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A descriptive analysis of magisterial remand custody orders for offenders who receive a non-custodial sentence outcome

Maeve B. Barry
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A DESCRIPTIVE ANALYSIS OF MAGISTERIAL REMAND
CUSTODY ORDERS FOR OFFENDERS WHO RECEIVE
A NON-CUSTODIAL SENTENCE OUTCOME

By

Maeve B. Barry

A thesis submitted in Partial Fulfillment
of the Requirements for the Award of
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USE OF THESIS

The Use of Thesis statement is not included in this version of the thesis.

Abstract

When an offender receives a non-custodial sentence following remand custody then concerns must be raised that the pre-trial remand imprisonment was unnecessary and improper, with judicial, economic and humanitarian consequences that run counter to the philosophical and legislative expectations of a democratic justice system. This study analysed the use of remand custody orders over a six month charge period, by magistrates in Western Australia, to determine what proportion of offenders spent time in remand custody prior to receiving a non-custodial sentence. The results indicate that magistrates use the remand custody facility as a "short, sharp shock" to deter future offending, and to impose a defacto custodial sentence as "taste" of imprisonment. The results of the study revealed that of 414 offenders received into remand custody, 221 (53%) received a non-custodial sentence. Of these 221 offenders, 55% had never been in prison before, 71% had no previous breaches of bail, 68% were remanded without bail, and 14% had no previous criminal history. The average time spent in custody was 16.34 days (19.91SD). The total number of days spent in custody was 3,612, at an estimated government cost of \$0.5 million. Aboriginality was a

significant factor between offenders remanded in custody and those at liberty in the community. However, Aboriginality was not significant with regard to inability to meet bail conditions. A comparative analysis between offenders remanded in custody and those in the community revealed significant differences with previous breaches of bail, no previous criminal history, age of onset of offending and current age. Notwithstanding this, by a process of elimination of risk factors that are cited in the legislation (Bail Act, 1982), as criteria for release to bail or remand in custody, the study concluded there was no justification for the remand custody prior to a non-custodial sentence. Recommendations were made for further research to examine the legislation and decision making that determines the imprisonment of unconvicted persons. Research is also required to evaluate the humanitarian consequences of remand custody for offenders and their families.

Declaration

"I certify that this thesis does not incorporate, without acknowledgement, any material previously submitted for a degree or diploma in any institution or higher education and that, to the best of my knowledge and belief, it does not contain any material previously published or written by another person, except where due reference is made in the text"

Signed: _____

Date: _____

Sept 24th, 1997

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Transalation; My thanks to my children **Declan, Keelin and Eveanna**, for their never ending love and faith in my ability which were the source of my motivation. I am so proud of your Social Justice beliefs in the importance of my research "the forgotten prisoners".

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CHAPTER ONE: INTRODUCTION

"Two basic tenets of faith in our justice system is that every man [sic] is presumed innocent until found guilty, and that no punishment may be imposed except after proper sentence" (Armstrong, Mossman, and Sackville, 1977, p.2). Consistent with this philosophy, the remand imprisonment of an unconvicted person raises serious questions. In the case of an unconvicted defendant imprisonment should be a seriously considered and seldom used option of the Magistrates Court.

Liberty is one of humanity's most fundamental rights. Together with the presumption of innocence it forms the foundation upon which our justice system is built. When offenders are remanded in pre-trial or pre-sentence remand custody prior to receiving a non-custodial sentence then serious consideration must be given to whether the generally accepted philosophical and legislative (Sec.19A, Criminal Code) requirement of imprisonment as a last resort is being eroded.

Apart from the question of justice, there are also humanitarian issues attached to remanding offenders in custody prior to receiving a non-custodial sentence. One

long-term social impact of this pre-trial or pre-sentence period is that offenders and their families may carry the cost of the remand custody long after the non-custodial sentence has expired (Armstrong et al. 1977). Further, criminogenic factors of imprisonment may have long term impact on society by an increase in criminal behaviour (O'Malley, Coventry, & Walters, 1993). There are fears that communicable diseases may be carried from the prison environment into the general community (Kerr, 1990). For the remandee the distress of remand imprisonment can be a contributing factor to suicide in prison (Liebling, 1994; Baldwin, 1988).

Another significant perspective to remand imprisonment is the economic burden that it can place on the taxpayer. Morgan (1989, p.481) attributes prison overcrowding to the massive increase in unconvicted prisoners. Remand rates in Western Australia have doubled in the last decade (Biles, 1990; Walker, Hallinan and Dagger, 1992; Australian Bureau of Statistics (ABS), 1996). This has placed an economic burden on the taxpayer.

This study will examine the judicial, economic and humanitarian issues as a consequence of one aspect of the use of remand custody by magistrates.

Background to the Study

Magistrates use the remand in custody option where bail is not a consideration during the pre-trial, pre-sentence and appeal period. In broad terms, the criteria laid down by the West Australian Bail Act 1982 for remanding in custody are:

- (i) the defendant may fail to appear in court;
- (ii) the defendant may commit an offence ;
- (iii) the protection of the community;
- (iv) the defendant may interfere with witnesses;

All persons regardless of their offences are entitled to apply for bail (Bail Act, 1982, p.78). In essence, remand custody is an option for the protection of the community (ii,iii,iv) or the maintenance of justice(i,iv).

There are a number of stages during the pre-trial and pre-sentence period when a remandee can be imprisoned. These are:

- ◆ remanded in custody without bail
- ◆ remanded with bail but unable to meet bail conditions so the defendant remains in custody
- ◆ remanded on bail in the community and subsequently imprisoned for a pre-sentence report (PSR)

- ♦ remanded on bail and has the bail withdrawn by the magistrate at the onset of the trial.
- ♦ remanded on bail and has the bail withdraw by a surety or police.

Remand custody was not intended to be used as a punishment or a deterrent. According to the Bail Act, 1982, Part C. Sec. 4 (a), even for those offenders found guilty and waiting sentence, remand custody should not be used where the sentence is likely to be non-custodial.

Biles (1983, p.12) calls for a detailed study of remand imprisonment saying the term "unconvicted prisoner" is a contradiction. It is not known how many non-custodial sentences imply that remand custody was never necessary for the offender. The criteria used by magistrates for granting bail or remanding in custody do not themselves demonstrate strength of evidence for a guilty verdict or custodial sentence. In broad terms, the presumption of guilt not innocence prevails when a person is remanded in custody.

Significance of the Study

This study is significant because of the large and continual increase in the number of remandees. This is particularly so in Western Australia where the remand rate has doubled in the past decade (Biles, 1990) with a

dramatic increase in the remand rate between 1996 and 1997 (Appendix 'A'). Research has shown that significant numbers of remandees held in custody later receive non-custodial sentences (Walker, 1985; Wilke 1993). In addition, it cost the West Australian government approximately \$132 per prisoner per day to keep a person in a maximum security institution (Ministry of Justice, personal communication, August 26, 1997).

These facts demonstrate the extent of the problem. There are issues of justice, human rights and economic accountability when an individual is detained in custody instead of remaining in the community in the instances where he/she has a non-custodial sentence imposed.

From an economic perspective this study is significant because in West Australia, remandees are occupying prison bed space in Casuarina and Canning Vale prisons to prevent overcrowding in C.W.Campbell Remand Centre. The State Government has intimated that a new metropolitan prison will be built in the near future to alleviate prison overcrowding (The West Australian, August 22, 1996, p.1). Remand imprisonment has the highest costs as most remandees are classified as medium and maximum security. It costs approximately \$235,487 per prisoner bed space to build a new prison in Western

Australia (Ministry of Justice, personal communication, August 26, 1997).

A reduction in remand imprisonment could save the taxpayer that cost. Investigation of the use of remand in custody by magistrates has a direct bearing on the taxpayer's contribution to the justice system.

This study is significant because it will examine the humanitarian implications of remand imprisonment. Indications are that imprisoning remandees, especially first time remandees, may increase the level of criminal activity which magistrates are seeking to reduce (Armstrong et al. 1977). Gray's (1994, p.571-2) study found that prison is more criminogenic than other rehabilitative interventions and "increased crime the most". Coumarelos and Weatherburn (1995, p.57) say there are moral and practical reasons for minimising formal contact with a criminal justice system that is inherently criminogenic.

The study is also significant because of the consequences of pre-trial imprisonment in terms of cost to the remandee and his/her family. The impact on children of a parent who has been imprisoned is often underestimated. According to Baldwin (1988, p.58) the effects of imprisonment are likely to be destructive

resulting in a de-stabilizing effect on the family unit. The loss of employment and income, education, personal relationships and the separation of a parent from their children can have a social cost exceeding the remand or sentence term (Armstrong et al., 1977).

Imprisonment is a distressing time for most people. It requires that person to adapt to the extraordinary environment and to change aspects of his/her behaviour in order to survive (Baldwin, 1988, p.58). Remand imprisonment has been identified as one of the situational triggers that can induce acts of self-harm (Liebling, 1994, pp.404-5). Acts of self-harm are probably the most common form of behavioural disturbance that can occur in response to environmental stress (Baldwin, 1988, p.63).

In spite of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1987), Aboriginal deaths in custody have reached the highest figure since recording began in 1980 (Dalton, 1996, p.144). This study is particularly significant given the fact that West Australia now has the unenviable highest rate of over-representation of Aboriginal prisoners in Australia (Biles 1993, p.5, National Correctional Statistics, 1996, p.3). Therefore, it is of paramount

importance that the issue of remand imprisonment as a last rather than a first resort is examined.

Internal figures quoted by the Ministry of Justice state that at least 20% of prisoners in West Australian prisons are hepatitis 'C' positive (Dr. Brockman, personal communication, 18 October, 1996). Notwithstanding an individual's responsibility for participating in high-risk behaviour, remanding an unconvicted person to an environment where he/she could acquire an infectious disease should be a magisterial option of last resort.

Previous research (Armstrong et al., 1977; Biles, 1990; Challinger, 1988; Henham, 1990; Hogarth, 1974; Parker, Summer and Jarvis, 1982; Walker, 1985; Wice, 1974) has skirted around the edges of some of the issues raised in this thesis. To date the researcher has not found any studies that have focused specifically on the use of remand custody orders by magistrates in the context of non-custodial sentences.

Apart from the philosophical, economic and humanitarian issues raised, this research is particularly timely and relevant given the implementation of the West Australian Sentencing Act 1995 in November 1996. This legislation places an emphasis on non-custodial sentences

and prevents a magistrate from imposing a custodial sentence of less than three months. The impact of this sentencing restriction could lead to a tendency for increased use of pre-trial and pre-sentence remand custody as a defacto custodial sentence or a deterrent to re-offending. Further research into the phenomenon of the sharp increase in remand figures in West Australia since December 1996 (Appendix 'A') may establish links with the introduction of the new legislation.

Remand imprisonment is an under-researched area. Given the judicial fundamentals of the presumption of innocence and imprisonment as a last resort, this research will provide a significant baseline for further investigation in this important area.

This present study is also significant because it will impact on the judicial, economic and social planning for West Australian's criminal justice system by highlighting the use of magisterial remand custody orders.

Purpose of the Research

The primary purpose of this research is to:
Analyse the use of remand custody orders by West Australian magistrates for offenders who receive a non-custodial sentence.

The secondary purpose is to contribute to the literature on the philosophical and justice issues of remand imprisonment.

Objectives of the Research

The specific objectives of the research are:

- ◆ To identify the proportion of offenders who spend some time in remand custody prior to receiving a non-custodial sentence.
- ◆ To analyse the nature of time spent on a remand custody order i.e. remanded in custody for a Pre-Sentence Report (PSR), and/or bail granted.
- ◆ To quantify the cost to the taxpayer of the custodial remand for this group of offenders.
- ◆ To analyse the demographic characteristics of the custodial remand group

- ◆ To compare the demographic characteristics of this target group with offenders who are remanded in the community and who receive a non-custodial sentence.

CHAPTER TWO: LITERATURE REVIEW

Issues of Justice

Fundamentals of Justice

Depriving an unconvicted, presumed innocent, person of their liberty unnecessarily runs counter to the ideologies, philosophies and legislation that underpin our justice system. According to Hall (1996) there is general acceptance that loss of liberty is the sole form of punishment that imprisonment provides. Hall (1996, p.397) continues "To achieve punishment, mere loss of liberty is necessary". This being the case, to avoid punishment of untried persons, remand imprisonment should be used as the very last resort after full deliberations that all other options pose a real risk to the community or the course of justice.

Pre-trial imprisonment is under-publicised. According to Clifford (1987, p.659) the rights of individuals before conviction might be getting less than sufficient attention. While there is constant media and public debate about post trial sentencing issues, the scales constantly tipping over and back between severity and leniency, remand prisoners remain the "forgotten prisoners" (Biles, 1970, Armstrong et al.1977).

One of the elemental tenets of the Magna Carta was that there should be no punishment without trial. There is a vast array of literature expounding the different theories and concepts of judicial punishment, all relating to punishment in the context of it being a consequential legal sanction (Findlay, Odgers, and Yeo, 1994; Morgan, 1994; Wright, 1992; Sparks, 1994). The literature to hand does not attempt to justify or rationalise punishment by imprisonment of an unconvicted person.

Punishment as a sentence is the deliberate infliction of suffering (Findlay et al., 1994, p.184). Punishment for remandees is incongruous. Findlay et al. describe the seriousness of punishment thus:

With the abolition of capital (death) and corporal (physical) punishment by all Australian jurisdictions, imprisonment remains as the final institution of punishment by which all other sentencing options are confirmed. The prison has dominated the landscape of penalty since the establishment of the penal colonies and their various systems of criminal justice (p.188).

A consideration of the principles of punishment in their simplest form are retribution or "just deserts", rehabilitation or reform, deterrence and community protection (Findlay et al., 1994, p.191). The latter

cited principles of community protection is the only criterion that can justify remand custody. Findlay et al. (1994) suggests that punishment should serve some social purpose beyond vengeance or terror and there should be acceptable logic behind sanction and penalty (p.192). There can be no social purpose for imprisonment of an unconvicted person beyond that which ensures the protection of the community and that justice takes its course. That being the case, magistrates can rightly justify remand imprisonment in the context of the likelihood of re-offending while on bail, or the non-appearance at court. However, because punishment by remand imprisonment runs contrary to the fundamental principles of justice, remand imprisonment should be clearly justified to ensure it is the lesser of two evils.

Tomasic (1976, p.15) does not agree with even the limited criteria for remand imprisonment, "Pre-trial restraints on the liberty of individuals who are charged with the commission of certain crimes deemed neither dangerous nor violent, are repugnant to our notion of fundamental fairness, decency and fair play". He argues that the pre-trial period is a risk period, but a small risk in comparison to the "progress of civilisation".

Although repugnant to the presumption of innocence, few will argue that there are instances where the seriousness of an alleged crime will warrant remand imprisonment. This study however deals with non-serious offences i.e. offences dealt with in a lower court that determined non-custodial sentences. Thus, the use of remand for non-indictable offences with these sentence outcomes raises serious concerns.

Remand in Custody or Bail

King (1973, p.90) quotes remand custody as the only example, in peacetime, where an unconvicted person can be kept in confinement without a proper sentence, he points out "...it is, therefore, the solitary exception to the Magna Carta". Biles (1983, p.12) argues that none of the criteria for bail consideration suggests that "accused people should be liable to deprivation beyond that required for secure custody". Blackstone, cited in the Journal of Criminology (1979, p.129), is also of the opinion that "imprisonment on remand is only for safe custody and not punishment".

Perusal of remand warrants at C.W.Campbell Remand Centre for one day in July 1996, indicated persons were remanded in custody, with and without bail, for a wide

range of minor and non-violent offences including no motor driver's licence, driving under the influence, possess smoking implement, false name and address, possession of cannabis, stealing, fraud, damage, unlawful on premises, etc. (Appendix 'B'). This example also demonstrated that defendants with serious offences like aggravated sexual penetration, deprivation of liberty and sell/supply heroin have been allowed bail. Conversely, minor offences like reckless driving, excess 0.08% and no motor driving licence have been remanded in custody without bail.

