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**REMANDS IN
SOUTH AUSTRALIAN
CRIMINAL COURTS**

**BY
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ABSTRACT

The research study sought to examine remand patterns and disposal times in South Australian Criminal Courts. Four hundred and ninety eight serious Adelaide Magistrates Court cases were examined, two hundred and forty three District Criminal Court cases were examined, and forty one Supreme Court cases were examined.

Sixty two percent of Adelaide Magistrates Court cases were dealt with in one month or less, seventy five percent were dealt with in two months or less, and eighty two percent were dealt with in three months or less. The mean time from the first court appearance to disposition of offenders prosecuted in the Adelaide Magistrates Court was 2.1 months. Defendants pleading guilty took a mean time of 1.9 months to be dealt with. Defendants pleading not guilty took a mean time of 3.5 months to be dealt with.

Twenty nine percent of Adelaide Magistrates Court cases were dealt with at first appearance. Seventy three percent of cases produced two remands or less. Cases showed a mean of 1.8 remands.

Defendants pleading guilty in the District Criminal Court were dealt with in a mean time of 109 days from first appearance to disposition. Defendants pleading not guilty in the District Criminal Court were dealt with in a mean time of 197 days from first appearance to disposition. District Criminal Court cases showed a mean of four remands where defendants pleaded guilty, and a mean of 6.1 remands where defendants pleaded not guilty.

Defendants pleading guilty in the Supreme Court were dealt with in a mean time of 115 days from first appearance to disposition. Defendants pleading not guilty in the Supreme Court were dealt with in a mean time of 233 days from first appearance to disposition. Supreme Court cases showed a mean of 4.7 remands where defendants pleaded guilty and 7.2 remands where defendants pleaded not guilty.

Fifty three percent (128) of District Criminal Court defendants were remanded for sentence: eight defendants were remanded on bail. Of the 120 District Criminal Court defendants remanded in custody for sentence, 65 were imprisoned and 55 were given non-custodial sentences.

Fifty nine percent (24) of Supreme Court defendants were remanded for sentence: all were remanded in custody. Of the 24 Supreme Court defendants remanded in custody for sentence, 15 were imprisoned and 9 were given non-custodial sentences.

It has been recommended that:

- . Detailed reasons for remands be recorded on court files;
- . Research be conducted to identify reasons for remands at the various stages of the criminal court process;
- . A first remand in the Magistrates Court be no longer than three weeks and subsequent remands be no longer than two weeks unless in the opinion of the court special reasons justify an extended remand;
- . Special reasons for extended remands be recorded on the court file;
- . At each remand defendants or counsel be required to explain

delays and to indicate to the court the state of their preparation for the proceedings;

- . Defendants committed for trial or sentence in a particular month be dealt with by the higher courts in the following month;
- . Procedures be revised to accommodate the recommendation immediately above;
- . Extended resources be provided to the courts so that trials are not unreasonably delayed because courts or judges are unavailable;
- . All defendants who are remanded for sentence should be remanded on bail unless an immediate term of imprisonment is likely to be imposed.

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PREFACE

This is the first study to examine remands in selected courts of an Australian state.¹ In the absence of comparative Australian material an important question was the extent to which research from other jurisdictions should be used in discussing the research findings. The decision was shaped by three prime considerations.

First, material from jurisdictions outside Australia is of limited value where those jurisdictions are not regulated by comparable laws and procedures. Only material from comparable jurisdictions should assume prominence.

Second, the research findings are worthy in themselves of attention, and reaction need not be dependent upon how well South Australian courts compare with those in other places. That is not to deny the obvious value of comparison: rather it is to suggest that an intelligent response to facts, regardless of events elsewhere, is equally important. For example, this study provides information about delays in South Australia's criminal courts. Responses can take place on two levels : comparatively ; or without emphasis on the operations of foreign jurisdictions. While it is irresistible to ask, "how do these findings compare with other places?", it is equally important to ask "do the findings, regardless of other places, indicate an acceptable or unacceptable system?"

Third, I believe that researchers should seek to provide concise reports with relevant references. History has properly

exposed those researchers who are more committed to pretension than utility.

With those matters in mind comparative material has been used in discussing the research findings where the material is relevant and where it relates in some way to issues under examination.²

The Home Office Research Unit report, Time Spent Awaiting Trial, 1960, and the Sheffield study by Bottoms and McLean, Defendants in the Criminal Process, have been referred to regularly in discussion of the research findings. They are leading studies because, like the research I have conducted, they examine remands in both magistrates courts and higher courts. Other studies have tended to concentrate on remands in magistrates courts only.³

REFERENCES

1 Some early explorations can be seen in:

Martin, J., "Awaiting Court Hearing," (1972) A.N.Z.J. Crim. 72; Ward, P.G., "Bail Statistics," in Sydney University, Institute of Criminology, Proceedings of the Seminar on Bail, 1969; Milte, K.L., "Pre-Trial Detention," (1969) A.N.Z.J. Crim. 225.

2 For example:

Gibson, E., Time Spent Awaiting Trial, 1960, H.M.S.O.; Friedland, M.L., Detention Before Trial, 1970, University of Toronto Press; Bottomley, A.K., Prison Before Trial, 1970, Bell and Sons, London; Oxley, P., Remand and Bail Decisions in a Magistrates Courts, Research series No. 7, Research Unit, Planning and Development Division, N.Z. Department of Justice, 1978.

3 Friedland, Supra n. 2; Oxley, Supra n. 2.

CHAPTER 1INTRODUCTION

It should be stated at the outset that this research study is not a bail study. It is and was designed to be an examination of the system of remand in South Australian Criminal Courts, of which the granting or denial of bail is a part. The task has been to provide information on the pattern and process of remands in the Criminal Courts and the variety of matters which contribute to that system.

The study was motivated by the dearth of criminological research devoted to remands in criminal courts, despite the contrasting interest in bail and pre-trial release.¹ It is undeniable that the remand system has been largely unexplored in Australia, however much of an enigma that may seem. Although delays in criminal proceedings have regularly attracted criticism from both opponents and supporters of the criminal justice system,² a coherent and comprehensive examination of delays involved in criminal proceedings has not been conducted. This report contributes to an alleviation of that deficiency.

Given the variety of criticisms about remands rates, remand times, and the time taken by courts to dispose of cases it is not difficult to recognise the value of remand information to those charged with the responsibility of maintaining a fair and efficient criminal justice system. In the absence of reliable information about the system of dealing with criminal offenders, policy formulation and implementation is severely impeded if not

impossible. Judicial activity can be reviewed only in the light of clear information; estimates of judicial behaviour are insufficient. Whatever reforms might be mooted with a view to improving the efficiency and quality of criminal court hearings, the ultimate decision must be based upon information as opposed to folk-lore or suppositions. And no excuse is made for asserting that those involved with the formulation of law and procedures, the administration of justice, and the review of those activities, should be committed to producing an efficient and fair system of dealing with criminal offenders. Both effective sentencing and an offender's feeling of just deserts demand it.

Time spent on remand is of no little significance to an accused person. A remand is a delay of proceedings which for many defendants and their families continues and often heightens the stresses and anxieties which accompany the uncertain predictions of a case outcome. Even a defendant remanded on bail can find his job jeopardised by time spent away from work and in court seeking remands of his case. The defendant remanded in custody is even more vulnerable. As one report has put it:

The potential and not unlikely effects of a custodial remand for the defendant, his family and his associates, in both personal and social arenas are fairly obvious. He will almost certainly lose money and he may well lose a job and perhaps accommodation. His defence may be severely impeded through lack of opportunity to seek and consult legal advice and to collect evidence. Disorientation in a person's attitude and ability to present himself well in court is another possible result of a custodial remand. There is evidence from overseas studies that a remand in custody increases the likelihood of a guilty plea, and prejudices the verdict and severity of sentence. It is difficult to justify these possible outcomes of a custodial remand, particularly if the defendant is not convicted at the time of the remand. 3

Those considerations aside, the accused is presumed innocent until proven guilty and methods of dealing with defendants should reflect that presumption. That includes appropriate remand and bail criteria and procedures, and appropriate facilities for housing persons held in custody on remand.

If the deficiencies in remand information were not enough to provoke this research study then South Australian prison statistics certainly were. With rare exception South Australia has consistently produced a higher percentage of remandees in its total prison population than all the remaining Australian states, and on some occasions even the Territories despite their overall small prison populations. For the most part South Australia's remand population in prison as a proportion of the total prison population is double that of other Australian states.⁴ Despite a variety of ideas and explanations for this high custodial remand rate, research has not hitherto been conducted to examine that feature of criminal court processes in South Australia. This report does offer an explanation of South Australia's high rate of custodial remands.

Of necessity the project to a large extent has been exploratory. Answers were sought to a variety of questions. How many offenders are remanded in custody, and how many are remanded on bail? How long do offenders spend on remand? Why? What, if any, particular practices noticeably increase or reduce remands? Can delays be reduced by changed procedures? Of offenders remanded in custody how many are not subsequently imprisoned? How many are

ordered imprisonment but are given a suspension of that term? At what stage of the Criminal Court process are remands the longest, or most frequent? How long do offenders wait on remand for sentence? These questions, and others like them, are vital. While many delays in the criminal justice system may be justifiable and expected, many are unnecessary or at best unexplained. To the extent that defendants spend unnecessary or unreasonable time on remand (whether on bail or in custody) respect for the criminal justice system must be seriously undermined. It cannot be overlooked that a defendant's feeling of just deserts, or otherwise, will be affected by the process he is subject to between apprehension and sentence or discharge. Remand is an important element of that process.

REFERENCES

- 1 No study of remands has hitherto been undertaken in Australia. A New Zealand report provides some information from that jurisdiction: see Oxley, P., Remand and Bail Decisions in a Magistrates Court, Research series No. 7, Research Unit, Planning and Development Division Department of Justice, New Zealand, 1978.

Australian bail information is more readily available, e.g. Tomasic, R., Bail and Pre-trial Release, Law Foundation of New South Wales, 1976; Report of the Bail Review Committee, Parliament of N.S.W., 1976; Armstrong, Mossman and Sackville, Essays on Law and Poverty : Bail and Social Security, Australian Government Commission of Enquiry into Poverty, 1977.
- 2 See, e.g. "The Period of Remand and the Treatment of Prisoners Awaiting Trial," Editorial, (1979) 12 A.N.Z.J. Crim. 129.
- 3 Oxley, P., Remand and Bail Decisions in a Magistrates Court, supra n. 1, p. 8.
- 4 Biles, D., "Australian Prison Trends," in Australian Institute of Criminology Quarterly Newsletter.

CHAPTER 2THE LEGAL FRAMEWORKCourt Structure

South Australia employs a three-tier system of courts to deal with the hearing of criminal cases: Courts of Summary Jurisdiction deal with the least serious offences; the District Criminal Court deals with the intermediate range of offences; and the Supreme Court deals with the most serious criminal offences.

Offence Categories

Criminal offences are divided into three categories : summary offences, minor indictable offences, and indictable offences. Summary offences, sometimes referred to as simple offences, are prosecuted on complaint and are dealt with by a magistrate or justices of the peace. ¹ Subject to the provisions of any special Act there is no power for a matter prosecuted on complaint to be dealt with by a court other than a Court of Summary Jurisdiction. Courts of Summary Jurisdiction do not provide for trial by jury and offenders prosecuted on complaint are tried and sentenced by a magistrate or justices of the peace as provided for in section 43 of the Justices Act, 1921-1977, (S.A.). In South Australia prosecutions of complaints are almost exclusively conducted by police prosecutors.

Minor indictable offences are more clearly explained if consideration is first given to indictable offences. Indictable offences are prosecuted on information, ² as opposed to complaint,

the significance of the information being that it provides for the right to trial by jury.³ Indictable offences are heard in the Supreme Court and the District Criminal Court.⁴

Whether an offender charged with an indictable offence is proceeded against in the Supreme Court or the District Criminal Court depends upon the category of his offence. Indictable offences are divided into three groups. Group one offences are those with a maximum term of imprisonment exceeding ten years and they are dealt with by the Supreme Court. Group two offences are those with a maximum term of imprisonment exceeding four years but not exceeding ten years; they are dealt with by either the Supreme Court or the District Criminal Court depending upon such matters as the gravity of the offence and the complexity of the evidence. Group three offences are those with a maximum term of imprisonment not exceeding four years and they are dealt with by the District Criminal Court.⁵

Minor indictable offences are the least serious indictable offences which by virtue of their comparative veniality allow the defendant to elect to have the offence dealt with as if it were a summary offence or to have the offence dealt with in a higher court, usually the District Criminal Court, with trial by judge and jury, or sentence by a judge.⁶

Most indictable offences and minor indictable offences where the defendant elects to be tried upon indictment require a preliminary examination, called a committal and conducted by a magistrate or justice of the peace, before the matter is sent to

a higher court for determination. The purpose of the committal is to determine whether the prosecution evidence is sufficient to warrant committing the defendant to a higher court for trial or sentence, or whether the evidence is insufficient and the defendant should be discharged.⁷ The preliminary examination, or committal, may be based upon the written declarations of prosecution witnesses,⁸ or the defendant or his counsel may request that all or some of the witnesses for the prosecution be called or summoned to appear for the purpose of oral examination.⁹ If the magistrate or justices of the peace before whom the preliminary examination takes place is satisfied that there is sufficient evidence to warrant committing the defendant for trial or sentence, he is required to so commit the defendant to either the Supreme Court or the District Criminal Court.¹⁰

Briefly, summary offences and minor indictable offences where the defendant elects to be tried summarily, are heard by Courts of Summary Jurisdiction comprising magistrates or justices of the peace. Indictable offences and minor indictable offences where the defendant elects to be tried on indictment are dealt with by the District Criminal Court or the Supreme Court, both of which provide for trial by jury. These cases are subject to a committal proceeding, or preliminary examination, prior to the defendant appearing in the higher court.

