

The attrition of sexual offences from the New South Wales criminal justice system

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Each year NSW Police receive reports of more than 7,000 sexual and indecent assault incidents. Only about one in ten of these incidents result in someone being found guilty in court. This paper analyses data from police and the criminal courts to ascertain the stages at which sexual offences lapse from the criminal justice system. Most sexual offences proceed no further than the investigation stage. Only 15 percent of sex incidents involving a child victim and 19 percent of incidents involving an adult victim result in the initiation of criminal proceedings against a suspect. Among the small proportion of cases that do reach court, the conviction rate is low, with less than 50 percent of defendants appearing for a sexual offence being found guilty. Criminal proceedings are less likely to be commenced in incidents where the victim is a young child, where the incident is reported more than ten years after it occurred, where the offender is a stranger and where there are no aggravating circumstances. These factors affect the quality and availability of evidence and suggest that the decision to prosecute is influenced mainly by the strength of the case and the prospect of success in court. It is suggested in this paper that every effort be made to strengthen cases at the investigation stage by the comprehensive gathering of evidence and the support of victims in order to improve the response of the criminal justice system to sexual assault.

INTRODUCTION

Over the last couple of years there has been considerable public disquiet about the way in which a number of high profile sexual assault cases have been dealt with by the criminal justice system:

Victim must bare her soul yet again – Gang-rape verdict overturned
The Daily Telegraph 5/3/2004

No charges – Police abandon rape investigation – Bulldogs affair
The Daily Telegraph 28/4/2004

Outcry over leniency for sex attacker
The Sunday Telegraph 27/5/2004

Why sexual violence is almost legal: Our inflexible, forbidding court system alienates many who deserve justice
Sydney Morning Herald 09/08/2004

The law adjourns and rapists win: Delays and separate trials continue to magnify the agony of victims

Sydney Morning Herald 29/11/2004

Concern about the criminal justice response to sexual assault victims has not been limited to the media. In an opinion piece published in the Daily Telegraph, a leading expert on sexual assault law reform, Dr Sandra Egger, expressed concern about the fact that 'the vast majority of sexual assaults are not tried or punished in the courts' (Egger 2004). Dr Egger highlighted the low rate at which sexual assaults are reported to police, the large proportion of cases where police do not lay charges and the high rate of acquittal at court.

In December 2004, the Criminal Justice Sexual Offences Taskforce was established by the New South Wales (NSW) Attorney General, with the aim of improving the response of the criminal justice system to sexual assault. In order to inform the work of the taskforce, the NSW Bureau of Crime Statistics and Research was asked to provide information showing the progress of sexual offences through the criminal justice system. The purpose of this bulletin is to provide information on:

1. The stages at which sexual offences lapse from the criminal justice system; and
2. The characteristics of sexual offences that proceed through various stages of the criminal justice system.

REPORTING OF SEXUAL OFFENCES

It is well documented that only a small percentage of sexual offences are reported to police. The NSW Crime and Safety survey shows that each year only 10 to 30 percent of adult female sexual assault victims report their victimisation to police (Australian Bureau of Statistics 2004). There is no reliable indication of the level of reporting among children or adult men.

Previous research has shown that adult women are more likely to report sexual assault victimisation if they sustain a physical injury, if they are born overseas or if the perpetrator is a stranger (Coumarelos & Allen 1999). This research also found that reporting is not influenced by age, education, labour force status, marital status, source of income, childhood abuse or prior adult violence.

Each year NSW Police receive reports of approximately 4,000 incidents of sexual assault, 3,500 incidents of indecent assault/ acts of indecency, and 1,500 other sexual offences (including obscene exposure, peep-or-pry offences and miscellaneous sex offences). This paper will focus only on sexual assaults, indecent assaults and acts of indecency¹, these being the most common sexual offences reported to police as well as the more serious.

Figure 1 compares the number of sexual assault and indecent assault incidents reported to police with the number of proven charges for sexual assault and indecent assault in the Local and Higher Courts over the past ten years. There are two features of this figure worth noting.

Firstly, it is clear that in each year the number of incidents recorded is far greater than the number of proven charges. In every year shown, the number of proven charges is less than 16 percent of the number of incidents that come to police attention.

Secondly, the trend is a very stable one. There has been no significant difference over the ten years from 1995 to 2004 in either the number of incidents recorded by police² or the number of charges proven in the courts³. In 2004, the number of proven sexual offence charges was ten percent of the number of recorded incidents. Thus, for every 10 sexual offences reported, only about one was proven in court⁴.

Figure 2 is a diagrammatic representation of the stages between reporting a criminal incident and conviction. An incident can fail to proceed to the next level at each of these stages. For instance, an offence might be reported to police but the offender not found. Another reported offence might proceed all the way to trial but the defendant found not guilty. The section below examines attrition at each of these stages.

FLOWCHART OF ATTRITION POINTS

Figure 3 shows the number of sexual offences at various stages of the criminal justice process in 2004. Rather than following a cohort of cases through the system, the figure displays the attrition of cases from the criminal justice system in two main periods. The first is from first report to police until the initiation (or non-initiation) of criminal proceedings against a suspect. The second is from appearance in a court to final disposition of the case.

The data on incidents reported to the police are not linked to the court data for two reasons. Firstly, the counting units are not the same; the police data show recorded criminal incidents and the court data show finalised defendants and charges. A single defendant can be involved in multiple incidents and a single incident can give rise to multiple charges. Secondly, the court statistics for a given year do not necessarily arise from incidents recorded by police in the same year due to the time it takes to investigate an offence and for charges to be finalised in court.

A criminal *incident* is an action reported to and recorded by police that falls into a single offence category (for instance indecent assault), occurs at one location, during one uninterrupted time period and involves the same victim(s) and offender(s). The first part of Figure 3 shows *incidents* of sexual offences separating incidents involving child victims from those involving adults, according to the victim age at reporting. Where the sexual offence incident involved more than one victim the incident is classified according to the age of the youngest victim. Victims are considered children if they are aged less than 16, which is consistent with the statutory age of consent in NSW. Slightly less than half the sexual offence incidents involved a child victim in 2004 (48%). The 7884 sexual offence incidents in Figure 3 include sexual assaults (54%) and indecent assault/acts of indecency (46%).