Absconding, interfering with the course of justice, a threat to the community and fear of offending on bail are the broad criteria used by magistrates when considering bail or remand imprisonment. None of the criteria demonstrate the strength of evidence for a conviction or indicate the likelihood of a custodial sentence. The Royal Association of Justices (WA) cites comments from the New South Wales Supreme Court (R v Owen, May 1965, unreported), "It is odd that a man presumed innocent until his guilt is proven should be imprisoned on evidence which the law says cannot be used to prove his guilt at a trial" (1996, p.199). The justification for remand custody because of events that

might happen is "built upon the flimsy foundation of ignorance and intuitive fears" (King, 1969, p.3). Tomasic (1976, p.44) cites Roulston's (1969) opinion that there is not any satisfactory predictive tool for determining which prisoners are certainties or likely to commit further crimes while on bail. Roulston's point would still apply three decades on.

It can be argued that it seems unreasonable to remand a person in custody on the speculation that they may commit a crime. However, it is also arguable that the community should be protected. There is ample evidence of a variety of methods to predict criminal behaviour in offenders (Andrew and Bonta, 1994). In general, the variables used to assess risk to the community are the seriousness of alleged offence, criminal history and age of onset of offending behaviour (Gendreau, Goggin, and Little, 1996).

However, it should be noted that risk assessment remains extremely flawed and at best a simple distinction between high and low risk offenders can be made (Andrews and Bonta, 1994; Gendreau et al., 1997). The offenders in this present study represented low risk offending because of the nature of their offences which attracted non-custodial sentences.

A non-custodial sentence outcome following remand custody must surely raise questions about the application of the bail criteria in light of an individual's fundamental liberty not to suffer arbitrary imprisonment. King (1973) says "where such fundamental right as the freedom of the subject are at stake... the standards of justice must be so high as to place the system and those administering it beyond reproach" (p.90).

Although outside the focus of this thesis, the bail procedures have a bearing on the research question as the administration of the Bail Act has a direct consequence for the remanded person. Comprehensive independent research and judicial reviews (Armstrong et al.1977; Johnson, Savitz and Wolfgang, 1962; King, 1973; Law Reform Commission, 1977; Tomasic, 1976) of the procedures and administration of the Bail Act has highlighted many inequities and shortcomings.

According to Barry (1997) the inconsistency of the interpretation of the Bail Act by Justices of the Peace and police personnel at Police lock-ups is responsible in part for persons with bail being remanded in custody. Recommendation 89 of the Royal Commission into Aboriginal Deaths in Custody (1992) stated "operation of bail legislation should be closely monitored to ensure that

the entitlement to bail ... is recognised in practice". The Law Reform Commission of Western Australian Review of Bail Procedures (1977, p.82) quotes an American perspective on bail to emphasis the lack of a consistent approach with bail decisions "...bail is manipulated to punish, to insure detention, to aid the prosecution, to satisfy the public..."

In West Australia, many people were remanded in custody at C.W.Campbell Remand Centre because they did not have legal representation at their first court appearance, bail was not requested by the duty lawyer or their lawyers were not sufficiently prepared for a bail application (Barry, 1997). Evidence from informal interviews with remandees at C.W.Campbell Remand Centre established that Form 2 (defendant information for a bail application) are rarely used or indeed requested by magistrates when considering a bail application.

As liberty is humanity's most fundamental right, the spirit of the Bail legislation should be applied accordingly. Pre-trial detention of an accused person must balance the rights of the unconvicted, presumed innocent, person against the assurance that the accused persons are brought to trial and the community is protected. This is what the community expects of the

criminal justice system, the ideology of justice and fairness resting upon the philosophy of the presumption of innocence.

Remand in Custody for Pre-Sentence Report

After finding a person guilty but prior to sentencing, a magistrate can request a pre-sentence report (PSR). In this instance, the presumption of innocence is not applicable because the accused is now a convicted offender. The magistrate can remand the offender on continuing bail or remand in custody. As already noted, the Bail Act, 1982, allows that a convicted person be considered for bail if there is a strong likelihood of a non-custodial sentence.

According to King (1973, p.27) those who favour remand custody would say a PSR provides offender information that can influence the magistrate in favour of a non-custodial sentence. Furthermore, having an offender at hand in a prison is "more convenient and less time consuming" for the report writer than interviewing an offender on bail (King, 1973, p.27). These arguments do not stand up to scrutiny and are certainly contrary to the philosophy and statutory requirements of "imprisonment as a last resort" (Criminal Code, 1913,

Sec.19A, p.43). Imprisonment of an offender for the convenience of the report writer is arguably legally and morally wrong.

It is plain that the intention of the legislation is that there should be no pre-sentence imprisonment where there is a likelihood of a non-custodial sentence. In 1993 a West Australian Supreme Court appeal against pre-sentence custody (Jackson v Cox, unreported) Judge Owen stated in his summing up "I would have been concerned had the remand in custody been for the purpose, and here I use the vernacular, to give the applicant a taste of what it is like on the inside. That in my opinion is not and must never be a legitimate exercise of the sentencing discretion" (L.Payne, Legal Aid Commission, personal communication, December 18, 1996).

There is little doubt that imprisonment for a PSR is punitive and raises serious questions about the motives of magistrates when remanding in custody for a PSR. The West Australia Sentencing Act 1995 stipulates that there will be no custodial sentences of less than three months (Part 13, Sec. 86, p.70).

Where an offender has been on pre-trial bail then remanded in custody for a pre-sentence report and subsequently receives a non-custodial sentence, it raises

the question of whether magistrates are using the pre-sentence remand custody period as a deterrent or defacto sentence. The oft-used phrase of "short, sharp shock" and "a taste of imprisonment" may in future be more commonly inferred in light of the short-term sentence restrictions of the Sentencing Act 1995.

Remand Custody as a Deterrent

King (1973, p.29) writes that the allegation that magistrates use remand custody as a punishment is "impossible to prove or disprove". He cites the research evidence given to the Royal Commission on the Penal System (UK) which showed that in one-third of cases magistrates had punitive motives for refusing bail to juvenile offenders (p.29). King (1973) elaborates thus "The most that can be said of custodial remands in adult magistrates courts is that it is common knowledge that some members of the bench favour the "short, sharp shock, the "spell inside as a salutary experience" type of treatment" (p.29). King (1973, p.84) disputes the legality and "dubious psychological validity" of such actions by magistrates. His opinion of the reasoning behind a "short, sharp, shock" lies in the belief that the increase in crime, particularly by young offenders,

is because policemen are not now permitted to give a "clip around the ear".

Armstrong et al. (1977, p.13) and the Aboriginal Legal Service of West Australia, (1996, p.71) are of the opinion that many Australian courts refuse bail or set unrealistic and onerous bail conditions to give young people a taste of prison. Hogart's (1974) research on the penal philosophy and practice expoused by Canadian magistrates found that while they differ widely in their views as to the effectiveness of different types of penal measures, they were consistent in their agreement about the efficacy of institutional measures as a deterrent to the offender (p.74).

O'Malley, Coventry, and Reece's (1993, p.171) evaluation of the Victoria Day in Prison pilot programme to deter young adult offenders concluded that "coercive, intimidatory and degrading aversion techniques should not be utilised by the criminal justice system for the purpose of individual deterrence". O'Malley et al. (1993, p.174) cite previous research (Finckenaue 1982, Lundman, 1984) that using short visits to prison as a deterrent can cause lasting trauma and shock. The evaluation by O'Malley et al. (1993, p.174) did consider the counter-effects of such trauma could be an acceptable

cost to the individual and society if it prevented further crime. However, Clarkson and Keating (n.d, p.15) stated that research findings on "short, sharp shock" as a deterrent indicate it is not an effective method of preventing recidivism.

Olson (1975, p.45) on the other hand, sees pre-sentence imprisonment as of some utilitarian benefit "...if the experience is unpleasant enough to make even the possibility of a return repulsive". He clarifies by stating deterrence clearly depends upon the pre-disposition of the individual being processed, whether they are impulsive or reflective (p.45). Parker et al. (1989) comprehensive research on 'custody or not' decisions by magistrates (United Kingdom) left no doubt that magistrates were in favour of individual deterrence by a "short, sharp shock". They state that magistrates found it quite possible to justify their custodial decisions on the basis of "helping the defendant"(p.75). Parker et al. (1989, p.62) elaborate further on the use of short detention terms from the perspective of the magistrates who saw them as most useful at an early stage of a defendant's criminal career. The magistrates use short detention terms as a 'nip in the bud' theory despite their claims that custody is used only as a last

resort in keeping with the legislation (p.62). Moody and Carr (1988, p.176) are clear that research has failed to support those proponents of imprisonment who cite its deterrent value.

Research into recidivism by offenders in Western Australia (Broadhurst and Maller, 1990; Broadhurst and Loh, 1993) found large differences between gender and Aboriginal and non-Aboriginal recidivism and in the rate of failure for both groups. The study by Broadhurst and Loh, (1993, p.84), found that "Not unexpectedly, it was generally observed that the probability of recidivism increases the more times a prisoner returns to prison". Coumarelos and Weatherburn (1995, p.59) cite Broadhurst and Loh's study to draw attention to the fact that reoffending rates are typically high for those who have been to prison and conversely "are not usually found among those offenders brought to court [only]".

Broadhurst and Loh's (1993) term "phantom of deterrence" (referring to the now defunct The Crime (Serious and Repeat Offenders) Sentencing Act 1992) aptly describes the failure of imprisonment as a mechanism to deter re-offending.

The then Attorney General, the Hon. C. Edwards, acknowledged that imprisonment does not serve as a

deterrent or "short, sharp, shock". During her address to Legislative Assembly on the Sentencing Bill (May 25, 1995) she stated "...short sentences serve little useful purpose: They fail as a deterrent, fail as a means of protecting the community, and fail as a means of addressing a prisoner's offending behaviour".

Informal discussions between the researcher and lawyers visiting clients at C.W.Campbell Remand Centre revealed they all believed that magistrates undoubtedly used remand custody as a "taste of imprisonment" and as a defacto sentence prior to handing down a non-custodial sentence. Many of them also believed that magistrates remanded people in custody in their own best interests, to "dry out", come off drugs and to build up their health. Because of remission of sentences, many lawyers said they used remand custody to the advantage of their clients i.e. one month remand custody could be calculated as an effective sentence of three months. Criminal Law Review (Editorial, 1987, p.438) state that no fewer than 10,000 remandees convicted at a magistrates court in England received non-custodial sentences. The conclusion to this article was that it was very likely that it was only possible to give a non-custodial sentence because

the offender has already suffered the deprivations of a custodial remand.

Walker's (1985) research of Australian outcomes of remand custody found "some apparent misuses of remand" (p.19). His opinion of the non-custodial sentence outcomes in that study was "that either the remand was unjustified in the first place, or that the sentence was excessively lenient, ...or that the court was informally (and improperly) giving a suspected offender a 'taste of prison' before even the matter of conviction was resolved" (1985,p.19).

Non-Custodial Sentence Outcomes

Previous research (Clifford, 1987; King, 1969; Walker, 1979; Wilke, 1993) on court outcomes found that between 23% and 50% of defendants imprisoned before trial or sentence were acquitted or received a non-custodial sentence. Walker (1985) derived his comments on Australian remandees from the research "...in the States of Queensland, Western Australia, South Australia and the Northern Territory there was a tendency to use remand in custody where a non-custodial sentence was appropriate on conviction".

Walker's (1985, p.24) study shows that West Australia had a significant number of remandees accused of minor or less serious offences and who later receive a non-custodial sentence. For these offenders a substantial punishment and loss of liberty came before they were found guilty. King (1973, p.3) is of the opinion that other than opening the prison gates to see what happens, there is no way of knowing if the system of remand incarceration before trial or sentence is wrong, therefore the system appears right. Consequently, pre-trial imprisonment has been able to perpetuate itself with the generations of approval of magistrates, lawyers, government and the public (King, 1973, p.3). Many would agree there are times persons accused of violent and serious crimes should be kept in custody, but as Appendix 'B' indicates, many remand prisoners in West Australian prisons have not been accused of violent or serious crimes.

Economic Issues

Remand Custody - The Cost to the Taxpayer

Over the past two decades in Australia the number of remandees has increased at almost four times the rate of sentenced prisoners; 88% and 24% respectively (Biles,

1990, p.1). Apart from the libertarian and humanitarian concerns already mentioned in the literature, these increasing prison populations highlight an economic issue. Remandees who receive a non-custodial sentence outcome are an unnecessary burden on the taxpayer.

Research (Biles, 1990; Walker, et al.1992) indicates that the remand rate for West Australia doubled between 1980 and 1991 and has been steadily increasing. This continuing increase is confirmed by the 1993 remand figures of 2068, (Mukherjee and Dagger, (1995, p.55), in 1994-95 2,888 persons were remanded and in 1995-96 the figure was 3143 (Australian Bureau of Statistics, 1996). An analysis of the remand figures draws this comment from Walker et al. (1992, p.106) "...the times served on remand have been stable, so that the increases in remandee numbers have been due to the greater numbers of alleged offenders being remanded in custody, not in significantly increased remand periods".

Biles (1993, p.5) raises his concerns about the cost of imprisonment in Australia, comparing the average annual expenditure per prisoner as higher than the average annual income of the Australian worker. He draws the comparison between the average cost of building a new

prison, per prisoner bed, and the average cost of a family home.

Zdenkowski (1994, p.189) sees the "decarceration" debate, which favours non-custodial penalties based on a cost-benefit analysis, appealing to the economic rationalists because non-custodial options "cost less, are more humane and are no less effective in terms of recidivism". He is surprised that where efficiency and humanitarian arguments have failed to produce a substantial decline in imprisonment, then the cost "which on any account is dramatic" would promote such a policy (p.189).

As mentioned previously, West Australia's only remand institution at C.W.Campbell Remand Centre cannot hold all the male remandees awaiting trial or sentence. The overflow goes to Casuarina and Canning Vale Prisons putting pressure on their prison facilities. The Hon. Mr. K. Minson, then Minister for Justice, has indicated a new 400-600 bed prison will be built in West Australia within the next three years to alleviate prison overcrowding (West Australian, August 22, 1996, p1). In the interim, a proposal for a 150 bed annex to C.W.Campbell Remand Centre is being considered. A reduction in remand rates could save the taxpayer the

cost of a new extension and/or prison, approximately \$36 million and \$160 million respectively.

Biles's (1990, n.p) analysis of remand imprisonment in Australia suggests that the panacea for reducing remand rates in West Australia is "...by legislation or by education, to encourage magistrates and judges to remand in custody as sparingly as possible." The legislation pertaining to remand custody where there is a likelihood of a non-custodial sentence is already in force in the Bail Act (1982). Further, during the introduction of the Sentencing Act 1995 the then Attorney General, the Hon. Ms. C. Edwards sent a clear message to the judiciary that imprisonment was to be used as a last resort "...to provide for their [offenders] supervision in the community without having to resort to imprisonment". (Hansard, May 25, 1995). It is an observation that the lack of response from the bench to the Attorney General's comments speaks volumes for the independence of the judiciary. Given that the West Australian legislation exist, Bile's (1990) comments would then suggest an emphasis on, or need to, educating West Australian magistrates and judges regarding the consequences of unnecessary and inappropriate remand custody for individuals and the tax-paying community.

The West Australian government spent over \$7 million on remand custody for C.W.Campbell Remand Centre in 1996 (Ministry of Justice personal communication, November, 1996). Remandees who spent some or all of their remand period in custody, prior to receiving a non-custodial sentence, contributed significantly to that cost. Wilkie's (1993, p.69) analysis of PSR's for female offenders in West Australia showed that more than one half (54.5%) who were remanded in custody pending a report, received a non-custodial sentence. The figure for male offenders was 39.4%. If those offenders had been on remand in the community there would have been a considerable cost saving to the West Australian government. Chappell (1983, p.22) states that imprisonment "is at least twenty times more costly than a community based alternative". Bearing that in mind, magistrates could only justify the cost of pre-trial and pre-sentence custody when the safety of the community is the lesser of two evils.