Adjournment, Remand and Bail

Police

A person arrested by police without a warrant is to be delivered into the custody of a member of the police force at a

police station and that member of the police force is empowered to admit the arrested person to bail.¹¹ If a member of the police force does not admit the arrested person to bail, he shall inform the arrested person that he is entitled to make application for bail to a justice, and if the arrested person so requests he shall bring the arrested person as soon as practicable before a justice in order that an application for bail may be made to, and dealt with, by that justice.¹² The provision does not apply where the person in custody was arrested upon suspicion of being a person in respect of whom a warrant of commitment has been issued.¹³ If an arrested person is not granted bail by the police or by a justice his next application for bail will normally be to the court before whom he next appears.

Courts of Summary Jurisdiction

The Justices Act provides Courts of Summary Jurisdiction with bail and adjournment powers with respect to both the hearing of complaints and the hearing of committal proceedings. The hearing of any complaint can be adjourned from time to time and at any time before it is completed on such terms as the court thinks fit. In particular the court may allow the defendant to be released at large, or remanded in custody, or remanded on bail.¹⁴ The hearing is defined to include all proceedings arising out of the complaint.¹⁵

Section 112 of the Justices Act provides that at the end of a committal proceeding, unless the defendant is discharged, the

justice may admit the defendant to bail or remand him in custody. The preliminary examination can be adjourned for any time provided that a defendant remanded in custody shall not be remanded for more than 15 clear days at any one time unless both parties consent thereto.¹⁶ During an adjournment of the preliminary examination a justice may instead of detaining the defendant in custody release the defendant upon bail.¹⁷

The granting of bail by a Court of Summary Jurisdiction both in hearing complaints and minor indictable offences and in conducting preliminary examinations is discretionary.¹⁸ A grant of bail by a Court of Summary Jurisdiction may impose conditions as to the defendant's place of abode or residence, the persons with whom he might or might not associate, or any other matters as the justice deems necessary or desirable.¹⁹

Bail may be in the defendant's own recognisance, of such amount as the justice thinks fit,²⁰ with such surety or sureties as the justice thinks fit,²¹ and the court may order the person to be released on cash bail or that a surety pay to the court an amount in cash for the due observance of the recognisance.²² Where a defendant has lodged an appeal against a conviction or order of a Court of Summary Jurisdiction the appellant can be released upon bail awaiting the outcome of his appeal.²³

District Criminal Court

Section 328 of the Local and District Criminal Courts Act, 1926-1978, (S.A.) provides as follows:

Subject to the district criminal court provisions, a District Criminal Court shall have all the jurisdiction and powers that the Supreme Court had, under any Act or the common law, immediately before the commencement of the Local Courts Act Amendment Act, 1969, respectively to try and sentence persons charged with and guilty of indictable offences and to do all such acts and things (including the making of orders, the granting or refusing of bail and the taking and enforcing of recognisances and securities) as are incidental to the exercise of that jurisdiction and those powers.

It has been held that the power of the District Criminal Court to grant bail is exercisable only in the course of hearing its own cases. In Ex parte Lewis²⁴ the defendant was committed for trial in the District Criminal Court and granted bail by a special magistrate. Before the commencement of his trial in the District Criminal Court the defendant applied to the Supreme Court for bail variation. The Supreme Court held that it had jurisdiction to hear and determine an application for a variation of terms of bail and that pursuant to Section 328 of the Local and District Criminal Courts Act the District Criminal Court has no power to grant bail prior to the commencement of trial of an accused in that court, and that the District Criminal Court can grant or refuse bail only in the process of trying an accused.

Supreme Court

The Supreme Court has an inherent common law power to grant bail and to attach conditions to bail.²⁵ The Supreme Court's power to grant bail as a superior court of record includes the power to grant bail to a defendant following a refusal of bail by a lower court although the Supreme Court would interfere with a bail decision of a lower court only upon careful consideration.²⁶

An application to the Supreme Court for bail is a fresh application and not an appeal even if the matter has been dealt with by a lower court.²⁷ A person appealing against a conviction or order of a Court of Summary Jurisdiction may apply to the Supreme Court for bail pending the outcome of his appeal provided he has in the first instance made application for bail to a special magistrate or to justices and that initial application has been refused.²⁸ Section 364 of the Criminal Law Consolidation Act, 1935-1978, (S.A.), empowers the Full Court to admit an appellant to bail pending the determination of that appeal or, where a new trial is directed, until the commencement of the new trial. The Supreme Court has a common law power to adjourn the hearing of criminal cases.²⁹ It follows from section 328 of the Local District Criminal Courts Act, 1926-1978, (S.A.), that the District Criminal Court inherited the power to adjourn the hearing of criminal cases.

Bail Following Conviction

Neither the Supreme Court nor the District Criminal Court is legislatively empowered to remand on bail convicted persons awaiting sentence, although section 364 of the Criminal Law Consolidation Act empowers the Supreme Court to grant bail to a convicted person appealing against his conviction or sentence.

The common law power of the Supreme Court and the District Criminal Court to grant bail to convicted persons awaiting sentence is the subject of divided views. It would appear that some judges deny the power while others accept the power and use

it sparingly.

The source of confusion is Blyth v. Appeal Committee of Lancaster³⁰ in which Hallett J. was asked to grant bail to a convicted person under sentence but awaiting the outcome of an instituted appeal. His Honour held that there was no common law power to admit convicted persons to bail. Conviction includes both the formal recording of a conviction and a plea or finding of guilt.³¹ In contrast to Blyth the third report of the Criminal Law and Penal Methods Reform Committee of South Australia, chaired by Justice Mitchell, notes:

The court may and sometimes does grant bail to a person after he has been convicted and before sentence when sentence must be deferred owing to the necessity to obtain further information concerning the accused. 32

Practice certainly supports the Committee's comment although it must be acknowledged that convicted persons awaiting sentence are granted bail on rare occasions.

The facts in Blyth are important. Although the court found generally that convicted persons could not under common law be granted bail the court was dealing with a convicted defendant under sentence and awaiting the outcome of his appeal, as opposed to a convicted defendant awaiting sentence. On the facts the case stands only for the proposition that the common law power to grant bail does not extend to convicted persons under sentence. On that view convicted persons awaiting, as opposed to serving, sentence could be granted bail by the Supreme Court and District Criminal Court. In this study a small proportion of defendants

remanded by the District Criminal Court for sentence have been remanded on bail.

General Factors

Factors which should be taken into account in granting bail in S.A. have been clearly enunciated by the courts. They may be summarised as follows. Persons remanded on charges of summary offences should normally be granted bail.³³ Courts must consider the presumption of innocence in favour of the accused.³⁴ A justice, in considering whether or not to grant bail, should lean towards exercising his discretion in favour of bail unless there are reasonable fears that the applicant for bail may not answer to his bail or may commit other offences whilst on bail.³⁵ Courts must consider the likelihood of fresh offences being committed by the defendant if he is granted bail.³⁶ Consideration should be given to whether a refusal of bail will prejudice the defendant in the preparation of his defence.³⁷

The fundamental question is whether the defendant will appear when required if he is granted bail. Matters to be considered in making that determination are: the nature of the crime and/or accusation; the severity of possible punishment or conviction; evidence in support of the accusation; the character and antecedents of the defendant; and whether the defendant has ties in South Australia such as home, family and employment.³⁸

Other grounds for the denial of bail are the danger that he

will attempt to molest witnesses or tamper with evidence, that his detention in custody will precipitate police enquiries, and the need to protect the accused. 39

REFERENCES

- 1 Justices Act, 1921-1977, (S.A.), S. 43.
- 2 Justices Act, S. 101.
- 3 Munday v. Gill (1930) 44 C.L.R. 38, per Dixon J.
- 4 Section 275 of the Criminal Law Consolidation Act, 1935-1978, (S.A.), provides that any person may be put upon his trial at any criminal session of the Supreme Court for any offence upon information presented to the court by the Attorney-General : section 328 of the Local and District Criminal Courts Act, 1926-1978, (S.A.), empowers the District Criminal Court to respectively try and sentence persons charged with indictable offences. Section 331 of the Local and District Criminal Courts Act also provides that persons charged in a District Criminal Court with any offence shall be tried by a judge and jury as established by common law for offenders charged before the Supreme Court.
- 5 See: Local and District Criminal Courts Act, s. 4(5), and Justices Act, S. 112(4).
- 6 Justices Act, SS. 120-122.
- 7 Justices Act, S. 106. By virtue of S. 275 of the Criminal Law Consolidation Act informations can be presented "ex officio" in the Supreme Court and the District Criminal Court, thus avoiding committal proceedings. The procedure is used in exceptional circumstances.
- 8 Justices Act, S. 106(2).
- 9 Justices Act, SS. 106(6) and 106(7).
- 10 Justices Act, S. 112.
- 11 Police Offences Act, 1953-1978, (S.A.), S. 80.
- 12 Police Offences Act, S. 80(1).
- 13 Police Offences Act, S. 80(2).
- 14 Justices Act, S. 65.
- 15 Justices Act, S. 65(10).
- 16 Justices Act, S. 113.
- 17 Justices Act, S. 114.

- 18 Justices Act, SS. 43 and 114.
- 19 Justices Act, S. 150a(1).
- 20 Justices Act, S. 31.
- 21 Justices Act, S. 31.
- 22 Justices Act, S. 187b.
- 23 Justices Act, S. 168.
- 24 (1972) 3 S.A.S.R. 145.
- 25 Forrest v. Huffa (1968) S.A.S.R. 341 ;
Queen v. Gay (1969) S.A.S.R. 467;
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- 26 In Re Bicanin (1974) 9 S.A.S.R. 41.
- 27 Ex parte Lewis (1972) 3 S.A.S.R. 145;
In Re Bicanin (1974) 9 S.A.S.R. 41.
- 28 Justices Act, S. 168.
- 29 R.V. Hall (1890) 16 V.L.R. 650.
- 30 (1944) 1 All E.R. 587.
- 31 Archbold, Criminal Pleading, Evidence, and Practice,
36th edn., 1969, pp. 336-337.
- 32 Criminal Law and Penal Methods Reform Committee of South
Australia, Third Report, Court Procedure and Evidence,
1975, p. 60.
- 33 Forrest v. Huffa (1968) S.A.S.R. 341.
- 34 Queen v. Gay (1969) S.A.S.R. 467.
- 35 In Re Bicanin (1974) 9 S.A.S.R. 41.
- 36 Forrest v. Huffa (1968) S.A.S.R. 341.
- 37 Queen v. Gay (1969) S.A.S.R. 467.
- 38 Forrest v. Huffa (1968) S.A.S.R. 341;
Queen v. Gay (1969) S.A.S.R. 467.

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39 Criminal Law and Penal Methods Reform Committee of South
Australia, Third Report, Court Procedure and Evidence, 1975,
p. 49.

CHAPTER 3

METHODOLOGY

Introduction

At the time the research study was formulated the Office of Crime Statistics within the South Australian Law Department was unable to provide comprehensive information about remands in South Australian Courts,¹ although general information from its quarterly court statistics provided important background to the study.

To obtain the remand information needed for the study a manual search of court files was required. Limited time and resources restricted sampling to Adelaide courts although these courts clearly deal with the bulk of criminal prosecutions in South Australia. The Adelaide Magistrates Court, the Central District Criminal Court, and the Supreme Court sitting in Adelaide were sampled. Children's Courts were not included in the study.

Case samples from the Central District Criminal Court and the Supreme Court were drawn from cases concluded during the period July 1st, 1978, to June 30th, 1979, inclusive. Initially it was anticipated that the Adelaide Magistrates Court would be sampled for the same period but for the following reasons that was not adhered to. Early discussion with the Office of Crime Statistics revealed that the Office had completed its first Adelaide Magistrates Court data collection for use in the

preparation of statistical reports. Data had been collected for the period January to June 1979, inclusive, and it became apparent that if the research study sampled within the same period, the file searchers would need to extract from each file only remand information: the remaining supplementary information could be provided by the Office of Crime Statistics. The time saved in data collection would allow a larger sample to be taken and so the decision was made to sample the Adelaide Magistrates Court during the period January to June 1979, rather than the period July 1st, 1978, to June 30th, 1979, as determined for the higher courts. Although the periods within which the samples were taken vary slightly between the Adelaide Magistrates Court and the higher Courts, each jurisdiction has been separately sampled and examined, and the results are unaffected by the variation of period within which sampling was conducted.

Samples were drawn from the total number of cases disposed of by each court in its original jurisdiction. Committal proceedings in the Adelaide Magistrates Court were not included in determining the total number of cases disposed of by that court unless it was found that there was no case to answer and the accused was discharged. Committal proceedings otherwise were examined in the District Criminal Court and Supreme Court. Cases taken on appeal were sampled only to the point of original disposition.

Where a Court file recorded more than one charge against a defendant the most serious charge was recorded. The gravity of

the offence was determined by the maximum penalty available to a Court in sentencing an offender for that offence.²

It should also be noted that some offences do not appear in the research data, because the study used random sampling techniques which by their nature will not catch every infrequently occurring offence. The research findings are unaffected by this.

