

Trends in sentencing in the New South Wales Criminal Courts: 1990 - 2000

Jacqueline Fitzgerald

This bulletin updates a previous report published by the NSW Bureau of Crime Statistics and Research which examined trends in sentencing in NSW Criminal Courts between 1990 and 1997. In the present analysis, trends in imprisonment rates and in the average length of imprisonment between 1990 and 2000 are examined for the major offence categories of murder, manslaughter, assault, sexual assault, sexual offences against children, robbery, burglary/break and enter, fraud/forgery, and deal or traffic in opiates. The results show that the percentage of convicted persons imprisoned for each of these offences has either risen or remained stable in both the Higher and Local Courts. In addition, the average length of imprisonment imposed has remained stable for most of the offences. The exception to this general trend in the NSW Local Courts is a significant increase in the imprisonment term imposed for deal or traffic in opiates offences. In the NSW Higher Courts, there was a significant decrease in the imprisonment term imposed for robbery offences. The decreased imprisonment term, however, is offset by an upward trend in the proportion of convicted robbery offenders who were imprisoned over this time period.

Since 1990, the rate of imprisonment in NSW has risen from 86 inmates per 100,000 population to 113, an increase of 31 per cent.¹ In 1998 the NSW Bureau of Crime Statistics and Research (BOCSAR) published research showing that part of the reason for this increase was tougher sentencing by the courts.² Due to continued interest in the issue, BOCSAR has now compiled sentencing trend data spanning 1990 to 2000 in the Higher Courts and 1993 to 2000 in the Local Courts.

In this bulletin, trends in imprisonment are examined in the Higher and Local Courts for a range of major offence categories: – *murder, manslaughter, assault, sexual assault, sexual offences against children, robbery, unauthorised entry with intent/burglary/break and enter (break and enter), fraud/forgery, and deal or traffic in opiates*. For each of

the selected offences, the analysis of the use of imprisonment is limited to those persons for whom the selected offence was the most serious offence for which they were convicted.³ The reason for considering only the most serious offence is to minimise the influence that other convictions have had on the penalty for the offence of interest.

In the sections below, trends in the use of imprisonment by the NSW Higher and Local Courts for persons convicted and whose cases were finalised between 1990 and 2000 are analysed. The use of imprisonment is measured in two ways – firstly, through the percentage of convicted offenders imprisoned and, secondly, through the average length of prison sentence for those imprisoned. The prison sentences reported are the minimum (non-parole) or fixed term of imprisonment imposed for the offence.

Statistical tests were conducted for each offence to determine whether significant upward or downward trends over the period 1990 to 2000 were evident in the percentage imprisoned and the average prison sentence length.⁴

The Appendix contains information about the data and how it compares with previously released sentencing information.

SENTENCING TRENDS IN THE HIGHER COURTS

Table 1 shows the proportion of proven offenders who received a sentence of imprisonment in the NSW Higher Courts for nine major offence categories over the period 1990 to 2000. The final column of Table 1 shows the results of statistical tests for trend for each series. From this

Table 1: Percentage of convicted offenders imprisoned, by principal offence, NSW Higher Courts, 1990 to 2000

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Trend
Murder	90.3	96.9	100.0	100.0	100.0	95.5	100.0	100.0	100.0	100.0	100.0	stable
Manslaughter	72.9	69.4	78.4	87.5	92.9	73.9	78.9	92.9	88.9	81.3	73.7	stable
Assault	27.9	33.0	38.2	42.8	42.9	44.6	54.1	52.4	42.9	51.2	49.4	upward
Sexual assault	40.6	49.3	58.1	66.6	62.0	67.9	68.3	65.3	66.5	66.7	64.8	stable
Sexual offences against children*	45.3	45.5	57.0	62.8	59.7	64.7	69.2	61.4	65.2	63.0	64.8	upward
Robbery	64.3	69.2	70.3	72.1	74.3	74.6	75.5	76.4	77.9	83.5	82.8	upward
Break and enter	65.9	62.5	59.7	61.5	59.2	66.7	72.8	64.7	71.5	73.0	74.4	upward
Fraud, forgery, false financial instruments	29.2	34.6	25.3	28.3	30.5	33.5	38.9	51.0	36.4	46.4	55.4	upward
Deal or traffic in opiates	65.7	81.1	80.4	74.9	72.1	77.0	79.2	69.7	76.9	73.8	73.9	stable

* Overlap exists between the category 'sexual offences against children' and 'sexual assault'. See Appendix for more details.

table it can be seen that NSW Higher Courts have become increasingly inclined to give sentences of imprisonment to convicted offenders. Between 1990 and 2000 the percentage of offenders receiving a prison sentence in the Higher Criminal Courts rose for five of the nine major offence categories. For each of the offence categories of *assault*, *sexual offences against children*, *robbery*, *break and enter*, and *fraud*, there was a statistically significant upward trend between 1990 and 2000 in the proportion of proven offenders receiving a custodial penalty. For the other four offence

categories shown in Table 1, the proportion of convicted offenders sentenced to imprisonment remained stable. Over this time period, there was no offence category showing a significant downward trend in the proportion of convicted offenders imprisoned.

