

The Outcomes of Remand in Custody Orders

by
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THE OUTCOMES OF REMAND IN CUSTODY ORDERSForeword

The first two national censuses¹ of prisoners held on the nights of 30 June 1982 and 1983 revealed considerable differences between the states and territories in both the numbers of remandees in prisons, compared to either the prison population or the general population of the state, and in the average duration of the remand periods being served. A report² based on these census data, produced by David Biles in 1984, concluded that remand in custody orders were used far more in the Northern Territory, South Australia and New South Wales than in other jurisdictions. Also, the time spent on remand was generally longer in New South Wales, Victoria and Western Australia than elsewhere.

Further research in individual jurisdictions revealed quite surprising, and somewhat disturbing results. Of particular importance was the finding that a significant proportion of persons remanded in custody were, on conviction, released immediately into the community by the sentencing magistrate with a bond, a fine, or some sort of non-custodial sentence. This suggested at first sight that people were being unnecessarily deprived of their liberty for offences which did not warrant terms of imprisonment. A less disturbing alternative possibility was that the courts were effectively taking periods of remands into consideration when setting penalties. With little real evidence available to resolve this question it was clear that further information was urgently required to determine whether remand in custody orders were being unfairly or improperly applied.

In May 1984 the Annual Conference of Correctional Ministers resolved to investigate in detail the outcomes of remand in custody orders, and requested the Institute, in co-operation with the National Correctional Statistics Committee, to

collect and analyse the appropriate data and report back to the 1985 Ministers' Conference. Membership of this committee consists of representatives of the Institute and the Australian Bureau of Statistics, together with nominees of correctional administrators. Those present at the most recent meeting of the committee were:

David Biles and John Walker (A.I.C.)
Debbie Neuhaus and Clarrie Pickerd (A.B.S.)
Don Porritt (New South Wales)
Monika Henderson and Lynne Wilkinson (Victoria)
Mike O'Leary (Queensland)
Jenny Connaughton and Carol Roe (Western Australia)
Frank Morgan and Laurie Farr (South Australia)
Geoffrey Storr (Tasmania)
Allan Van Zyl (Northern Territory)
Wendy Mouat and Paul Konings (Australian Capital Territory)

As the co-ordinator of this project I wish to express my sincere appreciation to these committee members for their co-operation and willingness to negotiate complex issues. My thanks are also due to David Biles for his valuable comments at all stages, and to the numerous unnamed workers in Australian corrections departments who collected and collated the basic data.

I am particularly grateful to Jan Dawes and Anita Scandia of the Australian Institute of Criminology for their patience in the preparation of both the draft report, circulated for comment in May 1985, and the extensive changes required for this final draft as a result of major corrections to the Queensland data, received from the Queensland Director of Prosecutions five months later.

JOHN WALKER
October 1985

Summary

This report analyses the results of a survey of 1,188 persons whose period of remand in custody terminated during October and November 1984.

The study showed firstly that courts and corrections departments in several jurisdictions can be criticised for failing to maintain the sort of information required to show up injustices in the use of remand in custody. The deprivation of an unconvicted person's liberty is a matter of some consequence, yet researchers in New South Wales, Victoria, Queensland and the Australian Capital Territory found considerable difficulty in obtaining information on the eventual outcomes of cases involving remand in custody. Information systems capable of 'tracking' accused persons through the various stages of the criminal justice system are fundamental to the efficient and equitable management of the courts, enabling inordinate delays and inequitable judgments to be detected and therefore rectified. Certain courts, in particular, continue to leave such matters buried beneath inadequate and antiquated monitoring procedures. In these days of relatively inexpensive yet high-powered computers, there is little excuse for failure in this respect.

The results of the study appear to show that the use of remand in custody orders differs in several ways from jurisdiction to jurisdiction. The most significant features of the samples are that:

- The jurisdictions of New South Wales, Western Australia, South Australia and the Northern Territory use remand in custody orders more frequently than the other jurisdictions.
- There is a distinct difference between the three largest states, New South Wales, Victoria and Queensland, and the smaller jurisdictions, in the processes of granting a release on bail to persons remanded in custody. Such persons tend to have already been in custody for a

number of weeks prior to release, in the larger states, whereas periods of remand of three days or less are predominant in the other jurisdictions.

- Remandees in Queensland, Western Australia, South Australia and the Northern Territory are considerably more likely to receive a non-custodial sentence upon conviction than those in other jurisdictions.

The reasons which underly the high remand rates in Western Australia, South Australia and the Northern Territory are dealt with in subsequent paragraphs of this report. No systematic reasons for New South Wales' high rates have emerged, however, and one can only conclude that the general 'presumption' in favour of release pending trial is simply weaker in New South Wales than elsewhere. The criminal justice system in that state could possibly save much public money by shifting the borderlines slightly.

The contrasting durations of remand prior to release on bail are worthy of further study. The longer periods of detention in the three largest states could indicate that bail is set at too high a level, or that court processes are unconscionably slow in those jurisdictions. The predominance of 'overnight' remands in the less populous jurisdictions may indicate that the remands were simply unnecessary.

A further area for concern is where convicted persons, having served time on remand in custody, are eventually sentenced to non-custodial penalties. The jurisdictions where this occurs most frequently are those with relatively large itinerant populations, generally, but not entirely, Aborigines. The lack of a permanent home or job is regarded as evidence in favour of remanding in custody, and the disparity, if one can call it that, may lie in the presumption that such persons should be routinely remanded in custody during trial hearings. If this is indeed the case, it would seem that altered court procedures might considerably reduce the numbers being remanded in custody. Possible alternatives include hearing character references, or

such other mitigating factors that tend towards non-custodial sentences, at the preliminary proceedings in cases where homelessness and joblessness are the only grounds for a remand in custody order. Other solutions, such as bail hostels or orders requiring the daily reporting to police, might also be effective and inexpensive.

More study is required to identify the precise nature of this effect, concentrating upon the characteristics of the remandees themselves (e.g. Aboriginality, permanency of residence/employment etc.) to determine if there is evidence of genuine inequity in the use of remand.

SECTION 1 : THE AIM OF THE STUDY

Remand in Custody or, as I shall refer to it for brevity in the remainder of this report, simply Remand, is an option available to a magistrate as an alternative to release on bail for persons charged with serious offences. It is a means of ensuring that the accused person will attend the court and be available for sentencing should he/she be found guilty. It is also a means of protecting the public from an allegedly dangerous person who may, if left at large, repeat the offences for which he/she has been charged or commit other offences. These, and only these, reasons are commonly regarded by Australian custom, practice and legislation as being valid cause for a defendant to be deprived of liberty without having first been convicted and sentenced. Remand may not be regarded as a punishment in itself since the accused person is officially regarded as innocent until proven guilty.

Two principles emanate from these considerations. Firstly, remand should not be used where there is no evidence of danger to the public and no apparent likelihood of the accused absconding. A corollary of this is that remand should not be used whenever the likely sentence, upon conviction, is non-custodial. Second, since remand in custody is a deprivation of liberty, in conditions sometimes little better than those in which sentenced prisoners are being punished, its duration should be minimised.

As the Biles report concluded that there are disparities between the jurisdictions on both accounts, the principal aim of this study is to determine how, where, and to what extent these disparities arise. The study must therefore compare the jurisdictions against each other, and against the absolute principles of minimising remand durations and unnecessary incarceration.

SECTION 2 : METHODOLOGY

State and territory representatives on the National Correctional Statistics Committee agreed to an arrangement whereby each jurisdiction monitored all persons in its adult prisons whose status changed from that of remandee during the months of October and November 1984. Persons of dual status, i.e. under sentence for one offence while on remand for others, were excluded except where they were only 'cutting out' fines. Discharge from remandee status results from a release on bail, an acquittal of all charges for which remanded, a sentence (whether to prison or otherwise) being passed, or a number of less frequent circumstances such as deportation, death, or escape from custody. Temporary absences from prison, such as to attend a court-hearing, were not counted as changes in status.