Adelaide Magistrates Court

On an annual basis Courts of Summary Jurisdiction in South Australia hear more than 160,000 individual cases.³ Most of these cases are heard by the Adelaide Magistrates Court which is the principal Court of Summary Jurisdiction in South Australia. The vast majority of cases involve regulatory offences and minor traffic offences which are commonly dealt with at first appearance. Since this research study was concerned with remand patterns in the criminal justice system, regulatory and minor traffic offences⁴ were excluded from consideration. As explained above, to higher courts for trial or sentence were also excluded from the cases to be sampled.

Remaining cases totalled 1346. Cases were identified from statistical returns collected by the Office of Crime Statistics. Each case eligible to be sampled was assigned a unique number and a sample of 498 cases was selected by using random numbers.

Each file in the sample was accessed manually and information on remands was recorded. The information collected supplemented that already held by the South Australian Office of Crime Statistics and both collections were matched to produce the

following data:

offence;
whether remanded;
conditions of bail;
total number of remands;
dates of remands;
reasons for remand;
origin of case;
extent of legal representation;
surrender of surety;
offences while on bail;
failure to appear and forfeiture of recognisance;
court;
magistrate;
date of disposition;
arrest or summons;
residence of offender;
date of birth;
sex;
race;
marital status;
country/state of birth;
occupational status at date of arrest;
date of offence;
date of complaint/summons;
date of first court appearance;
legal representation at final appearance;

bail status at final appearance;
amount of bail;
complainant;
number of co-defendants;
type of drug (drug offences only);
blood alcohol level (drink-driving offences only);
number of different offences charged;
previous juvenile dispositions;
previous adult convictions;
institutionalisation for any previous offence;
disposition of offence.

Sampled cases were classified into offence groupings comparable with those used by the Office of Crime Statistics for its quarterly reports. (Appendix 1)

The data was computer-processed using an S.P.S.S. computer package.

District Criminal Court

From court lists it was ascertained that 1223 cases had been disposed of by the District Criminal Court in the period July 1st, 1979, to June 30th, 1979.

A random sample of 243 cases was taken. Each file eligible to be sampled was assigned a unique number and the sample was selected using random numbers.

Files selected for the sample were accessed manually and remand information sought was similar to that collected from the Adelaide Magistrates Court. ⁵

Sampled cases were classified into offence groupings comparable with those used by the South Australian Office of Crime Statistics for its quarterly reports. Where classifications created too few cases for analysis some broader categories were created. (Appendix 2).

The data was manually analysed.

Supreme Court

From court lists it was ascertained that 309 cases had been disposed of by the Supreme Court in its original jurisdiction in the period July 1st, 1978, to June 30th, 1979.

Offences were classified into groupings comparable with those used by the South Australian Office of Crime Statistics for its quarterly reports. Where classifications created too few cases for analysis some broader categories were created. (Appendix 3). Offences within each group were randomly sampled in proportion to the representation of those groups in the Supreme Court population being sampled. Each eligible file was assigned a unique number and a sample of 41 cases was selected by using random numbers.⁶

Files selected for the sample were accessed manually and remand information was recorded. The information sought was similar to that collected from the Adelaide Magistrates Court.⁷

The data was manually analysed.

Definitions

"Court Hearing" is the complete court process from the first court appearance of the accused to disposition of the case.

"Remand Status" is the condition of being in custody, on bail, or at large during a remand.

"Remand" includes a simple adjournment as well as an adjournment during which the defendant is released on bail or is held in custody.

A remand of a case was so recorded if the case was adjourned until another day, unless the adjournment was to the next day of a continuous committal or trial. For example, if an offender appeared in the District Criminal Court on a Tuesday and his trial took three consecutive days such that he was remanded at the end of Tuesday to appear on Wednesday, and was remanded at the end of Wednesday to appear on Thursday, and was remanded at the end of Thursday for several days to await sentence, only the remand at the end of Thursday was recorded. If the trial had not been continuous the remands during the trial to other than the next day would have been recorded. Proceedings remanded on Friday to recommence on the following Monday were regarded as continuous.

The time taken to dispose of a case was recorded as the period between the first court appearance of the accused and his sentence or discharge.

"Change of Plea" as it arose in various cases was only a change from not guilty to guilty; instances of defendants changing a plea of guilty to not guilty were not encountered.

Limitations

Samples for the research study were drawn only from cases heard in Adelaide Courts. Although those Courts deal with the

bulk of criminal prosecutions in South Australia it may not be accurate to assume that the results of the study reflect the activities of all South Australia's criminal courts. In particular, observations support the view of many that trial delays in suburban magistrates courts are much greater than trial delays in the Adelaide Magistrates Court.

Some information sought from files was not always available: reasons for remands were commonly not recorded; it was not always clear when bail had been granted but an accused was unable to meet conditions of bail, such as finding a surety; or where bail had been granted but the accused was held in custody upon another charge or a warrant; bail forfeitures or partial forfeitures are poorly detailed; and in the higher courts some cases were remanded several times from session to session without any explanation on the court file.

REFERENCES

- 1 This situation has been somewhat rectified with the introduction of new and extended recording procedures in Supreme and District Criminal Courts.
- 2 Very few files which recorded more than one offence did not have a clear distinction between major and minor charges.
- 3 Statistics from Courts of Summary Jurisdiction, Selected Returns from Adelaide Magistrates Court: 1st January - 30th June 1979, S.A. Office of Crime Statistics, Series 2, No. 4, March, 1980, p. 2.
- 4 For example: Speeding offences, Local Government Act offences, public drunkenness.
- 5 Changes were merely a reflection of the different type of offences heard by the District Criminal Court.
- 6 A sample of 50 cases was intended but nine files were unavailable.
- 7 Changes were merely a reflection of the different type of offences heard by the Supreme Court.

CHAPTER 4ADELAIDE MAGISTRATES COURT

Tables appear at the end of this chapter

The Sample

In the Adelaide Magistrates Court four hundred and ninety eight cases were examined. Offences were categorised into the following groups:

assault (n = 87);
false pretences (43);
larceny (134);
wilful damage (13);
dangerous driving (13);
drug offences (44);
break, enter and larceny (7);
indecent behaviour (34);
offensive behaviour (43);
prostitution (10);
weapon offences (14);
betting and gambling (11);
offences against order (12);
miscellaneous offences (33).

Eighty four percent of defendants pleaded guilty, two percent pleaded not guilty, and sixteen percent entered no plea. Defendants entering no plea are treated as having entered a plea of not guilty.

Sixty one percent of defendants were arrested and the remaining thirty nine percent were summonsed.

Of the four hundred and ninety eight cases sampled, one hundred and forty two (29%) were sentenced at first appearance and only the remaining three hundred and fifty six cases produced any remands. Mean times for disposing of cases have been significantly affected by the inclusion of those cases where the defendant was sentenced at first appearance, but to exclude those cases would have created an unfair distortion of disposal times.

Records of defendants have not been included in the study because in at least one third of cases record was unknown, and in some remaining cases it appeared that previous convictions were not reliably recorded.

In examining the research findings readers should be reminded that the study, as explained in the previous section, has sampled only serious offences arising in the Adelaide Magistrates Court.

Time of Proceedings

Table 1 shows the time taken to dispose of cases in the Adelaide Magistrates Court. Times were rounded to the nearest month. It can be seen that twenty nine percent of cases were dealt with at first appearance, a further nine percent were dealt with in less than a month, and a further twenty five percent of cases were dealt with in one month. The majority of cases (62%) were dealt with in one month or less, seventy five percent were

dealt with in two months or less, and eighty two percent were dealt with in three months or less. Only eight percent of cases took more than six months and many of those were delayed primarily by non-appearance of the defendant. In the two cases taking twenty four months and forty eight months respectively to be disposed of, it is known that the defendants absconded during proceedings. The mean time to dispose of offences was 2.1 months.

The common practice of the court providing defendants with a three or four week remand at first appearance likely explains why only nine percent of defendants who were not sentenced at first appearance took less than one month to be sentenced. The high concentration of offences taking one month to be disposed of also supports that proposition.

Given that the study sampled only serious offences prosecuted in the Adelaide Magistrates Court the time taken to dispose of offenders is not alarming, although it cannot be overlooked that eighteen percent of offenders took more than three months to be dealt with.

Overseas studies provide some comparison. Gibson's 1960 Home Office Study,¹ one of the earliest remand studies conducted, shows a mean time of 2.1 weeks to dispose of magistrates court cases in England.² That study was updated in 1974 with a further Home Office study by Simon and Weatheritt³ who sampled arrested persons prosecuted in fifteen London magistrates courts in January 1966 and January 1969. They found that in 1966, before the introduction of the Criminal Justice Act, 1967, defendants were

sentenced in a median ⁴ time of two to three weeks, and in 1969 defendants were sentenced in a median time of three to four weeks. ⁵ Bottomley, in a 1970 study of urban and rural English magistrates courts, ⁶ shows that defendants were remanded for an average of eleven to twelve days prior to conviction. ⁷ Oxley's recent New Zealand study of remands in magistrates courts ⁸ shows that fifty-six percent of offenders were dealt with within one month. Twenty seven percent of offences took more than two months to be disposed of. ⁹

Table 2 shows the mean time to dispose of offences in the Adelaide Magistrates Court by offence and plea. It can be seen that plea significantly influences the time taken to dispose of cases, with defendants pleading guilty taking a mean time of 1.9 months and defendants pleading not guilty taking a mean time of 3.5 months. As seen in table 1, however, the mean time to dispose of cases has been weighted by those offenders who took an extraordinarily long time to be dealt with. Defendants pleading not guilty and defendants entering no plea have been considered together because no plea cases are treated as if a plea of not guilty had been entered. Mean times of defended matters are not particularly meaningful within offence categories because of small numbers within categories. Offence categories appear to affect disposal times only to the extent that offences giving rise to complex facts increase the time taken to dispose of cases. Assault and false pretences, for example, both exceed the mean time to deal with offenders.

Bottoms and McClean, in their Sheffield Study of defendants

in the legal process, ¹⁰ showed that over ninety percent of guilty pleas in the magistrates court were disposed of within one month whereas the bulk of defended matters took between one month and three and a half months to be dealt with. ¹¹ Friedland, in a 1965 Canadian study of 6,000 magistrates court cases, found that sixty two percent of guilty pleas were dealt with at first appearance and twenty nine percent were dealt with in one to five weeks. Of defended matters, twenty three percent were disposed of within one week, a further nineteen percent were dealt with in two or three weeks, fifty seven percent of cases took one to four months to be dealt with, and the remainder took more than four months to be disposed of. ¹²

Table 3 shows the mean time to dispose of Adelaide Magistrates Court offences by bail status at disposition. The defendant's bail status at disposition was chosen in preference to bail status at first appearance for two reasons. First, at the initial appearance the bail status of a number of defendants was unknown. Second, the bail status at disposition of a defendant is more likely to reflect the bail status of defendants throughout the proceedings: for example, several unrepresented defendants who were denied bail at first appearance were subsequently granted bail when applications for release were made by their counsel. In some cases, however, a defendant's bail status at disposition will not reflect his bail status throughout the proceedings. In particular, defendants who abscond while on bail and are subsequently apprehended will often be held in custody for the remaining duration of proceedings. For these defendants their bail status at disposition

is "in custody" and yet many will have been on bail until they absconded. Defendants appearing in court by summons and dealt with at first appearance were recorded as "at large with no bail."

It can be seen from table 3 that defendants at large without bail, including those appearing by summons and dealt with at first appearance, are dealt with in a mean time of slightly less than one month. Defendants on bail were dealt with in a mean time of two and a half months and defendants in custody at disposition were dealt with in a mean time of four and a half months. Analysis of the forty custody cases showed that the mean time had been markedly extended by a large number of offenders who absconded for long periods and who upon apprehension were held in custody. In fact all but forty percent of defendants in custody at disposition were dealt with in one month or less. Although seventy five percent were dealt with in three months or less, twenty five percent of defendants took a mean time of between four and forty eight months to be dealt with and many of these were absconders.

Table 4 shows the mean time in months to dispose of offences by legal representation at disposition. While it is clear that legal representation has produced a mean time of 2.7 months compared with a mean time of 1.1 months for cases without legal representation, the extent of legal representation in defended cases is significant. In defended cases seventy seven percent of defendants were legally represented and, as table 2 has shown, defended cases have taken nearly double the mean time of guilty pleas to be dealt with. It may well be, therefore, that the greater mean time to dispose of cases where the defendant is legally represented is

not a feature of legal representation but a reflection of the fact that legal representation is provided in cases which take the longest to be dealt with, and which also would likely take the longest in the absence of legal representation. In contrast, eighty four percent of defendants pleaded guilty of whom sixty percent were legally represented. The bulk of legal representation is provided in undefended cases. On that basis legal representation would appear to be a factor increasing the mean time taken to dispose of cases, but that is not unexpected. The delay in simply engaging a lawyer contributes to the overall time to dispose of a case.

Oxley's New Zealand remand study appears to provide the only comparative material on legal representation and disposal times. She found that legal representation was "significantly related to longer court hearings": thirty one percent of unrepresented defendants took more than one month to be dealt with compared with forty eight percent of represented defendants who took more than one month to be dealt with. ¹³

Remands

Table 5 shows the number of remands for offences in the Adelaide Magistrates Court. The findings are consistent with the time taken to dispose of proceedings as shown in table 1. It can be seen that one hundred and forty two cases (29%) were disposed of without any remands, a further twenty eight percent of cases produced one remand, and another seventeen percent of cases produced two remands. Seventy three percent of cases were dealt

with in two remands or less. Although remaining cases produced up to twelve remands, cases producing more than four remands are clearly exceptional. The mean number of remands is 1.8.