Humanitarian Issues

Criminalisation

It is generally accepted that one of the underlying principles of imprisonment is that the person will re-

enter society reformed, rehabilitated and suitably chastened. Some will argue the contrary occurs, that offenders are instead attending the "universities of crime" (Evans, 1994, p.1131). For remandees in custody there is no institutional separation of persons accused of capital crimes, drug trafficking, or sexual offences from those remanded for a court appearance or a pre-sentence report for minor offences like traffic, unlawfully on premises, and other non-violent offences. For first offenders, in particular, and those likely to receive a non-custodial sentence, the time spent in remand custody can cause more social damage than the deterrence effect that was intended as the "professional criminal" on remand can teach the former how to commit crime more "effectively" (Armstrong, 1977, p.11).

King (1973) highlights the dilemma of the magistrate using the remand period as "the short sharp lesson concept of penology, derived perhaps from the potted version of Skinnerian conditional learning" hoping to deter the offender from re-offending when the reality is the magistrate "may do nothing more than expose young offenders to the contamination from other prisoners and encourage bitterness and resentment against the injustice of the system" (p.84).

O'Malley et al.1993 (p.174), referring to the "Day in Prison" programmes in Australia and America, concludes that the brief taste of imprisonment as a deterrent could be overshadowed by long-term and persuasive criminogenic factors. Armstrong et al., (1977, p.9), writes about the criminalisation of unconvicted people awaiting trial "... the period following arrest is a crucial one, particularly for the first offender: if released he [sic] may continue positive family and social relationships; if held in gaol he [sic] will more readily identify himself with criminal activity.

Armstrong et al. (1977, p.9) cites the 1969 report from the Canadian Committee on Corrections to infer similar in Australian jurisdictions "...the exposure to those whose way of life is crime...may leave many defendants more likely to recidivist once released, than they were before incarceration". Mischkowitz (1993) found that one of the crucial factors in breaking away from a criminal career was staying away "from criminogenic peer groups and milieux". Grogger (1991) reports that imprisonment has a sizeable criminogenic affect in determining an individual's level of criminal activity. Coumarelos and Weatherburn (1995, p.57) write "contact with the criminal justice system is inherently

criminogenic" then there is a moral obligation to minimise such contact.

The criminalisation impact of remand custody on society is not confined to the future behaviour of the remandee. A study on prisoner's families in West Australia (Conti, Jackson and Matacz, 1993, unpublished) investigated the issues of second generation incarceration and found that "imprisonment offers negative role modeling for children...it has an effect on ascertaining future goals-they may want to be a lot like dad" (p.19).

There is ample literature available regarding the detrimental effect and consequences of imprisonment for remandees awaiting trial or sentence (Armstrong et al.1977; Austin, 1990; Biles 1983; Biles, 1990; Brandon, 1978; Cavadino, 1971; Findlay et al.1994; Johnson et al.1962; King, 1973; Law Reform Commission, 1977; Liebling, 1994; Morgan, 1989; NACRO, 1990; Olson, 1975; O'Malley et al.1993; Paine, 1994; Walker, 1988; Young, 1988; Zdenkowski, 1994). Notwithstanding the span of time since some of the research was carried out, very little has changed for remandees in the nineties.

Legal Disadvantage for Remandees

The philosophy of all men standing equal before the law does not always apply to remandees, who can find themselves severely disadvantaged by imprisonment when accessing legal advice. Research by King (1973, p.76-77) found that there were eight stages between arrest and conviction where the remanded defendant was at a definite disadvantage in comparison to a defendant on bail in the community. These are listed below:

1. If refused police bail, the defendant may not know or be able to contact a lawyer during or outside business hours.
2. Representation at a first hearing is unlikely if the defendant has not contacted a lawyer.
3. The defendant's choice of legal representation is restricted by custody. He/she may be obliged to accept a lawyer assigned by the court.
4. Following incarceration "Prisoners are often so confused or mentally restricted that they are unable to look after their own interests" (King, 1973, p.77).
5. Preliminary interviews with lawyers may take place in the court cells a few minutes before the defendant appears before the magistrate. If there is a further remand there is "almost inevitable reduction of quality

of preparation of the case" (King, 1973, p.77) because of the inconveniences for the lawyer of visiting a client in custody.

6. Defendants have to rely entirely on the lawyer and the goodwill of friends to trace witnesses in preparation of the case. If the names and addresses of witnesses are not known "the remand in custody can have a crippling effect on his defence" (King, 1973, p.77).
7. The defendant is "virtually impotent if he [sic] is not happy with the way his [sic] defence is being handled. All he can do is write letters from jail, complain to his solicitor when he chooses to visit, and in extreme cases change his lawyer" (King, 1973, p.77).
8. The defendant is severely restricted in efforts to obtain evidence in mitigation.

Although there are few prison restrictions in West Australia for access to lawyers, remandees have to depend on their lawyers and families to search for witnesses and gather evidence. Long trips to prisons and interview booking procedures do not encourage lawyers to attend their clients for a consultation that otherwise would take less than half an hour in their office. Informal interviews with remandees at C.W.Campbell Remand Centre reveal that they are often unaware or uncertain what is

happening regarding their alleged offences, the remand term or court hearing (Barry, 1997). Armstrong et al. (1977, p.13) are of the opinion that remandees, who stand most in need of good and understanding defence probably receive the worst legal service.

Although the results are not totally conclusive, there has been an amount of international research conducted which indicates that remandees in custody are more likely to receive a custodial sentence than their counterparts who are remanded with bail. (Armstrong et al., 1977; Johnson, Savitz and Wolhgang, 1962; Bottomley (1970) cited in King 1973). Appearing in court "from the dock" rather than the court benches can have a negative effect on the magistrate's perception of the good standing of the defendant.

Bottomley (1973, p.77) cited various international studies which were cautious in the conclusions that there was a causal association between remand custody and a conviction.

Suicide and Acts of Self-Harm

Hitherto in this review any justification for remand in custody has focused on the safety and protection of the community. There is however a humanitarian

responsibility with regard to the safety and protection of the accused when the magistrate considers pre-trial and pre-sentence custody.

Suicides and self-injuries in custody have reached alarming proportions in Australia (Findlay et al., 1994, p.119). A total of 75 people were reported to have died in custody in 1996, twenty-seven died in police custody or custody related operations, forty-eight died in institutions (Dalton, 1996, p.144). While there has been a continuing decrease in non-Aboriginal deaths in custody, Aboriginal deaths in custody have reached the highest figure recorded since 1980 (Dalton, 1996, p.144).

An Amnesty International Report into Aboriginal deaths in custody (1997, p.2) stated that previous research findings that Aborigines suffered no greater per capita risk of death in custody was no longer the case, this prisoner group were now "at about twice the risk of other prisoners". This report reveals a disturbing change in the vulnerability of Aboriginal prisoners. Pertinent to the vulnerability of Aboriginal remandees is Biles (1988, p.6) comment that "Aboriginal persons are often less able to tolerate isolation in custody than are persons of European descent..."

Broadhurst and Loh (1994, p.92) argue that previous figures for the Aboriginal /non-Aboriginal differential of deaths in custody have been distorted because the definition of "death in custody" has changed. Regardless of methodology, considering Western Australia has the highest rate of Aboriginal imprisonment in Australia (Australian Bureau of Statistics, 1996; Walker and McDonald, 1995) the vulnerability of Aboriginal remandees is a serious factor in the context of inappropriate or unnecessary remand imprisonment.

Research by McDonald and Thompson (1993) showed that self inflicted death was the most common cause of death in prison and the risk of suicide occurring in prison is much higher than in the community. Hatty and Walker (1986) identify commonalities between suicides in Australian prisons. High on the "suicide ladder" are remandees, first prison experience, the first two weeks of custody and lack of family or social support.

Liebling (1994, p.381) adds poor coping skills and young males as additional situational factors and noted that suicides profiles in prison are distinct from those occurring in the community "...90% of suicides in the community have a history of psychiatric illness compared to one-third of suicides in prison".

Backett (1988) is of the opinion that while there are commonalties of characteristics of prison suicides that he agrees with i.e. the danger period of the first few weeks imprisonment and remand status, he clarifies a broader perspective "what seems likely is that no clear pattern is present and that all prisoners are potentially vulnerable" (p.75).

Most studies agree that the maximum amount of stress is experienced during the initial phase of custody when most readjustments to custodial environment have to be made (Baldwin, 1988; Backett, 1988). This stress is compounded for remandees by the uncertainty of their future and often their incarceration has been unexpected, following arrest and court appearance in swift succession, with little time to prepare themselves psychologically for the shock of imprisonment (Backett, 1988, p.76). Biles (1988, p.6) recommends that "every reasonable effort must be made to prevent the onset of depression which is a common reaction to incarceration".

Backett (1988,p.81) calls the transition from street to custody as a "cataclysmic experience". He continues thus "It is this destructive effect which has attracted most attention and the long term personality damage that results is often sufficient to prevent the

ex-prisoners subsequent readjustment [in the community]". Backett (1988, p.81) attributes this negative affect of imprisonment as contributing to "the accumulation in society of severely damaged people".

A study of self-harming incidents over a four-year period at C.W.Campbell Remand Centre (Whitred, 1995) found that of 256 recorded incidents of self-harm, 54% occurred in the first 14 days of remand custody. Whitred's study also found that the most common (45.6%) precipitants to acts of self-harm was medically noted as "not coping with the constantly changing stresses of prison" (p.28). According to Liebling (1994, p.385) "prison-induced distress may be seen as a continuum that may contribute to suicide".

Communicable Diseases

It is accepted that high-risk behaviour prevails in prison (Austin, 1990; Burns, 1990; Cain, 1994; Connexions, 1993; Dwyer, 1990; Kerr, 1990; Kirby, 1990; Waddell, 1993). Kirby (1990, p.15) cites studies which report that 20% to 30% of prisoners engage in sexual activity at least once whilst in prison, 37% of South Australian prisoners were estimated to use intravenous drugs and 12% engaged in unprotected anal sexual

intercourse. Kirby (1990, p.15) infers that these figures are but the tip of the iceberg. There is every reason to believe the figures would generalise to West Australian prisons. Twenty prisoners at Karnet Prison Farm were tested for HIV and hepatitis C after it was revealed by the Ministry of Justice that a HIV positive prisoner has possibly had unprotected sex and shared needles (The West Australian, July 11, 1997, p.5). Following this incident Acting Premier for West Australia, the Hon. Mr.H.Cowan, said, "...the Government needed to protect prisoners from fellow inmates" (The West Australian, July 16, 1997, p.30)

Previous to the above incident, in an open letter to West Australian prison staff, Dr. D Brockman, A/Director Health Services, emphasised the problem of hepatitis C as an infectious disease is comparison to HIV. He estimated that at least one in five prisoners were infected with Hepatitis C and because of its frequency and high infectivity it is seen as a bigger problem than HIV in West Australian prisons (D. Brockman, personal communication, 1996). According to a Ministry of Justice spokesperson it would cost "hundreds of thousands of dollars" to stop the spread of hepatitis C and HIV in prisons (The West Australian, July 12, 1997). Lay (1991,

p.130) was so concerned about the impact of HIV positive and hepatitis infected offenders that he suggested that there are "enormous and obvious benefits in shrinking the size of the remand population for this [infectious diseases] reason alone".

Kerr (1990, p.113) is more concerned with the community than the prison environment, stating that prisons must be seen as "incubators" with prisoners disseminating the infectious diseases into the general community. He is also of the opinion that infectious disease policies in prisons are based on fear of contamination of the general public rather than concerns for the health of the prisoners. The Hon. Mr. J. McGinty, Opposition spokesperson on Health, suggested that the West Australian Government should make condoms available in prison "...because ultimately prisoners come back into the community. They will either be a walking time bomb or they will be healthy" (The West Australian, July 15, 1997, p.6).

Cain, (1994, p.11) highlights one of the biggest problems with communicable diseases in prisons when he points out that there could be many prisoners who are HIV positive who do not know their own HIV status. This is the same for hepatitis B and C infected offenders.

Psycho-Social Effects of Remand Custody

Custodial remand is likely to be damaging to a person's self esteem and social relationships especially if there is no previous experiences of imprisonment. In addition, limited contact with family and friends can put strain on personal relationships at a time when most support is needed (Armstrong et al.1977, p.9). Psychological withdrawal from partners and children is one way prisoners deal with the pain of separation (Baldwin,1988, p.59). Where this occurs it can compound a strained relationship already stressed by imprisonment, which will have little opportunity to be repaired while the remandee is in custody.

Pre-trial and pre-sentence imprisonment can mean the loss of job, income and often accommodation. Armstrong et al. (1977, p.9) and King (1973, p.79) are in agreement that the financial consequences of remand custody, particularly where a mortgage or other financial commitments exist, may extend for years after the determination of charges. Eviction from accommodation because of financial loss during remand imprisonment "...may have serious pejorative effect upon the defendants attempt to return to normal life after release" (King, 1973, p.92). Where a remandee is an

employer the custody impact can effect the livelihood of other people in the community. For young or mature age students who are remanded in custody it can result in disruption and disenrolment of tertiary studies and effect future career prospects.

According to Brandon (1973, p182) people suffer the loss of their reputation in the community when they are imprisoned. King's (1978) analysis of the "status passage" of defendants through the magistrates courts identifies that once a defendants has been "branded" as having been in prison, regardless of the offence or a suspended prison sentence outcome, it is likely he /she will be regarded in the community as a "degraded person" (p.190-191). This stigma can transfer to the remandees family. The stigma which attaches to a remand prisoner is indistinguishable to that of a convicted or sentenced prisoner (Armstrong et al.1977, p.9). In addition, when a remandee spends time in custody a permanent prison file number is generated on the Ministry of Justice database which is never erased. This is the case even though the defendant may never technically become a "prisoner" if he/she is acquitted or receives a non-custodial sentence following a remand period (Ministry of Justice personal communication, May, 1997).

According to Walker (1988, p.2) imprisonment not only punishes the offender, but also their spouse and children and questions that young children should suffer the consequences of their parent's "foolishness". Other comments on the impact of imprisonment on children was "they appear to cope, but are traumatised on the inside, they do not understand" (Conti et al. 1993, p.19). Even a short stint of imprisonment for a report can have a lasting effect on the stability of the children according to King "...the suffering that follows is out of all proportion to the possible risks involved in granting bail". Baldwin (1988, p.59) cites interviews with male and female prisoners who describe instances where behavioural disturbances of their children like bedwetting, emotional withdrawal and school problems coincided with the parent's receipt into custody.

In the event of a non-custodial sentence outcome with the above humanitarian consequences, a pre-trial or pre-sentence imprisonment period is not justified. In fact the severity of such an arbitrary decision by a magistrate goes beyond the meaning of the word justice where the punishment of imprisonment can also affect the offender's family for a period often outlasting the non-custodial sentence.

Previous Research

To date there has not been any Australian research to hand specifically on non-custodial outcomes following all or part of the offender's remand period being spent in custody. Walker's research (1985) on all outcomes, including custodial sentences and acquittals, of remand in custody orders directly supports the present research in so far that Walker's research investigated non-custodial outcomes as one part of his investigation. The aim of Walker's research was to build upon previous research by Biles (1984) who found there were significant differences in remandee numbers between Australian jurisdictions and "it was urgently required to determine whether remand in custody orders were being unfairly or improperly applied" (Walker, 1985, p.1).

Walker's (1985) study compared Australian jurisdictions against each other, the principal aim being to determine how, where and to what extent the disparities, discovered by Biles (1984) arose. Walker's (1985, p.1) considerations were that remand should not be used unless the safety of the public is endangered or the accused will abscond and that "...remand should not be used whenever the likely sentence upon conviction is non-

custodial ... and since remand is a deprivation of liberty ... its duration should be minimised".