Originally, in order to reduce the data-gathering effort, it was decided that each jurisdiction should select a 'representative' sample of at least 100 cases for the largest jurisdictions and 50 for Tasmania, the Northern Territory and the Australian Capital Territory. However, all but the two largest jurisdictions chose to obtain data on all persons discharged from remand during the period in question in order to improve the reliability of any conclusions which could be drawn from them. In Victoria the procedure adopted was to select the first hundred persons leaving remand in this period, while in New South Wales a random number generator was used to select cases. In all cases, a range of checks were made to ensure that no obvious biases were present in the samples: none were reported.

Data were obtained from a number of sources. The existing prison receipt and discharge records provided the majority of the information on each person, while sentencing information, where relevant, was often obtained from the police or the courts.

This frequently involved a high degree of inter-departmental co-operation which, in itself, is indicative of the serious difficulties faced by analysts working in this relatively

unexplored area of the criminal justice system. For example, the New South Wales data-collection effort involved six different types of source documents, some of which were available at the department's head office, some had to be obtained from the actual prison in which the person was detained, while others had to be requested from police records. Wherever data had to be obtained from courts or police records the researchers reported considerable delays and difficulties. By contrast, the computerised West Australian and Northern Territory data were obtained virtually at the press of a button.

A questionnaire or data collection form (see Figure 1), consisting of twelve data items relating to the remandee and the outcome of the remand order was used as the basis of the study. A unique personal identifier was included on the form to assist with any editing queries. The selection of variables was influenced by the known availability of data, and for this reason no information was obtained on the personal or family characteristics of the remandee which may have had a bearing on the initial decision to remand in custody. Since the study was directed entirely at the outcomes of these decisions this was thought to be relatively unimportant, particularly considering the significant amount of extra work these data items would have caused corrections department staff at a busy period of the year. The variables selected would enable comparisons to be made between the various types of outcome and the setting of bail, the types of offence for which remanded, the level of court terminating the remand, and most importantly the duration of remand. In retrospect it appears that a question on Aboriginality would have been of major interest, as would an indication of permanency of residence or employment, but neither of these variables are reliably available in all jurisdictions.

Data Items

1. Jurisdiction of Remand: The state or territory in which the person was remanded. No cases were recorded of persons being on remand in one jurisdiction while also being the responsibility of another correctional jurisdiction.

FIGURE 1-- DATA COLLECTION FORM

NATIONAL STUDY OF REMAND OUTCOMES		DATA COLLECTION FORM	Sequence Number																								
(Sample of Remand Outcomes - October/November 1984)		<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> </table>																									
<p>1. <u>Jurisdiction of Remand</u></p> <p>Code: 1 = NSW 2 = VIC 3 = QLD 4 = WA 5 = SA 6 = TAS 7 = NT 8 = ACT</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="text-align: center;">1</td> </tr> </table> </div>					1																						
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<p>2. <u>Unique Personal Identifier (up to 8 digits)</u></p> <p>(as employed for administration purposes)</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">2</td> <td style="text-align: center;">3</td> <td style="text-align: center;">4</td> <td style="text-align: center;">5</td> <td style="text-align: center;">6</td> <td style="text-align: center;">7</td> <td style="text-align: center;">8</td> <td style="text-align: center;">9</td> </tr> </table> </div>												2	3	4	5	6	7	8	9								
2	3	4	5	6	7	8	9																				
<p>3. <u>Sex of Former Remandee</u></p> <p>Code: 1 = Male 2 = Female</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="text-align: center;">10</td> </tr> </table> </div>					10																						
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<p>4. <u>Date of Birth (day, month and year of birth)</u></p> <p><u>Note</u> - If exact day or month is unknown code 99. <u>Note</u> - If exact year is unknown code best estimate.</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">11</td> <td style="text-align: center;">12</td> <td style="text-align: center;">13</td> <td style="text-align: center;">14</td> <td style="text-align: center;">15</td> <td style="text-align: center;">16</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">d</td> <td style="text-align: center;">d</td> <td style="text-align: center;">m</td> <td style="text-align: center;">m</td> <td style="text-align: center;">y</td> <td style="text-align: center;">y</td> <td></td> <td></td> </tr> </table> </div>												11	12	13	14	15	16			d	d	m	m	y	y		
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d	d	m	m	y	y																						
<p>5. <u>Date of Commencement of Remand Period</u></p> <p><u>Note</u> - Ignore transfers between prisons, temporary leave etc. - code initial receipt date.</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">17</td> <td style="text-align: center;">18</td> <td style="text-align: center;">19</td> <td style="text-align: center;">20</td> <td style="text-align: center;">21</td> <td style="text-align: center;">22</td> </tr> <tr> <td style="text-align: center;">d</td> <td style="text-align: center;">d</td> <td style="text-align: center;">m</td> <td style="text-align: center;">m</td> <td style="text-align: center;">y</td> <td style="text-align: center;">y</td> </tr> </table> </div>										17	18	19	20	21	22	d	d	m	m	y	y						
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<p>6. <u>Was Bail set at any stage during remand period?</u></p> <p>Code: 1 = Yes 2 = No 9 = Unknown</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="text-align: center;">23</td> </tr> </table> </div>					23																						
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<p>7. <u>Most Serious Charge for which Remanded</u></p> <p><u>Note</u> - Consider all charges, whether subsequently proven or not, see Coding List for codes and coding rules.</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">24</td> <td style="text-align: center;">25</td> <td style="text-align: center;">26</td> </tr> </table> </div>							24	25	26																		
24	25	26																									
<p>8. <u>Level of Court Terminating Remand</u></p> <p>Code: 1 - Supreme Court 5 - Other (e.g. administrative decision, Federal Court of Australia) 2 - District/County Court 3 - Magistrates' Court 9 - Unknown/Not stated 4 - Children's Court</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="text-align: center;">27</td> </tr> </table> </div>					27																						
	27																										
<p>9. <u>Outcome of Remand</u></p> <p>Code: 1 - Released on bail 2 - Acquitted of all charges for which remanded 3 - Died while on remand 4 - Escaped from custody 5 - Sentenced - non-custodial penalty 6 - Sentenced - custodial penalty 7 - Other (please state) 9 - Unknown</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="text-align: center;">28</td> </tr> </table> </div>					28																						
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<p>10. <u>Date of Termination of Remand</u></p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">29</td> <td style="text-align: center;">30</td> <td style="text-align: center;">31</td> <td style="text-align: center;">32</td> <td style="text-align: center;">33</td> <td style="text-align: center;">34</td> </tr> <tr> <td style="text-align: center;">d</td> <td style="text-align: center;">d</td> <td style="text-align: center;">m</td> <td style="text-align: center;">m</td> <td style="text-align: center;">y</td> <td style="text-align: center;">y</td> </tr> </table> </div>										29	30	31	32	33	34	d	d	m	m	y	y						
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d	d	m	m	y	y																						
ANSWER QUESTIONS 11 TO 13 ONLY IF REMAND OUTCOME IS 'SENTENCED' (i.e. Codes 5 or 6)																											
<p>11. <u>Most Serious Offence for which Sentenced</u></p> <p>Code as per question 7 - see code list.</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">35</td> <td style="text-align: center;">36</td> <td style="text-align: center;">37</td> </tr> </table> </div>							35	36	37																		
35	36	37																									
<p>12. <u>Type of Non-custodial Penalty (ANSWER ONLY IF Question 9 coded 5)</u></p> <p>Code: 1 - Attendance Centre Order 5 - Suspended Prison Sentence 2 - Community Service/Work Order 6 - Fine 3 - Probation (with supervision) 7 - Other (Specify.....) 4 - Recognisance/Bond (unsupervised) 9 - Unknown</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="text-align: center;">38</td> </tr> </table> </div>					38																						
	38																										
<p>13. <u>Aggregate Prison Sentence (ANSWER ONLY IF Question 9 coded 6)</u></p> <p><u>Note</u> - Charges pending which may extend the aggregate sentence should be ignored. Code 88888 88 for Indeterminate Sentences; 999999 99 if the actual sentence is unknown.</p> <div style="text-align: right;"> <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> <td style="width: 20px; height: 15px;"></td> </tr> <tr> <td style="text-align: center;">39</td> <td style="text-align: center;">40</td> <td style="text-align: center;">41</td> <td style="text-align: center;">42</td> <td style="text-align: center;">43</td> <td style="text-align: center;">44</td> <td style="text-align: center;">45</td> <td style="text-align: center;">46</td> </tr> <tr> <td style="text-align: center;">y</td> <td style="text-align: center;">y</td> <td style="text-align: center;">m</td> <td style="text-align: center;">m</td> <td style="text-align: center;">d</td> <td style="text-align: center;">d</td> <td style="text-align: center;">weekends</td> <td style="text-align: center;">weekends</td> </tr> </table> </div>												39	40	41	42	43	44	45	46	y	y	m	m	d	d	weekends	weekends
39	40	41	42	43	44	45	46																				
y	y	m	m	d	d	weekends	weekends																				

