

INCREASES IN THE NSW REMAND POPULATION

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The NSW remand population has risen considerably in recent years, placing correctional institutions under substantial pressure to accommodate growing numbers of inmates. Analysis of trends in NSW Court appearances show several factors which are likely to have contributed to the rise in the remand population. There has been an increase in the number of persons appearing in NSW Courts, persons are appearing in greater numbers for offences with high bail refusal rates, such as robbery and break and enter, and there are indications that the police and magistrates are less willing to grant bail. Remandees are also spending longer in detention due to increases in court delay.

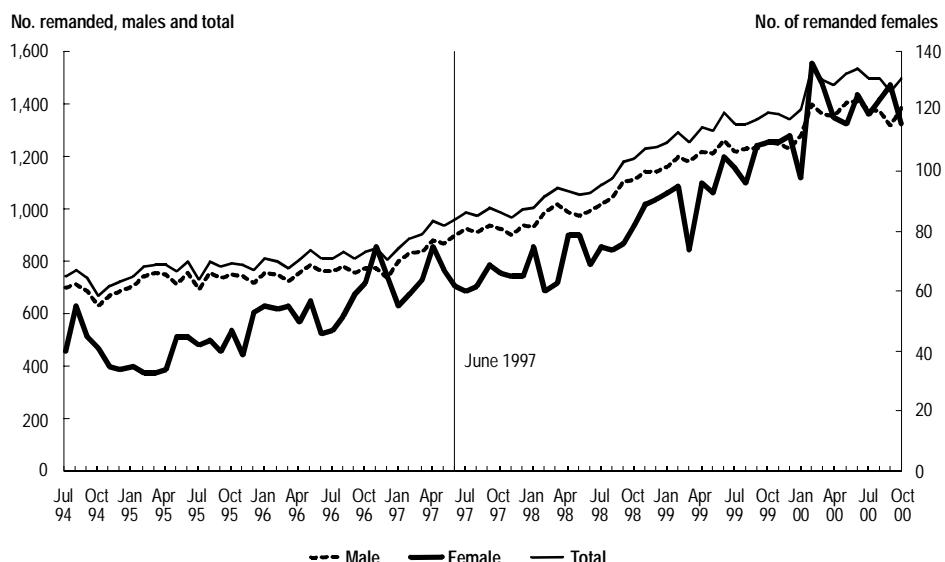
The remand population in NSW has been steadily rising since the beginning of 1997. This trend is true for both male and female remand populations. Figure 1 shows the trend in the monthly remand population between July 1994 and June 2000.¹

Between 1997-98 and 1998-99 the total remand population rose by 21.3 per cent. The number of male

remandees rose by 20.7 per cent and the number of female remandees rose by 28.4 per cent.²

There are four possible reasons for the increase in the remand population. Firstly, the increase in remand numbers may be due to a rise in the number of people appearing before criminal courts. Secondly, persons could be appearing in courts in greater numbers for

Figure 1: NSW Remand population



offences less likely to receive bail. Thirdly, courts and police may be less willing to grant bail. Finally rises in court delay could have an impact upon the size of the remand population. Of course, the increase in the remand population could also be due to a combination of these factors. Each possibility will be addressed in turn below.

TRENDS IN COURT APPEARANCES

The NSW Bureau of Crime Statistics and Research (BOCSAR) gathers information on each criminal court case occurring in the NSW Local, District and Supreme Courts. BOCSAR records show the bail status of persons charged at the time their case is finalised. However, a person's bail status may change one or more times between the date when charges are laid and the date that a case is finalised. This analysis considers only the bail status at finalisation³.

The bail status categories differ between the NSW Local Court and Higher Courts (District and Supreme Courts) in the information collected by BOCSAR. In the Local Court data collection, persons refused bail are categorised with persons who cannot meet their bail. Herein, the term 'bail refused' when used in the context of the Local Court, will refer to both persons refused bail and those who have been unable to meet their bail conditions. Thus, 'bail refused' in the Local Court includes persons on remand at the time of finalisation for what ever reason.