Figure 1: Number of recorded incidents and proven charges for sexual and indecent assault, 1995 to 2004, NSW

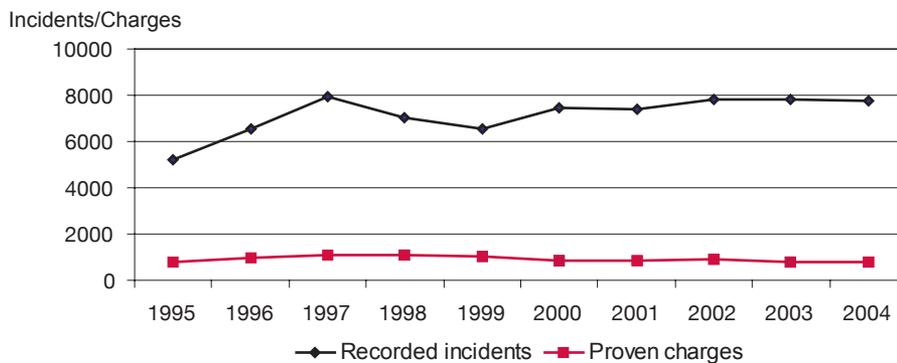


Figure 2: Stages of the criminal justice system

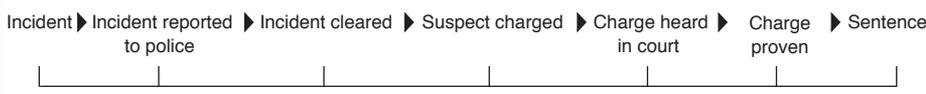
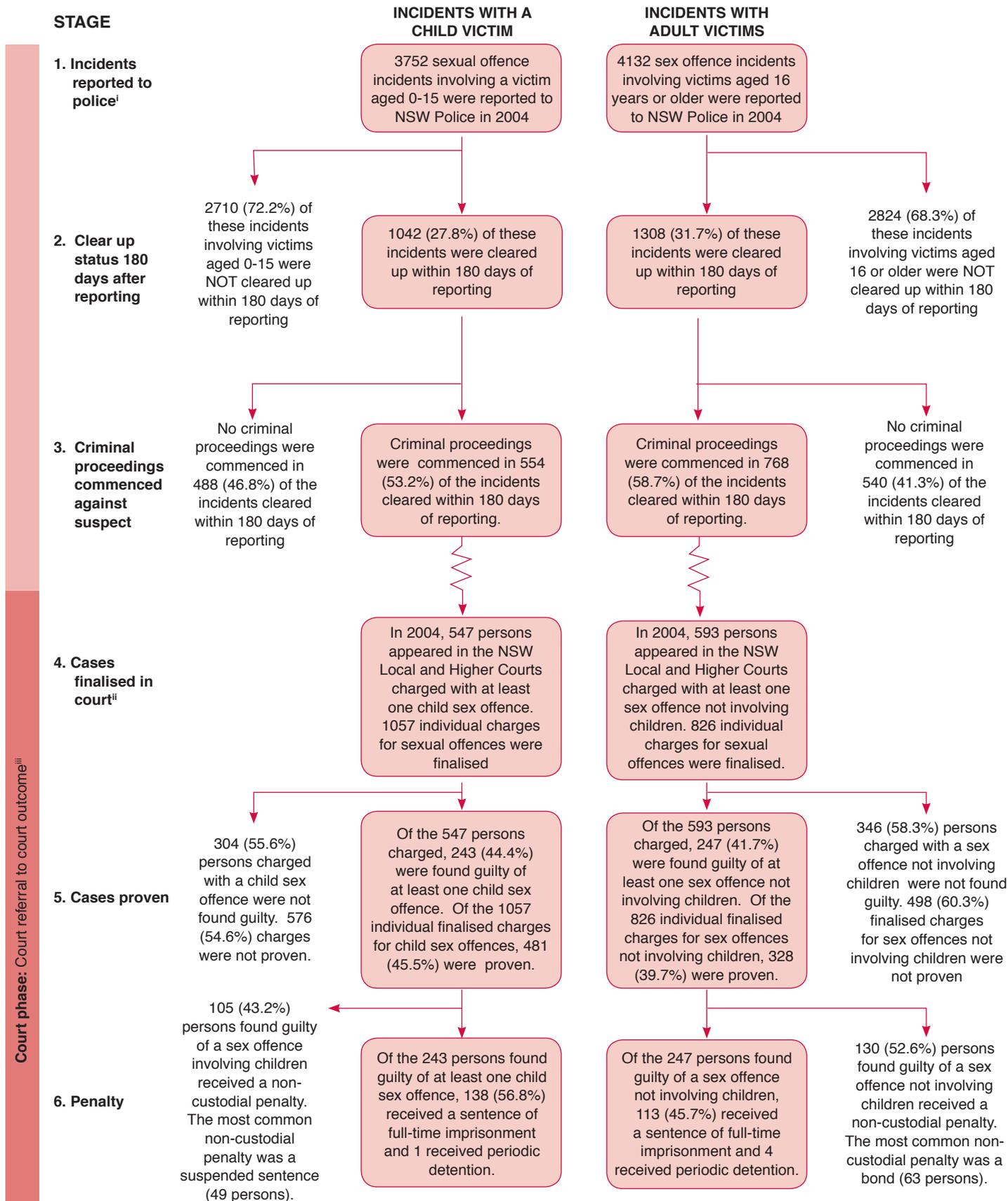


Figure 3: The progress of sexual offences through the NSW Criminal Justice System, 2004



Court phase: Court referral to court outcomeⁱⁱⁱ

i. This figure includes recorded incidents of sexual assault, indecent assault and acts of indecency. Other sex offences including obscene exposure and peep-or-pry are not included. Incidents involving multiple victims are classified by the age of the youngest victim. The stream showing adult victims includes 126 incidents where the age of the victim was not recorded.

ii. Matters finalised in the NSW Local, District and Supreme Criminal Courts. The 2004 court appearances do not directly relate to the incidents recorded by police in 2004.

iii. Persons appearing in court for a sex offence against children AND a sex offence against adults appear twice in this Figure. In 2004, the total number of people appearing for a sex offence in the NSW Local and Higher Courts was 1065. Of the 1065 persons, 469 (44.0%) were found guilty of at least one sex offence. Of the 469 persons found guilty, 231 (49.3%) received a penalty of imprisonment.