2. Unique Personal Identifier: The identification number as used for administrative purposes. This variable was only used to assist in matching data from separate files and for resolving edit queries.
3. Sex of Former Remandee: Since in setting bail or remanding in custody the magistrate is required to take into account factors such as danger to the public it was thought that a potential disparity between the sexes might be revealed in including this question, if sufficient numbers of female remandees were involved.
4. Date of Birth: The age of the defendant may have a bearing on the decision to remand in custody or on the ability to raise bail. The age calculated is that at the commencement of the remand period.
5. Date of Commencement of Remand Period: These data were used to determine the duration of remand.
6. Was Bail Set at any Time during Remand Period?: This was interpreted as relating only to the period prior to termination of remand status, i.e., if bail was set at any time, and the defendant was unable to meet the sum required, this question would be answered in the affirmative. Where the defendant is taken from a remand cell to court, is immediately granted bail, and does not return to custody, the situation is covered in question 9 (Coded 1). Question 6 is aimed at identifying cases where remand in custody was used as an alternative to bail only because the defendant was unable to raise the sum required.
7. Most Serious Charge for which Remanded: This was determined in basically the same way as in the National Prison Census. All charges are considered, whether subsequently proven or not. The most serious charge is that which carries the longest statutory maximum penalty. Equal penalties are resolved by

FIGURE 2 -- DRAFT AUSTRALIAN NATIONAL CLASSIFICATION OF OFFENCES**Offences Against The Person**

- 110 HOMICIDE
- 111 Murder
- 112 Attempted murder
- 113 Conspiracy to murder
- 114 Manslaughter (excluding by driving)
- 115 Driving causing death

- 120 ASSAULTS (EXCLUDING SEXUAL ASSAULTS)
- 121 Assault occasioning grievous bodily harm
- 122 Assault occasioning actual bodily harm
- 123 Aggravated assault
- 124 Other assault

- 130 SEXUAL ASSAULTS AND OFFENCES
- 131 Rape
- 132 Carnal knowledge
- 133 Incest
- 134 Indecent assault
- 135 Other sexual offences

- 140 OTHER OFFENCES AGAINST THE PERSON
- 141 Kidnapping and abduction
- 142 Illtreatment of children
- 143 Other offences against the person (including acts endangering life) not elsewhere classified

Robbery and Extortion

- 210 ROBBERY
- 211 Armed robbery
- 212 Other robbery

- 220 EXTORTION
- 221 Extortion

Breaking and Entering, Fraud, and Other Offences involving Theft

- 310 BREAKING AND ENTERING
- 311 Breaking and entering – dwellings
- 312 Breaking and entering – shops
- 313 Breaking and entering – other buildings

- 320 FRAUD AND MISAPPROPRIATION
- 321 Fraud, forgery and false pretences
- 322 Misappropriation

- 330 RECEIVING AND UNLAWFUL POSSESSION OF STOLEN GOODS
- 331 Receiving
- 332 Unlawful possession of stolen goods

- 340 OTHER THEFT
- 341 Motor vehicle theft
- 342 Stealing from the person
- 343 Shoplifting
- 344 Other theft

Property Damage and Environmental Offences

- 410 PROPERTY DAMAGE
- 411 Arson (person not therein)
- 412 Other property damage

- 420 ENVIRONMENTAL OFFENCES
- 421 Pollution
- 422 Other environmental offences

Offences Against Good Order

- 510 OFFENCES AGAINST GOVERNMENT SECURITY AND OPERATIONS
- 511 Offences against government security and operations

- 520 OFFENCES AGAINST JUSTICE PROCEDURES
- 521 Breach of maintenance order
- 522 Offences against enforcement of order

- 530 PROSTITUTION AND RELATED OFFENCES
- 531 Prostitution and related offences

- 540 OFFENSIVE BEHAVIOUR OFFENCES
- 541 Offences involving drunkenness
- 542 Other offensive behaviour

- 550 UNLAWFUL POSSESSION OF WEAPONS
- 551 Unlawful possession of weapons

- 560 OTHER OFFENCES AGAINST GOOD ORDER
- 561 Liquor and licensing offences
- 562 Betting and gaming offences
- 563 Trespassing and vagrancy
- 564 Consorting
- 565 Other offences against good order

Drug Offences

- 610 POSSESSION/USE OF DRUGS
- 611 Possession/use of narcotics
- 612 Possession/use of cannabis/marihuana
- 613 Possession/use of other drugs

- 620 DEALING AND TRAFFICKING IN DRUGS
- 621 Dealing and trafficking in drugs

- 630 MANUFACTURING, GROWING AND OTHER DRUG OFFENCES
- 631 Manufacturing/growing drugs
- 632 Other drug offences

Motor Vehicle, Traffic and Related Offences

- 710 OFFENCES INVOLVING THE DRIVING OF A VEHICLE
- 711 Driving under the influence of alcohol or drugs
- 712 Dangerous, reckless, negligent driving (excluding driving causing death or bodily harm)
- 713 Other offences involving the driving of a vehicle

- 720 ADMINISTRATIVE OFFENCES
- 721 Licence offences
- 722 Registration/insurance offences
- 723 Roadworthiness and other administrative offences

- 730 OTHER MOTOR VEHICLE, TRAFFIC AND RELATED OFFENCES
- 731 Other motor vehicle, traffic and related offences

Other Offences

- 811 Other offences

Source: Australian Bureau of Statistics (1980)

reference to the DANCO Classification (See Figure 2), by selecting the offence with the lowest DANCO code. This effectively gives offences against the person priority over property, good order, and other offences. Multiple charges of the same offence-type are ignored.