This research is an expansion of Walker's 1985 investigations by providing a more detailed analysis of non-custodial sentences for offenders who spent some or all the pre-sentence period in custody. The rationale is that if a significant number of offenders receive a non-custodial sentence following a period of remand custody, then the initial pre-trial or pre-sentence custody could be unnecessary or improper and contrary to the philosophical and legislative underpinning of the justice system.

This present research is also an expansion of previous studies as it examines the demographic characteristics of the sample group to determine if there are any significant demographics or offender characteristics that could be attributed to them being remanded in custody prior to receiving a non-custodial sentence. Walker (1985) recognised the need for further study to identify the characteristics of remandees themselves "to determine if there is evidence of genuine inequity in the use of remand" (p.v).

Wilke's (1993) research on sentencing of female offenders in West Australia following a PSR request has

some bearing on this thesis. Wilke (1993) is the most up to date research available on sentence outcome for remand in custody orders. While confined to outcomes for PSR's only, and which applied exclusively to female offenders, her results confirm previously mentioned research that magistrates and judges are continuing to remand offenders in custody contrary to philosophical expectations and legislative requirements.

This present study investigated magisterial remand custody orders for offenders who received a non-custodial sentence following a period of remand custody. Comparisons were made with a group of offenders who spent the remand period at liberty in the community, to determine if there are any significant demographic characteristics that may be a contributing factor to a magisterial custodial remand order. The present study also analysed the cost to the taxpayer of the custodial remand period.

CHAPTER THREE: METHOD

Procedures

Data for the present study was extracted from three West Australian Ministry of Justice databases: Magic; Community Corrections (CC); and Offender Management System (OMS). Microsoft Excel was used by Ministry of Justice computer analyst, Mr. Adrian De Graf, to identify the sample population and extract a portion of offender demographic data (Appendix 'C').

The three databases contain both similar and different offender details. The Magic database provides offence charge details, court outcomes and offender identification. Community Corrections data is detailed regarding supervised non-custodial sentences, PSR data and offender demographics. OMS provides prison-based data regarding time spent in custody, custodial outcomes, bail details and offender demographics.

The data collection and identification of the sample group turned out to be far more complex than was anticipated during the initial planning stage of the thesis. The difficulties arose because so many charge, court appearance, offender and prison receipt variables were present and were subject to change. Examples of

such difficulties were multiple prison receptions, or where an offender was already in remand custody on another matter prior to receiving a charge for the offence on which he/she received the non-custodial sentence within the sample period.

The researcher extracted data from the West Australian Prison Service database. The police database provided criminal history, offence data, bail data and offender demographics.

Selection of Subjects

Subjects were drawn from the offender population of Armadale, Joondalup and Perth Courts of Petty Session and consisted of two distinct sample groups.

Sample A consisted of all offenders with charges laid between May 1, 1996 and October 31, 1996 and who spent some or all of the remand period in custody prior to receiving a non-custodial sentence. This primary sample numbered 221 offenders, 192 males and 29 females ranging in age from 18-52 years.

Sample B was randomly selected from the overall population of 11,430 offenders who spent all of the remand period at liberty in the community prior to receiving a non-custodial sentence. This comparative

sample consisted of 273 randomly selected offenders, 217 males and 56 females ranging in age from 18-90 years.

Data collection

Sample Population

To identify the sample population, individual offender charge numbers for the period May 1 1996 and October 31, 1996 were linked with tables of non-custodial outcomes on the Magic database. This was done separately for each court, Armadale, Joondalup and Perth Courts of Petty Sessions.

Where there were multiple charges and outcomes for an offender the most serious sentence outcome was taken as the "head" outcome for the sample population. This reduction of data was achieved by starting with the least serious sentence outcome and overriding it by the next least serious outcome. For example, a fine outcome is the least serious outcome and was overridden in succession by a Good Behaviour Bond, Probation, Community Service Order, combined Probation and Community Service Order, Community Based Supervision Order, Intensive Supervision Order, Suspended Sentence and imprisonment. Where there was no sentence outcome to a charge this was excluded from the sample population. Those exclusions

included dismissed charges, withdrawn charges, no sentence imposed and transfers to higher jurisdictions for committals for sentence and/or trial.

Sample Group

To verify data of offenders with charges by most serious outcome as distinct persons, offender identification details were cross-matched across the three Ministry of Justice databases. If offenders had charges in more than one court, they were counted in the figures pertaining to each of those courts. Offender records were cross-matched as follows:

1. Exact match between surname and given names, including aliases, date of birth and gender.
2. Exact match between surname and given names, including aliases and date of birth if gender is unknown on the Magic database.
3. Exact match between surname, first three characters of given names, including aliases, date of birth and gender.
4. Exact match between surname, first three characters of given names, including aliases, and date of birth if gender is unknown on the Magic database.

All duplications of offenders as distinct persons were then excluded from the tables. The tables were for Armadale, Joondalup and Perth Courts of Petty Sessions, as both single and combined data tables.

For a descriptive analysis of sample A, it was necessary to identify those offenders in the sample population who had spent some or all of the remand period in custody prior to their non-custodial sentence. To achieve this, the offender sample population was matched to the prison reception data. Those offenders who were received into custody as remand prisoners before, on, or following the sample period of May 1, 1996 and October 31, 1996, and who were released on or before the charge outcome date were identified as sample A. If there was a prison receipt date prior to the charge entry date, this was checked to see if the offender was a sentenced prisoner on other matters. If so they were excluded from the sample. This stage of the procedures finalised the selection of sample A for the present study.

The following tables for sample A was created on SPSS:

- ◆ Bail granted
- ◆ PSR request (1) i.e. during any period of remand pertaining to the charge outcome

- ◆ PSR request (2) i.e. where the prison receipt date and request date were the same
- ◆ Number of days spent in remand custody
- ◆ Number of days in remand custody for a PSR (1 and 2)
- ◆ First time in prison

Pre-Sentence Reports (PSR)

The data regarding PSR's was extracted from the CC and OMS databases by linking offender identification numbers from each system. PSR Yes/No links were established. Where a PSR request date was the same as the prison receipt date this was categorised as PSR (2). The time spent on remand for a PSR (1 and 2) was calculated by deducting the PSR request date from the prison exit date and adding one day for the first actual day spent in custody. Where a PSR request date was prior to a prison receipt date, the receipt date was calculated as the first day. This could occur if a PSR was requested while the offender was on bail but the bail was withdrawn and the person was remanded in custody.

Bail Data

The data regarding bail was collected from OMS by establishing links with prison reception data. There

were a number of cases where subjects were recorded as having no bail set on the date of prison receipt but were exited from prison prior to the charge outcome date. This discrepancy in data could occur where an offender was granted bail after his/her first reception history data was entered on OMS but the new grant of bail data was not updated on the offender's file following a court appearance.

Time Spent in Remand Custody

The number of days spent in remand custody for sample A was extracted from OMS by deducting the prison receipt date from the prison exit date and adding one day for the first actual day spent in custody. Where the prison receipt date preceded the charge entry date then the charge entry date was taken as the first day of remand custody. This would occur where an offender was already in custody for other matters when he/she received the charge in the sample period.

First time in Prison

This data was collected by examining offender prison file numbers. Where there was a pre-1996 file number the

individual offender data was cross-matched with the criminal history records to see if an offender had ever received a custodial sentence. Where an offender has a pre-1996 file number and no recorded prior custodial sentence on the criminal history record, it was deemed that the offender has previously spent a period of time in remand custody and was coded accordingly. This also applied to offenders who had spent time in a police lock-up for non-payment of fines.

Comparative Data

For comparative analysis of demographics, a second sample, B, were randomly selected from the sample population. Data for sample B was obtained by the researcher from the West Australian Police apprehension and criminal history records. The initial sample of 353 was reduced to 273 following the data collection, as not all subjects had their current charge conviction recorded on the criminal history record (80 cases).

Aboriginality of persons apprehended by police is not specifically recorded on West Australian Police Services database. Therefore, this data was compiled by the researcher entering "no" in this category where a country other than Australia was recorded as country of

origin on the police database. As Aboriginality is recorded on CC and OMS, a cross match of offender data for those in group B with Australia as their country of origin, was made to ascertain their Aboriginality.

Demographic Characteristics /Criminal History

Tables of demographics and criminal history variables for sample A and sample B were created on SBSS as follows:

- ◆ age at time of charge
- ◆ gender
- ◆ Aboriginality
- ◆ employment
- ◆ age at first conviction
- ◆ number of prior court appearances (adult and juvenile)
- ◆ number of adult breaches of bail
- ◆ previous most serious adult convictions
- ◆ current most serious offence (of present non-custodial sentence)
- ◆ specific court by most serious offence of present conviction

The number of previous juvenile and adult court appearances does not indicate where there may be multiple

convictions from one court appearance. Categories for offences were selected and coded according to the Australian National Criminal Offences (ANCO). It was necessary to add a number of extra categories to describe and analyse adequately certain offences not on the ANCO list. For example, "other assaults" were categorised to include "assault a public officer" and "assault common" as both these offences appeared frequently during the data collection.

Data Analysis

Samples

Descriptive data for samples A and B was statistically analysed using SPSS for Windows. It (a) described (b) compared characteristics to determine if there are any significant differences between offenders who spend some or all of the remand period in custody and those that spend all of the remand period in the community, both samples having received a non-custodial sentence.

Using SPSS for Windows, frequencies for the following variables in samples A and B were statistically analysed:

- ◆ Gender

- ♦ Aboriginality
- ♦ Age (current conviction)
- ♦ Age (at first conviction)
- ♦ Employed
- ♦ Bail granted
- ♦ Breaches of bail
- ♦ First time in prison
- ♦ Current most serious offence
- ♦ Previous most serious offence
- ♦ Adult convictions
- ♦ Juvenile convictions

In addition, the following variable frequencies from sample A were also statistically analysed;

- ♦ Bail granted
- ♦ Pre-Sentence Report

Using SPSS for Windows, the mean and standard deviation of time spent in remand custody was analysed. The range and sum of days were also calculated.

Using SPSS for Windows, the mean and standard deviation of ages for sample A and B were statistically analysed.

To determine any differences in (a) current age and (b) age of first conviction, of the two groups, SPSS was used to complete an independent t-test.

To determine if there were relationships between groups, SPSS for Windows completed two-way chi-squared tests for:

- ◆ Aboriginal offenders in sample A and B
- ◆ Current most serious offences in samples A and B
- ◆ Breaches of bail for samples A and B
- ◆ Bail for Aboriginal and non-Aboriginal offenders in sample A.

Using Ministry of Justice data the cost of remand custody for sample A was determined by analysing both the fixed and variable cost components of remand imprisonment.

CHAPTER FOUR: RESULTS

As noted, SPSS for Windows was used to analyse the data. Frequencies sample A are described first, followed by frequencies for sample B. Two-way chi-square and independent t-tests of the two sample groups complete the analysis.

Descriptive analysis of frequencies for sample A

Table 1.

Frequencies of demographic characteristics and criminal history of custodial remandees (sample A)

N=221	n	%
Male	192	87%
Aboriginal	81	37%
Employed	52	24%
First time in prison	121	55%
No previous criminal history	37	17%
Remanded without bail	150	68%
Remanded for a Pre-Sentence Report	97	44%
Breaches of bail	65	29%
Mean time in custody	16.34 days	
Mean age	26.23 years	

It can be seen from Table 1 that for 55% of offenders this was their first time in prison. Almost all of the offenders were male (87%). Aboriginal offenders comprised 38% of the sample group. Almost three-quarters of the sample were unemployed. The age

range was from 18 to 52 years, 24 years *SD*, and the 19-21 age group had the highest frequency (Appendix 'D'). The average time spent in remand custody was 16.34 days. 15% of the sample group had no previous criminal convictions, which also means they would not have breaches of bail.

Table 2.

Frequencies of bail granted, and previous breaches of bail (sample A)

	Total N=221	Aboriginal N=81	Non-Aboriginal N=140
Bail granted			
Yes	71	29 (36%)	42 (30%)
No	150	52 (64%)	98 (70%)
Breaches of bail			
Yes	65	42 (52%)	23 (16%)
No	156	39 (48%)	117 (84%)

Note. Previous breaches of bail apply to charges and court appearances prior to the current conviction charge.

Table 2 shows that 150 offenders (68% of sample A) were remanded in custody without bail. Of the total number (81) of Aboriginal offenders 29 (36%) were granted bail compared to 42 (30%) of non-Aboriginal offenders. Results also show that although only 65 (29%) of all offenders had previous breaches of bail, 42 (52%) of Aboriginal offenders had previously breached bail compared to 23 (16%) of non-Aboriginal offenders.

Table 3.

Frequencies of Pre - Sentence Reports, bail granted and no previous criminal history (sample A)

N=221	PSR 1	PSR 2
PSR request		
Yes	97 (44%)	56 (25%)
No	124 (56%)	
Bail granted	24 (25%)	9 (16%)
No previous criminal history	15 (41%)	13 (35%)

Note. PSR 1. Is when a report was requested during any period of the remand custody i.e. the offender could have already been in custody waiting for the charge to be determined. PSR 2 is the when the report was requested on the day the offender was received into prison from court having been on bail in the community up to the time of the conviction.

The results show that 44% of the sample group were in custody for a report. Of this percentage, 25% were in custody solely for the purpose of a PSR. Bail was granted to 25% of offenders in custody for a PSR.

Table 4.

Mean and standard deviation of time spent in remand custody

	N	M	SD	Min	Max	Sum
Aboriginal	81 (37%)	17.15	19.16	1	111	1389
Non Aboriginal	140 (63%)	15.88	20.39	1	165	2223
Total	221 (100%)	16.34	19.91	1	165	3612

Note. The sample period of May 1, 1996 and October 31, applies to the charge date. Time spent in remand applies to the period between the charge date and the outcome date, which could occur after October 1996.

Results in Table 4 show the total number of remand custody days accumulated by offenders was 3,612. The mean days were 16.34 and 19.91SD.

The variable cost of imprisonment is \$132 per prisoner, per day. The annual cost of remand custody for the six month sample period is \$476,784. The capital cost of imprisonment per prisoner bed space is \$235,487. At any given time there was an average 20 prisoners in this category. The capital cost therefore was \$235,487 x 20= \$4.7 million.

Table 5.

Frequencies of current and previous most serious offences (sample A)

N=221	Current		Previous	
Against property	85	(39%)	90	(41%)
Driving offences	51	(23%)	18	(8%)
Against good order	36	(16%)	14	(6%)
Against the person	31	(14%)	51	(23%)
Drug offences	17	(8%)	16	(7%)
No previous offences			32	(14%)

Note. A further breakdown of current and previous offence categories are available in Appendix 'E' and 'F' respectively.

Table 5 shows that offences against property were the most frequent offences of current (39%) and previous (40%) convictions. Offences against the person were the second most frequent offence for previous convictions in

comparison to driving and good order offences for the current offence category. 32 offenders (14%) had no previous criminal history.

Descriptive Analysis of Frequencies for Sample B

Table 6.

Frequencies of demographic characteristics of offenders in the community (sample B)

N=273	f	%
Male	217	80%
Aboriginal	34	13%
Employed	152	56%
Previously in prison	38	14%
No previous criminal history	102	37%
Breaches of bail	19	7%
Mean age	28.85 years	

Table 6 shows the majority of sample B was male non-Aboriginal offenders (87%). More than half of sample B was employed (56%). The age range was from 18 to 90 years, 7.77 SD, 28.85M and the 25-29 age group had the highest frequency (Appendix 'D'). The results show that only 7% of the sample had previous breaches of bail and while 100% of the sample were on bail at the time of conviction, 63% had a previous criminal history. 14% of the offenders had previously been in prison.

Table 7.*Frequencies of current offences (sample B)*

	f	%
Driving offences	124	46%
Against property	63	23%
Against good order	32	12%
Against the person	28	10%
Drug offences	25	9%

The results show that driving offences accounted for the majority of offences committed by the offenders in sample B (46%). Offences against property was second (23%) and offences against persons and drug offences the least frequent.