The Higher Court data collection differentiates between persons refused bail and persons unable to meet their bail. Thus, 'bail refused' when referring to the Higher Courts includes only persons actually in custody due to bail refusal at the time of finalisation, omitting bail not met cases. Persons who are in custody because of a prior offence are excluded from both Higher and Local Court data presented here.

Table 1 shows the number of persons with cases finalised in the NSW Higher and Local Courts and the number and proportion of these persons who were refused bail. The table shows an increased tendency for people appearing before the courts to be refused bail in both the Higher and Local Court jurisdictions in NSW. Between 1994 and 1999 the number of persons with criminal matters finalised rose by 32.3 per cent in the NSW Local Court, from 99,663 in 1994 to 131,833 in 1999. Over the same time period, the number of persons appearing who were remanded in custody increased by 80.6 per cent, from 3,552 in 1994 to 6,415 in 1999. The number of persons remanded in custody thus increased at more than twice the rate of overall appearances over six years. The proportion of persons remanded in custody has risen progressively from 3.6 per cent in 1994 to 4.9 per cent in 1999.

A similar pattern can be seen in the Higher Courts. The number of persons who were on remand at the time their case was finalised in the Higher Courts rose from 1,195 in 1995 to 1,358 in 1999, an increase of 13.6 per cent over the five years. On the other hand, the number of persons appearing in the Higher Courts has actually fallen by 19.8 per cent over the same time period (from 4,876 in 1994 to 3,912 in 1999). As in the Local Court, the proportion of persons refused bail has risen steadily over six years, from 24.5 per cent in 1994 to 34.7 per cent in 1999. Note that the proportion of persons refused bail in this jurisdiction is much higher due to the severity of the charges dealt with in the Higher Courts.

CHANGES IN THE OFFENCE PROFILE

There may be two reasons for the increase in bail refusal rates. Firstly, it may be that persons appearing before the court are increasingly less suited to receive bail. Secondly, the bail criteria may be being applied more strictly. Each of these will be dealt with in turn.

Table 1: Trends in persons on remand at the time their Court case was finalised and total finalisations, NSW Local and Higher Courts, 1994 to 1999

	1994	1995	1996	1997	1998	1999
Local Court						
bail refused	3,552	4,075	4,581	4,884	5,374	6,415
bail refused (%)	3.56	3.97	4.14	4.37	4.61	4.87
finalisations (total)	99,663	102,617	110,773	111,686	116,598	131,833
Higher Courts						
bail refused	1,195	1,066	1,075	1,063	1,330	1,358
bail refused (%)	24.51	25.80	28.35	29.26	33.27	34.71
bail not met	30	30	34	33	31	22
bail not met (%)	0.64	0.73	0.90	0.91	0.78	0.56
finalisations (total)	4,876	4,131	3,792	3,633	3,998	3,912

To examine the first of these possibilities it is useful to see whether there has been a change in the profile of offences dealt with by the Local Court and District Court.

Local Court

As we have seen, Table 1 shows that the number of persons appearing before the Local Court increased by 32.3 per cent between 1994 and 1999. Many offences in the NSW Local Court have increased at a rate greater than this, and these have often been offences with higher than average rates of bail refusal. The offences exhibiting the largest increases in appearances with high rates of bail refusal are: 'other offences against the person'⁴ appearances up 253.2 % (with a bail refusal rate of 11.1% in 1999), unlawful possession up 63.5 % (with a bail refusal rate of 9.0 % in 1999), 'other against good order'⁵ (up 239.7% with a bail refusal rate of 5.2 % in 1999) and possess and/or use opiates (up 162.5% with a bail refusal rate of 5.6% in 1999). These changes in the offence profile of the Local Court towards offences more likely to have bail refused will have contributed to the rise in people on remand in excess of the overall number of persons appearing before the Court.