8. Level of Court Terminating Remand: The duration of the trial process is related to the length of the remand period. Where a case goes to higher courts it would in many cases account for any extended period of remand which may have been served.
9. Outcome of Remand: Six possible circumstances which terminate remand periods were specifically allowed for in the form, namely:
 - 1 - Released on bail
 - 2 - Acquitted of all charges for which remanded
 - 3 - Died while on remand
 - 4 - Escaped from custody
 - 5 - Sentenced - non-custodial penalty
 - 6 - Sentenced - custodial penaltyOther outcomes were allowed for in a write-in answer. The majority of cases which were coded as '7-other' were found to be deportees or persons convicted without further penalty.
10. Date of Termination of Remand: These data were used to determine the duration of remand.
11. Most Serious Offence for which Sentenced: This question was only to be answered in cases where question 9 was coded 5 or 6, i.e., the outcome was 'sentenced'. Only those offences for which sentence had been passed were considered. The most serious offence was that single charge for which the longest prison term or most severe form of non-custodial penalty was awarded. Equal sentences were resolved by reference to DANCO as before. The inclusion of

this question enables some comparison with the original set of charges faced by the remandee, and highlights the cases where persons remanded for a highly complex offence may be convicted of a lesser charge before the more serious charge is resolved, or where the most serious charge is dropped.

12. Type of Non-custodial Penalty: If question 9 was coded 5 this question records the type of non-custodial penalty prescribed. The duration, or amount of fine or bond, was not considered germane.
13. Aggregate Prison Sentence: If question 9 was coded 6 this question records the total head sentence imposed by the court. Charges pending which may have extended the sentence were ignored.

SECTION 3 : CHARACTERISTICS OF THE SAMPLES

Sample sizes

The final sample of 1,188 remandees is summarised in Table 1. It must be remembered that this sample is not equally representative of the total numbers of remandees actually passing through the individual jurisdictions in the two month period. However, because of the sampling procedures adopted by the two largest correctional departments involved in the study, we do know what these total numbers were, and hence we know the relative use of remand in the different jurisdictions. This is expressed by the rates per 100,000 population aged 15-69 as shown in Table 1.

Table 1

	<u>Sample Sizes by Sex and Jurisdiction</u>							
	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Males in Sample	181	90	129	247	274	48	116	29
(%)	(92.8)	(90.0)	(95.6)	(94.3)	(93.8)	(98.0)	(95.1)	(87.9)
Females in Sample	14	10	6	15	18	1	6	4
(%)	(7.2)	(10.0)	(4.4)	(5.7)	(6.2)	(2.0)	(4.9)	(12.1)
Total Sample	195	100	135	262	292	49	122	33
Total Persons								
leaving remand	908#	133*	135	262	292	49	122	23
Rate per 100000	25.9	5.1	8.9	30.8	33.2	17.8	156.5	22.4
aged 15-69								
Samples as								
per cent of all	21.5	75.0	100.0	100.0	100.0	100.0	100.0	100.0
remand outcomes								

May include some persons who were remanded twice during the period. These were eliminated from the sample but up to 20 per cent of the Total Persons leaving remand might be in this category. The rate would then reduce by the same percentage (to 20.7 per 100,000) and the sample would increase as a percentage of all outcomes (to 25.8 per cent).

* Estimated.

In all jurisdictions the sample size is sufficient to give reasonable confidence in the distributions of sample characteristics such as age of remandee, duration of remand, and the probabilities of certain outcomes for certain offence types. It is considered, however, that the small numbers of females in the samples preclude analysis by sex, and that because of the differing sample sizes little purpose is served by simply adding the eight jurisdictions to give an 'Australian' figure.

Rates of Remand

The rates of remandees per 100,000 persons aged 15-69 are included in Table 1. Although the figures differ somewhat from those presented in David Biles' report, due to a different method of calculation, the conclusion is the same, i.e., that the Northern Territory, South Australia, Western Australia and New South Wales have higher remand in custody rates than the other jurisdictions. His report, based on 1982 and 1983 data concluded that this was principally due to longer periods of remand in New South Wales and Western Australia but to higher intakes in South Australia and the Northern Territory. Since then some efforts have been made in some jurisdictions to reduce the use of remands in custody. Some possible reasons for the continuing differences in rates emerge in subsequent sections. The remarkably high figure for the Northern Territory parallels that jurisdiction's very high imprisonment rates which, it would be reasonable to surmise, are related to its high proportion of young males and the large itinerant populations including Aboriginals.

Age of Remandees

Remandees are likely to be younger than the overall prison population. Table 2 shows the percentage distributions of remandees by age in each jurisdiction and includes total Australian figures from the 1984 National Prison Census for comparison. The less populous jurisdictions appear to have the

most pronounced over-representation of under 20 year olds, while the Northern Territory has a particularly high percentage in the 20-24 years grouping.

Table 2
Percentage Distribution of Remandees by Age and Jurisdiction

Age (years)	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	NPC84*
Under 16	-	-	-	-	-	2.0	3.3	-	.0
16	.5	1.0	2.2	.8	-	8.2	1.6	-	.1
17	4.1	6.0	9.6	5.7	3.8	4.1	9.8	4.3	.9
18	7.7	4.0	2.2	13.0	11.0	2.0	5.7	13.0	3.8
19	11.2	12.0	9.6	14.1	14.0	18.4	13.9	21.7	5.1
20-24	27.6	29.0	27.4	22.5	25.3	28.6	39.3	17.4	27.9
25-29	20.4	19.0	15.6	17.2	16.4	10.2	9.0	17.4	27.3
30-34	10.7	14.0	11.9	10.3	12.0	6.1	7.4	4.3	15.2
35-39	7.1	1.0	9.6	7.3	9.2	6.1	4.9	13.0	10.1
40-44	3.6	9.0	3.7	2.7	4.1	2.0	2.5	4.3	5.9
45 and Over	7.1	5.0	8.1	6.5	4.1	12.2	2.5	4.3	7.2

* Total persons in Australian prisons as at 30 June 1984, extracted from Walker, J. and Biles D., 'Australian Prisoners 1984' Australian Institute of Criminology.

By the nature of the imprisonment processes, including the fact that serious and/or repeat offenders tend to predominate in prison populations because of the lengthy sentences they incur, this difference between remand and overall prison populations is neither surprising nor disturbing.

The Use of Bail

Persons committed for trial who were immediately released on bail by the courts and at no time remanded in custody are not included in this sample. However, persons considered by the court to be eligible for bail, but who were initially unable to raise the money or meet the conditions for bail, are included.

The question arises of whether remand in custody, as an alternative to bail, is the dubious 'privilege' of the poor. While this study was unable to investigate such complex issues as ability to pay (or find a guarantor) we might still conclude, from the figures given in Table 3, that disparities exist between jurisdictions.

Table 3
Percentage of Cases where Bail was Set and Unable to be Met

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Bail Set	37.2	10.0	45.9	40.1	27.1	10.2	15.6	78.3
Bail Not Set	59.2	90.0	37.0	39.7	71.6	89.8	84.4	21.7
Unknown	3.6	-	17.0	20.2	1.4	-	-	-

Data gatherers in several jurisdictions expressed some misgivings about the responses to this question, which should have excluded those to whom the option of bail was not given until their actual release from custody. To the extent that the data are accurate, the first row of Table 3 can be interpreted as the percentage for whom remand in custody was principally a consequence of inability to pay, and it shows considerable disparity between jurisdictions. If true, the Australian Capital Territory figures expose a highly disturbing situation. Even if this result is a consequence of a very small sample, it seems that the price of freedom is being set extraordinarily high. Queensland, Western Australia, and New South Wales courts imprison around four times as many persons offered bail than Victoria or Tasmania. It seems, on the face of it, that there is considerable room in those jurisdictions to reduce the remand population by reducing bail demands to something more affordable or by finding another alternative to remand in custody. In Tasmania it is very rare to set bail demanding the actual payment of money, for example, and although it may be reasonable to suggest that an island state might have fewer problems with abscondings while on bail, their example appears worth

investigating. Also, although it was not possible to ask a question on Aboriginality of remandee, it appears that this question could also provide some enlightenment on why these particular jurisdictions' figures are so high. Accumulated evidence suggests that Aboriginals are considerably more likely to be remanded in custody than non-Aboriginals, and less likely to be offered bail. When imprisoned they are far more likely to be in default of fines. Aboriginal legal aid organisations frequently claim that Aboriginals who are offered bail are often unable to pay, or actually prefer to remain in custody, because it enables them to 'cut out' fines imposed for other offences. Unfortunately, without the appropriate data, this is mere speculation.