Oxley's New Zealand remand study shows that seventy percent of cases were dealt with in two remands or less.¹⁴ Other comparative material is not available.

Table 6 shows the mean number of remands by offence and plea. As explained in discussing the mean time by offence and plea, defended matters in some offence categories are very few and the mean for defended matters in individual offence categories should be interpreted with caution. The impact of plea on the overall number of remands is significant, with guilty pleas showing a mean of 1.6 remands and defended matters showing a mean of 2.8 remands. Offence categories which might be expected to produce complex facts have, where defendants pleaded guilty, produced remands higher than the overall mean: assault and false pretences are ready examples.

Table 7 examines the bail status and outcome of only those defendants remanded for sentence, including remands for pre-sentence reports. It can be seen that only twenty defendants (4% of the sample) were remanded for sentence and only two were remanded in custody, both of whom were subsequently given a custodial sentence.

Table 8 shows the mean number of remands for offences by legal representation at disposition. Consistent with table 4, which shows an increased disposal time with legal representation,

the mean number of remands is higher for cases where the defendant is legally represented, 2.4 compared with 0.7. But, as explained in discussing table 4 above, the important question is whether legal representation in itself produces more delays in proceedings or whether legal representation is provided in cases which in the ordinary course of events, irrespective of counsel, would take longest to be dealt with. Although legal representation was provided in seventy seven percent of defended cases, eighty four percent of all defendants pleaded guilty of whom sixty percent were legally represented. The bulk of legal representation was provided in cases where the defendant pleaded guilty and on that basis it would appear that legal representation does increase the number of remands, although that is to be expected. Simply engaging a lawyer contributes to the overall time to dispose of a case and likely accounts for at least one remand in represented cases.

Reasons for Remands

Reasons for remands are poorly recorded on court files and with the exception of procedural remands the only information generally available is whether the remand is upon application of the prosecution or defence. Even a prosecution remand can be misleading because prosecution applications for remands are sometimes made for the benefit of the defendant whose counsel may not be ready to proceed or may be unable to appear on a particular day. As is the case with the higher courts, data on reasons for remands is sketchy and inconclusive.

It would appear that one prosecution remand is common, usually at the first appearance of the defendant. After an initial prosecution remand it would appear that applications are generally made by the defendant or his counsel, sometimes for procedural purposes such as setting a date for trial, but often for unspecified reasons.

Of a total eight hundred and seventy eight remands in the Adelaide Magistrates Court proceedings under study, two hundred and forty eight were clearly prosecution applications: two hundred and one prosecution applications were made at the first appearance of the defendant, twenty eight prosecution applications were made at the second appearance of the defendant, and only nineteen prosecution applications were made at subsequent appearances of the defendant. The remaining six hundred and thirty remands (72%) were largely unexplained applications by the defendant or his counsel, or procedural remands for trial, plea, or sentence.

Bail Status and Disposition

Table 9 shows the bail status at disposition for Adelaide Magistrates Court offenders by major outcome. Defendants shown as not guilty include those whose charges were withdrawn. It can be seen that the majority of offenders (60%) were fined. Although fifty five percent of defendants in custody at disposition were not given a custodial sentence, as explained above in discussing table 3, many of those defendants were held in custody following their absconding whilst on bail, and many would likely otherwise not have been held in custody. Of the thirty seven defendants sentenced to

imprisonment nineteen (51%) were on bail or at large prior to sentence.

TABLE 1

Time taken in months to dispose of Offences in the Adelaide Magistrates Court

Time taken to dispose of cases (in months)	n	%
Immediately	142	28.5
One month	43	8.6
1	125	25.1
2	65	13.1
3	35	7.0
4	16	3.2
5	23	4.6
6	10	2.0
7	12	2.4
8	3	0.6
9	9	1.8
10	3	0.6
11	3	0.6
12	1	0.2
13	1	0.2
14	1	0.2
15	1	0.2
17	2	0.4
18	1	0.2
24	1	0.2
48	1	0.2
Total	498	100%

mean = 2.1

TABLE 2

Mean time in months to dispose of Offences in the Adelaide Magistrates Court by Offence and Plea

Offence	Plea			n
	Guilty (n)	Guilty in Writing (n)	Not Guilty or no Plea (n)	
Assault	2.3 (74)		4.5 (13)	87
False Pretences	2.5 (38)		2.8 (5)	43
Larceny	1.8 (116)		5.0 (18)	134
Wilful Damage	1.2 (11)		7.5 (2)	13
Dangerous Driving	1.9 (12)		0.5 (1)	13
Drug Offences	2.1 (37)		3.6 (7)	44
Break, Enter Larceny			1.1 (7)	7
Indecent Behaviour	1.5 (31)		8.0 (3)	34
Offensive Behaviour	1.1 (32)	0 (8)	0.3 (3)	43
Prostitution	2.1 (8)		2.0 (2)	10
Weapon Offences	2.3 (12)		2.0 (2)	14
Betting, Gambling	2.0 (1)	0 (4)	1.0 (6)	11
Offences Against Order	1.6 (11)		2.0 (1)	12
Miscellaneous Offences	1.4 (24)	0 (1)	3.7 (8)	33
mean	1.9		3.5	
Total				498

TABLE 3

Mean time in months to dispose of Offences in the Adelaide Magistrates Court by Bail Status at Disposition

Bail Status	Months	n	%
At large, no bail	0.9	176	35.0
Bail	2.5	280	56.0
Custody	4.5 *	40	8.0
Unknown		2	1.0
Total		498	100%

* See text for an explanation of the high mean

TABLE 4

Mean time in months to dispose of Offences in the Adelaide Magistrates Court by Legal Representation at Disposition

Legal Representation	Months	n
Yes	2.7	303
No	1.1	195
Total		498

Legal representation was provided in 77% of defended cases

TABLE 5

Number of Remands for Offences in the Adelaide Magistrates Court

Number of Remands	n	%
0	142	28.5
1	138	27.7
2	85	17.1
3	56	11.2
4	39	7.8
5	9	1.8
6	16	3.2
7	6	1.2
8	3	0.6
9		
10	2	0.4
11	1	0.2
12	1	0.2
Total	498	100%

mean = 1.8

TABLE 6

Mean number of Remands for Offences in the Adelaide Magistrates Court by Offence and Plea

Offence	Plea			n
	Guilty (n)	Guilty in Writing (n)	Not Guilty or no Plea (n)	
Assault	2.5 (74)		3.5 (13)	87
False Pretences	1.8 (38)		2.2 (5)	43
Larceny	1.2 (116)		3.7 (18)	134
Wilful Damage	1.3 (11)		5.0 (2)	13
Dangerous Driving	1.7 (12)		1.0 (1)	13
Drug Offences	1.9 (37)		3.0 (7)	44
Break, Enter, Larceny			1.7 (7)	7
Indecent Behaviour	1.2 (31)		5.3 (3)	34
Offensive Behaviour	1.2 (32)	0 (8)	0.7 (3)	43
Prostitution	1.9 (8)		2.5 (2)	10
Weapon Offences	1.8 (12)		3.0 (2)	14
Betting, Gambling	3.0 (1)	0 (4)	0.2 (6)	11
Offences against Order	1.2 (11)		2.0 (1)	12
Miscellaneous Offences	1.3 (24)	0 (1)	3.0 (8)	33
mean	1.6		2.8	
Total				498

TABLE 7

Number of Defendants remanded in the Adelaide Magistrates Court for Sentence by Bail Status and Penalty

Bail Status	Penalty					n
	No Penalty	Bond	Fine	Suspended Sentence	Imprisonment	
At large, no bail			1		1	2
Bail	1	1	6	4	2	14
Custody					2	2
Unknown						2
Total	1	1	7	4	5	20

TABLE 8

Mean number of Remands for Adelaide Magistrates Court Offences by Legal Representation at Disposition

Legal Representation	Remands	n
Yes	2.4	303
No	0.7	195
Total		498

Legal representation was provided in 77% of defended cases

TABLE 9

Bail Status at Disposition by Major Outcome for Offences
in the Adelaide Magistrates Court

Bail Status	Outcome								n
	No Penalty	Costs Order	Bond Without Supervision	Bond with Supervision	Fine	Suspended Sentence	Imprisonment	Not Guilty	
At large, no bail	7	1	6	1	129	1	4	27	176
Bail	19		12	5	156	13	15	60	280
Custody	2	1	2		11	1	18	5	40
Unknown									2
Total	28	2	20	6	296	15	37	92	498

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Unit, 1960.
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- 3 Simon, F., and Weatheritt, M., The Use of Bail and Custody
by London Magistrates Courts Before and After the Criminal
Justice Act 1967, Home Office Research Unit, 1974.
- 4 The present study used the mean in its calculations.
- 5 Simon and Weatheritt, supra n. 3, p. 34.
- 6 Bottomley, A.K., Prison Before Trial, 1970, Bell and Sons,
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- 8 Oxley, P., Remand and Bail Decisions in a Magistrates
Court, Research Series No. 7, Research Unit, Planning and
Development Division, Department of Justice, New Zealand,
1979.
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- 11 Ibid., table 2.4.
- 12 Friedland, M.L., Detention Before Trial, 1965, University
of Toronto Press, tables 6 and 9.
- 13 Oxley, P., supra n. 8, p. 100.
- 14 Ibid., p. 99.

CHAPTER 5DISTRICT CRIMINAL COURT AND SUPREME COURT

Tables appear at the end of this chapter

The Sample

In the District Criminal Court two hundred and forty three cases were examined. Offences were categorised into the following groups:

break, enter and larceny (n = 68);
break and enter with intent (13);
larceny (37);
false pretences (17);
sex offences (22);
serious driving offences (8);
assault occasioning actual bodily harm (24);
common assault (5);
cultivating Indian Hemp (25);
selling Indian Hemp (11);
other drug offences (5);
and miscellaneous offences (8).

Seventy eight percent of defendants pleaded guilty, fifteen percent pleaded not guilty, four percent changed plea during the hearing from not guilty to guilty, and three percent of defendants entered no plea.

In the Supreme Court forty one cases were sampled. Offences were categorised into the following groups:

murder (n = 8);
robbery (10);
sex offences (14);
and miscellaneous offences (9).

Forty four percent of defendants pleaded guilty, forty six percent pleaded not guilty, two defendants changed plea during the hearing from not guilty to guilty, and two defendants entered no plea.

Legal representation has not been examined for its influence on the number of remands or the time taken to dispose of proceedings in either the District Criminal Court or the Supreme Court because with rare exception all defendants were represented by counsel once preliminary appearances were complete.

Time of Proceedings

Tables 1 to 14 explore the mean time in days of proceedings for both District Criminal Court and Supreme Court offences.

In table 1 the time taken to dispose of District Criminal Court cases is shown. The time includes appearance in the Magistrates Court for the committal, time after the committal awaiting appearance in the District Criminal Court, and time in the District Criminal Court. It can be seen that defendants pleading guilty are dealt with in approximately sixteen weeks while defendants pleading not guilty take an average of twenty eight weeks to be dealt with. Category of offence can be seen to affect the time spent in disposing of District Criminal Court cases. Those offences which are commonly surrounded by complex facts, for example false pretences,

and those which provide ready opportunity for defences, for example assault, have taken longer than other offences to be disposed of.

Table 2 shows the time taken to dispose of Supreme Court cases. Like the District Criminal Court sample it includes time appearing in the Magistrates Court for the committal, time after the committal awaiting appearance in the Supreme Court, and time in the Supreme Court. The time difference created by the defendant's plea is marked. Defendants pleading guilty wait approximately sixteen weeks to be dealt with while those pleading not guilty wait thirty three weeks to be dealt with. Change of plea and no plea involves only two cases each and are too few to comment on. On an average the District Criminal Court and Supreme Court take the same time to hear and sentence those pleading guilty but the Supreme Court takes five weeks more than the District Criminal Court to deal with defended matters. As a broad proposition, however, the Supreme Court tries more serious and often more complex cases than the District Criminal Court. Murder is an obvious example. Category of offence can be seen to affect time spent in Supreme Court hearings. Murder and sex offences, both of which may produce complex factual situations or complex defences, take longer to be disposed of than robbery or the miscellaneous offences, for both guilty and not guilty pleas.

Some comparative studies are available although Australian material is scarce. N.S.W. court statistics show that in 1977 more than twenty percent of higher court cases took more than a year to be dealt with. Seventy four percent of guilty pleas were

dealt with within six months whereas only nineteen percent of not guilty pleas had been finalised in the same time. ¹ Simon and Weatheritt's 1974 Home Office study ² showed that defendants taking their cases to trial in the higher courts took a median ³ of seven to eight weeks to be sentenced or acquitted in 1966, and fourteen to fifteen weeks to be sentenced or acquitted in 1969 following the introduction of the Criminal Justice Act, 1967, (U.K.). It was further shown that defendants pleading guilty and sentenced by the higher courts took four to five weeks to be dealt with in 1966 and five to six weeks in 1969. Bottoms and McClean, in a 1976 Sheffield study, ⁴ found that eighty one percent of defendants sentenced by the higher courts waited less than fourteen weeks. The remaining eighteen percent took up to thirty weeks to be dealt with. Pleas of not guilty affected proceedings to the extent that forty four percent of defendants took fourteen weeks or more to be dealt with. ⁵

Table 3 shows the committal time for District Criminal Court offences. Comparable with the overall time discussed above the type of offence and the plea has a particular impact on the committal time. A plea of guilty by the defendant resulted in his case taking approximately seven weeks from first appearance in the Magistrates Court to committal, while a plea of not guilty, often requiring an oral as opposed to a declaratory committal, resulted in a delay of approximately thirteen weeks from first appearance in the Magistrates Court to committal.