Comparative analysis

A two-way chi-square, using SPSS for Windows, revealed Aboriginality was a significant difference between offenders remanded in custody and those at liberty in the community. Chi-square (1, N=494) = 59.32, $p < .05$. The frequencies are shown in Tables 1 (sample A) and 6 (sample B). It can be seen from Table 1 that a larger proportion of Aboriginal offenders (37%) spend time in remand custody prior to receiving a non-custodial sentence. Table 6 shows the comparison of 13% Aboriginal offenders who spent the remand period in the community.

A two-way chi-square, using SPSS for Windows, revealed that Aboriginality was not significant regarding an inability to meet bail conditions as there was no significant relationship between Aboriginal and non-Aboriginal offenders in sample A being granted bail. Chi-square (1, N=221)=.80, $p > .05$. The frequencies are shown in Table 2.

A two-way chi-square, using SPSS for Windows, revealed breach of bail history is a significant difference between sample A and sample B. Chi-square (1, N=494)= 46.62, $p < .05$. The frequencies are shown in Table 2 (sample A) and Table 6 (sample B). It can be seen from Table 3 that 29% of offenders had previously breached bail. Comparatively, Table 6 shows that 7% of offenders in sample B breached bail.

A two-way chi-square, using SPSS for windows, revealed criminal history is a basis for a decision to remand in custody as there was a significant relationship between offenders with no previous criminal history in sample A and sample B. Chi-square (1, N=494)= 35.30, $p < .05$. The frequencies are shown in Table 5 (sample A) and Table 6 (sample B). Table 5 shows that 14% of offenders had no previous criminal history. In Table 6 it can be

seen that 37% of offenders had no previous criminal history.

A two-way chi-square, using SPSS for Windows, revealed the nature of the current offence is significant between sample A and sample B. Chi-square (4,N=494) =30.478, $p < .05$. The frequencies are shown in Table 5 (sample A) and Table 7 (sample B). Table 5 shows that offences against property were committed most frequently (39%). It can be seen from Table 7 that driving offences had the highest percentage of convictions.

Using SPSS for Windows, an independent t -test was completed on the differences of age at first conviction for sample A and sample B. Assumptions of normality and homogeneity of variance were met and results indicated the age of onset of offending is significant between sample A and sample B. $t(462.2) = -7.44$, $p < .05$. The mean age of first conviction for sample A was 17.38 ($SD = 6.23$) compared to 23.33 years in sample B ($SD = 10.07$). It is noted that the results do not indicate offenders who have one or more early juvenile conviction and did not re-offend again until well into adulthood.

Using SPSS for Windows, an independent t -test was completed on the differences of current age for sample A and sample B. Assumptions of normality and homogeneity

of variance were met and results indicated current age is significantly different between sample A and sample B. $t(490.4) = -3.24, p < .05$. The mean age for sample A was 26.23 ($SD \approx 7.77$) compared to 28.85 ($SD \approx 10.18$) for sample B.

CHAPTER FIVE: DISCUSSION

The aim of this study was to describe and analyse the use of remand custody orders for offenders who received a non-custodial sentence. The study found that for charges laid over a six month period, 221 offenders were imprisoned prior to receiving a non-custodial sentence outcome. As mentioned in the data collection this number is an underestimate due to the difficulties encountered in determining a sample because of complex charge and prison receipt variables. It can be said that at a conservative level, at least 442 offenders a year spend an average of 16.34 days in custody prior to receiving a non-custodial sentence.

One of the principal issues in this study is that remand imprisonment is used by magistrates as a "short sharp shock", the phrase so often used now that it has become accepted judicial jargon. It is also suggested that magistrates use remand imprisonment to give offenders a "taste of imprisonment" where a custodial sentence may not be applicable or appropriate. This defacto custodial sentence abuses the legislative requirement of imprisonment as a last resort.

The discretionary criteria for granting bail or remanding in custody are governed by certain principles. In general, these principles are that there is a likelihood the defendant will fail to appear at court, commit an offence whilst on bail, endanger the community and interfere with witnesses if he/she is not kept in custody (emphasis added) (Bail Act, 1982, p.78).

Remand in Custody or Bail?

Failure to appear

One of the criteria for remanding an accused person in custody is the probability that the defendant will fail to appear at court. On the probability that past behaviour is a good predictor of future behaviour, previous breaches of bail can be an indicator of the likelihood of the defendant not appearing in court. The results of this study show there was a significant difference of previous bail history between offenders in custody and those who spent the remand period in the community. That is, it appears that for this criteria, magistrates made a reasonable decision when remanding in custody. However, the results need to be put in perspective. Table 2 shows that only 65 (29%) offenders who were held in custody had previously breached bail.

It is argued, if breaches of bail were a factor when remanding offenders in custody because of a possibility of absconding, then one would predict the 156 (71%) offenders held in custody, without breaches of bail, would have been likely contenders to appear in court. Therefore, for previous breaches of bail as a predictor to absconding, there is not any reasonable argument for magistrates remanding this group in custody.

It is disturbing to see that 150 (68%) offenders (Table 2) were remanded in custody without bail granted. This means that over two-thirds of the custodial sample was given no opportunity for freedom prior to receiving a non-custodial sentence. In reality they had served a de-facto custodial sentence, regardless of their "unconvicted" status and before their "legal" sentence was determined.

71 (32%) offenders in remand custody during the study were granted bail but could not meet bail conditions. It is disquieting that these defendants remained in custody. There are two contrasting interpretations that can be construed from the results. The first is that magistrates granted bail with the confidence the defendants would be released to the community. However, one possible impediment to this intention for a bail

release is the post court surety process. There is no appeal system for a surety refusal by a Justice of the Peace, and consequently a lack of accountability that can cover any bias or prejudice a judicial officer may have (Barry, 1997). The results in Table 2, and the above interpretation, are consistent with previous studies (King, 1973; Law reform Commission, 1977) that the surety requirement is discriminatory in that it can place the under-privileged or isolated defendants at disadvantage.

The second interpretation of the bail results is that it cannot be discounted that unrealistic and onerous bail conditions are set by magistrates who are seen to apply the legislation, but in reality the intention is to detain in custody. If this is the case, then magistrates are knowingly using the legislation to wrongly imprison defendants. Apart from the injustice to the individuals concerned, another implication of such misuse of the Bail Act is that it can infer legislative inadequacies that in fact may not exist. In other words, it may appear the legislation is at fault when in reality it is the interpretation and application of the legislation by the judiciary that is the problem.

Ironically, the Sentencing Act 1995, which was introduced to provide alternatives to imprisonment, could be a causal factor of remand custody in this study. For magistrates who favour the "short sharp shock" and a "taste of imprisonment" as ways to correct offending behaviour, the remand facility enables them to circumvent the new legislation which restricts custodial sentences of less than three months.

Custody or Bail? - Aboriginal Offenders

This study was able to investigate whether Aboriginal remandees were disadvantaged by the Bail Act, 1982 (Sec.39(c)) in comparison to their non-Aboriginal counterparts. This has not been demonstrated. Statistically there is no significant relationship between bail granted to Aboriginal and non-Aboriginal remandees. This is interesting in view of the results in Table 2 which show that Aboriginal offenders in custody have a greater percentage of previous breaches of bail than non-Aboriginal offenders in custody. It could therefore be suggested that magistrates are more lenient towards Aboriginal offenders with previous breaches of bail by giving them "another chance". On the other hand, Table 2 shows more Aboriginal offenders than non-

Aboriginal offenders in custody have not been able to meet the bail conditions. The inference of this is that Aboriginal defendants and sureties may be more disadvantaged by the asset requirement of the Bail Act, 1982, (Sec.39), than their non-Aboriginal counterparts. If this is so, the situation will be compounded if magistrates are deliberately placing onerous bail conditions as discussed in the previous paragraphs. Also pertinent to the bail or custody decisions for Aboriginal defendants is the previously noted lack of an appeal system for surety refusals which can create leeway for biased or prejudiced decisions by judicial officers.

There are not significant differences between Aboriginal and non-Aboriginal offenders for bail granted and the length of time spent in custody, however, the results show that Aboriginality is a significant factor when being remanded in custody. A larger proportion of Aboriginal offenders spent time in remand custody prior to receiving a non-custodial sentence. These results indicate that further research is urgently required to determine to what extent the systemic discrimination of the justice system in Western Australia is occurring within the remand imprisonment facility.

While endorsing the concerns of Amnesty International regarding the high risk of Aboriginal deaths in custody (1997, p.2), this study is also concerned with the non reporting of over representation of unconvicted, presumed innocent Aboriginal offenders, in remand custody. Systemic racism and other injustices and inequities can be more covert within the remand facility, because, as we have seen by the results of the study so far, the ideology of intervention practiced by magistrates can be hidden by a "surface" compliance with the legislation.

Risk to the community

Another criterion for deciding to remand or grant bail is the risk posed to the community if the defendant is not detained in custody. As previously mentioned, magistrates use previous criminal history to decide if the defendant poses a risk to the community. While "professional" criminals will be easily identified as a risk to the community by the frequency and seriousness of their previous offences, this study dealt with non-serious offences. As noted in the literature review section, the key variables that are used for offender risk prediction are the age of onset of offending,

criminal history and the nature of the offence (Gendreau et al., 1997). There was a significant difference between sample A and sample B on all these variables. That is, those remanded in custody offended earlier, had more criminal histories and there were differences in the nature of offences committed. Thus it appears that magistrates are making a risk assessment consistent with the research on risk prediction (Andrews and Bonta, 1994; Gendreau, 1997). However, on further examination of the results, which follows, it is argued that for the 221 offenders remanded in custody, there is no demonstrable evidence to suggest they were a risk to the community or the course of justice.

In regard to community risk factors, the study shows 14% of offenders in custody had no previous criminal history (Table 6). In addition, this group would have no previous breaches of bail and the most serious offence they could have committed was against property. Going on past behaviour, there was no risk to the community of offending or absconding. It is illogical to remand an individual in custody for an average of 16.34 days to prevent him/her from offending then release them with a non-custodial sentence immediately after the hearing. Preventive detention will not guarantee that he/she will

not "continue" to be a risk to the community on release. The criminal records of some offenders in this group, shown in Appendix "G", demonstrate that there is no justifiable reason why they should have been imprisoned. The conclusion is that they were remanded in custody to teach them a lesson 'early' in their criminal activities, i.e. a short sharp shock.

Further to offender risk assessment is the age of onset of offending. The results show that there is a significant difference in the age of first conviction between those in custody and those who remained in the community 17.83M (SD6.23) and 23.33M (SD10.07) respectively. It appears that magistrates use onset of age of offending as a factor when remanding in custody. This is consistent with the risk variable identified above.

The study showed there was a significant difference between the nature of the current offences for offenders in custody and those who remained in the community. Table 5 reveals that offenders were remanded more frequently for offences against property. In comparison, Table 7 shows driving offences were committed most frequently by offenders who remained in the community. The offence category itself does not indicate the

seriousness or triviality of the property offence. What does indicate the nature of the offence is the non-custodial sentence outcome.

Pre-Sentence Reports (PSR)

Table 3 shows that PSR's were requested for 44% of offenders in custody. Of these, 41% had no previous criminal history and 75% were remanded without bail. These offenders had been detained in custody for a report. As Appendix 'H' testifies, offenders in the study were remanded in custody for verbal and written PSR's for minor offences prior to receiving a non-custodial sentence. To remand an individual in custody for a written PSR for not having a driving licence seems difficult to justify. It is even more problematic if the remand order is for a verbal report (Appendix 'H'). Given the harshness of such measures, it is reasonable to suggest that the magistrate's motives were to shock the offender into compliance.

According to Wilke's (1993) study on pre-sentence reports, there are four principal factors taken into account for sentencing; the number and seriousness of current charges, length of criminal record and most serious previous disposition (p.67-8). To apply these

sentencing principals to the offender in Appendix 'H' who was remanded without bail and had never been in prison before; his most serious previous offence was assault common and he had no breaches of bail. If the pre-sentence information for this offender can be taken from a criminal history record by the researcher then the same is available to the magistrate via the police prosecutor at the courts. While specific cases cannot be expected to generalise to the entire study, it is suggested in this case that a non-custodial sentence for having no motor driving licence was a foregone conclusion. The remand imprisonment was not a last resort. Furthermore, the PSR request outwardly legitimised this improper use of remand custody. These examples seem to be consistent with the premise that magistrates are using remand custody as a guise for deterrence and/or defacto custodial sentences.

Table 5 shows that 25% of the PSR's were for offenders who had been on bail up to the time of conviction. They did not abscond; they had fulfilled their bail obligations, but were remanded in custody for a PSR before they received a non-custodial sentence. Of the sample, 35% had no previous history and 84% were remanded without bail. There does not appear to be any

justification for this remand. There is no rationale or logic that will explain the imprisonment of individuals who have obeyed all the rules of the justice system up to a verdict and then receive a non-custodial sentence after the imprisonment. The conclusion for an observer of such arbitrary decisions is that the magistrate is using remand custody as "short sharp shock" measures.

It should not be forgotten that the Bail Act 1982, makes provision for liberty of an offender after conviction "if there is a strong likelihood of a non-custodial sentence outcome" (Sec.4, p.80). Consistent with this legislation, 44% of the offenders in the study who were imprisoned for a PSR could have spent the remand period in the community.

First Time in Prison

Table 1 shows 55% of offenders remanded in custody before receiving a non-custodial sentence had never been in prison before. Of this group 86% had no previous breaches of bail, 26% had no previous criminal history, the most frequent offence was against property, 28% had been granted bail and the mean age was 23.57 years. Appendix ('I').

Criminalisation

To introduce individuals to a prison environment for the first time prior to giving them a non-custodial sentence outcome is a serious indictment of the administration of justice. Consistent throughout this study has been the thesis that magistrates use remand custody to deter re-offending by giving individuals a taste of imprisonment. As noted from previous research there is no evidence to suggest that such measures are effective as a deterrent (Clarkson and Keating, n.d; Moody and Carr, 1988; O'Malley et al., 1993). Conversely, the literature supports the view that the criminogenic factor of imprisonment far out-weighs any dubious deterrence effect (Armstrong et al., 1977; Broadhurst and Loh, King, 1973; O'Malley et al., 1993, Moody and Carr, 1988;). That being the case, remanding offenders in custody for the first time inappropriately or unnecessarily, is likely to have a long term effect on West Australia's offender management resources as future offending develops, rather than wanes.

Suicide

Another serious aspect of remanding people in custody for the first time is the implications of deaths in

custody. A first prison experience is just one of the factors that has been identified as a situational trigger for acts of self harm and suicide (Hatty and Walker, 1988; Liebling, 1993; Backett, 1988). Other characteristics in Table 1 that have been identified as possible risk factors for self harm and suicide are; youth, Aboriginality, male gender and remand status (Amnesty International, 1997; Backett, 1988; Liebling, 1993).

Given the evidence from the results (Table 1 and Appendix 'I') there does not appear to be justification for these first time remands in accordance with the Bail Act, including the previously discussed community risk assessment process. One can only conclude that the purpose behind the remand custody in question is to teach the offender a lesson not to offend again. If this is the case, then magistrates are clearly contravening the principles of justice and human rights.

Economic Impact of Remand Custody

Remand Custody Cost

The study shows that offenders spent a total of 3612 days in remand custody (Table 4). The variable costs to the government for maximum security imprisonment are \$132

per prisoner per day. Therefore it costs the government almost \$1 million per annum to remand prisoners in custody prior to receiving a non-custodial sentence. The cost for offenders in the community who received the same sentence outcome was nil.

Table 4 shows the longest remand period for an offender was 165 days. It cost approximately \$21,780 to keep this specific offender in remand custody before he/she received a non-custodial sentence. Given the low offending risk factors of the sample group already discussed, this remand term was a costly burden on the tax payer.