Most Serious Charges

Detailed inspection of Table 4 shows a surprising uniformity in the distribution of most serious charges by type of charge. Since remand in custody is virtually obligatory for offences involving violence, including robbery and extortion, one can assume that differences between jurisdictions are due principally to the differing incidence of these offences. The generally higher percentages in the National Prison Census data merely reflect the tendency for such offenders to be given lengthy sentences and hence 'accumulate' in the prison systems. Offences involving deception, which might suggest a tendency to abscond, also show similar features.

Where we might look for problem areas in this table is in those persons charged with relatively minor offences, such as offensive behaviour (which often consists of uttering a few rude words in public), minor traffic offences or simple possession or use of drugs. On face of it, since prison terms are rare for the persons convicted of offences, it should be equally rare to find such persons so charged in remand.

By and large, this appears to be the case. South Australia and (but be careful of the small numbers) Tasmania seem to have rather more cases of offensive behaviour than elsewhere,

Table 4
Percentage of Remandees by Most Serious Charge and Jurisdiction

OFFENCE TYPE	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	NPC84*
HOMICIDE	3.6	5.0	4.4	2.3	2.4	2.0	.8	-	11.0
ASSAULT	12.2	7.0	8.2	7.3	18.5	4.1	8.2	21.7	6.8
SEX OFFENCES	2.6	4.0	10.4	5.7	7.9	12.2	9.8	-	9.0
OTHER AGAINST PERSON	.5	1.0	.7	.4	-	-	1.6	-	1.1
ROBBERY	12.2	8.0	7.4	4.2	6.2	4.1	3.3	-	13.4
EXTORTION	1.0	-	-	-	-	-	-	-	.3
BREAK AND ENTER	22.4	26.0	16.3	29.8	16.1	34.7	28.7	-	17.5
FRAUD/MISAPPROPRIATION	4.1	11.0	1.4	6.5	5.1	2.0	1.6	13.0	4.2
RECEIVING	3.6	1.0	2.2	3.8	3.1	-	3.3	17.4	1.5
OTHER THEFT	13.3	11.0	5.9	13.7	15.4	6.1	10.7	13.0	9.4
PROPERTY DAMAGE	2.0	5.0	1.4	1.5	2.7	-	5.7	-	1.6
GOVERNMENT SECURITY	-	-	3.7	-	-	-	4.1	-	.2
JUSTICE PROCEDURES	4.6	7.0	-	4.2	5.8	-	4.1	-	2.7
PROSTITUTION	-	-	.7	-	-	-	-	-	.0
OFFENSIVE BEHAVIOUR	-	-	.7	.8	3.4	4.1	.8	4.3	.4
UNLAWFUL POSS. WEAPON	-	1.0	2.2	1.5	.7	-	1.6	-	.2
OTHER GOOD ORDER OFFENCES	2.6	2.0	.7	2.3	3.4	2.0	3.3	8.7	1.1
POSSESSION, USE OF DRUGS	3.6	2.0	7.4	3.1	3.4	4.1	1.6	4.3	2.3
TRAFFICKING DRUGS	5.1	7.0	5.2	4.2	1.0	-	2.5	4.3	5.5
MANUFACTURING DRUGS	3.6	-	10.3	1.9	1.7	2.0	-	-	.9
DRIVING OFFENCES	2.6	-	3.0	3.1	1.0	6.1	8.2	-	4.9
LICENCE, REGN. OFFENCES	-	2.0	-	.8	1.7	12.2	-	-	4.2
OTHER TRAFFIC OFFENCES	-	-	-	1.9	-	-	-	-	.3
OTHER OFFENCES	.5	-	5.9	1.1	.3	4.1	-	8.7	1.3

* Total Prisoners in Australian prisons as at 30 June 1984.
 Taken from 'Australian Prisoners 1984', op. cit.

Queensland chooses to put drug users on remand, and Tasmania puts its bad drivers in gaol to await court hearings. These differences simply reflect the relative likelihood of imprisonment upon conviction in these jurisdictions. This author concludes that this constitutes evidence of differences of opinion

and interpretations regarding the danger to the public inherent in certain offences, but not of unjustifiable disparity. If too many persons are remanded for relatively minor offences this phenomenon is one which applies across all jurisdictions, or in none. It does not only apply in one or two errant jurisdictions. Once again, without going to unrealistic levels of detail in data-gathering, such a question cannot be answered by a study of this type.

Level of Court Terminating Remand

The interest of this variable lies in its relationship with duration of remand. However, Table 5 shows the differences between jurisdictions, which appear to mostly reflect the differences between the court systems themselves. No obvious conclusions are possible from this variable in isolation.

Table 5
Percentage of Remandees
by Level of Court Terminating Remand and Jurisdiction

	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Supreme Court	8.2	7.0	17.1	6.1	17.1	32.7	17.2	-
District/County Court	33.2	21.0	8.2	33.6	16.1	-	-	-
Magistrates' Court	57.1	72.0	66.7	56.1	66.8	65.3	80.3	100.0
Children's Court	.5	-	-	2.3	-	2.0	.8	-
Other	.5	-	-	1.1	-	-	1.6	-
Unknown	.5	-	8.2	.8	-	-	-	-

Duration of Remand

There would be little argument with the proposition that lengthy periods of remand in custody reflect adversely on the legal system which imposes them. It is a relief therefore that in every jurisdiction over 60 per cent of remands are terminated one way or another in under one month, and over 80 per cent in

under three months. Table 6 shows also that cases over one year are extremely rare. More complex analyses, such as by offence-type, may explain the circumstances of these exceptional cases. It is quite possible, for example in cases of complicated drugs/homicide offences which have occurred in the last few years in Australia, to justify such lengthy periods of remand, just as it is possible that even the shortest remand is unjustified by the circumstances of a particular case.

Few broad conclusions, therefore, may be drawn from Table 6 other than that the durations of remand are not generally excessive. Queensland has the lowest percentage of remands under one month, and the Australian Capital Territory and Tasmania the highest. These figures differ markedly from those presented in National Prison Censuses principally because the Biles reports are based on 'stock' data whereas this report uses 'flow' data. The use of 'stock' data, i.e., all persons on remand at a given date, tends to exaggerate the proportions of long-termers in the population.

Table 6

Percentage of Remandees by Duration of Remand and Jurisdiction

REMAND DURATION	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
Under 1 month	67.9	70.0	61.4	77.1	68.2	95.9	68.0	100.0
1 and under 3 mths	21.4	15.0	24.4	15.6	19.5	4.1	23.8	-
3 and under 6 mths	8.2	9.0	11.9	5.7	8.6	-	1.6	-
6 and under 12 mths	2.6	5.0	2.2	1.5	2.4	-	5.7	-
1 yr and under 2 yrs	-	1.0	-	-	1.4	-	.8	-

The cases of remand periods over 12 months are all homicide or rape cases with the single exception of one drug trafficking case in South Australia. Without exception the remands were terminated at the Supreme Court level with a prison sentence. More detailed discussion of all those with remand periods over six months follows later in this report.