In table 4 the committal time for Supreme Court cases is shown. The time varies with offences, but like the District

Criminal Court offences the outstanding comparison is the committal time for cases proceeding on a plea of guilty and those which are defended. Guilty pleas have taken approximately five weeks from first appearance in the Magistrates Court to committal whereas not guilty pleas have taken approximately fourteen weeks. In the normal course of events oral committals for defended matters can be expected to significantly increase a defendant's time awaiting committal.

The limited information available from other jurisdictions tends to show a much quicker committal process than that found for South Australian higher courts. Gibson's renowned 1960 Home Office study ⁶ found that defendants committal for trial in English courts waited two to three weeks for committal. When Simon and Weatheritt revised Gibson's study in 1974 they found that in 1966 defendants waited two to three weeks for committal but by 1969 committal time had increased to a median of nine to ten weeks. ⁷ Bottomley in 1970 found that in urban English courts defendants waited an average of twenty five days for committal in contrast to twelve days for rural courts. ⁸ Bottoms and McClean in their Sheffield study found that seventy-seven percent of defendants in custody waited no more than three weeks for committal and eighty nine percent of those on bail waited no more than five weeks for committal. ⁹

Table 5 shows the time between committal and first appearance in the District Criminal Court. It can be seen that defendants pleading not guilty wait nearly seven weeks to appear while those pleading not guilty wait just over six weeks to

appear. In the ordinary course of events plea, but not offence, can be expected to affect the time between committal and first appearance in the higher courts. Criminal sittings are regulated by Rules of Court under which those pleading guilty appear for sentence on the first and second Monday of each month and trials are conducted throughout the month commencing on the first Tuesday of the month. In practice defendants on bail awaiting trial need not appear until the court is ready to proceed with the trial. Negotiations by defendants with prosecutors will often also extend the normal waiting time between committal and first appearance in the District Criminal Court.

Table 6 shows the time between committal and first appearance in the Supreme Court. The noteworthy feature is the delay of ten weeks for defendants pleading not guilty compared with seven weeks for those pleading guilty. As was explained in discussing the District Criminal Court findings plea, but not offence, can be expected to affect the time between committal and first appearance in the higher courts, in this case the Supreme Court. Under the Rules of Court for criminal sittings defendants pleading guilty appear for sentence on the first and second Monday of each month and trials are conducted throughout the month commencing on the first Tuesday of the month. In practice defendants on bail awaiting trial need not appear until the court is ready to proceed with the trial. Delays between committal and appearance in the Supreme Court may also arise if negotiations by defendants with prosecutors takes place. The ten week delay experienced by Supreme Court defendants pleading not guilty may well indicate

Supreme Court congestion dealing with trials.

Bottomley's English study shows a waiting time between committal and trial of thirty five days for defendants from urban courts and twenty five days for defendants from rural courts.¹⁰ Gibson's earlier 1960 study shows that the time between committal and trial varied between courts but that for persons tried in the same area where committals were conducted the average interval was just over five weeks.¹¹ Simon and Weatheritt, updating Gibson, found that in 1966 defendants committed to higher courts waited between four and five weeks for trial and by 1969 that delay had extended to between nine and ten weeks.¹² Bottoms and McClean describe delays in Sheffield courts between committal and trial as intolerable pointing out that forty percent of defendants pleading guilty and seventy percent of defendants pleading not guilty waited more than eight weeks between committal and trial.¹³

In table 7 the time in the District Criminal Court is shown. Guilty pleas have taken a mean time of just under three weeks to be dealt with and defended matters have taken just over eight weeks. The type of offence has affected defended matters more than guilty pleas and some abnormally long trials or trial delays have increased the mean time. The break, enter and larceny category is an example. The extra time spent in the District Criminal Court by defendants changing their plea is likely the result of bargaining with prosecuting authorities about plea, evidence, and withdrawal of multiple charges.

In table 8 time spent by defendants in the Supreme Court

is shown. The times are similar to those found in the District Criminal Court with undefended matters taking just under four weeks and defended matters a little longer than nine weeks. When offence categories are considered it is no surprise that defended murder charges take the longest, eighteen weeks, to be disposed of.

Other studies do not give separate times for the appearance of defendants in courts higher than the magistrates court.

Time by Record

Table 9 and 10 consider the defendant's record in relation to the time taken to dispose of proceedings.

Table 9 shows the mean time of District Criminal Court proceedings by record. Defendants without previous convictions have been subject to more delays in proceedings than defendants with previous convictions but a clear explanation is not apparent.

Eighty three percent of defendants with previous convictions pleaded guilty and sixty nine percent of defendants without previous convictions pleaded guilty. Eighteen defendants with previous convictions pleaded not guilty and nineteen defendants without previous convictions pleaded not guilty. Abnormally long proceedings will, of course, affect the mean time.

In table 10, which shows the mean time of Supreme Court proceedings by record, defendants with previous convictions have taken longer to be dealt with than those without previous convictions. The mean, however, with smaller numbers than the District Criminal Court, is less reliable. Fifty percent of defendants with previous convictions pleaded guilty and fifty

percent of defendants without previous convictions pleaded guilty. Forty three percent of defendants with previous convictions pleaded not guilty and thirty three percent of defendants without previous convictions pleaded not guilty.

Gibson analysed cases by record for the period between committal and trial and found that conviction affected delay, by increasing it, only where the defendant had six or more previous convictions.¹⁴

Time between Conviction and Sentence

Tables 11 and 12 examine the delay between conviction and sentence. Pre-sentence reports have been interpreted for the purposes of the study as including psychiatric reports.

Table 11 shows the time between conviction and sentence in the District Criminal Court. It can be seen that fifty three percent of defendants were remanded for sentence and thirty of those were awaiting pre-sentence reports; the remainder were simply held over for sentence. Defendants not awaiting pre-sentence reports were sentenced within thirteen days whereas those defendants awaiting pre-sentence reports took thirty two days to be sentenced where previous convictions were involved, and nine days where defendants did not have previous convictions. The delay with pre-sentence reports is important. Although the mean time is thirty two days for defendants with previous convictions the waiting times varied between three weeks and eight weeks. What is not known is when reports were received by the court in contrast to when defendants were called up for sentence. Sentence remands are

further examined in tables 25 and 26.

Table 12 shows the time between conviction and sentence in the Supreme Court. Fifty nine percent of defendants were remanded for sentence: ten of those were awaiting pre-sentence reports and the remainder were simply held over for sentence. The record of one defendant remanded for sentence could not be determined. With the exception of one defendant remanded for sentence for a period of seven days all defendants remanded for pre-sentence reports or for sentence had previous convictions. Those remanded for pre-sentence reports were sentenced within thirty one days and those remanded for sentence were sentenced within nineteen days. The delays are comparable with those from the District Criminal Court although Supreme Court defendants wait slightly longer when simply held over for sentence. Time spent waiting for pre-sentence reports varied from two weeks to eight weeks. The fact that delays for pre-sentence reports are almost the same for District Criminal Court and Supreme Court cases may well reflect consistency in report preparation by officers of the Department of Correctional Services. Sentence remands are further examined in tables 25 and 26.

Gibson's 1960 Home Office study showed that only four and a half percent of defendants in the higher courts had their sentence delayed; those sentences were delayed for a mean of thirty five days.¹⁵ The Sheffield study of Bottoms and McClean shows that eight and a half percent of male defendants in the higher courts and twenty eight percent of female defendants in the higher courts were remanded for pre-sentence reports: no time delays are

given. 16

Bail Status and Time

Tables 13 and 14 show the relationship between bail status and the mean time taken to dispose of proceedings. The categories of "bail" and "bail and custody" are not as separate as they appear because the dominant bail status of those in the "bail and custody" category is bail. The explanation lies in the high proportion of defendants remanded in custody for sentence.

In table 13 bail status and mean time of District Criminal Court proceedings is shown. Given the explanation in the preceding paragraph it is no surprise to find that the categories of "bail" and "bail and custody" produce similar mean times. The contrast of these cases with custody cases is marked. Defendants remanded in custody were disposed of in nearly half the time taken to dispose of those not in custody. As explained earlier the District Criminal Court is regulated in its criminal sittings by Rules of Court. They provide that in sentencing and trying defendants, those in custody are to be dealt with before defendants on bail are dealt with. The priority provided by the Rules for defendants in custody is supported by the findings in table 13. It should also be said that the incentive for defendants in custody to have their cases dealt with is much greater than that for defendants on bail for whom plea bargaining and negotiations may mean reprieve from sentence.

Table 14 shows the mean time of Supreme Court proceedings by bail status. Unlike the District Criminal Court sample,

defendants in the "bail" category and those in the "bail and custody" category do not show comparable mean times of proceedings. Nor do the findings show the same contrast of time between defendants on bail and those in custody. It is, however, significant that those in custody were dealt with in the least time, those in custody for some of the time were dealt with in a slightly longer period, and those on bail waited the longest. The results are consistent with the priority given to custodial cases as explained above.

Remands

The length of court proceedings is largely dictated by the number of remands in each case. As a general proposition an increase or reduction of remands in each case will produce a corresponding increase or reduction in the length of court proceedings. Tables 15 to 20 examine remands in the District Criminal Court and Supreme Court.

Table 15 shows the total number of remands in the District Criminal Court and Magistrates Court for District Criminal Court offences.

Plea can be seen to affect the number of remands. Guilty pleas have produced a mean of four remands while not guilty pleas have produced a mean of just over six remands. The high mean of remands for the no plea and change of plea category is consistent with earlier suggestions that these cases tend to be delayed for negotiations between defendant and prosecuting authorities. Although seventy five percent of cases were dealt with in five

remands or less it is noteworthy that the remaining cases took between six and fifteen remands to be dealt with. Five percent of cases involved ten or more remands but they are clearly exceptional cases, tending to reflect abscondings or a complicated series of offences.

Table 16 shows the total number of remands in the Supreme Court and Magistrates Court for Supreme Court offences. The mean of total remands is higher than for the District Criminal Court, 6.1 compared with 4.5, but as with the District Criminal Court cases plea can be seen to affect the number of remands. Guilty pleas have produced a mean of 4.7 remands while not guilty pleas have produced a mean of 7.2 remands. The no plea and change of plea category involve too few cases to be meaningful but it cannot be overlooked that those four cases reflect a similar pattern to the District Criminal Court. Fifty one percent of cases were dealt with in five remands or less with the remaining cases taking between six and fourteen remands to be dealt with. Four cases took ten remands or more to be disposed of: these cases are exceptional. The greater number of remands for Supreme Court cases compared with District Criminal Court cases accords with the longer time taken by the Supreme Court to deal with defended matters although both the Supreme Court and the District Criminal Court recorded similar times for dealing with pleas of guilty. The length of each remand is clearly an important factor when comparing the number of remands with total time.

In tables 17 and 18 the number of remands in the Magistrates

Court for District Criminal Court and Supreme Court offences is shown.

Table 17 shows the mean number of remands for District Criminal Court offences in the Magistrates Court. It can be seen that guilty pleas have produced a mean of three remands whereas not guilty pleas have produced a mean of just over four remands. Sixty four percent of cases have been committed in three remands or less.

Table 18 shows the mean number of remands for Supreme Court offences in the Magistrates Court. It can be seen that guilty pleas have produced a mean of 3.2 remands whereas not guilty pleas have produced a mean of 4.6 remands. The two no plea cases have produced remands similar to those in the not guilty category and the two change of plea cases have produced remands similar to the guilty category. Forty one percent of cases have been committed in three remands or less. Comparison of Magistrates Court remands with higher court remands shown below is valuable.

Tables 19 and 20 show the number of remands in the District Criminal Court and Supreme Court.

In table 19 District Criminal Court remands are shown. It can be seen that guilty pleas have produced a mean of one remand and not guilty pleas have produced a mean of just under two remands. Change of plea and no plea cases are clearly above the norm. Eighty eight percent of cases have been dealt with by the District Criminal Court in two remands or less. Twenty eight percent of cases were dealt with at first appearance and forty

nine percent of cases took between three and nine remands to be dealt with.

In table 20 Supreme Court remands are shown. Guilty pleas have produced a mean of one and a half remands while not guilty pleas have produced a mean of two and half remands. The mean of the no plea category and change of plea category has been disproportionately affected by the high number of remands by one of two cases in each category. Sixty eight percent of cases have been dealt with by the Supreme Court in two remands or less. Four cases have been dealt with at first appearance and eighteen cases, forty four percent, required only one remand. Thirty two percent of cases took between three and ten remands to be dealt with.

It is quite clear, and findings on the time of proceedings support the proposition, that delays in relation to higher court offences are greatest in the time prior to appearance in the District Criminal Court or Supreme Court.

An examination of remands in relation to offence categories showed that offence types did not produce a remand pattern in either the District Criminal Court or Supreme Court: cases in a variety of offence categories produce both high and low numbers of remands. The number of remands would appear to reflect the individual characteristics of each offence although some offences readily lend themselves to complex dispute, for example murder, false pretences, and sex offences.

