months})$ .

For example, a supervised recognizance or a probation order for 12 months was assigned a rank score of 3.5 and an order for 24 months was given a rank score of 3.

## UNSUPERVISED RECOGNIZANCE AND A FINE

*Penalty rank equals 4–4.99*

On a similar basis to supervised recognizances with a fine, the penalty rank was computed by —

taking the midpoint between  $[5 - (\text{the recognizance duration} / 24 \text{ months})]$  and  $[5 - (\text{the fine amount} / \$1000)]$ .

## UNSUPERVISED ORDERS

*Penalty rank equals 5–5.99*

On a similar basis to supervised orders, the penalty rank for unsupervised orders was computed as —

$6 - (\text{period ordered} / 24 \text{ months})$ .

## FINE ONLY

*Penalty rank equals 6–6.99*

As previously mentioned, the Children's Court can impose a fine of up to \$1000. Therefore, the penalty rank was computed as —

$7 - (\text{the fine amount} / \$1000)$ .

For example, a fine of \$200 was assigned a rank score of 6.8 and a fine of \$500 was given a rank score of 6.5.

## DISMISSALS FOLLOWING A CAP PROGRAMME

*Penalty rank equals 7–7.99*

At present, there is no legislative base for CAPs. In our sample, the number of hours of community work completed by offenders ranged from 0 – 85 hours. The penalty rank was therefore computed as —

$8 - (\text{the number of CAP hours} / 85 \text{ hours}).$

For example, 85 hours of CAP programmes were assigned a rank score of 7 and 0 hours of CAP programmes were given a rank score of 8 (that is, the same score as someone who was dismissed without a referral to a CAP).

## DISMISSALS

*Penalty rank equals 8*

All dismissals without referral to a CAP were assigned a rank score of 8.

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