CLEAR UP RATES

Figure 3 shows the number of cases still in the criminal justice system at various stages. The first stage at which cases drop out of the system, Stage 2, is the clear-up stage. A cleared criminal incident is one that the police are no longer investigating, either because they have commenced criminal proceedings against a suspect or for another reason, such as withdrawal of the complaint. Incidents that are not cleared are not likely to proceed any further. This flowchart shows the number of incidents recorded as cleared six months after reporting.

In 2004, only 28 percent of sexual offence incidents involving a child victim and 32 percent of those involving adults were cleared within 180 days. With 70 percent of incidents uncleared after six months, it is at this point that the largest number of incidents are lost from the criminal justice system.

COMMENCEMENT OF CRIMINAL PROCEEDINGS

Stage 3 of Figure 3 shows the proportion of cleared incidents in which criminal proceedings were commenced against a person of interest or suspected offender. Criminal proceedings are commenced by the issuing and filing of a court attendance notice by the police. This stage of the flow chart shows how common it is for incidents to be recorded as cleared but for there to be no criminal proceedings commenced.

Within 180 days of reporting, criminal proceedings had been commenced against a person of interest in 53 percent of cleared incidents involving a child victim and in 59 percent of cleared incidents involving an adult victim. This means that slightly less than half the sexual offence incidents recorded as cleared had not progressed any further in the criminal justice system after 180 days. This is the second most common point at which cases drop out of the criminal justice system.

Police record the status of suspects that they do not proceed against. Among cleared incidents that did not result in

formal action the two most common status classifications used by police were *no formal action* (244 incidents with child victims and 329 incidents with adult victims) and *arrest not desired* (238 incidents with child victims and 188 incidents with adult victims). The next most prevalent status was *deceased* (two incidents with child victims and nine incidents with adult victims).

Note that the descriptors *no formal action* and *arrest not desired* do not provide any insight into why criminal proceedings are not commenced. This issue will be taken up at the conclusion of the bulletin.

COURT OUTCOMES

Court outcomes can be measured by either counting the number of people who appear in court or by counting the number of individual offences for which people appear. The number of offences is greater than the number of persons because some people are charged with more than one offence. Stage 4 of Figure 3 shows both measures.

As mentioned above, the court figures shown at Stages 4, 5 and 6 of Figure 3 are not directly comparable with the police figures shown at Stages 1, 2 and 3, due to different counting units and the fact that the court appearances do not necessarily relate to the police incidents from the same period.

Stage 4 of Figure 3 shows that 547 persons appeared in the NSW Local, District and Supreme Courts in 2004 charged with at least one sexual offence against a child, while 593 persons appeared for at least one sexual offence not involving a child.

In 2004 the Children's Court finalised sexual offence proceedings against 107 juveniles. These offences are not included in Figure 3 because the age of the victim is not known.

CASES PROVEN

Stage 5 of Figure 3 shows that of the 547 persons appearing for a sexual offence against a child (or children) in the Local, District or Supreme Courts, 243 (44.4 %) were found guilty of at least one count of a sexual offence against a child. Of the 593

persons appearing for a sexual offence *not* involving a child, 247 (41.7%) were found guilty of at least one offence of this type. This conviction rate is relatively low compared to other offences and this will be considered in more detail below.

Of the 107 young people appearing for sexual offences in the Children's Court, 59 (55.1%) had an offence proven against them.

PENALTY

The final stage of Figure 3 shows that imprisonment is the most common penalty received by people convicted of sexual offences. Fifty seven percent of those found guilty of a sexual offence against a child and 46 percent of persons found guilty of a sexual offence not involving children received a sentence of full time imprisonment.

SUMMARY

Among sexual offences reported to police, criminal proceedings are initiated in only 15 percent of incidents involving a child victim and 19 percent of incidents involving adult victims. Of the charges that do reach court, slightly less than half result in a guilty finding. It follows that approximately eight percent of recorded incidents involving children and ten percent of recorded incidents involving adults result in a sexual offence being proven in court. Note, however, that these estimates are based on the proportion of incidents that result in criminal proceedings being commenced within six months of the incident being reported. Since criminal proceedings in some cases takes longer than six months to commence, the true proportion of incidents resulting in criminal proceedings would be slightly higher than this⁵.

Figure 3 shows that the major points of attrition for sexual offences in the criminal justice system lie between reporting and clear up, and between clear up and the commencement of criminal proceedings. Attrition also occurs at the court stage, but because such a small proportion of sexual offences reach this stage, the number of cases is relatively small.

DETAILED INVESTIGATION OF ATTRITION POINTS

The next section examines:

1. Incident characteristics that affect the likelihood of criminal proceedings being initiated; and
2. The outcome of criminal proceedings in Local and Higher Courts.