Remands by Record

Examination of record in relation to the number of remands

showed that for both committal proceedings and the District Criminal Court appearance defendants with previous convictions have produced a slightly higher mean of remands than those defendants without previous convictions. In committal proceedings defendants with previous convictions produced a mean of 3.3 remands compared with 2.9 for defendants with no previous convictions. In the District Criminal Court defendants with previous convictions produced a mean of 1.4 remands compared with 1.1 for defendants without previous convictions. The disparity is not great and the likely explanation is that, as shown in table 11, of those defendants remanded for sentence the majority were defendants with previous convictions. Those sentence remands increase the mean of remands for all defendants with previous convictions. Leaving sentence remands aside it cannot be said that a defendant's record affects the number of remands in District Criminal Court cases.

Similar results were obtained when record was examined in relation to the number of remands for Supreme Court offences. In committal proceedings defendants with previous convictions produced a mean of four remands compared with 3.8 for defendants with no previous convictions. In the Supreme Court defendants with previous convictions produced a mean of 2.4 remands compared with 2.2 for defendants without previous convictions. As is the case with District Criminal Court offences the disparity is small and as shown in table 12 nearly all defendants who were remanded for sentence had previous convictions. Those sentence remands have increased the mean of remands for all defendants with previous

convictions and otherwise it cannot be said that a defendant's record affects the number of remands in Supreme Court cases.

Reasons for Remands

Reasons for remands are poorly recorded on court files in both the District Criminal Court and Supreme Court. Only three reasons for remands are regularly clearly expressed: remands to seek legal advice; remands for trial; and remands for sentence or pre-sentence reports. With other remands the only information generally available is whether the remand is upon application of the prosecution or defence. Little can be drawn from that information because on a number of occasions applications by the prosecution for remands are made for the benefit of the defendant whose counsel may not be ready to proceed or may be unable to appear on a particular day. Unfortunately, information on reasons for remands is sketchy and inconclusive.

What can be said is that the pattern of applications is similar in both the Supreme Court and the District Criminal Court. As is expected one prosecution remand is common, particularly where defendants have been arrested overnight and appear the following day. After that initial prosecution remand, however, it would appear that applications are generally made by the defence, sometimes for procedural purposes, such as setting a date for trial, but often for unspecified reasons.

From a total of one thousand and eighty seven remands in District Criminal Court proceedings in the research study only one hundred and seventy one were clearly prosecution applications.

The remaining remands were either unexplained defence applications (166) or procedural remands for trial, plea, committal hearing, defence submissions, sentence, or carry over to the next sessions. The last-mentioned category of remands is interesting. Seventy seven remands were made for the purpose of defendants appearing in subsequent sessions of the District Criminal Court. Presumably some of those remands arose from simple congestion of the court list. Twenty four percent of all District Criminal Court remands were custodial.

From a total of two hundred and fifty one remands in Supreme Court proceedings thirty nine were clearly prosecution applications. The remaining remands were either unexplained defence applications (37) or procedural remands for trial, plea, committal hearing, defence submissions, sentence, or carry over to the next sessions. Like the District Criminal Court findings several remands (25) were made for the purpose of defendants appearing in subsequent sessions of the Supreme Court. Again it can be presumed that some of those remands arose from simple congestion of the court list. Forty nine percent of all Supreme Court remands were custodial.

Thirteen percent of remands to the District Criminal Court following committal were custodial. Twenty seven percent of remands to the Supreme Court following committal were custodial. Gibson found that forty two percent of defendants were remanded in custody following committal.¹⁷ Bottoms and McClean found that thirty nine percent of defendants committed for trial or sentence in Sheffield were remanded in custody compared with a twenty two

percent custody rate expressed in national criminal statistics.¹⁸ Simon and Weatheritt's London study shows that in 1966 forty nine percent of defendants committed for trial or sentence were remanded in custody but by 1969 thirty eight percent of remands following committal were custodial.¹⁹

Bail Status and Disposition

Tables 21 and 22 compare in each of the District Criminal Court and the Supreme Court the predominant bail status of defendants and their bail status at disposition. The category of "predominant bail status" was used because a number of defendants were in custody for a very short time, for example for a few days after their first appearance, and were then released on bail. If their bail status had been recorded as "bail and custody" it would have created a false picture of mixed bail fortunes which failed to show the main bail status. Similarly, those defendants who were on bail until remanded for sentence would, if placed in a "bail and custody" category, show mixed bail fortunes without revealing the main bail status. Where defendants had been on bail and in custody it was generally clear what their predominant bail status was but in unclear cases the amount of time which a defendant spent on bail and in custody was calculated and the bail status for the longest period was regarded as the predominant bail status.

In table 21 the predominant bail status prior to disposition of District Criminal Court defendants is compared with their bail status at disposition. It can be seen that although

two hundred and one defendants were on bail prior to disposition only one hundred and eight were on bail at disposition. The shift in bail status reflects the practice of the District Criminal Court remanding in custody those defendants remanded for sentence. As table 25, below, shows, of one hundred and twenty eight defendants remanded for sentence only eight were remanded on bail. In relation to table 21 it should also be explained that for defendants not remanded for sentence their bail status prior to disposition and at disposition remains the same.

Table 22 compares the bail status prior to disposition of Supreme Court defendants with their bail status at disposition. It can be seen that although twenty five defendants were on bail prior to disposition only ten were on bail at disposition. Like the District Criminal Court findings the shift in bail status reflects the practice of giving custodial remands to those remanded for sentence. As shown in table 26, below, of twenty four defendants remanded for sentence none were remanded on bail. For defendants not remanded for sentence their bail status prior to disposition and at disposition remains the same.

Tables 23 and 24 compare the outcome of offences with the bail status of defendants at the time of sentence. In most cases where a non-custodial sentence has been imposed it is a suspended sentence.

In table 23 the outcome of District Criminal Court offences is compared with the bail status of defendants at the time of sentence. Of one hundred and eight defendants on bail at dis-

position twenty four (22%) were discharged following a jury verdict of not guilty or the entering of a nolle prosequi by the Crown, five (5%) were imprisoned, and seventy nine (73%) were given a non-custodial sentence. Of one hundred and thirty five defendants in custody at disposition one was discharged following a jury verdict of not guilty, seventy five (56%) were imprisoned, and sixty (44%) were given a non-custodial sentence.

Table 24 compares the outcome of Supreme Court offences with the bail status of defendants at disposition. Of ten defendants on bail at disposition seven (70%) were discharged following a jury verdict of not guilty or the entering of a nolle prosequi by the Crown, and the remaining three (30%) were given a non-custodial sentence. Of thirty one defendants in custody at disposition four (13%) were discharged following a jury verdict of not guilty or the entering of a nolle prosequi by the Crown, seventeen (55%) were imprisoned, and ten (32%) were given a non-custodial sentence.

Tables 25 and 26 provide a refined examination of bail status and outcome by showing the bail status at disposition by outcome of only those defendants remanded for sentence in the District Criminal Court and Supreme Court.

Table 25 shows the bail status at disposition by outcome of defendants remanded for sentence in the District Criminal Court. It can be seen that of eight defendants (6%) remanded on bail for sentence only one was imprisoned and the remaining seven were given a non-custodial sentence. Of the one hundred and twenty def-

endants (94%) remanded in custody for sentence sixty five were imprisoned and fifty five were given a non-custodial sentence. In other words, of defendants remanded in custody for sentence nearly half (46%) were not imprisoned.

Table 26 shows the bail status at disposition by outcome of defendants remanded for sentence in the Supreme Court. It can be seen that all of the twenty four defendants remanded for sentence were remanded in custody: fifteen were sentenced to imprisonment and nine were given a non-custodial sentence. Of Supreme Court defendants remanded in custody for sentence 38% were not imprisoned.

Milte ²⁰ and Martin ²¹ provide some comparative Australian material. In a 1969 sample of two hundred cases taken consecutively at Melbourne General Sessions Milte found that thirty percent of custody cases were not disposed of by imprisonment compared with fifty percent of the non-custody cases. Martin, examining two hundred and thirteen prisoners awaiting trial on one particular evening in October 1970, found that of the one hundred and ninety one prisoners who did not get bail sixty seven percent received sentences of imprisonment, twenty five percent received non-custodial sentences, three percent were dealt with in other ways, and five percent were acquitted. Information from overseas relates only to magistrates court proceedings.

TABLE 1
 Mean Time in days of District Criminal Court
 Proceedings by Offence and Plea

n	Offence	Plea			Change of Plea (n)
		No Plea (n)	Guilty (n)	Not Guilty (n)	
68	Break, Enter, Larceny		110 (64)	387 (4)	
13	Break, Enter with Intent	254 (1)	118 (12)		
37	Larceny		90 (27)	173 (9)	170 (1)
17	False Pretences	391 (1)	109 (13)	298 (2)	283 (1)
22	Sex Offences	192 (1)	103 (16)	211 (5)	
8	Serious Driving Offences	100 (1)	105 (3)	104 (4)	
24	Assault- actual bodily harm	183 (4)	173 (13)	204 (5)	225 (2)
5	Common Assault		126 (1)	196 (4)	
25	Cultivate Indian Hemp		119 (21)	184 (2)	149 (2)
11	Sell Indian Hemp		112 (8)	183 (2)	65 (1)
5	Other Drug Offences		119 (5)		
8	Miscellan. Offences		97 (8)		
	mean	209	109	197	203

TABLE 2
 Mean Time in days of Supreme Court Proceedings
 by Offence and Plea

n	Offence	Plea			
		No Plea (n)	Guilty (n)	Not Guilty (n)	Change of Plea (n)
8	Murder		148 (4)	257 (4)	
10	Robbery		89 (5)	199 (4)	193 (1)
14	Sex Offences	560 (1)	116 (3)	239 (9)	186 (1)
9	Miscellaneous Offences	146 (1)	98 (6)	226 (2)	
	mean	353	115	233	190

TABLE 3

Mean Time in days of Committal Proceedings
for District Criminal Court offences by Offence and Plea

n	Offence	Plea			
		No Plea (n)	Guilty (n)	Not Guilty (n)	Change of Plea (n)
68	Break, Enter, Larceny		41 (64)	73 (4)	
13	Break, Enter with Intent	211 (1)	64 (12)		
37	Larceny		42 (27)	106 (9)	30 (1)
17	False Pretences	112 (1)	59 (13)	139 (2)	72 (1)
22	Sex Offences	117 (1)	39 (16)	117 (5)	
8	Serious Driving Offences	42 (1)	41 (3)	59 (4)	
24	Assault-actual bodily harm	57 (4)	102 (13)	127 (5)	99 (2)
5	Common Assault		95 (1)	74 (4)	
25	Cultivate Indian Hemp		62 (21)	98 (2)	54 (2)
11	Sell Indian Hemp		41 (8)	84 (2)	4 (1)
5	Other Drug Offences		52 (5)		
8	Miscellan. Offences		25 (8)		
	mean	89	48	94	46

TABLE 4

Mean Time in days of Committal Proceedings for
Supreme Court offences by Offence and Plea

n	Offence	Plea			
		No Plea (n)	Guilty (n)	Not Guilty (n)	Change of Plea (n)
8	Murder		60 (4)	69 (4)	
10	Robbery		13 (5)	70 (4)	67 (1)
14	Sex Offences	104 (1)	58 (3)	105 (9)	42 (1)
9	Miscellan. Offences	93 (1)	36 (6)	151 (2)	
	mean	99	38	95	55

TABLE 5

Mean Time in days between Committal and First Appearance in District Criminal Court by Offence and Plea

n	Offence	Plea			
		No Plea (n)	Guilty (n)	Not Guilty (n)	Change of Plea (n)
68	Break, Enter, Larceny		44 (64)	40 (4)	
13	Break, Enter with Intent	43 (1)	43 (12)		
37	Larceny		37 (27)	51 (9)	47 (1)
17	False Pretences	71 (1)	48 (13)	76 (2)	71 (1)
22	Sex Offences	51 (1)	43 (16)	48 (5)	
8	Serious Driving Offences	58 (1)	48 (3)	38 (4)	
24	Assault-actual bodily harm	74 (4)	44 (13)	47 (5)	51 (2)
5	Common Assault		95 (1)	74 (4)	
25	Cultivate Indian Hemp		46 (21)	60 (2)	44 (2)
11	Sell Indian Hemp		107 (8)	48 (2)	38 (1)
5	Other Drug Offences		56 (5)		
8	Miscellan. Offences		46 (8)		
	mean	65	43	48	38

TABLE 6

Mean Time in days between Committal and First Appearance
in Supreme Court by Offence and Plea

n	Offence	Plea			
		No Plea (n)	Guilty (n)	Not Guilty (n)	Change of Plea (n)
8	Murder		64 (4)	62 (4)	
10	Robbery		42 (5)	62 (4)	45 (1)
14	Sex Offences	164 (1)	33 (3)	83 (9)	141 (1)
9	Miscellan. Offences	52 (1)	51 (6)	69 (2)	
	mean	108	48	72	93