Higher Courts

Between 1994 and 1999 the number of persons appearing in the NSW Higher Courts fell for all offences except : manslaughter, assault, robbery, and import/exporting drugs, each of which increased by between 12 and 33 per cent. Most notable among these trends is a 30 per cent increase in persons appearing for robbery offences. The remand rate for robbery has historically been high, 55.4 per cent in 1999, and it is one of the more common offences in the District Court (14.4 % in 1999). The growth in appearances in the Higher Courts for robbery offences is therefore another factor contributing to the growth in the remand population.

Assault charges are also frequently heard in the District Court. Assault was the principal offence of 562 persons in 1999. The proportion of persons charged with assault who are remanded in custody is relatively low but the 12 per cent rise in persons charged between 1994 and 1999 resulted in an additional 60 persons appearing in the Higher Courts charged with assault in 1999 over 1994. Inevitably some of these people would have been refused bail and this would have contributed to the remand population.

While the overwhelming trend for most offences has been a decline in the number of persons appearing in the Higher Courts, a few offences have increased. These include robbery which has a very high proportion of

persons appearing on remand, and assault which accounts for a large volume of cases in the Higher Courts.

RISING PREVALENCE OF PERSONS BEING REFUSED BAIL FOR CERTAIN OFFENCES

Local Court

If bail is becoming harder to obtain we should expect to see a rise in bail refusal rates within various offence categories. In the NSW Local Court more than half the offence categories showed a greater than 25 per cent increase in the proportion of persons refused bail between 1994 and 1999. The largest percentage increases were seen in offences for which defendants appear infrequently in the Local Court. For example, the rate of persons on remand for prostitution offences rose 826.3 per cent over the six years up to 1999 while for dealing/trafficking cannabis the proportion of persons on remand rose 163.9 per cent from 1994 to 1999. Note, however, that these offences involve fewer than 30 persons who were refused bail in 1999.

A greater impact on the remand population is being made by the increased proportion of persons refused bail for common offences such as 'other driving'. 'Other driving' offences were the principal offence of 17 per cent of offenders in the Local Court. This offence category includes driving whilst disqualified or unlicensed, driving an unregistered vehicle, exceeding the speed limit and numerous other offences. Between 1994 and 1999 the rate of persons refused bail for this offence rose by 67.3 per cent from 1.4 per cent in 1994 to 2.4 per cent in 1999, resulting in 200 extra people remanded in custody in 1999 over 1994.

Increases in the proportion of persons remanded in custody for offences which have traditionally had a high rate of bail refusal, such as break and enter, have also had a considerable impact on the size of the remand population. Break and enter is the principal offence of 2.3 % of offenders in the Local Court and has a high rate of bail refusal. The rate of bail refusal for break and enter has risen 43.3 per cent between 1994 and 1999. In 1994, 357 of the total 2376 persons appearing for break and enter as their principal offence were refused bail (15.0 %), while in 1999, 667 of the total 3098 persons appearing were refused bail (21.5%). The increase resulted in 200 more people on remand for this offence in 1999 than in 1994.

Higher Courts

In the Higher Criminal Courts the percentage of defendants refused bail also rose for most offences.

Of the twenty-seven offence categories, for which more than 20 persons appeared in 1999, twenty-one showed an increase in the proportion of persons refused bail. For instance, in 1994, 50.0 per cent of persons appearing for break and enter were on remand with bail having been refused (55 remanded of 111), whereas in 1999, 69.1 per cent of persons appeared on remand for this offence (67 remanded out of 97). A similar pattern can be seen for dealing and trafficking opiates. Among defendants appearing for this offence, 36.5 per cent were refused bail in 1994 (58 remanded of 159 persons) compared with 46.8 per cent remanded in 1999 (58 remanded of 124 persons), while the overall number of persons appearing for the offence fell by 22.0 per cent between 1994 and 1999. The impact that this would be expected to have on the remand population was completely offset by the rise in the proportion of persons being remanded (up by 28.2 %).