CRIMINAL PROCEEDINGS BY OFFENCE CHARACTERISTICS

It was shown above that less than 20 per cent of sexual offences reported to police result in the initiation of criminal proceedings. This section will look at whether some sexual offences are more likely to result in criminal proceedings than others. In examining this issue we

Table 1: Sexual offence incidents recorded by police in 2004; type of offence by whether criminal proceedings commenced within 180 days of the reporting date

<i>Sexual offence category</i>	<i>No. of incidents</i>	<i>% with criminal proceedings commenced</i>	<i>Significance</i>
Sexual assault	4209	14.5	p<0.01 ⁷
Indecent assault	3602	19.4	
Total	7811	16.8	

are limited to incident information about offences that is routinely collected by police. This excludes a great deal of incident information that is potentially quite relevant to understanding whether a case will result in criminal proceedings or not (e.g. whether the victim wishes to proceed with a prosecution).

The first consideration is whether the type

of sexual offence allegedly committed has an effect on the likelihood of criminal proceedings being commenced. Table 1 shows the likelihood of criminal proceedings being commenced by type of sexual offence (as described in the police record). The differences between the types of offences shown in Table 1 are as follows. Legally, sexual assault is

Table 2: Sexual assault and indecent assault incidents recorded by police in 2004; offence characteristics by whether criminal proceedings commenced within 180 days of the reporting date

<i>Incident characteristics</i>	<i>Sexual assault</i>			<i>Indecent assault</i>		
	<i>No. of incidentsⁱ</i>	<i>% with criminal proceedings commenced</i>	<i>Sig.</i>	<i>No. of incidentsⁱⁱ</i>	<i>% with criminal proceedings commenced</i>	<i>Sig.</i>
Any aggravating factor involved						
Aggravated	1987	17.6	p<0.01 ⁸	1169	21.5	p=0.079 ⁹
Not aggravated	1861	13.4		1407	18.7	
Time between offence and reporting						
Same or next day	1413	17.4	p<0.01 ¹⁰	1165	20.3	p<0.01 ¹¹
Within one year	1499	15.2		996	17.3	
Within ten years	550	16.4		298	29.9	
Over ten years	386	8.8		117	14.5	
Victim gender						
Male	584	10.3	p<0.01 ¹²	433	12.7	p<0.01 ¹³
Female	3264	16.5		2143	21.4	
Victim age at offence						
0 to 5	333	5.7	p<0.01 ¹⁴	256	4.3	p<0.01 ¹⁵
6 to 10	626	13.7		541	15.9	
11 to 15	1210	17.5		794	23.6	
16 to 30	1176	16.9		704	23.2	
30+	503	16.3		281	23.8	
Relationship of offender to victim						
Partner / ex-partner	603	18.2	p<0.01 ¹⁶	97	35.1	p<0.01 ¹⁷
Family member	1037	15.8		753	19.1	
Other known person	1603	16.6		1106	21.5	
Not known to victim	605	9.6		620	15.8	

i. Excludes 273 incidents where the relationship was not recorded, 72 incidents where the victim's age at offence was not recorded and 16 incidents where the victim's gender was not recorded.

ii. Excludes 975 incidents where the relationship was not recorded, 44 incidents where the victim's age at offence was not recorded and 7 incidents where the victim's gender was not recorded.

distinguished from other sexual offences by the act of sexual intercourse⁶. Indecent assault is unwanted sexual touching. Acts of indecency are indecent acts performed in the presence of the victim where there is no touching of the victim by the accused. Sexual assault, indecent assault and acts of indecency can occur under circumstances of aggravation, such as where the offender acts in company, where malicious bodily harm is inflicted or where the alleged victim is either a child or a person with a physical or intellectual disability. In the following section, as was the case above, the term indecent assault incorporates both indecent assaults and acts of indecency.

From Table 1 it can be seen that criminal proceedings were more likely to arise from incidents of indecent

assault reported to police than sexual assault incidents (19.4% versus 14.5% respectively), although the difference is relatively small.

In this section we examine the influence of various offence characteristics on the likelihood of criminal proceedings being initiated for a sexual offence. The offence characteristics considered are: the age and gender of the victim, the time between offence and reporting, the presence of an aggravating factor and the victim-offender relationship. Sexual assault and indecent assault are described separately. Table 2 shows how various characteristics of an offence influence the likelihood of criminal proceedings being commenced.

In the case of sexual assault, criminal proceedings were more likely to be

commenced in sexual assault incidents that involved aggravation¹⁸, where reporting was within ten years of the incident, where the victim was a female, where the victim was over ten years of age and where the victim knew the offender. The results were the same for indecent assault, with the exception of aggravation, which fell just short of significance at the five percent level.

It is possible that some of these effects are confounded with others. In order to find out which factors independently predict the likelihood of criminal proceedings being commenced, a logistic regression model was fitted to the data.

Table 3 shows the odds ratios and 95 percent confidence intervals for the significant predictors of the

Table 3: Logistic regression model predicting likelihood that a sexual assault incident recorded by police will have criminal proceedings commenced within 180 days of the reporting date

<i>Incident characteristics</i>	<i>Significance</i>	<i>Odds ratio</i>	<i>Confidence interval (95%)</i>	
			<i>Lower</i>	<i>Upper</i>
Aggravating circumstances				
Aggravated v not aggravated	<0.0001	1.512	1.263	1.811
Victim gender				
Female v male	0.0024	1.564	1.172	2.088
Victim age at offence				
Over five years v 0-5 years	<0.0001	3.141	1.942	5.081
Offender relationship to victim				
Known person v stranger	<0.0001	2.082	1.560	2.779
Time from offence to report				
Within ten years v more than ten years	<0.0001	2.381	1.646	3.444

Table 4: Logistic regression model predicting likelihood that an indecent assault incident recorded by police will have criminal proceedings commenced within 180 days of the reporting date

<i>Incident characteristics</i>	<i>Significance</i>	<i>Odds ratio</i>	<i>Confidence interval (95%)</i>	
			<i>Lower</i>	<i>Upper</i>
Aggravating circumstances				
Aggravated v not aggravated	0.0037	1.374	1.109	1.703
Victim gender				
Female v male	0.0007	1.710	1.255	2.328
Victim age at offence				
Over five years v 0-5 years	<0.0001	6.167	3.478	10.936
Offender relationship to victim				
Partner/expartner v stranger	<0.0001	2.796	1.741	4.491
Other known person v stranger	0.0068	1.437	1.105	1.868
Time from offence to report				
Within ten years v more than ten years	0.0263	1.827	1.074	3.107

commencement of criminal proceedings for sexual assault incidents. All factors were significantly associated with the commencement of proceedings. When the effects of other variables were taken into account, the odds of criminal proceedings being commenced were higher where:

- The victim was aged over five years;
- Reporting of the incident occurred within ten years of its occurrence;
- The offender was known to the victim;
- The victim was female; or
- Aggravating circumstances were present.