TABLE 7

Mean Time in days between First Appearance in District
Criminal Court and Disposition by Offence and Plea

n	Offence	Plea			
		No Plea (n)	Guilty (n)	Not Guilty (n)	Change of Plea (n)
68	Break, Enter, Larceny		26 (64)	274 (4)	
13	Break, Enter with Intent	0 (1)	12 (12)		
37	Larceny		11 (27)	16 (9)	93 (1)
17	False Pretences	208 (1)	11 (13)	83 (2)	140 (1)
22	Sex Offences	24 (1)	21 (16)	46 (5)	
8	Serious Driving Offences	0 (1)	16 (3)	8 (4)	
24	Assault-actual bodily harm	53 (4)	28 (13)	20 (5)	75 (2)
5	Common Assault		0 (1)	58 (4)	
25	Cultivate Indian Hemp		10 (21)	26 (2)	52 (2)
11	Sell Indian Hemp		18 (8)	52 (2)	23 (1)
5	Other Drug Offences		11 (5)		
8	Miscellan. Offences		27 (8)		
	mean	55	18	57	118

TABLE 8

Mean Time in days between First Appearance in Supreme Court and Disposition by Offence and Plea

n	Offence	Plea			
		No Plea (n)	Guilty (n)	Not Guilty (n)	Change of Plea (n)
8	Murder		39 (4)	126 (4)	
10	Robbery		34 (5)	68 (4)	81 (1)
14	Sex Offences	292 (1)	25 (3)	51 (9)	3 (1)
9	Miscellan. Offences	1 (1)	12 (6)	7 (2)	
	mean	147	26	66	42

TABLE 9
 Mean Time in days of District Criminal
 Court Proceedings by Record

Record	Mean Time (in days)
Previous Convictions (n = 155)	125
No Previous Convictions (n = 88)	137

TABLE 10
 Mean Time in days of Supreme Court
 Proceedings by Record

Record	Mean Time (in days)
Previous Convictions (n = 28)	182
No Previous Convictions (n = 6)	174
Unknown (n = 7)	-

TABLE 11

Mean Time in days between Conviction in the District
Criminal Court and Sentence by Record

Record	Remanded for Pre-Sentence Report	Remanded for Sentence
Previous Convictions	32 (n = 26)	13 (n = 68)
No Previous Convictions	9 (n = 4)	13 (n = 30)

Total Defendants = 128 (53%)

TABLE 12

Mean Time in days between Conviction and Sentence
in the Supreme Court by Record

Record	Remanded for Pre-Sentence Report	Remanded for Sentence
Previous Convictions	31 (n = 10)	19 (n = 12)
No Previous Convictions	-	7 (n = 1)
Unknown	-	4 (n = 1)

Total Defendants = 24 (59%)

TABLE 13

Bail Status by Mean Time in days of Proceedings
in the District Criminal Court

Bail Status	Mean Time (days)
Custody	75 (n = 25)
Bail	136 (n = 102)
Bail and Custody	138 (n = 116)

n = 243

TABLE 14

Bail Status by Mean Time in days of Proceedings
in the Supreme Court

Bail Status	Mean Time (days)
Custody	169 (n = 9)
Bail	205 (n = 10)
Bail and Custody	182 (n = 22)

n = 41

TABLE 15

Plea in the District Criminal Court by the number of Remands in the Magistrates Court and the District Criminal Court

Mean	Plea	Number of Remands															n	
		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14		15
5.9	No Plea			1	1	1		2	1		1	1						8
4.0	Guilty	8	32	41	56	22	11	11	6	2	2							191
6.1	Not Guilty			1	5	3	8	7	2	6	1		2				1	36
7.9	Change of Plea					2	1		1	1	1		1				1	8
	Total	-	8	34	47	62	31	20	15	13	5	3	3	-	-	-	2	243

mean = 4.5

TABLE 16

Plea in the Supreme Court by the number of Remands in the Magistrates Court and the Supreme Court

Mean	Plea	Number of Remands															n	
		0	1	2	3	4	5	6	7	8	9	10	11	12	13	14		15
9.5	No Plea						1									1		2
4.7	Guilty				4	5	5	2	1	1								18
7.2	Not Guilty					4	1	3	2	3	3	2		1				19
6.0	Change of Plea						1		1									2
	Total	-	-	-	4	9	8	5	4	4	3	2	-	1	-	1	-	41

mean = 6.1

TABLE 17

Plea in the District Criminal Court by the number of Remands in the Magistrates Court

Mean	Plea	Number of Remands											n
		0	1	2	3	4	5	6	7	8	9	10	
3.6	No Plea		1	1	2	2		2					8
3.0	Guilty		25	54	56	32	8	10	5			1	191
4.1	Not Guilty		1	2	10	10	7	3	3				36
3.5	Change of Plea		1	2	1	2	1		1				8
	Total	-	28	59	69	46	16	15	9	-	-	1	243

mean = 3.1

TABLE 18

Plea in the Supreme Court by the number of Remands in the Magistrates Court

Mean	Plea	Number of Remands											n
		0	1	2	3	4	5	6	7	8	9	10	
4.5	No Plea					1	1						2
3.2	Guilty		3	1	6	6	1	1					18
4.6	Not Guilty				6	4	6	1			1	1	19
3.5	Change of Plea				1	1							2
	Total		3	1	13	12	8	2			1	1	41

mean = 3.9

TABLE 19

Plea in the District Criminal Court by the number
of Remands in the District Criminal Court

Mean	Plea	Number of Remands										n	
		0	1	2	3	4	5	6	7	8	9		10
2.3	No Plea	4	1				2		1				8
1.0	Guilty	58	105	17	5	3	2		1				191
1.9	Not Guilty	7	12	9	2	3		1	1		1		36
4.5	Change of Plea		1	2			2	1	1	1			8
	Total	69	119	28	7	6	6	2	4	1	1		243

mean = 1.3

TABLE 20

Plea in the Supreme Court by the number of
Remands in the Supreme Court

Mean	Plea	Number of Remands										n	
		0	1	2	3	4	5	6	7	8	9		10
5.0	No Plea	1										1	2
1.5	Guilty	2	10	3	2	1							18
2.5	Not Guilty	1	7	3	2	3	2	1					19
2.5	Change of Plea		1			1							2
	Total	4	18	6	4	5	2	1				1	41

mean = 2.1

TABLE 21

Bail Status before and at Disposition for
District Criminal Court Offences

	On Bail at Disposition	In Custody at Disposition	n
On Bail Prior to Disposition	108	93	201
In Custody Prior to Disposition	0	42	42

n = 243

TABLE 22

Bail Status before and at Disposition for
Supreme Court Offences

	On Bail at Disposition	In Custody at Disposition	n
On Bail Prior to Disposition	10	15	25
In Custody Prior to Disposition	0	16	16

n = 41

TABLE 23

Bail Status at Disposition by Outcome for
District Criminal Court Offences

	Outcome			n
	Discharged	Custodial Sentence	Non-Custodial Sentence	
On Bail at Disposition	24	5	79	108
In Custody at Disposition	1	75	60	135

n = 243

TABLE 24

Bail Status at Disposition by Outcome for
Supreme Court Offences

	Outcome			n
	Discharged	Custodial Sentence	Non-Custodial Sentence	
On Bail at Disposition	7		3	10
In Custody at Disposition	4	17	10	31

n = 41

TABLE 25

Bail Status at Sentence by Outcome for
District Criminal Court Defendants remanded for Sentence

	Outcome		n
	Custodial	Non-Custodial	
On Bail at Sentence	1	7	8
In Custody at Sentence	65	55	120

Total Defendants = 128

TABLE 26

Bail Status at Sentence by Outcome for
Supreme Court Defendants remanded for Sentence

	Outcome		n
	Custodial	Non-Custodial	
On Bail at Sentence			0
In Custody at Sentence	15	9	24

Total Defendants = 24

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- 1 N.S.W. Bureau of Crime Statistics and Research, Court Statistics 1977, Statistical Report 9, Series 2.
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- 3 The present study used the mean in its calculations.
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- 6 Gibson, E., Time Spent Awaiting Trial, Home Office Research Unit, 1960.
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- 8 Bottomley, A.K., Prison Before Trial, 1970, Bell and Sons, London, p. 28.
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- 11 Gibson, supra n. 5, table 1.
- 12 Simon and Weatheritt, supra n. 1, p. 34.
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- 14 Gibson, supra n. 5, table 5.
- 15 Gibson, supra n. 5, table 10.
- 16 Bottoms and McClean, supra n. 3, p. 211.
- 17 Gibson, supra n. 5, table 16.
- 18 Bottoms and McClean, supra n. 3, p. 211.
- 19 Simon and Weatheritt, supra n. 1, pp. 50-51.
- 20 Milte, K.L., "Pre-Trial Detention," (1969) Vol. 1 No. 4, A.N.Z.J. Crim. 225.
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CHAPTER 6SUMMARY AND RECOMMENDATIONSAdelaide Magistrates Court

1. Four hundred and ninety eight Adelaide Magistrates Court cases were examined.
2. Sixty one percent of defendants were arrested and thirty nine percent were summonsed.
3. Twenty nine percent of defendants were disposed of at first appearance.

Time

4. Sixty two percent of cases were dealt with in one month or less, seventy five percent were dealt with in two months or less, and eighty two percent of cases were dealt with in three months or less.
5. The mean time to dispose of cases is 2.1 months from the first court appearance to disposition.
6. Defendants pleading guilty took a mean time of 1.9 months to be dealt with.
Defendants pleading not guilty took a mean time of 3.5 months to be dealt with.
7. Defendants at large without bail at disposition were dealt with in a mean time of 0.9 months. Defendants on bail at disposition were dealt with in a mean time of two and a half months. Defendants in custody at disposition were dealt with in a mean time of four and a half months. See p. 43.

8. Defendants with legal representation took a mean time of 2.7 months to be dealt with. Unrepresented defendants took a mean time of 1.1 months to be dealt with.
9. Twenty nine percent of cases produced no remands. Seventy three percent of cases produced two remands or less.
10. The mean number of remands is 1.8.
11. Defendants pleading guilty produced a mean of 1.6 remands. Defendants pleading not guilty produced a mean of 2.8 remands.
12. Four percent of defendants were remanded for sentence or pre-sentence report. Only two defendants were remanded in custody for sentence: both were sentenced to imprisonment.
13. Defendants with legal representation produced a mean of 2.4 remands.
Unrepresented defendants produced a mean of 0.7 remands.

Bail Status

14. Of fifty defendants sentenced to imprisonment, sixty four percent were on bail or at large prior to sentence.

District Criminal Court and Supreme Court

15. Two hundred and forty three District Criminal Court cases were examined.
16. Forty one Supreme Court cases were examined.

Time

17. Defendants pleading guilty in the District Criminal Court were dealt with in a mean time of 109 days from first court appearance to disposition. Defendants pleading not guilty

- in the District Criminal Court were dealt with in a mean time of 197 days from first court appearance to disposition.
18. Defendants pleading guilty in the Supreme Court were dealt with in a mean time of 115 days.
Defendants pleading not guilty in the Supreme Court were dealt with in a mean time of 233 days.
 19. Committal proceedings for District Criminal Court offences took a mean time of 48 days for those pleading guilty and 94 days for those pleading not guilty.
 20. Committal proceedings for Supreme Court offences took a mean time of 38 days for those pleading guilty and 95 days for those pleading not guilty.
 21. Defendants pleading guilty wait a mean time of 43 days between committal and first appearance in the District Criminal Court while defendants pleading not guilty wait a mean time of 48 days between committal and first appearance in the District Criminal Court.
 22. Defendants pleading guilty in the Supreme Court wait a mean time of 48 days between committal and first appearance in the Supreme Court while defendants pleading not guilty wait a mean time of 72 days between committal and first appearance in the Supreme Court.
 23. Defendants pleading guilty spend a mean time of 18 days in the District Criminal Court.
Defendants pleading not guilty spend a mean time of 57 days in the District Criminal Court.
 24. Defendants pleading guilty spend a mean time of 26 days in

the Supreme Court. Defendants pleading not guilty spend a mean time of 66 days in the Supreme Court.

25. In District Criminal Court proceedings defendants with previous convictions took a mean time of 125 days to be disposed of while defendants without previous convictions took a mean time of 137 days to be disposed of.
26. In Supreme Court proceedings defendants with previous convictions took a mean time of 182 days to be disposed of while defendants without previous convictions took a mean time of 174 days to be disposed of.
27. Fifty three percent of District Criminal Court defendants were remanded for sentence. Defendants not awaiting pre-sentence reports waited a mean time of 13 days to be sentenced. Defendants awaiting pre-sentence reports waited a mean time of 32 days to be sentenced where previous convictions were involved and 9 days where defendants did not have previous convictions.
28. Fifty nine percent of Supreme Court defendants were remanded for sentence. Defendants remanded for pre-sentence reports waited a mean time of 31 days for sentence. Defendants remanded for sentence but not awaiting pre-sentence reports waited a mean time of 19 days for sentence.
29. In the District Criminal Court defendants remanded in custody were dealt with in a mean time of 75 days, defendants on bail were dealt with in a mean time of 136 days, and defendants experiencing both bail and custody were dealt with in a mean time of 138 days.

30. In the Supreme Court defendants remanded in custody were dealt with in a mean time of 169 days, defendants on bail were dealt with in a mean time of 205 days, and defendants experiencing both bail and custody were dealt with in a mean time of 182 days.