PRIOR CONVICTIONS

Criminal history is another factor which influences whether bail is granted. Persons with prior convictions are more likely to be refused bail than persons with no prior convictions. Thus, the increase in the remand population may be due to more people appearing in court with prior offences, and consequently being less likely to get bail.

It would be of interest to note whether the proportion of persons with prior convictions has increased among persons appearing before the Local Court. A change of this nature would be expected to influence the remand population. Unfortunately, this information is not available from BOCSAR data collections as there are a large number of persons appearing whose criminal history is unknown (39% in the Local Court in 1999) thus preventing a reliable indication.

Local Court

We are, however, able to look at whether there have been any changes in the way the Court has dealt with people known not to have prior convictions. Table 2 shows that among those with no prior convictions the proportion of people refused bail has increased in the

Local Court. In 1994, 0.6 percent of persons without prior convictions were refused bail, whereas in 1999, 1.1 per cent were refused. This would appear to imply increased severity in the application of the Bail Act.

The upward trend in bail refusal could be an artefact of the change in offence profile observed earlier. Consideration of the five offence categories which account for the largest number of persons refused bail, however, shows that there has been an increase in the percentage of defendants having no prior record who are refused bail within these offence categories.

Figure 2 shows that the proportion of persons with no prior convictions who have been refused bail has risen for 'other assault'⁶, break and enter, 'other larceny'⁷, unlawful possession and 'other driving'⁸. Break and enter showed the largest increase, with the proportion of persons on remand rising by 975.0 per cent, from 0.8 per cent in 1994 (2 of 250) to 8.6 per cent in 1999 (24 of 279). Increases in the other offences were 91.3 per cent for 'other assault', 633.3 per cent for 'other larceny', 45.5 per cent for unlawful possession and 51.7 per cent for 'other driving'. These increases suggest that the police and courts are becoming less inclined to grant bail.

Higher Courts

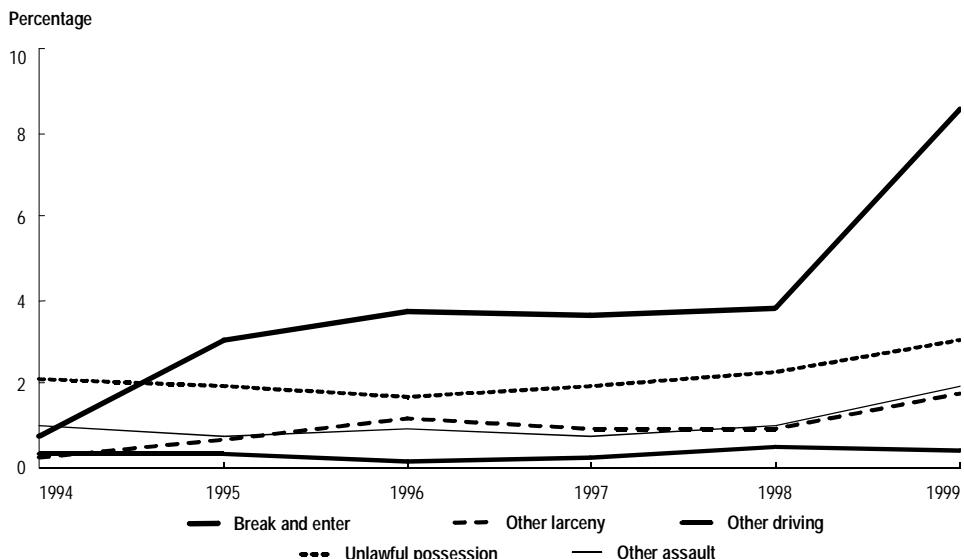
If the Higher Courts were becoming similarly less willing to grant bail we would also expect an increase in the percentage refused bail. The data confirm this. In 1994, 14.8 per cent of persons without prior convictions were refused bail (357 remanded of 2420). In 1999 the proportion had risen to 21.1 per cent (449 remanded of 2130).