Outcomes of Remand

The key items of data in this study, the outcomes of remands, are shown in Table 7. Several important results are immediately obvious, although perhaps the explanations of them are less so. Among the desirable features which one would hope to find in this table are:

- a low percentage eventually released to bail, indicating that remand in custody is rarely used where release on bail is appropriate;
- a high percentage convicted (or low percentage acquitted), indicating that the evidence against the accused persons has justified their being remanded in custody; and
- a high percentage imprisoned upon conviction, indicating that the nature of the offence retrospectively justifies the protection given to the public by the remand in custody order. If the sentence can be served in the community, on the other hand, it gives little retrospective support for remand in custody.

On the first point, that of release to bail, one finds a considerable spread of values: from ten percent in Tasmania to almost fifty per cent in both Queensland and the A.C.T. It is possible that these differences are an artifact of the system of posting bail, so that for example, persons may be routinely held in custody in some jurisdictions for a day or two while surety is arranged, whereas other jurisdictions may allow immediate release. Those jurisdictions who do not allow immediate release on bail could show higher figures on this variable without very much meaning attaching to those figures in terms of remandee workloads. We can, however, screen these cases out by looking at the durations of remand for those prisoners eventually released on bail, and this has been done in Section 4.

On the subject of acquittal rates, Table 7 shows only New South Wales, Victoria and the Northern Territory had greater than a one per cent acquittal rate. Offence types were various, but assaults, robberies and drug offences were most common.

Initially, the data supplied by Queensland indicated that 30 remandees (21.7 per cent of the sample) had eventually been acquitted - a result which gave rise to some disquiet in that state. The fact that it took over four months to correct these figures amplifies the comments made elsewhere in this report about co-operation between corrections and courts staff, and the quality of management information systems.

When one looks at the likelihood of imprisonment for remandees whose remand periods are terminated by a conviction and sentence, some apparent misuses of remand are discovered. Table 7 gives the percentages of sentenced persons who are given prison sentences and those who are given non-custodial sentences.

(We do not know the final outcomes of those released to bail, so there may be some biases either way. However, since bail is more likely to be available to persons charged with less-serious offences, then any bias is likely to be in the direction of comparatively overestimating the percentage imprisoned in those jurisdictions where the percentage released to bail is highest.)

Relatively high percentages of convicted former remandees in Queensland, Western Australia, South Australia, Tasmania and the Territories are given non-custodial sentences. While it is not unreasonable for a person to be remanded in custody where doubts exist prior to the hearing of the evidence, and subsequently released to a community-based punishment after the hearing, these figures suggest that this occurs significantly more frequently in these jurisdictions than in others. In such cases, it would seem, in retrospect, that either the remand was unjustified in the first place, or that the sentence was excessively lenient, or that the court was trying to redress an initial wrong by 'taking the remand period into account', or that the court was informally (and improperly) giving a suspected offender a 'taste of prison' before even the matter of conviction was resolved.

Most Serious Offence for which Sentenced

This question can at best give a partial picture of the circumstances under which a list of charges for which remanded is modified during the court process. Some, perhaps relatively simple, offences may be easily disposed of in court leaving more complex ones to be dealt with later, with the accused safely behind bars. Alternatively, some charges may be dropped due to lack of evidence, or reduced in an informal plea-bargaining exchange with the prosecution. Some charges may even be dismissed or the defendant found not guilty. Additional charges may also be brought to court after the initial remand was imposed. All of these circumstances may explain prolonged remand periods which at first sight might not seem justified by the charges.

The most serious offence for which sentenced may be similar to the most serious charge for which remanded, or it may be more serious, or less serious. Unfortunately such a cloudy picture emerges from the 96 cases in our sample whose Most Serious Offence changed between remand and sentence, that few conclusions of any value can be arrived at.

Table 8 summarises these cases. The author apologises for the complexity of this table! There are examples of very serious charges at remand leading to relatively trivial offences at sentence, and vice versa. There are a number of general points which emerge and are worth reporting:

- (i) Surprisingly there seems to be little evidence of committal proceedings being related to changes of M.S.O. It is quite common for such changes to occur at these stages of the court process, but most of these 96 cases were decided at the lower courts. It may be, of course, that any outstanding charges were later heard at higher courts.
- (ii) In only four cases of the 96 was bail set during the hearings. This suggests that most cases involved serious charges, or perhaps repeat offenders with long records, which persuaded the court that custody was

necessary. Table 3 shows that this percentage is much lower in cases where M.S.O. changed than overall.

- (iii) There is some evidence that, in New South Wales alone, drug offences feature highly in these cases. Four persons remanded for charges of property offences or offences against the person received sentences for drug offences, and in one case, charges of trafficking resulted in a sentence for possession of drugs.
- (iv) The remand durations were generally shorter than average, with the Queensland and South Australian average durations each being influenced by single very lengthy cases.
- (v) Only 20 cases overall were given non-custodial sentences, almost half of which were in the Northern Territory.
- (vi) Average sentence lengths for those given prison sentences were mostly relatively short. The Victorian and South Australian averages are distorted by cases in which very lengthy sentences were passed, but the Northern Territory was particularly noticeable since no case received more than two years' gaol and only four cases received a year or more. Some evidence is here, perhaps, that it is the lesser charges which terminate remand periods, because these are dealt with more quickly, leaving the more serious charges to be dealt with the defendant safely under sentence.

Table 8
Summary of Characteristics of Cases where Most Serious Offence Changed

	NSW	VIC	QLD	WA	SA	TAS	NT
No. of Cases	12	14	4	9	28	1	28
Percent of Total Sample	6.2	14.0	2.9	3.4	9.6	2.0	23.0
Average Remand Period	2 wks	9 wks	18 wks	3 wks	11 wks	2 wks	3 wks
No. Cases where Bail Set	0	0	1	0	2	0	1
No. Cases at Higher Crts	1	3	3	3	11	1	1
No. Cases Non-Cus. Sent.	1	2	0	5	2	1	9
Av. Prison Sentence #	12 mths	41 mths	34 mths	16 mths	27 mths	-	6 mths

Case Numbers	Individual Cases													
	NSW		VIC		QLD		WA		SA		TAS		NT	
	R	S	R	S	R	S	R	S	R	S	R	S	R	S
1	1	3	1	1	1	3	1	7	1	1	1	1	1	1
2	2	6	1	3	1	2	1	1	1	1			1	1
3	2	6	1	2	1	1	3	3	1	3			1	5
4	3	3	3	2	6	7	3	7	1	5			1	1
5	3	3	3	3			3	7	1	3			1	1
6	3	3	3	3			3	3	1	1			3	1
7	3	3	3	5			5	3	1	1			3	3
8	3	6	3	2			7	7	2	3			3	3
9	3	6	3	3			8	7	3	3			3	3
10	3	5	3	5					3	3			3	3
11	3	5	4	3					3	3			3	7
12	6	6	5	3					3	3			3	3
13			5	2					3	3			3	3
14			7	3					3	3			3	3
15									3	3			3	3
16									3	5			3	3
17									3	3			3	3
18									3	3			5	5
19									3	3			5	5
20									3	3			5	5
21									4	5			5	5
22									5	5			5	5
23									5	1			5	5
24									5	5			5	5
25									5	3			5	5
26									5	3			7	3
27									6	3			7	7
28									6	6			7	7

Notes on Interpretation of table:

This table summarises the 96 cases in which the most serious offence for which sentenced differed from that for which remanded in custody. The individual cases are listed in the second part of the table where the Most Serious Offence for which remanded is given in the column headed 'R' and the M.S.O. for which sentenced is given in the column headed 'S'. Only the first digit of the DANCO Code is used, i.e., 1 = Against Person 2 = Robbery, Extortion 3 = Against Property 4 = Environmental 5 = Good Order 6 = Drug Offences 7 = Traffic Offences 8 = Other. For example, the first case listed in New South Wales was remanded for an offence against the person (code 1) and sentenced for drug offences (code 6). The fourth case was remanded and sentenced for property offences (code 3), but of a different nature, in fact remanded for breaking and entering, but sentenced for 'other theft'.