Remands

31. District Criminal Court Cases produced a mean of 4 remands where defendants pleaded guilty and 6.1 remands where defendants pleaded not guilty.
32. Supreme Court cases produced a mean of 4.7 remands where defendants pleaded guilty and 7.2 remands where defendants pleaded not guilty.
33. In committal proceedings for District Criminal Court offences, defendants pleading guilty produced a mean of 3 remands and defendants pleading not guilty produced a mean of 4.1 remands.
34. In committal proceedings for Supreme Court offences, defendants pleading guilty produced a mean of 3.2 remands and defendants pleading not guilty produced a mean of 4.6 remands.
35. In the District Criminal Court defendants pleading guilty produced a mean of 1 remand and defendants pleading not guilty produced a mean of 1.9 remands.
36. In the Supreme Court defendants pleading guilty produced a mean of 1.5 remands and defendants pleading not guilty produced a mean of 2.5 remands.
37. In both the District Criminal Court and the Supreme Court

defendants with previous convictions produced a slightly higher mean number of remands than defendants without previous convictions.

Bail Status and Disposition

38. Of 201 District Criminal Court defendants on bail prior to disposition 108 were on bail at disposition.
39. Of 25 Supreme Court defendants on bail prior to disposition 10 were on bail at disposition.
40. Of 108 District Criminal Court defendants on bail at disposition, 24 were discharged, 5 were imprisoned, and 79 were given a non-custodial sentence.
Of 135 District Criminal Court defendants in custody at disposition, 1 was discharged, 75 were imprisoned, and 60 were given a non-custodial sentence.
41. Of 10 Supreme Court defendants on bail at disposition, 7 were discharged and 3 were given a non-custodial sentence.
Of 31 Supreme Court defendants in custody at disposition, 4 were discharged, 17 were imprisoned, and 10 were given a non-custodial sentence.
42. Of the 128 District Criminal Court defendants remanded for sentence, 8 were remanded on bail, 7 were given non-custodial sentences and 1 was imprisoned. Of the 120 defendants remanded in custody for sentence, 65 were imprisoned and 55 were given non-custodial sentences.
43. All of the 24 Supreme Court defendants remanded for sentence were remanded in custody: 15 were imprisoned and 9 were given non-custodial sentences.

RECOMMENDATIONS

Introduction

Defendants and the community have a stake in fair, efficient and speedy criminal court proceedings. Unnecessary delays in the criminal courts cannot be tolerated.

For defendants on bail awaiting hearing, court delays contribute to anxiety about an uncertain future and may jeopardize family relationships and jobs.

For defendants in custody awaiting hearing the impact of delays is marked. Several commentators have given attention to the problems of the unconvicted prisoner held in custody.¹ He will lose money, will likely lose his job, and may lose his accommodation. Access to legal advisers will be limited and preparation of his defence will as a result be impaired. Defendants appearing in court from custody will likely present a "dishevelled and demoralised appearance"² which may not invite favourable response from the court. Overseas studies suggest that a remand in custody increases the likelihood of a guilty plea and prejudices the verdict and severity of sentence.³

A languishing criminal justice system is no credit to a community concerned to deal justly with its offenders. Moreover, it may well be, as leading commentators have suggested, that delays in the process of dealing with defendants reduce the deterrent impact of sentences.⁴

To a large extent the research findings speak for themselves but two matters demand specific attention: the time taken

to dispose of cases, and sentence remands in the higher courts.

(a) Delays

The time taken to dispose of Adelaide Magistrates Court offences is not alarming given that the study sampled only serious offences; less serious offences could be expected to be dealt with more quickly. It should also be recognised that the mean time to dispose of Adelaide Magistrates Court offences has been extended by cases where defendants have absconded during proceedings and have not been apprehended for several months, in some cases several years. Nevertheless, it cannot be overlooked that eighteen percent of defendants prosecuted in the Adelaide Magistrates Court took more than three months to be dealt with.

The time taken to dispose of District Criminal Court and Supreme Court cases is considerable, with guilty pleas taking approximately four months and not guilty pleas taking seven to eight months. By any standards of justice these are unacceptable delays and measures must be taken to reduce the time taken to dispose of matters in the higher criminal courts.

The findings show that the longest delays occur in the period before defendants appear in the District Criminal Court and the Supreme Court, although remands in those courts because of list congestion cannot be ignored. The study also shows that remands for higher court offences are concentrated in the Magistrates Court where defendants appear for committal proceedings.

Sadly, reasons for remands are poorly recorded or inadequately explained in all courts and it is recommended that

detailed reasons for remands be recorded on court files. It is further recommended that research be conducted to identify the reasons for remands at the various stages of the criminal court process. Until reasons for remands are known it is difficult to identify abuses within the system or superfluous remands. The concern must be to identify those factors which unnecessarily delay proceedings.

What is apparent is that police and Crown prosecutors are not responsible for the bulk of remands: defendants and their legal representatives seek most of the remands, albeit often in compliance with procedure. And, of course, many remands are expected and beyond challenge. For example: an overnight arrest usually produces a remand when the defendant appears in court the next day; counsel with an incomplete brief may seek a remand to obtain further instructions; a remand may be necessary to allow a defendant to apply for legal aid. Similarly, a variety of matters can be expected to delay committal proceedings: unavailable witnesses, for example. In contrast, many remands can be avoided. Over-committed counsel who continually seek remands because of pressing cases in other courts should brief the otherwise delayed case to appropriate counsel. It is acknowledged that some clients may feel uncomfortable with unfamiliar counsel but a briefing conference with the attendance of the client should overcome potential difficulties. Ill-prepared counsel who seek long remands "for further instructions" should be granted only short remands and at their re-attendance in court they should be required to explain the need for further delays. Similarly, defendants

seeking remands should be limited to short remands and should be required to explain the need for further delays. While this study has not identified the length of each remand, observations in the Adelaide Magistrates Court made by the writer over several years suggest that a three to five week remand is readily obtainable and will likely be granted more than once in the same case.

In the interests of reducing Magistrates Court delays it is recommended that a limit be placed on the length of each remand unless in the opinion of the court special reasons justify an extended remand. A first remand should be no longer than three weeks and subsequent remands should be no longer than two weeks. If a court determines that special reasons justify an extended remand then the special reasons should be recorded on the court file. It is further recommended that at each remand defendants or counsel be required to explain delays and to indicate to the court the state of their preparation for the proceedings.

Delays between committal and sentence or trial are not inconsiderable: the study shows a mean waiting time of between six and ten weeks. As explained earlier, procedure largely dictates when a defendant appears in the District Criminal Court or Supreme Court but it cannot be overlooked that some defendants awaiting trial are delayed by congestion of the court list. A defendant who is committed for trial or sentence in the first half of a month will normally appear in the higher court in the following month. This is certainly so for defendants pleading guilty but if courts are unavailable to deal with all trials then some defendants awaiting trial may be remanded until the criminal sessions of the

second month after the defendant is committed. A defendant who is committed for trial or sentence in the second half of a month will not appear in the higher court in the following month but rather he will appear in the month after that. In the ordinary course of events guilty pleas would be then disposed of but if courts are unavailable to deal with all trials some defendants may be remanded until the third month after the defendant is committed.

It is recommended that defendants committed in a particular month be dealt with by the higher courts in the following month. Appropriate procedural changes should be made to accommodate the recommendation and extended resources should be provided to the courts so that trials are not unreasonably delayed because courts or judges are unavailable.

Delays in the District Criminal Court and Supreme Court compare favourably with the delays experienced by defendants prior to their higher court appearance. Defendants pleading guilty are dealt with in three to four weeks and many are sentenced on the day of first appearance. Trials take considerably longer and are completed in a mean time of approximately two months although unusually long trials increase the mean time. The concern in the higher courts must be with delays created by congestion of the court list. It is no credit to a system of criminal justice that trials are delayed by limited resources. If more judges and courts are needed they should be provided.

(b) Sentence Remands

More than half of defendants in each of the District

Criminal Court and Supreme Court are remanded for sentence and nearly all of those defendants are remanded in custody, despite most being on bail prior to conviction. A large proportion of defendants remanded in custody for sentence are not subsequently imprisoned, usually because they receive suspended sentences.

The reality is that many defendants are on bail prior to conviction, remanded in custody for sentence, and subsequently given a non-custodial sentence. While it is acknowledged that many defendants in the District Criminal Court are eligible for terms of imprisonment it is difficult to accept that those defendants remanded in custody and subsequently given a non-custodial sentence are worthy of suspended sentences only or even primarily because of their custodial remand for sentence. It is an incapable conclusion that a significant number of defendants in the higher courts, but particularly in the District Criminal Court, are remanded in custody for a "taste of prison" before a suspended sentence is imposed. The practice is an improper use of sentence remands, a direct threat to the jobs of defendants who are not sentenced to imprisonment, and an unnecessary burden on the prison system. Moreover, for those who suggest that custodial sentence remands improve the deterrent effect of suspended sentences, it should be pointed out that research conducted by the South Australian Department of Correctional Services has shown not only that the suggestion is unfounded but also that defendants remanded in custody prior to receiving a suspended sentence are more likely to be imprisoned subsequent to receiving the suspended sentence than those with no experience of imprisonment before receiving the

suspended sentence.⁵

The Criminal Law and Penal Methods Reform Committee of South Australia suggested in 1975 that sentence is often deferred "owing to the necessity to obtain further information concerning the accused."⁶ The committee overlooked the practice of remanding an accused for sentence even when no further information on the accused is being sought. The committee recommended that where a custodial sentence was not likely to be imposed on a defendant he should be granted bail pending the preparation of pre-sentence or psychiatric reports. That recommendation must be supported and extended. All defendants who are remanded for sentence should be remanded on bail unless an immediate term of imprisonment is likely to be imposed. The fact that nearly half of defendants remanded in custody for sentence are not subsequently imprisoned suggests that for many defendants an immediate term of imprisonment is not likely at the time they are remanded for sentence.

REFERENCES

- 1 See, for example:
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Armstrong, S., Essays on Law and Poverty : Bail and Social Security, Australian Government Commission of Enquiry into Poverty, 1977, Chapter 2.
- 2 Armstrong, supra n. 1, at p. 6.
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- 4 Zimring, F.E., and Hawkins, G.J., Deterrence, 1973, Uni. of Chicago Press, pp. 246-247.
- 5 Dengate, C.E., The Use of Suspended Sentences in South Australia - a summary, S.A. Department of Correctional Services, pp. 44-46.
- 6 Criminal Law and Penal Methods Reform Committee of South Australia, Third Report, Court Procedure and Evidence, 1975, p. 60.

APPENDIX 1Offence Classifications for Adelaide Magistrates Court sample ¹

<u>Classification</u>	<u>Offence</u>
Assault	- Assault, assault police, resist arrest.
False Pretences	- False pretences, fraud, embezzlement.
Larceny	- Larceny and receiving.
Break, enter and larceny	- Break, enter and larceny.
Wilful Damage	- Wilful damage, other damage.
Dangerous Driving	- Dangerous driving, negligent driving.
Drug Offences	- Possessing Indian Hemp, possessing heroin, smoking Indian Hemp, using heroin.
Indecent Behaviour	- Indecent behaviour, indecent language, indecent publications.
Offensive Behaviour	- Disorderly behaviour, fighting in a public place.
Prostitution	- Soliciting, keeping a brothel, living off the earnings of prostitution.
Weapon Offences	- Carrying offensive weapons, discharging a firearm.
Betting and Gambling	- Illegal betting, occupying a common gaming house, giving a false name when suspected of illegal betting.
Offences against order	- Accessory, obstructing police, loitering, refusing to give name to police.

Miscellaneous Offences - Unlawfully on premises,
licensing offences, perjury,
intent to commit a felony,
escape from custody, killing
protected animals, illegal
fires, threatening witness.

1 In the interests of simplicity offences have been only
broadly described. The South Australian Office of Crime
Statistics has compiled a comprehensive list of all offences
which is used in data collection for its statistical reports.

APPENDIX 2Offence Classifications for District Criminal Court sample¹

<u>Classification</u>		<u>Offence</u>
Break, enter and larceny	-	Break, enter and larceny.
Break and enter with intent	-	Break and enter with intent.
Larceny	-	Larceny and receiving.
False Pretences	-	False pretences, attempted false pretences, fraudulent conversion, falsification of accounts, embezzlement.
Sex offences	-	Unlawful sexual intercourse, gross indecency, indecent assault.
Assault occasioning actual bodily harm	-	Assault occasioning actual bodily harm.
Assault	-	Common assault, assault with intent to rape.
Selling/Trading Indian Hemp	-	Selling or trading Indian Hemp, possessing Indian Hemp for sale.
Cultivating Indian Hemp	-	Cultivating Indian Hemp, permitting premises to be used for cultivating Indian Hemp.
Other Drug	-	Possessing Indian Hemp, possessing heroin, smoking Indian Hemp, altering prescriptions.
Serious Driving	-	Causing death by driving, injuring by driving.
Miscellaneous Offences	-	Escape prison or custody, causing malicious damage, making a false statement, perjury, accessory after the fact.

¹ In the interests of simplicity, offences have been only broadly described.

The South Australian Office of Crime Statistics has compiled a comprehensive list of all offences which is used in data collection for its statistical reports.

APPENDIX 3Offence Classifications for Supreme Court Sample ¹

<u>Classification</u>	<u>Offence</u>
Murder	- Murder, attempted murder.
Sex Offences	- Rape, indecent assault, unlawful sexual intercourse
Robbery	- Armed robbery, robbery.
Miscellaneous offences	- Arson, unlawful wounding, forge and utter, sale/ trade prohibited drugs.

1 In the interests of simplicity offences have been only broadly described.

The South Australian Office of Crime Statistics has compiled a comprehensive list of all offences which is used in data collection for its statistical reports.