Table 4 shows the results of fitting a logistic regression model to indecent assault incidents using the same regressors as were used for sexual assault. The variable measuring aggravation was included in this analysis because there were indications it was significant in the bi-variate analysis (see Table 2). This model showed that the odds of criminal proceedings being commenced in a case of indecent assault were higher if:

- The victim was aged over five years;
- The offender was known to the victim, particularly if they were a current or former partner;
- The incident was reported within ten years of its occurrence;
- The victim was female; or
- Aggravating circumstances were present.

THE RATE OF CONVICTION IN COURT

The other area of attrition among sexual offences occurs at the court stage. There are two ways of analysing data at this stage. One involves looking at the percentage of individuals found guilty of one or more sexual assault offences. The other involves looking at the outcome of individual charges, regardless of whether they involve the same or distinct individuals. This section analyses both.

OUTCOME FOR PERSONS CHARGED WITH SEXUAL OFFENCES

There is considerable interest in whether people charged with sexual offences are acquitted or found guilty. Figure 3 showed that only 44 percent of persons charged with a child sex offence and 42 percent charged with an offence against an adult were found guilty. In this section we examine the detailed court outcomes for defendants with a sexual offence finalised in the NSW Local or Higher Courts in 2004. Tables 5a and 5b show the court outcome for persons charged with a sexual offence in the NSW District and Supreme Courts. Tables 6a and 6b show the Local Court results. Note that sexual offences include charges for sexual assault, indecent assault and acts of indecency. Note also that the outcome shown relates only to the defendant's sexual offences and disregards any concurrent charges the defendant may have had. For comparison, both tables show the court outcomes received by all people appearing in court (all offences combined) and those appearing for non-sexual assaults.

Higher Courts

Table 5a shows that people appearing for sex offences in the Higher Courts (District and Supreme) have much a lower conviction rate than other Higher Court defendants. The last row of the table shows that, in 2004, 48 percent of sexual offence defendants were found guilty of at least one sex offence compared with 73 percent of assault defendants and 80 percent of all Higher Courts defendants.

Several aspects of Table 5a allow us to better understand the reason for this. The first is that sexual offences are more likely to be discontinued (dismissed without a hearing) than other cases. Eighteen percent of cases involving child victims and 27 percent of cases involving adult victims fell into this category. In total, 23 percent of defendants with a finalised sexual offence had all charges dismissed prior to hearing, compared with an average of eight percent for all defendants finalised in the Higher Courts and eight percent of those appearing for assault.

In almost every case the outcome *all charges dismissed without hearing* arose due to an application by the prosecution.

The second point worth noting about Table 5a is that people appearing for a sexual offence are less likely to plead guilty and more likely to go to trial than those charged with other offences. Only 35 percent of persons (45% for those appearing for an offence involving child victims and 23% involving adult victims) appearing for a sexual offence were finalised by way of a guilty plea, compared with an average of 71 percent of all defendants and 65 percent of persons charged with assault.

Another major area of attrition concerns the outcome of the trial itself. This is best seen in Table 5b, which focuses on defendants whose case was finalised by trial. This table shows that 67 percent of defendants appearing for a sexual offence were acquitted at trial, compared with 59 percent of persons charged with assault. The average acquittal rate for all offences at trial was 44 percent.

Finally, it is clear from Table 5a that sex offences against children have a higher conviction rate than sex offences against adults. This is because defendants appearing for child sex offences are much more likely to plead guilty (45 %) than those appearing for sex offences against adults (23 %) and much less likely to be acquitted of all charges after a trial. Table 5b shows that, at trial, 61 percent of defendants charged with a child sex offence were acquitted, compared with 74 percent of defendants with a sexual offence against an adult.

Local Court

Tables 6a and 6b shows the Local Court results. As with the Higher Courts, people charged with sex offences in the Local Court have a lower conviction rate than other defendants. In 2004, 41 percent of sexual offence defendants were found guilty of at least one sex offence compared with 73 percent of assault defendants and 87 percent of all Higher Court defendants.

Table 5a: Persons with selected offences finalised in the Higher Courts; offence by outcome of charges for that offence, 2004

Outcome (%)	Offence defendant charged with				
	Sex offence against a child	Sex offence NOT against a child	Any sexual offence	Assault	All offences
Proceeded to trial	32.7	45.2	37.8	19.8	17.2
<i>Acquitted of all charges</i>	20.0	33.3	25.4	11.6	7.6
<i>Guilty of at least one charge</i>	12.3	11.1	11.8	7.9	8.6
<i>Acquitted, had other guilty plea</i>	0.4	0.8	0.6	0.3	1.0
Pleaded guilty	45.0	23.0	35.3	65.1	70.7
All charges dismissed without hearingⁱ	18.1	26.8	23.3	8.2	8.4
All charges otherwise disposed ofⁱⁱ	4.2	5.0	3.6	6.9	3.8
Total (%)	100	100	100	100	100
Total (number)	260	261	476	681	3623
Guilty (%)ⁱⁱⁱ	57.7	34.9	47.7	73.3	80.2

i. Most commonly applications for no further proceedings by the crown.

ii. Most commonly cases where the accused either failed to appear or died.