Victorian cases include one which received 13 years and another which received 12 years prison sentences. South Australian cases include one which received 21 years prison.

SECTION 4 : DETAILED EXAMINATION OF PROBLEM AREASPersons eventually released on bail

The percentage of remandees eventually released on bail varies from ten per cent in Tasmania to 48 per cent in Queensland and the A.C.T.

Table 9 shows that two distinct groups of jurisdictions emerge from an analysis of the data. The three largest states each have around 23 per cent of persons released on bail after a period in custody of three days or less. By contrast, in all other jurisdictions, 40 per cent or more are released in three days or less. (We should disregard Tasmanian because of the very small numbers involved there.) The high percentages remanded on one day and released on bail the next, in Western Australia, South Australia, the Northern Territory and the Australian Capital Territory, are not strongly offence-related, with a small majority being for property offences such as breaking and entering and other theft. The author's expectation that these would be predominantly public order offences such as drunkenness was not borne out. With the exception of the Australian Capital Territory, these jurisdictions suffer the tyrannies of distance, and this may account for their large numbers of 'overnight' remandees. Considering the costs of remanding in custody, however, it is worth investigating whether these people need be remanded at all, particularly in the relatively close community of the A.C.T. The three most populous jurisdictions, on the other hand, have rather higher percentages spending a week or more in custody prior to release on bail. This could reflect difficulties for the defendants in raising the sum of money, or surety, required, in which case it is worth asking whether such levels of bail are necessary. Alternatively it could reflect delays in court processes in those states, which would raise the question of whether court procedures related to applications for bail ought to be simplified.

Table 9
Percentages of Persons Eventually Released on Bail, by
Duration of Remand and Jurisdiction

Duration of remand	NSW	VIC	QLD	WA	SA	TAS	NT	ACT
1 day	11.1	0.0	8.2	23.3	19.5	20.0	23.8	21.4
2 days	5.6	20.0	3.3	12.3	14.9	0.0	4.8	21.4
3 days	6.9	3.3	9.8	6.8	11.5	20.0	23.8	7.1
Total<3 days	23.6	23.3	21.3	42.4	45.9	40.0	52.4	50.0
4<7days	25.1	26.7	29.4	17.8	18.3	20.0	28.6	21.4
1<2 wks	19.4	16.7	16.4	12.3	9.2	20.0	4.8	14.3
2<3 wks	9.7	10.0	8.2	5.5	6.9	2.0	4.8	7.1
3<4 wks	2.8	6.7	0.0	4.1	2.3	0.0	4.8	7.1
>1 mth	19.4	16.7	21.3	17.8	17.2	0.0	4.8	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Persons eventually given non-custodial sentences:

The 218 remandees who were sentenced to non-custodial forms of punishment in the sample were distributed as shown in Table 10.

The table must be carefully interpreted by reference to the sample sizes shown in Table 1. However, it can clearly be seen that the jurisdictions of Queensland, Western Australia, South Australia, and the Northern Territory appear to have significant numbers of remandees, some on relatively minor charges, who eventually received non-custodial sentences. The total of 218 out of around 700 convicted persons prima facie seems an excessive figure.

If the two areas of violent offences and offences involving deception are accepted as reasonable prima facie reasons for remands in custody, and if the more serious drug offences of trafficking and manufacturing are included under these headings, then as Table 10 shows, 19 of Western Australia's 65 persons eventually given non-custodial sentences can be explained. Similarly, nine out of Queensland's 20 cases and 26 of South Australia's 66 cases, but only three of the Northern Territory's 29 cases are explained. Eight persons in Western Australia, four in South Australia, two in Queensland and one in the Northern Territory spent over one month in prison on charges of breaking and entering, before finally being given non-custodial sentences. One person in South Australia spent over three months on a charge of property damage.

Because of the crudeness of the offence classification system it is impossible to say with certainty that the nature of the offences alone could not justify a remand in custody order in most of the cases listed in Table 10, but the weight of evidence tends to suggest that this may be true. The fact that four jurisdictions, Queensland, Western Australia, South Australia, and the Northern Territory, face similar, and very real, geographic problems in their treatment of alleged offenders might suggest that remand in custody orders are used in these states mainly as a means of ensuring the defendant does not 'go bush'. It is a fact that these jurisdictions contain many itinerant people, including both traditional Aboriginals and the employees of mining and pastoral companies who tend to be young single males. The problem of ensuring that persons with no fixed address and no fixed employment stay around to face trial must be difficult, and remand in custody may currently be the only legal means of doing so. If this is the explanation for the very high numbers in these jurisdictions in Table 10, then it is at least understandable. It may, however, be unfortunate for the Aboriginal for whom the concepts of fixed address and employment may be inappropriate measures of the likelihood of absconding⁴.

Table 10
Persons Eventually given Non-custodial Sentences, by
Most Serious Offence, Remand Period and Jurisdiction

JURISDICTION	NSW			VIC			QLD			WA			SA			TAS			NT				
	<1	1<3	3<6	<1	1<3	3<6	<1	1<3	3<6	<1	1<3	3<6	<1	1<3	3<6	<1	1<3	3<6	<1	1<3	3<6		
<u>Offence</u>																							
Homicide *	-	-	-	-	-	-	-	-	-	1	1	-	-	-	-	-	-	-	-	-	-	-	-
Assault *	-	2	-	-	-	-	4	-	-	4	-	-	9	2	-	-	-	-	2	-	-	-	-
Sexual Assault *	-	-	-	2	-	-	-	1	-	2	2	-	3	1	-	2	-	-	-	-	-	-	-
Robbery *	-	1	-	-	-	-	1	3	-	-	-	-	-	1	2	-	-	-	-	-	-	-	-
Break and Enter	2	-	-	1	-	-	3	1	1	10	7	-	7	3	1	5	-	-	8	1	-	-	-
Fraud etc. +	1	-	-	2	-	-	-	-	-	5	-	-	4	1	-	-	-	-	-	-	-	-	-
Receiving	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	-	-	-
Other Theft	4	-	-	1	-	-	-	1	-	7	-	-	12	2	-	-	-	-	1	1	-	-	-
Property Damage	-	-	-	1	1	-	-	-	-	-	1	-	3	-	1	-	-	-	3	-	-	-	-
Government Security	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-
Justice Procedure	-	-	-	-	-	-	-	-	-	4	1	-	3	-	-	-	-	-	1	-	-	-	-
Offensive Behaviour	-	-	-	-	-	-	-	-	-	1	-	-	2	-	-	-	-	-	-	-	-	-	-
Unlawful Weapon	-	-	-	-	-	-	1	-	-	1	-	-	-	-	-	-	-	-	2	-	-	-	-
Other Good Order	2	-	-	-	-	-	-	-	-	3	-	-	1	-	-	1	-	-	3	-	-	-	-
Possession Drugs	-	-	-	-	-	-	3	-	-	5	-	-	2	-	-	1	-	-	1	-	-	-	-
Traffic Drug #	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-	-	1	-	-	-	-
Manufacture Drug #	-	-	-	-	-	-	-	-	-	2	-	-	2	1	-	1	-	-	-	-	-	-	-
Driving Offences	-	-	-	-	-	-	1	-	-	3	-	-	-	-	-	-	-	-	2	-	-	-	-
License Offences	-	-	-	-	-	1	-	-	-	-	-	-	3	-	-	2	-	-	-	-	-	-	-
Other Traffic	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Offences	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-

* 'Violent' Offences
+ Offences involving deception
Serious drug offences

Excessive Remand Periods - Cases Involving Remand Periods over Six Months

The concept of an excessive period of remand is an elastic one and must depend upon the weight of evidence, the nature of the charges and numerous other considerations. A period of remand in custody greater than the maximum penalty if convicted seems, however, to be an upper limit to the notion of 'excessive'. This means that even a week on remand is excessive if the statutory maximum penalty is less than seven days in prison. The data available, without a considerably greater investment of time and resources, are unable to provide insights at this level of detail. It would require detailed information on the whole list of charges faced by each remandee. This report will therefore be arbitrarily limited to simply looking at the 37 cases where the remand period exceeded six months. They are summarised in Table 11.