This trend is also apparent within individual offence categories. An increased proportion of persons without prior convictions refused bail has been seen in each of the seven most prevalent offences.⁹ The proportion of persons without prior convictions refused bail for sexual offences against children rose from 7.5 per cent in 1994 (22 remanded of 293) to 10.0 per cent in 1999 (29 remanded of 291). For assault the proportion rose from 4.4 per cent in 1994 (10 remanded of 226) to 18.4 per cent in 1999 (53 remanded of 288), while for robbery,

**Table 2: Trends in persons on remand at finalisation by prior convictions,
NSW Local Court, 1994 to 1999**

	1994	1995	1996	1997	1998	1999
Percentage bail refusal for people with no prior convictions	0.6	0.6	0.7	0.7	0.8	1.1
Percentage bail refusal for persons with prior convictions	5.5	6.0	6.5	7.1	7.4	7.5

Figure 2: Percentage pf persons with no prior convictions refused bail, Local Court



the proportion rose from 25.6 per cent in 1994 (46 remanded of 180) to 33.8 per cent in 1999 (89 remanded of 263).

Another possible explanation for the increased proportion of persons refused bail may be that as less serious offences have been diverted to the Local Court, the remaining cases are all more serious in nature and as such are more inclined to have bail refused. This may account for some of the increase; however, it still seems probable that a substantial proportion is due to increased severity of bail determinations. For instance, the rate of bail refusal for importing/exporting drugs which is heard only in the Higher Courts has increased by 21.4 per cent. In 1994, 62.9 per cent of persons charged with this offence were refused bail (39 remanded of 62), while in 1999, 76.4 per cent were refused bail (55 remanded of 72).

FAILURE TO MEET BAIL CONDITIONS

Higher Courts

As noted earlier the Local Court data do not permit any distinction between defendants unable to meet their bail conditions and defendants refused bail. Records from the Higher Courts allow the separate identification of such persons. The number and proportion of persons on remand at the time of finalisation because they have not been able to meet their bail conditions is small and has remained steady since 1994. There were 31 such persons out of the total 4871 persons appearing in 1994 and 22 out of 3912 appearances in 1999. It follows that changes in willingness to grant bail rather than changes in ability to meet it account for the Higher Court trends in Table 1.

COURT DELAY

The final reason for the growth in the remand population could be that persons are spending longer in prison waiting for their case to be heard. Figure 3 shows the trend in time between first appearance and determination for persons on remand. Persons proceeding directly to sentence are plotted separately to those having a defended hearing, as are persons appearing in the Higher and Local Courts.