As discussed previously in this paper, the West Australian government may in the near future spend, at best, approximately \$36 million on remand accommodation. This study showed that at a conservative estimate, 422 offenders per year might be imprisoned unnecessarily. Magistrates should only be using remand imprisonment as a last resort. The results of the study indicate that the overcrowding and economic consequences are contributed to by questionable judicial decision making. By providing more bed space the government is accommodating, not addressing, a problem.

Socio-Economic Cost

Not so easily calculated is the cost of the loss of productivity to the state economy from the 24% of offenders who were employed before their imprisonment (Table 1). Instead of being tax payers they became a tax cost. Notwithstanding any government assistance to a defendant's family during an extended remand period, the cost to the taxpayer may continue after the offender is released if he/she has to receive unemployment benefit. Table 6 shows that 56% of the offenders in the community were employed. These continued to contribute to the economy while waiting for their sentence, their employment or education was not jeopardised and they were not a burden on the taxpayer. Given the results of the study, there could have been a similar beneficial outcome for the offenders in custody.

The results of the study have revealed justice and economic issues that cannot be denied. However, this study is also about an impact of custody that is not so easily measured in percentages and dollars. This study is about people. It is about 221 individuals who have been imprisoned unnecessarily. They have been placed in a prison environment where the stress and isolation can trigger acts of self harm and suicide. They are at risk

of exposure to hepatitis and HIV communicable diseases. There can be an intolerable strain put on family and personal relationships. Education and employment can be jeopardised or cease because of the disruption caused by the remand period. Not only the offender suffers. The stigma attached to imprisonment can effect the family of the offender; this can be particularly difficult for children to deal with.

Limitations of the Study.

Due to time restraints, this study was confined to Armadale, Joondalup and Perth Courts of Petty Sessions. Notwithstanding that Perth Magistrate's Court handles 40% of all Petty Session matters in West Australian (Auditor General, 1996, p.10) the results of the study cannot be generalised to all courts in Western Australia. This is particularly so for Courts of Petty Session in county areas who deal with over three-quarters of Aboriginal defendants (Broadhurst et al.1994, p.6).

The data collection for this study has highlighted deficiencies regarding Ministry of Justice offender data which will need to be resolved if further empirical research is undertaken. To overcome any possible inaccuracies within the available data that could have

biased the results, the researcher was obliged to discard offenders that could have been included if there was consistency of the data entry across Ministry of Justice databases. Such an example was the omission of 113 offenders who were received into a prison during the sample period, "but no link to the prison system was found" (Appendix 'C'). The limitation for the study is that while the results are accurate they are underestimated.

Conclusion

The information from this study has advanced the knowledge of the use of remand imprisonment. An analysis of the common factors of offender risk assessment and comparative analysis of the two groups, led to the conclusion that there was no justifiable reason in accordance with the legislation, why the custodial offenders in the study were remanded in custody prior to receiving a non-custodial sentence. The study concluded that it is reasonable to suggest that magistrates use the remand facility for short sharp shock measures and as a defacto sentence. This being the case, imprisonment is not being used as a last resort, instead magistrates may

be using the legislation to facilitate their own beliefs that imprisonment deters offending.

The study has contributed significant information about remandee demographics and criminal history that will support future research in this under investigated area of the criminal justice system. The results have highlighted humanitarian and justice issues by revealing that over half the offenders who were in custody were imprisoned for the first time, exposing them to criminogenic influences, communicable disease and acts of self harm and suicide. In addition, an analysis of the results found that the administration of the bail legislation detained offenders in custody without just cause. Further research is required to examine the bail legislation and its effectiveness for offenders at grass root level, i.e. remand imprisonment.

The study has provided empirical information which indicates that the systemic discrimination against Aboriginal offenders, apparent in other sections of the criminal justice system, is also practiced within the sphere of the remand custody facility. This data is a valuable addition to other research findings, in pursuit of a solution to the problem of the over representation of Aborigines in the West Australian justice system.

The study has highlighted the economic implications of unnecessary remand custody for the West Australian government. The conclusion is that there are enormous savings to be gained by the taxpayer if magistrates use the remand custody facility sparingly, and in strict adherence to the spirit of the legislation.

This study has provided the groundwork for future research which is needed to examine the legislation and the decision making that results in unnecessary and unjustified loss of liberty. In addition, to provide a holistic perspective to the question of imprisonment of the unconvicted, further research is required to evaluate the humanitarian effect of remand custody.

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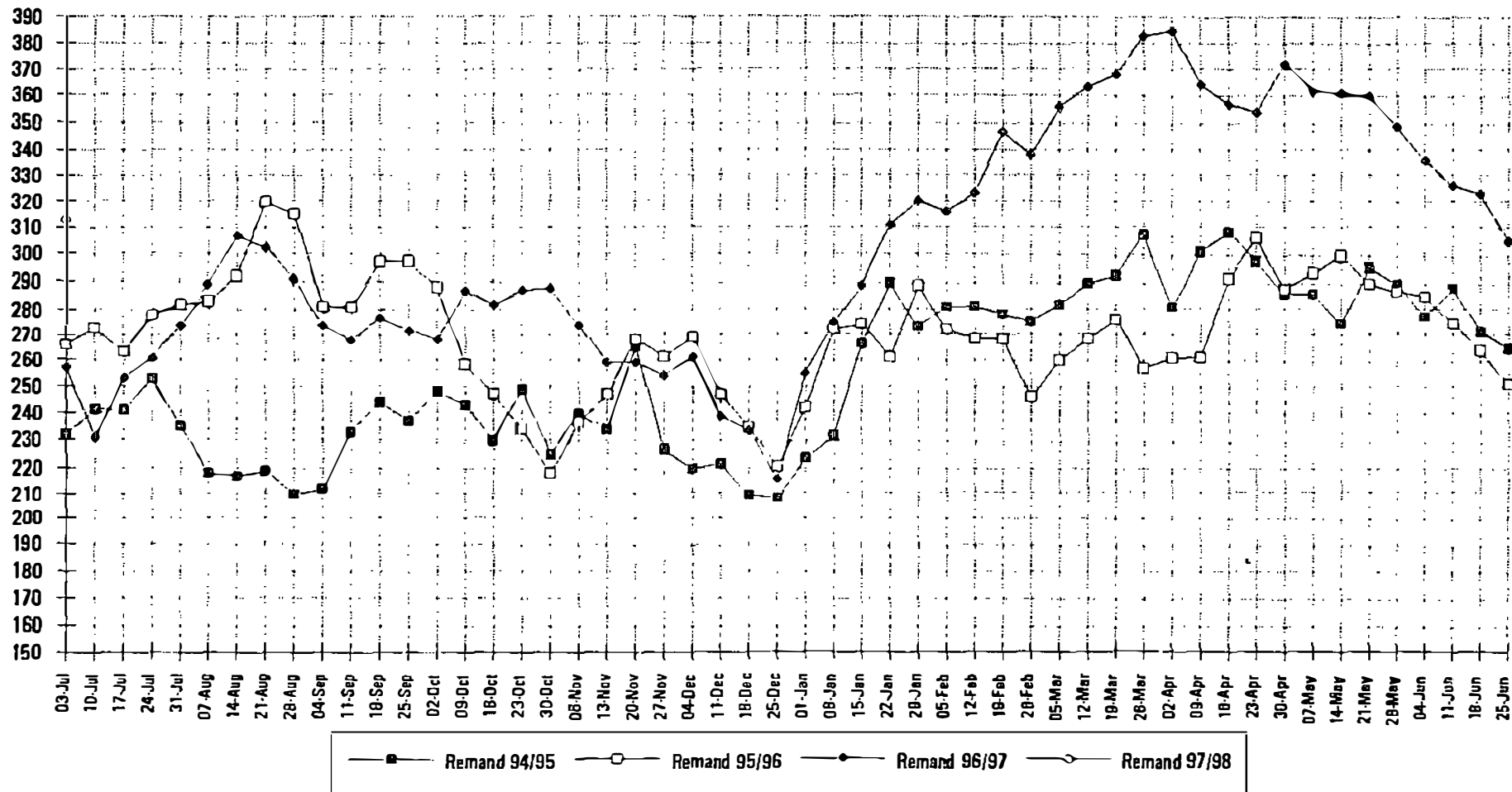
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APPENDIX 'A'

WEST AUSTRALIAN ADULT REMAND RATE 1994-1997

Weekly Remand Muster Adult Prisons 1994/1998



APPENDIX 'B'

ONE DAY SNAPSHOT OF MAGISTERIAL REMAND WARRANT

OFFENCES

Snapshot of offences for remandees at C.W.Campbell Remand Centre on 25/9/1996 for Court of Petty Sessions warrants only. (N.B Some remandees have multiple offences and court appearances)

No mdl, steal, dr/m.v with false label; revoke bail; **no bail**

Burglary x3, attempt burg., resist, on curritlage, damage; **no bail**

Steal m.v, no mdl, damagex6, stealx3, assault; **no bail**

Threat to kill, assault occasion bodily harm (aobh), unlawful poss, possess utensil; **bail granted.**

Assault, damage, threat to hinder, breach bail condition;**no bail.**

Assault public officer, disorderly, br. bail condition, steal, grievous bodily harm (gbh); **bail granted.**

Unlawful poss. weapon, threatening words, aobh, receiving, fraudx5, br. community service order, armed robbery, breach bail, damage, burglary; **no bail.**

Burglary, steal with violence whilst in company; **no bail.**

Grievous bodily harm; **no bail.**

Import drugs; **no bail.**

Attempt to pervert the course of justice; **no bail.**

Assault, false name, sex. penetration x5, aggravated assaultx6; **bail granted.**

Deprivation of liberty, aobh, robbery with attempted violence; **no bail.**

Fraud x 27; **no bail.**

Steal, offensive behaviour, trespass, br. bail x2, steal m.v, false name, no mdl, damage x2; no bail.

False name, reckless driving, no mdlx2, driving under the influence (dui); **no bail.**

Fail to stop, br. bail, attempt to pervert the course of justice; **bail granted.**

Robbery with attempt. violence, attempt steal with violence; **no bail.**

No mdl; **no bail**

Burglary; **no bail.**

Steal m.v, reckless driving, no mdl, excess 0.08%, fail to stop; **no bail.**

Refuse to stop, dangerous driving; **no bail.**

Burglary; **no bail.**

Steal m.v, reckless driving, no mdl, excess 0.08%, fail to stop, refuse to stop, dangerous driving, steal m.v x3, burg, attempt armed robbery; **no bail.**

Assault public officer x 8, threat to kill x 6; **bail granted.**

Steal with violence; **bail granted.**

Steal x3, steal m.v, steal x2, no mdl, reckless driving;**no bail.**

No mdl, br. bail conditions x2, fraud, unlawful obtain;**no bail.**

No mdl, excess 0.08%, resist arrest, unlawful assault, aobh, br. bail, damage x2; **no bail.**

Steal m.v x2, burglary, unlawful assault to resist detention, resist public officer, receiving, steal x4; **bail granted.**

No mdl; **no bail.**

Burglary x9, steal; **no bail.**

Robbery x3, steal m.v, steal m.v x7, receive, br. bailx2, forfeit bail, steal, burglary; **no bail.**

Breach probation, no mdl; **bail granted.**

Breach bail, no mdlx2, 0.08%, steal; **bail granted.**

Refuse to comply, br. order to keep the peace, assault; **bail granted.**

Aobh; **no bail.**

Steal with violence, assault public officer; **bail granted.**

Breach probation x5; **bail granted.**

Steal whilst armed in company; **bail granted.**

Attempt to steal m.v x2; **bail granted.**

Unlawful wounding, sex. Penetration; **bail granted.**

Stealx4, stupefy to commit indecent offence, sexual penetration without consent; **bail granted.**

Aggravated indecent assault, aggravated sexual Penetration x3, deprivation of liberty, stupefy to commit offence x2; **no bail.**

Sexual offence x5, indecent dealings x5; **bail granted.**

Br.bailx2, unlawful on premises, no mdlx4; **no bail.**

Burglary x2, steal x2; **no bail.**

Steal with violence; **bail set.**

Aobh, deprivation of liberty, sexual penetration x8; **bail granted.**

Steal m.v.; **bail granted.**

Import prohibited goods, false statement; **no bail.**

Dui, no mdl, speeding; **no bail.**

Escape legal custody, destroy property x2, steal m.v, reckless driving x2, burglary x2, false name, refuse to stop, resist arrest; **no bail.**

Excess 0.08%, no mdl, unlicensed vehicle, br.bail; **bail granted.**

Breach order to keep the peace; **no bail.**

Aobh; **no bail.**

Burglary, aobh, robbery; **no bail.**

Burglary x3; **bail granted.**

Assault, resist, steal m.v, reckless driving, dui, dangerous driving, steal, no mdl x2; **bail granted.**

Conspiracy to cultivate cannabis with intent to sell/supply; **no bail.**

Dangerous driving, refuse to stop, 0.08%, no mdl; **no bail.**

False name, conspire to s/s amphetamines, possess stolen goods; **no bail.**

Burglary x 3; **no bail.**

Attempt to pervert the course of justice; **bail granted.**

Burglary x 5, possession; **bail granted.**

Burglary x 3, aobh x 2, deprivation lib.x 2, agg. sex. penetration x 6, criminal damage; **no bail.**

Aobh, br.bail; **no bail.**

Steal with violence whilst in company; **bail granted.**

Armed robbery in companyx4, steal m.v x4, armed robbery; **no bail.**

Damage, offensive behaviour; **no bail.**

Intent to injure x 3; **no bail.**

Cultivate cannabis with intent s/s; **no bail.**

Aobh, poss. weapon, unlawful assault, wilful exposure, disorderly conduct, steal, gbh, unlawful wounding; **no bail.**

Indecent dealings with child u/16 x 3, sex.penetration child u/16 x3; **bail granted.**

Attempt burglary, resist, unlawful assault; **no bail.**

Aggravated sex. penetration x 16; **no bail.**

Steal, burglary; **no bail.**

Aggravated sexual penetration x 6; **no bail.**

Criminal damage, assault; **bail granted.**

Unlawful wounding, break and enter, aobhx 2, br. restraining order; **bail granted.**

Stalking, revoke bail; **no bail.**

Fail to comply, fail to provide breath test, no mdl, disorderly;**no bail.**

Disorderly,conduct, assault public officer x 4; **no bail.**

Intend bodily harm, unlawful on premises x2; **no bail.**

On premises without lawful intent, burglary, unlawful indecent assault, steal m.v, threat to hinder; **bail granted.**

Criminal damage by fire; **bail granted.**

Sexual penetration of child u/16 x 2; **bail granted.**

Burglary with intent; **no bail.**

Steal x12, fraud x5, Burglary x8, steal as a servant; **no bail.**

Resist, br. restraining order; **no bail.**

Burglary x2; **no bail.**

Steal x2, attempt to cause explosion, threat to kill; **bail granted.**

Fail to stop, no mdl, dui, dangerous driving; **no bail.**

Possess cannabis, gbh; **no bail.**

Burglary, steal with violence; **bail granted.**

Burglary; **bail granted.**

Burglary, steal; **no bail.**

Br. bail x2, false name, false statement, possess cannabis; **no bail.**

Unlawful assault x3, damage property x2; **no bail.**

No mdl, false statement, possess cannabis., possess utensil; **no bail.**

Steal m.v, damage, wilful murder, rape, attempt murder; **no bail.**

Robbery whilst armed; **bail granted.**

False name, possess weapon, assault; **bail granted.**

steal with violence; **no bail.**

Threat to hinder; **bail granted.**

Breach bail, possess heroin with intent to sell/supply, aggravated sexual penetration x 2, deprivation of liberty; **bail granted.**

Indecent offence, sexual penetration without consent; **bail granted.**

Aggravated indecent assault, aggravated sexual penetration x3, deprivation of liberty; **no bail.**

APPENDIX 'C'

MINISTRY OF JUSTICE DATA COLLECTION

**COURT DEFENDANTS HELD IN PRISON
AS REMAND PRISONERS
WHILST WAITING FOR CHARGES TO BE DEALT WITH
PERTH, ARMADALE AND JOONDALUP COURTS OF PETTY SESSIONS**

Following a request for data to be provided to enable a research project to be completed by Ms Maeve Barry concerning prisoners held on remand whilst waiting for charges to be dealt with, the following procedures were followed.