In fact there are few cases where an excessive period of remand appears to have been served. Only five cases in the whole sample failed to result in an immediate prison sentence of at least twelve months. No distinct pattern emerges other than the generally acceptable one of serious offences eventually being brought to a conviction with a (usually) lengthy prison sentence being passed. Under such circumstances few would have serious misgivings about the uses of remand in custody.

The few notable cases include the two New South Wales cases which resulted in acquittals after the accused persons had spent seven and six months in remand prisons respectively, and the person, eventually convicted of robbery and sentenced to sixteen years gaol, who had at some stage been offered bail! Two other cases, one of attempted murder in Victoria and the other of breaking and entering in Western Australia, where the defendants were unable to take up an offer of bail until having spent over six months on remand, stand out but are not particularly anomalous (although the fact that the courts cannot dispose of a case of breaking and entering in less than six months may be a cause for concern).

Table 11
Detailed Characteristics of Cases lasting over Six Months

JURISDICTION*	SEX	AGE	MSO	BAIL SET	COURT	OUTCOME
NSW	M	22	Armed Robbery	No	Dist/County	Prison - 8 years
NSW	M	30	Trafficking Drugs	No	Dist/County	Acquitted all charges
NSW	M	19	Armed Robbery	No	Dist/County	Prison - 3 years
NSW	M	20	Other Robbery	Yes	Supreme	Prison - 16 years
NSW	M	28	Break & Enter	No	Dist/County	Acquitted all charges
VIC	M	42	Murder	No	Supreme	Prison - Life
VIC	M	26	Break & Enter	No	Magistrate	Prison - 5 yrs 3 mths
VIC	M	34	Motor Theft	No	Magistrate	Prison - 2 yrs 6 mths
VIC	M	44	Attempt Murder	Yes	Magistrate	Released on Bail
VIC	M	41	Property Damage	No	Magistrate	Prison - 6 years
VIC	M	27	Break & Enter	No	Magistrate	Prison - 13 years
QLD	M	22	Serious Assault	No	Dist/County	Prison - 6 years
QLD	M	24	Break & Enter	No	Dist/County	Prison - 4 yrs 6 mths
QLD	M	19	Break & Enter	No	Supreme	Prison - 12 months
WA	M	35	Break & Enter	Yes	Dist/County	Released on Bail
WA	M	20	Armed Robbery	Unkn	Supreme	Prison - 5 yrs 6 mths
WA	M	35	Serious Assault	No	Supreme	Prison - 8 years
WA	M	23	Rape	No	Supreme	Prison - 6 yrs 3 mths
SA	M	44	Rape	No	Supreme	Prison - 2 years
SA	F	30	Serious Assault	No	Supreme	Prison - 3 yrs 6 mths
SA	M	27	Robbery	No	Supreme	Prison - 5 yrs 2 mths
SA	M	26	Break & Enter	No	Supreme	Prison - 5 years
SA	M	21	Good Order	No	Dist/County	Prison - 18 months
SA	M	37	Trafficking Drugs	No	Supreme	Prison - 6 years
SA	M	50	Murder	No	Supreme	Prison - Life
SA	M	37	Murder	No	Supreme	Prison - 21 years
SA	M	38	Murder	No	Supreme	Prison - 24 years
SA	M	37	Receiving	No	Dist/County	Prison - 2 years
SA	M	57	Rape	No	Supreme	Prison - 7 years
NT	M	21	Armed Robbery	No	Supreme	Prison - 5 years
NT	M	17	Rape	No	Supreme	Prison - 7 years
NT	M	19	Rape	No	Supreme	Prison - 6 years
NT	M	26	Rape	No	Supreme	Prison - 9 years
NT	M	25	Rape	No	Supreme	Prison - 8 years
NT	F	20	Rape	No	Supreme	Prison - 8 years
NT	M	22	Govt Security	No	Magistrate	Deported
NT	M	23	Rape	No	Supreme	Prison - 14 years

* No cases were recorded in Tasmania or the Australian Capital Territory.

SECTION 5 : CONCLUSIONS

The aim of this study was to determine if, how, and where remand in custody orders are being applied improperly. Significant samples, 100 per cent of cases in most jurisdictions, of remandees have been analysed and the characteristics of their period of remand have been compared against the two basic premises that remand in custody should not be used without just cause, and that, if used, the duration of remand should be kept to an absolute minimum. Both of these premises follow directly from the presumption of innocence which is fundamental to the Australian justice system.

The first conclusion, which must be heavily underlined, is that some jurisdictions, notably the three largest in terms of population, experience the most horrendous difficulty in tracking an alleged offender from one end of the court process to the other. Since prison administrators are required to deal with both unconvicted and convicted persons, each theoretically under quite different conditions, one group supposedly innocent while the others proven guilty, it would seem to be essential for them to be able to inform themselves completely of the current status and case histories of these persons. For example, it appears that court clerks frequently neglect to record whether bail was granted or refused at a court hearing. Bail details, and lists of offences for which remanded, frequently fail to accompany prisoners on transfer from one prison to another, and then may be lost due to an inability to match up police, court, or prison files. In short, there is no system for monitoring the treatment, by the judicial system, of an alleged offender on remand in custody. This must be seen as a serious management failure, since there is no systematic way in which cases of hardship or injustice can be brought to light, other than by the protests of the defendants themselves.

The results of the survey appear to show two areas in which differences in the use of remand exist between

jurisdictions. Firstly, the extent to which remand is used as an alternative to bail, and the time spent in custody prior to the release on bail, differs from state to state. Secondly, there are differences in the extent to which persons remanded in custody receive non-custodial sentences upon conviction.

Remand periods are most likely to be terminated by bail in Queensland and the Australian Capital Territory. It rarely occurs in Tasmania. The durations of remand prior to release on bail are considerably longer in the three most populous states than in the others. The predominance of one to three-day remand periods in the less populous jurisdictions may be due to the relative efficiency of their court systems, compared to the major states, or it may indicate that many of these cases need not have been remanded in custody at all.

In the jurisdictions of Queensland, Western Australia, South Australia, and the Northern Territory there is a tendency to use remand in custody where a non-custodial sentence is appropriate upon conviction. One possibility is that magistrates are using remand as 'a taste of prison' and subsequently handing down a probation order or a fine upon conviction. Alternatively, they are using remand to ensure the defendant's appearance in court in circumstances where geography would make it particularly difficult to trace the defendant should he/she abscond prior to the court hearing. The fact that these jurisdictions contain many itinerant persons, both Aboriginal and non-Aboriginal, who lack permanency of address and employment, is a likely factor.

This study has certainly raised more questions than it has settled, although it was to be expected that a national comparative study would do so. It has brought to light many interesting differences between jurisdictions in the way they use the mechanism of remands in custody, some of which may be useful both now and in the future in the identification of potential improvements to the individual systems. Further study into some of the issues raised ought to be undertaken, either within the individual jurisdictions concerned or on a multi-lateral basis.

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