Table 2 shows the average prison sentences imposed in the Higher Courts for nine major offence categories annually between 1990 and 2000. The average length of prison sentences imposed on convicted offenders in the Higher Courts remained stable between 1990 and 2000 for all of the offences considered

with the exception of *robbery*. The average prison sentence imposed on *robbery* offenders by the Higher Criminal Courts declined by 15 months in the period from 1990 to 2000. Over the same period of time, however, the proportion of offenders convicted of *robbery* who were sentenced to imprisonment increased from 64.3 to 82.8 per cent (as shown in Table 1). It is reasonable to assume that, because more *robbery* offenders are being sentenced to prison (rather than being given non-custodial penalties), there is a higher proportion of shorter sentences,

Table 2: Average length of prison sentence (months) imposed against convicted offenders by principal offence, NSW Higher Courts, 1990 to 2000

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Trend
Murder [#]	165.0	134.4	151.3	140.8	154.5	150.3	134.9	145.0	158.9	154.9	188.1	stable
Manslaughter	57.1	48.0	54.2	47.1	60.8	48.6	55.2	58.0	54.5	47.2	44.1	stable
Assault	16.5	18.2	14.9	22.1	18.6	17.3	22.5	18.1	20.1	19.4	18.4	stable
Sexual assault	30.4	29.6	29.9	32.2	29.7	27.5	32.9	34.1	33.5	28.8	31.7	stable
Sexual offences against children*	30.1	27.9	31.3	29.1	30.9	24.4	31.7	32.3	31.5	28.2	25.3	stable
Robbery	40.2	38.5	32.6	31.1	27.3	26.9	27.5	26.3	26.6	28.6	25.2	downward
Break and enter	20.6	19.9	20.5	20.3	16.8	19.5	20.1	18.7	20.4	20.3	19.8	stable
Fraud, forgery, false financial instruments	17.4	19.4	15.6	19.4	22.8	19.0	21.8	20.6	25.8	18.8	19.2	stable
Deal or traffic in opiates	28.5	37.4	28.6	32.9	28.0	24.8	24.9	30.7	27.5	25.5	27.4	stable

[#] Note that life sentences are excluded from this calculation.

* Overlap exists between the category 'sexual offences against children' and 'sexual assault'. See Appendix for more details.

Table 3: Percentage of convicted offenders imprisoned, by principal offence, NSW Local Courts, 1993 to 2000

	1993	1994	1995	1996	1997	1998	1999	2000	Trend
Assault	7.5	8.0	9.0	8.1	7.9	8.9	9.2	8.0	stable
Sexual assault	18.6	14.8	18.1	17.8	16.2	15.7	17.6	17.7	stable
Sexual offences against children*	18.9	18.4	20.7	21.1	19.4	20.4	19.6	20.2	stable
Break and enter	33.7	33.8	37.2	39.8	39.9	42.8	44.6	41.4	upward
Fraud, forgery or false financial instruments	8.8	9.2	9.7	7.8	7.8	11.5	10.3	10.2	stable
Deal or traffic in opiates	46.3	40.2	50.8	46.5	44.0	38.4	42.7	33.1	stable

*Overlap exists between the category 'sexual offences against children' and 'sexual assault'. See Appendix for more details.

and hence a decline in the average sentence for *robbery*. The apparent decline in prison terms for *robbery* should therefore not be taken as evidence that the courts are treating this offence more leniently.

SENTENCING TRENDS IN THE LOCAL COURT

Table 3 shows the proportion of offenders who were sentenced to imprisonment in the Local Courts for six major offence categories over the period 1993 to 2000. The percentage of offenders sentenced to imprisonment in the Local Courts remained stable between 1993 and 2000 for all offences considered with the exception of *break and enter*. The percentage of offenders convicted of *break and enter* who were given a sentence of imprisonment by the Local Courts rose from 33.7 per cent in 1993 to 41.4 per cent in 2000 (an increase of 22.8%).

Table 4 shows, for each of the six selected offences, the length of the average prison sentence imposed by the Local Courts between 1993 and 2000. The average length of prison sentences imposed on convicted offenders remained stable in the Local Criminal Courts for five of the six offences considered. The only offence to show an upward trend in the Local Courts was *deal or traffic in opiates*. For this offence the average prison sentence imposed in the Local Courts increased significantly between 1993 and 1997. In 1993 the average prison term for *deal or traffic in opiates* was 5.3 months compared with 6.7 months in 2000 (an increase of 26.4%).