1. Court Data Bases

With the assistance of Bruce Mohan, details of all charges and outcomes were extracted from the court data bases on the Ministry's Data Warehouse. The charges selected were those recorded on the data bases over the period 01 MAY 1996 to 31 OCTOBER 1996.

In case there was more than one outcome for a charge, the most serious outcome was selected.

If outcomes indicated transfer to other courts, committal for trial/sentence, withdrawal, discharge, dismissal, no sentence or no outcome (as at late June 1997), appropriate codes were inserted so that those charges could later be excluded.

Age was calculated by deducting the date of birth from the charge date and dividing the result by 365.25. Ages were then grouped into various categories.

To guard against duplicate file numbers, the lowest file number was selected in cases where the first three characters of both the surname and the given names were found to be the same when there were multiple file numbers, provided that date of birth and sex (where known) were also the same.

2. Prison and Community Corrections Data Bases

Where possible, prison and community correction file numbers were inserted against the court records. This was done on the basis that at least the first three characters of both the surname and the given names on the court systems had to equal those on the corrective services system. The Date of Birth and Sex had also to be the same, unless they were unknown. The Alias Records on the Corrective Services Systems were also checked.

If the Court records did not show valid date of birth, sex or race, those were obtained from the prison or community corrections systems where possible.

3. Prison Reception

A valid prison reception date was selected on the following basis:

The reception date needed to be on or after the charge date and before or on the outcome date. If there was no such date, a 'prior reception date' was inserted if possible, provided that the charge date was prior to the release date following such prior reception date. The first following release date, if any, was obtained from the reception record.

The reception type was inserted and the offence and prison term files on the prison data base were checked to ascertain whether the prisoner became sentenced during the particular prison stay. The reception record was also examined as to whether the prisoner was employed as at the time of reception.

The admission check list record immediately following the reception was utilised to find whether bail was set or not. The offences recorded on the admission check list records were converted to anco codes. The lowest anco code was taken to be the major charge.

4. Community Corrections Orders

The Community Corrections Data Base was checked to find whether there were any community based court orders recorded as having commenced on or after the charge date but before or on the outcome date.

If a pre-sentence report was requested on or after the charge date and on or before the release date it was recorded. However, it would only be considered valid if the due date was greater than the reception date. In case of a reception prior to the charge date, both the request and the due date needed to be equal to or greater than the charge date.

5. Time Incarcerated

Time incarcerated was calculated on the following basis:

If the reception date was on or after the charge date, the reception date was deducted from the release date.

If the reception date was before the charge date, the charge date was deducted from the release date.

Time incarcerated whilst a pre-sentence report was pending was calculated as follows:

If the charge date was before or on the reception date and the request date was on or after the reception date, the request date was deducted from the release date.

If the charge date was before or on the reception date and the request date was prior to the reception date with a due date on or after the reception date, the reception date was deducted from the release date.

If the charge date was after the reception date and the request date was on or after the charge date, the request date was deducted from the release date.

One day was added in each case to ensure that both the first and last day were counted.

6. Distinct Persons Held on Remand Only

From the tables containing details of all the charges, separate tables were extracted showing, as far as possible, distinct receptions of distinct persons where there was no record of such persons having been sentenced to imprisonment for any of the charges examined and where such persons did not become a sentenced prisoner for any other reason. Such persons must also have been released from prison and charges must have a valid outcome. Separate tables were constructed for each Court plus a table combining all Courts.

As far as the table combining all Courts is concerned, the lowest file number was selected in cases where the first three characters of both the surname and the given names were found to be the same when there were multiple file numbers, provided that date of birth and sex (where known) were also the same.

Where there were multiple receptions and more than one apparently valid charge date, the lowest charge date was selected.

Where rows were duplicated or overlapping, the appropriate rows were deleted.

7. Conclusion

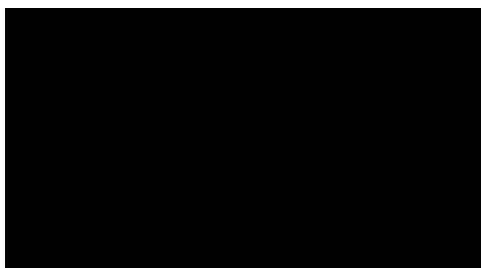
It must be noted that figures will change over time as over time more and more matters commenced during the period examined (1 May 1996 - 31 October 1996) continue to be finalised.

The lists of distinct persons provided show the following columns:

Court No	Court File No (which is the lowest number of all numbers where the defendant appeared to be the same person)
cpr nr	Prison File Number
Surname	
Given Names	
S	Sex
R	Race
P_DOB	Date of Birth
tm rmd	Time held on remand
ps dys	Time held on remand with pre-sentence report pending
CH_ETRY	Charge Date
PRIOR_REC	Prison Reception Date if received before charge date
PRISON_DA	Prison Reception Date if received on/after charge date
PSR_REQU	Pre-Sentence Report Request Date
PSR_DUE_D	Pre-Sentence Report Due Date
RelDate	Prison Release Date
EV_DATE	Charge Outcome Date
P	Code 'Y': Valid Pre-sentence Report
B	Code 'Y' Bail Set, Code 'N' Bail Not Set
min anc	Minimum Anco: Major Charge according to Prison System.
PstC	Post Code of Address recorded on Court System
E	Employment as at time of Reception: Code 'Y' Employed; Code 'N' Not Employed

Attached are lists of the fields recorded in the Temporary Tables utilised for extracting the data.

Note: As the outcome date was inserted at a late stage, it now is found that the outcome date may, at times, precede the release date. This occurs in relation to 15 distinct individuals. If it is decided that such cases are not valid cases or if remand days should only be calculated as far as the outcome days, a slight modification to the program needs to be made.



Adrian de Graaf

A/Manager Statistical Analysis
Policy Branch
Policy, Programs and Projects Directorate
Offender Management Division

23 July 1997

TABLES.XLS

tempparty (Perth CPS), temppartya (Armadale CPS) and temppartyj (Joondalup CPS)			
Name	Null?	Type	
P_ID	NOT NULL	VARCHAR2(10)	
SURNAME	NOT NULL	VARCHAR2(40)	
GIVEN NAMES		VARCHAR2(40)	
P_SEX		VARCHAR2(1)	
P_RACE		VARCHAR2(1)	
P_DOB		DATE	
P_ADDRESS_1		VARCHAR2(35)	
P_ADDRESS_2		VARCHAR2(35)	
P_ADDRESS_3		VARCHAR2(35)	
P_POSTCODE		VARCHAR2(8)	
CH_ID	NOT NULL	VARCHAR2(10)	
CH_YEAR	NOT NULL	NUMBER(2)	
CH_ENTRY_DATE	NOT NULL	DATE	
CH_COMPL_DATE	NOT NULL	DATE	
OT_ANCO_CODE		VARCHAR2(5)	
OT_ACT	NOT NULL	VARCHAR2(5)	
OT_SECTION	NOT NULL	VARCHAR2(8)	
OT_SUB_SECTION		VARCHAR2(32)	
OT_ADD_CODE		VARCHAR2(5)	
OT_SHORT_DESC		VARCHAR2(70)	
OUTCOME		VARCHAR2(1)	
PRISON_ID		VARCHAR2(6)	
CCD_ID		VARCHAR2(8)	
PRISON DATE		DATE	
CCD DATE		DATE	
CCD OT		VARCHAR2(2)	
RT_CODE		VARCHAR2(8)	
EV DATE		DATE	
REC_TYPE		VARCHAR2(4)	
PRIOR_REC_DATE		DATE	
PSR REQUEST DATE		DATE	
BAIL SET		VARCHAR2(1)	
RELEASED DATE		VARCHAR2(8)	
TIME REMAND		NUMBER(5)	
COURT LOC		VARCHAR2(1)	
PRISON DOB		VARCHAR2(6)	
PRISON DOBYR		VARCHAR2(4)	
PRISON DOBMO		VARCHAR2(2)	
PRISON DOBDA		VARCHAR2(2)	
AGE		NUMBER(4)	
PRISON TIME		VARCHAR2(6)	
EMPLOYED		VARCHAR2(1)	
OMIS OFF1		VARCHAR2(4)	
OMIS OFF2		VARCHAR2(4)	
OMIS OFF3		VARCHAR2(4)	
ANCO OFF1		NUMBER(3)	
ANCO OFF2		NUMBER(3)	
ANCO OFF3		NUMBER(3)	
MIN ANCO		NUMBER(3)	

tempparty (Perth CPS), temppartya (Armadale CPS) and temppartyj (Joondalup CPS)			
Name	Null?	Type	
AGE_GROUP		NUMBER(3)	
RELEASED_TIME		VARCHAR2(6)	
SENT		VARCHAR2(1)	
PREV_P_ID		VARCHAR2(10)	
PRIOR_REC_TIME		VARCHAR2(6)	
PRIOR_REC_TYPE		VARCHAR2(4)	
tempdistpartyage (Perth CPS), tempdistpartyagea (Armadale CPS), tempdistpartyagej (Joondalup CPS), tempdistpartyageall (All three Courts)			
Name	Null?	Type	
P_ID	NOT NULL	VARCHAR2(10)	
SURNAME	NOT NULL	VARCHAR2(40)	
GIVEN_NAMES		VARCHAR2(40)	
P_SEX		VARCHAR2(1)	
P_RACE		VARCHAR2(1)	
P_DOB		DATE	
P_POSTCODE		VARCHAR2(8)	
PRISON_ID		VARCHAR2(6)	
CCD_ID		VARCHAR2(8)	
REC_TYPE		VARCHAR2(4)	
AGE		NUMBER(4)	
AGE_GROUP		NUMBER(3)	
EMPLOYED		VARCHAR2(1)	
PRISON_DATE		DATE	
PRIOR_REC_DATE		DATE	
PRIOR_REC_TYPE		VARCHAR2(4)	
EV_DATE		DATE	
PSR_REQUEST_DATE		DATE	
RELEASED_DATE		VARCHAR2(8)	
BAIL_SET		VARCHAR2(1)	
MIN_ANCO		NUMBER(3)	
TIME_REMAND		NUMBER(5)	
CH_ENTRY_DATE		DATE	
PSR_DUE_DATE		DATE	
PSR		VARCHAR2(1)	
PSR_DAYS		NUMBER(6)	
COURT		VARCHAR2(1)	

NUMBERS				
18-Jul-97				
TOTAL NUMBER OF DISTINCT PERSONS WITH CHARGES				
BETWEEN 1/5/98 AND 31/10/98				
	Perth	Armadale	Joondalup	Total
Total	10449	1528	2158	14134
18-Jul-97				
TOTAL NUMBER OF DISTINCT PERSONS WITH CHARGES				
BETWEEN 1/5/98 AND 31/10/98				
BY MOST SERIOUS OUTCOME FOR EACH CHARGE RECORDED TO DATE				
(If more than one charge with different most serious outcomes, persons are counted more than once.)				
Outcome	Perth	Armadale	Joondalup	Total
Fine	7886	1262	1794	11042
Good Behaviour Bond	128	19	39	186
Probation	141	18	21	180
Community Service	68	12	25	103
Probation and Community Service	128	35	18	177
Community Based	83	11	12	108
Intensive Supervision	68	7	9	84
Sub-Total Community Corrections	484	83	83	650
Suspended Imprisonment	6	4	6	16
Imprisonment	416	25	18	459
Sub-Total Final Outcomes	8020	1183	1940	12353
Dismissed	895	64	0	959
Withdrawn	204	28	15	245
No Sentence Imposed	8	1	0	7
Transfer/Committed for Sent/Trial	930	89	78	1095
Sub-Total All Outcomes	11056	1573	2031	14659
Other Outcomes/No Outcome	831	85	253	969
Total	11686	1658	2284	15628
18-Jul-97				
TOTAL NUMBER OF DISTINCT PERSONS WITH CHARGES				
BETWEEN 1/5/98 AND 31/10/98				
WHICH HAVE AN OUTCOME RECORDED TO DATE				
	Perth	Armadale	Joondalup	Total
Imprisonment	416	25	18	459
Other than Imprisonment*	8226	1324	1880	11430
Total	8642	1349	1898	11889
* Excludes Dismissed, Withdrawn, No Sentence Imposed/Other Outcomes/No Outcome and Transfer/Committed for Sent/Trial.				
18-Jul-97				
TOTAL NUMBER OF DISTINCT PERSONS WITH CHARGES				
BETWEEN 1/5/98 AND 31/10/98				
BY ORDER TYPE				
IF ISSUED A COMMUNITY CORRECTIONS ORDER ON OR AFTER FIRST APPEARANCE DATE				
(If more than one order type, persons are counted more than once)				
Order Type	Perth	Armadale	Joondalup	Total
Probation and Community Service	152	30	24	212
Community Based	78	10	12	100
Community Service	50	8	24	82
Intensive Supervision	81	7	8	74
Probation	123	13	22	158
Total	464	74	88	626
18-Jul-97				
TOTAL NUMBER OF DISTINCT PERSONS WITH CHARGES				
BETWEEN 1/5/98 AND 31/10/98				
WHO HAD AT LEAST ONE COMMUNITY CORRECTIONS ORDER IMPOSED				
ACCORDING TO THE COMMUNITY CORRECTIONS SYSTEM				
	Perth	Armadale	Joondalup	Total
Total	458	74	87	619

APPENDIX ‘D’
FREQUENCIES OF CURRENT AGE FOR SAMPLE A SAMPLE B

SAMPLE A

current age^a

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	18	16	7.2	7.2	7.2
	19	31	14.0	14.0	21.3
	20	19	8.6	8.6	29.9
	21	17	7.7	7.7	37.6
	22	10	4.5	4.5	42.1
	23	14	6.3	6.3	48.4
	24	6	2.7	2.7	51.1
	25	11	5.0	5.0	56.1
	26	10	4.5	4.5	60.6
	27	9	4.1	4.1	64.7
	28	11	5.0	5.0	69.7
	29	7	3.2	3.2	72.9
	30	7	3.2	3.2	76.0
	31	4	1.8	1.8	77.8
	32	8	3.6	3.6	81.4
	33	4	1.8	1.8	83.3
	34	5	2.3	2.3	85.5
	35	7	3.2	3.2	88.7
	36	3	1.4	1.4	90.0
	37	2	.9	.9	91.0
	38	1	.5	.5	91.4
	39	1	.5	.5	91.9
	40	2	.9	.9	92.8
	41	1	.5	.5	93.2
	42	2	.9	.9	94.1
	43	2	.9	.9	95.0
	44	3	1.4	1.4	96.4
	45	1	.5	.5	96.8
	46	1	.5	.5	97.3
	47	1	.5	.5	97.7
	48	1	.5	.5	98.2
	50	3	1.4	1.4	99.5
	52	1	.5	.5	100.0
Total		221	100.0	100.0	
Total		221	100.0		

a. REMAND = yes

SAMPLE B

current age^a

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid 18	9	3.3	3.3	3.3
19	23	8.4	8.4	11.7
20	14	5.1	5.1	16.8
21	17	6.2	6.2	23.1
22	23	8.4	8.4	31.5
23	16	5.9	5.9	37.4
24	18	6.6	6.6	44.0
25	21	7.7	7.7	51.6
26	8	2.9	2.9	54.6
27	7	2.6	2.6	57.1
28	13	4.8	4.8	61.9
29	8	2.9	2.9	64.8
30	7	2.6	2.6	67.4
31	8	2.9	2.9	70.3
32	6	2.2	2.2	72.5
33	11	4.0	4.0	76.6
34	4	1.5	1.5	78.0
35	5	1.8	1.8	79.9
36	5	1.8	1.8	81.7
37	6	2.2	2.2	83.9
38	3	1.1	1.1	85.0
39	2	.7	.7	85.7
40	3	1.1	1.1	86.8
41	3	1.1	1.1	87.9
42	6	2.2	2.2	90.1
43	2	.7	.7	90.8
45	3	1.1	1.1	91.9
46	3	1.1	1.1	93.0
47	1	.4	.4	93.4
48	2	.7	.7	94.1
49	5	1.8	1.8	96.0
50	1	.4	.4	96.3
51	2	.7	.7	97.1
56	1	.4	.4	97.4
57	2	.7	.7	98.2
59	1	.4	.4	98.5
60	1	.4	.4	98.9
61	1	.4	.4	99.3
63	1	.4	.4	99.6
90	1	.4	.4	100.0
Total	273	100.0	100.0	
Total	273	100.0		

a. REMAND = no

APPENDIX ‘E’