iii. Includes persons who pleaded guilty and those who were found guilty

Table 5b: Persons with selected offences finalised in the Higher Courts by trial; offence by outcome of charges at trial for that offence, 2004

Outcome (%)	Offence defendant charged with				
	Sex offence against a child	Sex offence NOT against a child	Any sexual offence	Assault	All offences
Proceeded to trial					
<i>Acquitted of all charges</i>	61.2	73.7	67.2	58.5	44.4
<i>Guilty of at least one charge</i>	37.6	24.6	31.1	40.0	49.8
<i>Acquitted, had other guilty plea</i>	1.2	1.7	1.7	1.5	5.8
Total (%)	100	100	100	100	100
Total (number)	85	118	180	135	622

Table 6a presents the detailed situation for the Local Court:

- People charged with a sexual offence are more likely to have all charges withdrawn prior to hearing than other defendants. This was the outcome for 36 percent of sexual offenders, compared with 7 percent of all defendants and 14 percent of assault defendants.
- People appearing for sexual offences are less likely to enter a guilty plea than the average defendant. Only 24 percent of defendants charged with a sexual offence pleaded guilty to their charges, compared with 48 percent of persons appearing for assault and 57 percent of all Local Court defendants.
- A higher proportion of persons charged with sexual offences are

adjudicated at a defended hearing.

Table 6b shows the outcome specifically of defended hearings. Table 6b shows that where a case is finalised by a defended hearing, those appearing for sexual offences are more often acquitted than defendants in general; 60 percent of defended hearings for sexual offences resulted in a complete acquittal compared with 46 percent of defended hearings for assault and 30 percent of defended hearings for all offences.

- In contrast to the Higher Court results, in the Local Court defendants appearing for sexual offences involving children have a lower conviction rate than people appearing for offences against adults (33% versus 47%). While this is in part due to a smaller proportion pleading

guilty (21% versus 27%), the main reason is because of the high withdrawal rate for sexual offences involving children. Forty eight percent of defendants charged with a sexual offence against a child had the charges dismissed without a hearing compared with 27 percent of defendants charged with sexual offences against an adult.

There is one other feature of Table 6a that deserves comment. It can be seen from a comparison of Tables 5a and 6a that the outcomes for people charged with sexual offences in the Local Courts are similar to those in the Higher Court, except that sexual offence defendants in the Local Court are less likely to be convicted in their absence than are defendants charged with other offences.

Table 6a: Persons with selected offences finalised in the Local Court; offence by outcome of charges for that offence, 2004

Outcome (%)	Offence defendant charged with				
	Sex offence against a child	Sex offence NOT against a child	Any sexual offence	Assault	All offences
Defended hearing	24.7	37.7	32.3	23.5	13.5
<i>Acquitted of all charges</i>	15.3	22.9	19.4	10.7	4.1
<i>Guilty of at least one charge</i>	9.1	14.8	12.7	12.3	8.9
<i>Acquitted, had other plea</i>	0.3	0.0	0.2	0.5	0.6
Pleaded guilty	20.6	27.4	24.1	47.5	57.1
Convicted ex parteⁱ	2.8	4.8	4.1	12.6	20.2
Arrest warrant issued	3.1	2.4	2.9	1.5	1.1
All charges dismissed without hearingⁱⁱ	48.1	26.8	36.0	14.3	7.4
All charges otherwise disposed ofⁱⁱⁱ	0.7	0.9	0.7	0.6	0.6
Total (%)	100	100	100	100	100
Total (Number)	287	332	589	23,424	135,497
Guilty (%)^{iv}	32.8	47.0	41.1	72.9	86.8

i. This outcome means the defendant was convicted in his or her absence

ii. Most commonly cases where no evidence was offered by the prosecuting authority

iii. Most commonly cases stood out of list

iv. Includes persons who pleaded guilty and those who were found guilty

Table 6b: Persons with selected offences finalised in the Local Court by defended hearing; offence by outcome of charges at defended hearing for that offence, 2004

Outcome (%)	Offence defendant charged with				
	Sex offence against a child	Sex offence NOT against a child	Any sexual offence	Assault	All offences
Defended hearing					
<i>Acquitted of all charges</i>	62.0	60.8	60.0	45.5	30.0
<i>Guilty of at least one charge</i>	36.6	39.2	39.5	52.5	65.5
<i>Acquitted, had other plea</i>	1.4	0.0	0.5	2.0	4.5
Total (%)	100	100	100	100	100
Total (Number)	71	125	190	5,500	18,330

This simply reflects the fact that other offences (including assaults) are often minor enough not to require the presence of the to defendant for the matter to be dealt with under Local Court procedures.

OUTCOME OF SPECIFIC SEXUAL OFFENCE CHARGES

It was shown above that the characteristics of a sexual offence predict whether police will commence criminal proceedings. It is also of interest to consider whether some individual offences are more likely to be proven at court. Unfortunately, information is not

readily available from the courts on the victim/offender relationship, the victim's gender or the time between incident and reporting to police. Information is, however, available on whether the victim is a child and whether the offence involved circumstances of aggravation.

Table 7 shows the court outcome for specific, high volume, sex charges finalised in the NSW courts in 2004. Note that this table shows the outcome of finalised *charges not persons*; a single defendant can have multiple charges. Outcomes are presented for the most commonly prosecuted sexual offences.

The total conviction rate for each charge can be calculated by summing the first two columns; the proportion of charges finalised by guilty plea and guilty verdict. It is worth bearing in mind, when examining Table 7, that the prosecutors can drop, add or substitute charges. When this happens the original charge is finalised by being *withdrawn*. In some cases this will be because an alternative charge has been laid.