SUMMARY

Penalties imposed in the NSW Higher and Local Courts have generally become more severe over the period between 1990 and 2000 for the Higher Courts, and 1993 to 2000 for the Local

Courts. In no case has the percentage of convicted offenders given a prison sentence decreased significantly. In six cases the percentage has increased. Average prison terms have generally remained stable although they increased for *deal or traffic in opiates*. Over the period 1990 to 2000, the average prison sentence decreased for only one of the nine selected offences in the Higher Court, namely, *robbery*. This decrease is likely to be associated with the increase in the percentage of offenders being sent to prison for this offence.

NOTES

- 1 Mariasson, S. and Eyland, S. 2000, *Inmate Statistics (Weekly States) July 1999 to June 2000*, Statistical Publication No. 21 September 2000, NSW Department of Corrective Services, Sydney.

Calculations are based on the daily average inmate population, excluding periodic detainees.

Table 4. Average length of prison sentence (months) imposed against convicted persons by principal offence, NSW Local Courts, 1993 to 2000.

	1993	1994	1995	1996	1997	1998	1999	2000	Trend
Assault	4.2	3.9	4.1	4.0	4.2	4.2	4.1	4.6	stable
Sexual assault	6.8	5.5	7.6	5.3	8.1	6.4	6.3	8.9	stable
Sexual offences against children*	7.5	5.3	7.0	5.5	8.8	6.7	7.3	8.3	stable
Break and enter	7.8	7.8	7.5	7.2	7.8	7.5	7.4	7.3	stable
Fraud, forgery or false financial instruments	4.6	5.0	5.1	5.5	5.1	5.2	5.1	5.4	stable
Deal or traffic in opiates	5.3	5.6	6.4	5.3	6.8	6.5	6.9	6.7	upward

*Overlap exists between the category 'sexual offences against children' and 'sexual assault'. See Appendix for more details.

- 2 Baker, J. 1998, *Are the Courts Becoming More Lenient?* Crime and Justice Bulletin No. 40, New South Wales Bureau of Crime Statistics and Research, Sydney.
- 3 The most serious offence is the offence charged which received the most serious penalty. See New South Wales Bureau of Crime Statistics and Research 2001, *NSW Criminal Courts Statistics 2000*, New South Wales Bureau of Crime Statistics and Research, Sydney, for a hierarchy of penalty seriousness.
- 4 The statistical significance of trends reported in this bulletin were determined by application of Kendall's rank-order correlation test (two-tailed) with significance level 0.05 (see, for example, Conover, W.J. 1980, *Practical Non-Parametric Statistics*, 2nd edn, John Wiley and Sons, pp. 256-260). This test assesses whether or not there has been a sustained upward or downward trend in the data over the time period considered. This test for trend is not affected by single aberrantly high or low years.

APPENDIX

Tables describing sentencing trends, similar to those contained in this bulletin, have been compiled by BOCSAR in the past (for instance, in the bulletin 'Are the Courts Becoming more Lenient?'). The data series shown in this bulletin, however, entirely replaces that in the earlier publications. This is because the offence classifications shown here differ from those used in the past.

With one exception, noted below, the offence categories presented in this bulletin are classified according to the Australian Standard Offence Classification (ASOC). ASOC was developed by the Australian Bureau of Statistics to standardise criminal offence recording across all Australian States and to achieve data comparability across jurisdictions (see the publication Australian Bureau of Statistics 1997, Australian Standard Offence Classification 1997, Cat. No. 1234.0, ABS, Canberra). The present year, 2001, is the first year that BOCSAR has used ASOC in publishing official Criminal Courts statistics. In order to give a comparable data series over time,

all statistics have therefore been reclassified according to ASOC. Local Courts data for 1990, 1991 and 1992 could not be converted to ASOC, hence the Local Courts trends refer to the time period 1993 to 2000.

The move to ASOC means that some new offence categories have been created and the charges which fall within some existing categories have changed slightly. For instance, prior to 2000 the category *murder* used by BOCSAR included charges for both *murder* and charges for *solicit to murder*. The category of *murder* under ASOC does not include *solicit to murder* charges. The only offence included in this bulletin which is not an ASOC category is *sexual offences against children*. Under ASOC, the category *sexual assault* incorporates offences involving children. As there is often interest in the offence of *sexual offences against children*, however, data have been separately compiled for this sub-group. This results in overlap between these two categories; that is, all *sexual offences against children* are also included in the *sexual assault* category.