CURRENT OFFENCES FOR SAMPLE A AND SAMPLE B

SAMPLE A

current most serious

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid homicide	1	.5	.5	.5
aobh/gbh	8	3.6	3.6	4.1
sexual assaults	1	.5	.5	4.5
assault common	14	6.3	6.3	10.9
assault public officer	7	3.2	3.2	14.0
att. pervert crse of justice	1	.5	.5	14.5
burglary	28	12.7	12.7	27.1
break and enter	2	.9	.9	28.1
fraud	5	2.3	2.3	30.3
receiving	7	3.2	3.2	33.5
steal/unlaw use of m.v	16	7.2	7.2	40.7
stealing	23	10.4	10.4	51.1
hinder/resist	2	.9	.9	52.0
damage	4	1.8	1.8	53.8
breach restraining orders	2	.9	.9	54.8
false name/add/possession/use of firearms	2	.9	.9	55.7
breach bail	6	2.7	2.7	58.4
58	10	4.5	4.5	62.9
disorderly behaviour-var.	1	.5	.5	63.3
un,law on premises	8	3.6	3.6	67.0
possession/use illegal drugs	2	.9	.9	67.9
possess smoking imp.	12	5.4	5.4	73.3
solicit	1	.5	.5	73.8
traffic drugs	1	.5	.5	74.2
consume liquor	4	1.8	1.8	76.0
excess 0.08%	2	.9	.9	76.9
reckless driving	11	5.0	5.0	81.9
no motor driving licence	1	.5	.5	82.4
refuse breath test	37	16.7	16.7	99.1
Total	2	.9	.9	100.0
Total	221	100.0	100.0	

REMAND * crmt mso offence group Crosstabulation

		crmt mso offence group					Total
		against person	against property	drug offences	against good order	driving offences	
REMAND yes	Count	31	85	17	36	51	220
	% of REMAND	14.1%	38.6%	7.7%	16.4%	23.2%	100.0%
	% of crmt mso offence group	52.5%	57.4%	40.5%	52.9%	29.1%	44.7%
	% of Total	6.3%	17.3%	3.5%	7.3%	10.4%	44.7%
REMAND no	Count	28	63	25	32	124	272
	% of REMAND	10.3%	23.2%	9.2%	11.8%	45.6%	100.0%
	% of crmt mso offence group	47.5%	42.6%	59.5%	47.1%	70.9%	55.3%
	% of Total	5.7%	12.8%	5.1%	6.5%	25.2%	55.3%
Total	Count	59	148	42	68	175	492
	% of REMAND	12.0%	30.1%	8.5%	13.8%	35.6%	100.0%
	% of crmt mso offence group	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
	% of Total	12.0%	30.1%	8.5%	13.8%	35.6%	100.0%

APPENDIX 'F'

PREVIOUS MOST SERIOUS OFFENCE FOR SAMPLE A

previous most serious charge

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no previous conviction	30	13.6	13.6	13.6
	driving causing death	1	.5	.5	14.0
	aobh/gbh	23	10.4	10.4	24.4
	sexual assaults	3	1.4	1.4	25.8
	assault common	15	6.8	6.8	32.6
	assault public officer	9	4.1	4.1	36.7
	att. pervert crse of justice	1	.5	.5	37.1
	armed robbery	4	1.8	1.8	38.9
	burglary	37	16.7	16.7	55.7
	break and enter	10	4.5	4.5	60.2
	fraud	6	2.7	2.7	62.9
	receiving	6	2.7	2.7	65.6
	steal/unlaw use of m.v	12	5.4	5.4	71.0
	stealing	11	5.0	5.0	76.0
	hinder/resist arrest	2	.9	.9	76.9
	damage	4	1.8	1.8	78.7
	false name/add.	1	.5	.5	79.2
	possessio/use of firearms	2	.9	.9	80.1
	breach bail	2	.9	.9	81.0
	58	1	.5	.5	81.4
	disorderly behaviour-var	4	1.8	1.8	83.3
	un.law on premises	1	.5	.5	83.7
	possession/use illegal drugs	11	5.0	5.0	88.7
	solicit	1	.5	.5	89.1
	traffic drugs	4	1.8	1.8	91.0
	65	1	.5	.5	91.4
	cultivate illegal drugs	1	.5	.5	91.9
	excess 0.08%	10	4.5	4.5	96.4
	reckless driving	1	.5	.5	96.8
	no motor driving licence	7	3.2	3.2	100.0
	Total	221	100.0	100.0	
Total		221	100.0		

APPENDIX 'G'
CRIMINAL HISTORY

NAME :

D.O.B.

ALSO KNOWN AS :

FINGER PRINT :

REQUESTED BY : MAEVE BERRY

ISSUED BY : CS00005

DOCKET : 00267952

W.A. PHOTO : 97/APR

C.N.I. :

COURT	TYPE	DATE	OFFENCE	COUNT	SENTENCE
JOONDALUP	PS	19/06/1996	STEALING	2	PROB 12 MTHS

PSR
No Bail

***** END OF RECORD *****

DATE: 04/06/1997 I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF
COURT APPEARANCES RECORDED AT THIS OFFICE
AGAINST THE PERSON NAMED ABOVE.

CRIMINAL RECORDS SECTION
POLICE DEPARTMENT, PERTH.

SUPERINTENDENT IN CHARGE
FORENSIC DIVISION

D.O.B. - 6

C.N.I.

- Bail not granted.

SUPERINTENDENT IN CHARGE
FORENSIC DIVISION

NAME : D.O.B.

FINGER PRINT :
REQUESTED BY : MAEVE BERRY
ISSUED BY : CS00005
DOCKET : 00274348
W.A. PHOTO : 97/MAY
C.N.I. : 55276631

COURT	TYPE	DATE	OFFENCE	COUNT	SENTENCE
PERTH	PS	22/10/1996	BREACH OF RESTRAINT ORDER	2	\$150 EA CHG

NO PSR
NO Bail

***** END OF RECORD *****

DATE: 03/06/1997 I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF
COURT APPEARANCES RECORDED AT THIS OFFICE
AGAINST THE PERSON NAMED ABOVE.

CRIMINAL RECORDS SECTION
POLICE DEPARTMENT, PERTH.
SUPERINTENDENT IN CHARGE
FORENSIC DIVISION

NAME :

D.O.B. 20/11/72

FINGER PRINT : / / / / /
 REQUESTED BY : MAEVE BERRY
 ISSUED BY : CS00005
 DOCKET : 00275665
 W.A. PHOTO : 97/MAY
 C.N.I. : 90078337

COURT	TYPE	DATE	OFFENCE	COUNT	SENTENCE
PERTH	PS	05/08/1996	UNLAW REMAIN ON ²⁰ / ₈ PREM	✓ 2	\$60 EA CHG
PERTH	PS	03/12/1996	BREACH OF BAIL	1	\$50

NO PSR
 Bail granted

***** END OF RECORD *****

DATE: 29/05/1997 I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF
 COURT APPEARANCES RECORDED AT THIS OFFICE
 AGAINST THE PERSON NAMED ABOVE.

CRIMINAL RECORDS SECTION
 POLICE DEPARTMENT, PERTH.

SUPERINTENDENT IN CHARGE
 FORENSIC DIVISION

NAME :

D.O.B. 3/3

ALSO KNOWN AS :

FINGER PRINT : /
 REQUESTED BY : MEAVE BERRY
 ISSUED BY : CS00005
 DOCKET : 00269563
 W.A. PHOTO : 96/JUN
 C.N.I. : 55272737

COURT	TYPE	DATE	OFFENCE	COUNT	SENTENCE
PERTH	PS	14/06/1996	FALSE NAME AND/OR ADDRESS	1	\$200
PERTH	PS	14/06/1996	STEALING (M/VEHICLE)	1	\$800 MDL DISQ 6 MTHS

- PSR
 - NO Bail granted

***** END OF RECORD *****

DATE: 29/05/1997 I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF
 COURT APPEARANCES RECORDED AT THIS OFFICE
 AGAINST THE PERSON NAMED ABOVE.

CRIMINAL RECORDS SECTION
 POLICE DEPARTMENT, PERTH.

SUPERINTENDENT IN CHARGE
 FORENSIC DIVISION

APPENDIX 'H'
PRE-SENTENCE REPORT REQUESTS

Form 3

WESTERN AUSTRALIA

Bail Act 1982, s 24

Sentencing Act 1995, Part 3, Divs 3-5

REQUEST FOR A REPORT

SUPREME COURT ☐DISTRICT COURT ☐CHILDREN'S COURT ☐COURT OF PETTY
SESSIONS ☒

LOCATION:

ARMADALE

Request

Director, Community Corrections, Ministry of Justice:

Please prepare and submit a report about this person in accordance with this request.

Defendant
or
Offender

Name:

Male/Female

Date of birth:

Address:

Status

Appeared in court on: 27.5.97

Convicted: ☐ Yes ☐ No☐ Remanded on bail☒ Remanded in custody

Relevant offences

Charge/Indict No

Description of offence

5376/95

No mdl - susp

Type of report

☐ for bail purposes☐ suitability for bail at a community hostel
☐ suitability for home detention condition
☐ other (specify):☒ for sentencing purposes☐ Court Diversion Service report
☐ pre-sentence report (PSR)
☐ mediation report
☐ other (specify):☐ oral ☒ written

Issues to be addressed

by a pre-sentence report (PSR)

by a PSR or other report

- ☐ suitability for a CBO
- ☐ suitability for an ISO
- ☐ suitability for community service
- ☐ suitability for detention in a special detention centre
- ☐ suitability for a sex offender treatment program
- ☐ curfew
- ☐ breach of CBO or ISO
- ☐ other (specify):

- ☐ medical condition
- ☐ psychological condition
- ☐ psychiatric condition
- ☐ alcohol, drug or substance abuse
- ☐ other (specify):

Report required by

Judicial officer: Mr. T. McIntyre S.M.

Court:

Address:

Date of hearing:

ARMADALE COURT
100 BRIDGE STREET, ARMADALE
17.6.1997Request
Issued by

Signature:

Date:

27.5.97

To the defendant/offender: You must contact a community corrections centre by the next working day. See attached list of community corrections centres.

DUPLICATE to offender

Form 3

APPENDIX F

WESTERN AUSTRALIA Bail Act 1982, s 24 Sentencing Act 1995, Part 3, Divs 3-5 REQUEST FOR A REPORT

SUPREME COURT	<input type="checkbox"/>
DISTRICT COURT	<input type="checkbox"/>
CHILDREN'S COURT	<input type="checkbox"/>
COURT OF PETTY SESSIONS	<input checked="" type="checkbox"/>
LOCATION:	Armadale

Request	Director, Community Corrections, Ministry of Justice: Please prepare and submit a report about this person in accordance with this request.
----------------	--

Defendant or Offender	Name:	Male/Female Date of birth:
	Address:	

Status	Appeared in court on: 5-8-97	Convicted: <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<input type="checkbox"/> Remanded on bail	<input checked="" type="checkbox"/> Remanded in custody

Relevant offences	Charge/Indict No	Description of offence
	6656/97	Drive whilst Disentitled

Type of report	<input type="checkbox"/> for bail purposes	<input type="checkbox"/> suitability for bail at a community hostel
	<input checked="" type="checkbox"/> for sentencing purposes	<input type="checkbox"/> suitability for home detention condition
	<input checked="" type="checkbox"/> oral <input type="checkbox"/> written	<input type="checkbox"/> other (specify):
		<input checked="" type="checkbox"/> Court Diversion Service report
		<input checked="" type="checkbox"/> pre-sentence report (PSR)
		<input type="checkbox"/> mediation report
		<input type="checkbox"/> other (specify):

Issues to be addressed	by a pre-sentence report (PSR)	by a PSR or other report
	<input type="checkbox"/> suitability for a CBO <input type="checkbox"/> suitability for an ISO <input type="checkbox"/> suitability for community service <input type="checkbox"/> suitability for detention in a special detention centre <input type="checkbox"/> suitability for a sex offender treatment program <input type="checkbox"/> curfew <input type="checkbox"/> breach of CBO or ISO <input type="checkbox"/> other (specify)	<input type="checkbox"/> medical condition <input type="checkbox"/> psychological condition <input type="checkbox"/> psychiatric condition <input type="checkbox"/> alcohol, drug or substance abuse <input type="checkbox"/> other (specify):

Report required by	Judicial officer: Mr T. J. McIntyre SM
	Court: ARMADALE COURT
	Address: 109 JULL STREET, ARMADALE 6112
	Date of hearing: 12-8-97

Request issued by	Signature: [Redacted]	Date: 5-8-97
	Official title: JSO/CPS Armadale	

APPENDIX ‘I’
FREQUENCIES OF VARIABLES FOR “FIRST TIME IN PRISON”

employed at 1st appearance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	33	27.3	27.7	27.7
	no	86	71.1	72.3	100.0
	Total	119	98.3	100.0	
Missing	System Missing	2	1.7		
	Total	2	1.7		
Total		121	100.0		

abor

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	31	25.6	25.6	25.6
	no	90	74.4	74.4	100.0
	Total	121	100.0	100.0	
Total		121	100.0		

ball

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	34	28.1	28.1	28.1
	no	87	71.9	71.9	100.0
	Total	121	100.0	100.0	
Total		121	100.0		

breached bail?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	104	86.0	86.0	86.0
	yes	17	14.0	14.0	100.0
	Total	121	100.0	100.0	
Total		121	100.0		

adult court appearance(s)?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	31	25.6	25.6	25.6
	yes	90	74.4	74.4	100.0
	Total	121	100.0	100.0	
Total		121	100.0		

chn's court appearance(s)?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no	58	47.9	47.9	47.9
	yes	63	52.1	52.1	100.0
	Total	121	100.0	100.0	
Total		121	100.0		

current most serious

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	homicide	1	.8	.8	.8
	aobh/gbh	4	3.3	3.3	4.1
	sexual assaults	1	.8	.8	5.0
	assault common	5	4.1	4.1	9.1
	assault public officer	6	5.0	5.0	14.0
	att. pervert crse of justice	1	.8	.8	14.9
	burglary	20	16.5	16.5	31.4
	fraud	3	2.5	2.5	33.9
	receiving	6	5.0	5.0	38.8
	steal/unlaw use of m.v	11	9.1	9.1	47.9
	stealing	13	10.7	10.7	58.7
	hinder/resist	1	.8	.8	59.5
	damage	1	.8	.8	60.3
	breach restraining orders	1	.8	.8	61.2
	false name/add/possession/use of firearms	1	.8	.8	62.0
	breach bail	5	4.1	4.1	66.1
	disorderly behaviour-var.	2	1.7	1.7	67.8
	un,law on premises	4	3.3	3.3	71.1
	possession/use illegal drugs	2	1.7	1.7	72.7
	possess smoking imp.	6	5.0	5.0	77.7
	traffic drugs	1	.8	.8	78.5
	consume liquor	2	1.7	1.7	80.2
	excess 0.08%	2	1.7	1.7	81.8
	reckless driving	3	2.5	2.5	84.3
	no motor driving licence	1	.8	.8	85.1
	refuse breath test	17	14.0	14.0	99.2
	Total	1	.8	.8	100.0
	Total	121	100.0	100.0	
Total		121	100.0		