The offence with the lowest conviction rate in any jurisdiction is sexual assault (s. 611) against an adult. In 2004, less than one in four of these charges finalised

Table 7: Outcome of selected sexual offence charges finalised in the Local and Higher Courts, 2004

Jurisdiction	Crimes Act 1900		Outcome (%)						
	Section	Description	Victim	Guilty plea	Guilty verdict	Not guilty by verdict ⁱ	Other ⁱⁱ	Total (%)	Total (No.)
Higher Courts	61I	Sexual assault	adult	14.8	8.1	32.9	44.3	100.0	149
	61J	Agg. sexual assault	adult	14.6	21.4	15.5	48.5	100.0	103
			child	21.6	13.5	25.7	39.2	100.0	74
			adult	36.8	7.0	21.1	35.1	100.0	57
	61M	Agg. indecent assault	adult	23.7	5.3	23.7	47.4	100.0	38
			child	43.2	14.1	14.1	28.6	100.0	199
	61N	Act of indecency	child	35.0	30.0	25.0	10.0	100.0	20
	61O	Agg. act of indecency	child	33.3	13.3	16.7	36.7	100.0	30
	66A	Sexual intercourse – child under 10	child	40.7	8.5	15.3	35.6	100.0	59
	66C	Sexual intercourse – child 10 to 15	child	44.3	12.7	19.0	24.1	100.0	79
Local Courts	61L	Indecent assault	adult	28.7	20.9	19.4	31.0	100.0	258
	61M	Agg. indecent assault	adult	23.7	7.9	31.6	36.8	100.0	38
			child	26.4	16.8	13.5	43.3	100.0	208
	61N	Act of indecency	adult	34.8	17.3	18.8	29.0	100.0	69
			child	43.4	8.4	7.2	41.0	100.0	83
	61O	Agg. act of indecency	child	15.8	13.2	5.3	65.8	100.0	38
	66C	Sexual intercourse – child 10 to 15	child	29.4	5.9	11.8	52.9	100.0	17

i. Includes not guilty verdicts from trials and defended hearings

ii. Includes all other outcomes. More than two thirds of these charges were withdrawn by the prosecuting authority prior to hearing.

in the Higher Courts were proven (23%). This offence relates to sexual intercourse without consent. No charges for this offence should involve child victims because where the victim is aged less than 16 years, charges should be laid under either s. 61J (where the age of the victim is an aggravating factor) or ss. 66 A-D of the *Crimes Act 1900* (the child sexual assault offences).

The conviction rate for aggravated sexual assault (s. 61J) against an adult is somewhat higher at 36 percent. While around the same proportion of aggravated and non-aggravated sexual assault charges are withdrawn or involve guilty pleas, aggravated sexual assault charges have a higher guilty rate because those that go to trial are more likely to be proven.

Charges for indecent assault of an adult (s. 61L) have a higher guilty rate than charges for aggravated indecent assault (s. 61M) (44% versus 29% respectively) and every other sexual offence against adults dealt with in the Higher Courts shown in Table 7. This is because (a) fewer indecent assault

charges are withdrawn prior to hearing (35% compared with nearly half for the other sexual offences against adults), and (b) the plea rate for indecent assault (37%) is higher than the plea rate for other sexual offences against adults (less than 25%). This pattern of a high withdrawal rate for more serious charges, and a high plea rate for less serious charges, is characteristic of offences where prosecutors agree to proceed with a lesser offence in exchange for a guilty plea (i.e. where charge negotiation has occurred).

In the Higher Court, for example, the offence against children with the highest conviction rate was act of indecency (s. 61N) (65%) which is also the least serious offence considered in the table for that jurisdiction. One of the most serious offences, aggravated sexual assault (s. 61J), had the lowest guilty rate (35%). Interestingly, the guilty rates for the s. 66 offences are relatively high (57% for s. 66C and 49% for s. 66A). These offences do not include a requirement to prove lack of consent because a child cannot consent, and as a consequence prosecution can concentrate simply

on whether or not sexual intercourse occurred.

In the Local Court, the least serious sexual offence against adults also showed the highest guilty rate. Fifty two percent of act of indecency (s. 61N) charges were proven compared with 32 percent of aggravated indecent assault charges (s. 61M) and 50 percent of indecent assault charges (s. 61L). This is because a greater proportion of more serious offences are withdrawn prior to hearing, and there are fewer guilty pleas for the more serious offences.

The same pattern is also evident among sexual offences against children dealt with in the Local Court. The least serious sexual offence against children shown, act of indecency (s. 61N), had a higher guilty rate (52%) than aggravated indecent assault (s. 61M) (43%), sexual intercourse with a child aged 10 to 15 (s. 66C) (35%) and aggravated act of indecency (61O) (29%). Acts of indecency committed against a child (61N) had a relatively low rate of withdrawal prior to hearing (41%) and relatively high rate of guilty pleas (43%).

SUMMARY AND CONCLUSION

The purpose of this bulletin was to determine:

1. The stages and rate at which sexual offence cases lapse from the criminal justice system, and
2. The characteristics of sexual offences that proceed through various stages of the criminal justice system.

In NSW in 2004 the number of sexual offences reported to police exceeded the number of proven charges by about ten to one. This study estimates that approximately eight percent of sexual offences committed against children and ten percent of recorded sexual offences against adults reported to police are ultimately proven at court.

The major points of attrition for reported sexual offences are in the early stages of the criminal justice process. More than 80 percent of sexual offences reported to police did not result in the initiation of criminal proceedings. Six months after reporting, about 30 percent of reported sexual offences were recorded as cleared by police. Of the incidents that were cleared, slightly more than half had criminal proceedings commenced against a suspect. Of persons who had sexual offence charges initiated against them, 43 percent were found guilty of at least one charge.

This pattern of attrition is consistent with (although slightly higher than) that found in previous studies. Wundersitz (2003) found no legal action was taken in 64 percent of child sexual offences in South Australia. Kelly, Lovett and Regan (2005) found that half to two-thirds of sexual assault cases in Britain drop out at the investigative stage. Both studies cite the withdrawal of complaints by victims as a key factor in early attrition. Parkinson et al. (2002) found that of 183 substantiated child sex abuse cases, 17 percent resulted in a conviction. Past research has also found relatively low rates of conviction at court (Kelly et. al. 2005; Wundersitz 2003).