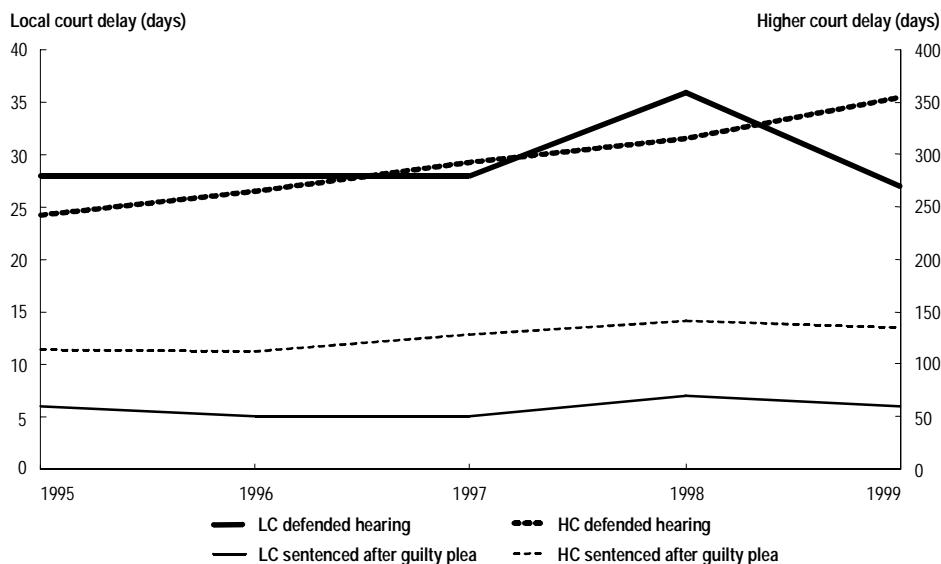
Local Court

Local Court figures show no systematic increase or decrease in court delay for persons refused bail appearing before the court. Figure 3 shows the median number of days from first court appearance to determination for persons refused bail. The time taken for defended hearings to be finalised showed no visible trend. Median time between first appearance and determination did increase to a peak of 36 days in 1998 but fell back to 27 days in 1999. The time between first appearance and determination for persons pleading guilty in the Local Court has also remained constant at around six days.

Higher Courts

In contrast, the Higher Courts results do show increases in court delay for persons on remand. The time between committal and sentence for persons on remand whose case was determined by a defended hearing has risen steadily from 243 days in 1995 to 355 days in 1999. The rise was more modest for persons pleading guilty. Persons appearing in the Higher Court who proceeded straight to sentencing, waited only 114 days between committal and sentence in 1995 compared with 135 days

**Figure 3: Median delay from committal to sentence for persons refused bail,
Higher and Local Courts**



in 1999. These increases in court delay in the Higher Courts are likely to have contributed to the remand population as people are being detained in custody for longer periods

CONCLUSION

Investigation of NSW Criminal Courts statistics suggests that there are several factors contributing to the increase in the number of persons refused bail. Firstly, the overall number of persons appearing in the Local Court has increased. Secondly, there has been an increase in the number of persons appearing for some offences with a high rate of bail refusal. Thirdly, there are indications that police and magistrates are becoming less willing to grant bail. Finally, court delay has increased in the Higher Courts.

NOTES

- 1 In May 1997 the NSW Department of Corrective Services implemented a new computerised inmate record system with a revised method for classifying inmates into the prison population sub-categories. This is why there is an inconsistency in the trend line shown in Figure 1. It can, however, be seen that the change in recording practices seems to have made little difference in the number of persons recorded as being on remand. The upward trend is consistent before and after the change.
- 2 Doak, P., 2000, *Key Trends in Crime and Justice New South Wales 1999*, NSW Bureau of Crime Statistics and Research
- 3 Further information on BOCSAR bail status records can be obtained by contacting the author.
- 4 The offence category 'other offences against the person' comprises all personal offences other than assault, sexual assault and sexual offences against children. The most common charges in the category are for stalking, using telecommunication device to harass followed by robbery.
- 5 The offence category 'other offences against good order' includes all good order offences other than offensive behaviour. The most common charges in this category are trespass offences, unlawful possession of knives and offensive implements, followed by possession of housebreaking implements.
- 6 'Other assault' excludes assault occasioning actual bodily harm charges. The most common charges in the category are for common assault, then assaulting an officer, followed by malicious wounding.
- 7 'Other larceny' comprises all theft offences other than break and enter, fraud, shop stealing, unlawful possession and vehicle theft. The most common charge in the category is for basic 'Larceny', *NSW Crimes Act 1900*, s 117.
- 8 The offence category 'Other driving' excludes most PCA offences, cause injury by driving and dangerous driving offences. The most common charges in the category are driving whilst disqualified, suspended or unlicensed, driving an uninsured vehicle and exceeding the speed limit.
- 9 Offences other than these high prevalence categories have an insufficient number of persons without prior convictions who are refused bail to give an accurate indication as to trend in bail refusal.
- 10 NSW Bureau of Crime Statistics and Research, 'Bail in NSW', *Crime and Justice Bulletin*, 2, 1987
- 11 'Other larceny' comprises all theft offences other than break and enter, fraud, shop stealing, unlawful possession and vehicle theft. The most common charge in the category is for basic 'Larceny', *NSW Crimes Act 1900*, s 117.
- 12 The offence category 'Other driving' includes court appearance for exceeding the speed limit, driving whilst disqualified, suspended or unlicensed and driving an uninsured vehicle among others.