Unfortunately, the present study offers only limited insights into why the clear-up and conviction rates for sexual assault are so low, or why such a large proportion

of cases that are recorded by police as cleared do not result in any criminal proceedings. In cases that are cleared without any charges being laid, police commonly include a notation on their system such as *arrest not desired* or *no formal action* in relation to the suspected offender. These descriptors, however, provide no insight into why the offence was cleared but criminal proceedings not commenced.

The data in this bulletin indicate that criminal proceedings were more likely to be initiated if the victim was over the age of 10 years at the time of the offence, if the victim was female, if the gap between offence and reporting was less than 10 years, if the alleged offender was known to the victim or if the offence involved some aggravating factor. These findings are consistent with the assumption that proceedings are more likely to be initiated in cases where the evidence suggests that there is a reasonable prospect of a successful prosecution. Lievore (2004, 2005) has shown that prosecutors' decisions are primarily based on evidentiary considerations; cases that have a reasonable prospect of success are more likely to proceed. This is consistent with the present findings that show a higher proportion of prosecutions among cases when the victim could be regarded as more credible (e.g. when the victim is older) and/or when other evidence (e.g. injury) can be used to corroborate victim testimony. Further detailed research into the reasons behind police and prosecutorial decisions in cases of sexual assault is clearly necessary. A critical factor weakening many sexual offence cases is an unwillingness to proceed on the part of the victim (Kelly et. al. 2005). This was not examined in this study but is an issue which should be the subject of further research.

Whatever the causes, the high level of attrition of sexual assault cases from the justice system erodes the capacity of criminal sanctions to act as a deterrent to sexual offenders. Offenders who do not believe that they will be apprehended and convicted for the offence may be likely to offend again. The critical policy questions therefore are these: Firstly, what steps

can be taken to increase the percentage of offences reported to police that result in the initiation of a criminal prosecution? Secondly, how can the success rate of prosecutions in cases of sexual assault be improved?

Proceeding against more offenders is only worthwhile if convictions can be obtained. Simply referring more cases to court will not achieve the desired outcome if it means that such cases have a limited prospect of success. It is important that every effort is made to strengthen sexual assault cases at the investigation stage. Improvements in the investigation and the collection of evidence may improve the conviction rate and also facilitate the prosecution of a greater proportion of incidents.

These findings suggest a number of important avenues for further, more detailed research and reform:

- What are the precise reasons why police and prosecutors do not commence criminal proceedings? It is necessary to understand the reasons underlying the 'clearing up' of an incident without the initiation of criminal proceedings in incidents where the suspect is identified. This could be achieved by a study tracking cases from the reporting of the incident through to conclusion to assess the precise reasons for the decisions made at various stages. Police could also assist by routinely recording on the COPS database the reasons why criminal charges are not laid.
- What improvements can be introduced for victims who report sexual offences to reduce the trauma associated with the investigation process and criminal prosecution? If victims are treated respectfully, compassionately and kept informed at all times they may be less likely to withdraw their complaint or choose not to proceed.
- What improvements can be made in the collection of evidence to strengthen cases and improve the prospect of conviction? The likelihood of conviction exerts an influence on the attrition decisions made at every point in the criminal justice system and is a key area for improvement and reforms.

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NOTES

- In this paper, when discussing sexual offence incidents recorded by police, the term 'Indecent assault' includes both indecent assaults and acts of indecency.
- Trend in recorded sexual offence incidents: $P = 0.09$, Kendall's $t = -0.422$ Kendall rank order correlation
- Trend in proven sexual offence charges: $P = 0.06$, Kendall's $t = 0.467$ Kendall rank order correlation
- This figure is not precise; it may be lower since some criminal incidents give rise to numerous charges. Also, the court statistics do not directly relate to the crime statistics.
- Police data shows that in 2003, 32.2% of sexual offence incidents were recorded as cleared 180 days after reporting compared with 35.1% recorded as cleared 365 after reporting. The proportion of incidents with a Person of Interest (POI) criminally proceeded against went from 17.8% 180 days after reporting to 19.9% 365 days after reporting. This suggests that a small proportion of offences are resolved well after they have come to the attention of police.
- Sexual intercourse is broadly defined in section 61H of the *Crimes Act 1900*.
- Commencement of criminal proceedings by type of sex offence: $\chi^2 = 33.600$, $df=1$, $p<0.001$.
- Commencement of criminal proceedings for sexual assault by aggravating factor: $\chi^2 = 12.818$, $df=1$, $p<0.001$
- Commencement of criminal proceedings for indecent assault by aggravating factor: $\chi^2 = 3.088$, $df=1$, $p=0.079$
- Commencement of criminal proceedings for sexual assault by time to report: $\chi^2 = 17.499$, $df=3$, $p<0.001$
- Commencement of criminal proceedings for indecent assault by time to report: $\chi^2 = 25.048$, $df=3$, $p<0.001$
- Commencement of criminal proceedings for sexual assault by victim gender: $\chi^2 = 14.549$, $df=1$, $p<0.001$
- Commencement of criminal proceedings for indecent assault by victim gender: $\chi^2 = 17.135$, $df=1$, $p<0.001$
- Commencement of criminal proceedings for sexual assault by victim age: $\chi^2 = 31.635$, $df=1$, $p<0.001$
- Commencement of criminal proceedings for indecent assault by victim age: $\chi^2 = 58.476$, $df=1$, $p<0.001$
- Commencement of criminal proceedings for sexual assault by relationship: $\chi^2 = 21.107$, $df=3$, $p<0.001$
- Commencement of criminal proceedings for indecent assault by relationship: $\chi^2 = 22.54$, $df=3$, $p<0.001$
- We have measured whether or not criminal proceedings of any type have been initiated. The charges that eventually arise from an incident that police have recorded as 'aggravated' may or may not be for an aggravated category of offence.