
Criminal Justice Commission
Queensland

Crime and Justice in Queensland

July, 1991.

© Criminal Justice Commission, 1991.

Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the COPYRIGHT ACT, no part may be reproduced by any process without permission. Inquiries should be made to the publisher Criminal Justice Commission (Queensland).

IBSN 0-7242-4569-3

Printed by Goprint, Brisbane.

Foreword

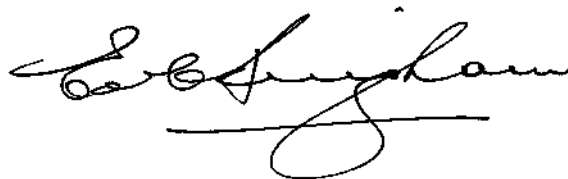
In 1983 the United States Bureau of Justice Statistics released a publication entitled *"Report to the Nation on Crime and Justice"*. A second edition of the Report was published in 1988. This work has become a trend-setter not only within the United States but elsewhere as well. Since 1983 a number of states within the United States have published such reports. Outside the country, Australia and the United Kingdom have issued such reports.

The American initiative has filled a very important gap that has existed for a long time. The lay public, the student up to undergraduate level education, and the teachers did not have at their disposal a volume which explained the characteristics of crimes and criminals and the operation of the criminal justice system in their country. The notable features of the United States publication were its brevity, simple and non-technical language, presentation of data through imaginative blending of tables and graphics, and the size of the volume.

In Queensland, the Commission of Inquiry in its report lamented the lack of adequate and reliable information on crime and criminal justice. The report found that currently available information on crime, criminals, victims and the functioning of the criminal justice system was inadequate. The Criminal Justice Commission weighed this lack of information and decided that a report of the kind published by the United States Bureau of Justice Statistics would be of value to the people of Queensland.

"Crime and Justice in Queensland" brings together a wide range of data from various criminal justice and other sources and research reports. These have been described in plain language and presented along with graphs and tables. The volume is neither intended to be a legal treatise nor a criminological textbook. No attempt has, therefore, been made to be meticulous in describing the technicalities of law. But rather the efforts were directed at preparing a readable and informative document containing main features of the Queensland criminal justice system.

I believe this report should interest the general public, students, educators in high schools and universities, as well as criminal justice practitioners and researchers.



Sir Max Bingham, Q.C.
Chairman
Criminal Justice Commission

Acknowledgments

This report is the result of a 12 month effort by many individuals in addition to the researchers and contributors.

The original idea for this report was based upon the United States Bureau of Justice Statistics publication, *"Report to the Nation on Crime and Justice"*.

During the preparation of this report the Division has received encouragement from the staff of the Bureau of Justice Statistics. In particular the Division is grateful to the editor of the U.S. publication, Ms. Marianne Zawitz and the Director of International Statistics, Ms. Carol Kalish for their interest in and support for the project.

To ensure the quality of the report, outside experts were involved in its development and review. These external reviewers were selected for their knowledge of the subject matter and their experience in presenting technical information to lay audiences. However, the responsibility for any errors and inaccuracies lies with the Research and Co-ordination Division of the Criminal Justice Commission.

The list of those who contributed in the production of this volume in any capacity is too large to mention. There were a large number of individuals and organizations who supported this project and also commented on the substance. The Commission is indebted for their assistance.

There are, however, a number of individuals, without whose assistance many of the sections would have remained incomplete and hence their services must be acknowledged. Special thanks is extended to Peter Jones of the Criminal Justice Commission; Dennis Shepherdson of the Queensland Police Service; Vicky Crowley, formerly of the Department of Justice; Roger Carstens of the Queensland Corrective Services Commission; and Peter Nelson of Griffith University, all of whom provided invaluable assistance in the production of this report.

Finally, I wish to thank the Chairman, Sir Max Bingham, Q.C., the Commissioners and the Directors of the Criminal Justice Commission for their support and encouragement for this report.



Satyanshu Mukherjee
Director
Research and Co-ordination Division
Criminal Justice Commission.

Contents

	Foreword	iii
	Acknowledgments	iv
I.	The criminal event	1
II.	The victim	23
III.	The offender	27
IV.	The response to crime	39
	1. An overview	40
	2. Entry into the criminal justice system	46
	3. Prosecution and pretrial services	56
	4. Adjudication and sentencing process	62
	5. Corrections	69

Chapter I

The criminal event

This chapter gives an overview of crime as it exists in Queensland with data that answers such questions as:

How are crimes defined?

What are the most common serious crimes?

What do we know about crimes such as homicide, robbery and burglary?

How much is known about drink driving, organized crime, white-collar crime, and crimes involving high technology?

What are the main sources of Queensland crime statistics?

What do they measure?

What do they tell us?

How much crime is there?

Have crime rates gone up or down?

What do statistics tell us about crime trends?

How do people rank the seriousness of different crimes?

How much agreement is there among the public about the seriousness of various crimes?

Where do crimes occur?

What is crime?

Crimes are defined by law

For the purposes of this report, crime is defined as being all of those types of behaviour and acts for which the state of Queensland (and in some cases the Commonwealth of Australia) provides formally sanctioned punishment. What is criminal is defined in the written law, specifically the State statutes. When comparisons of criminal offences are made with other states, some variance occurs in the definition of what constitutes a criminal offence. For example, in all other jurisdictions except Tasmania, some homosexual acts no longer constitute a criminal offence.

Criminologists define crime in both general and specific terms, and this process is the first step towards the goal of obtaining accurate statistics on the size and the nature of criminal activity.

Additional perspectives on crime are provided by viewing it in ways that vary with the standard legal definitions. These alternatives define crime in terms of the type of victim (child abuse), the type of offender (white-collar crime), the object of the crime (property crime), or the method of criminal activity (organized crime). Usually these definitions cover one or more of the standard legal definitions of crime, e.g. organized crime may include homicide, assault, fraud, extortion, blackmail, corruption of public officials, tax evasion, illegal gambling, prostitution, etc.

What is considered criminal by society changes over time

Traditionally, some types of activity, such as murder, robbery, stealing and burglary, have been defined as criminal for many centuries. In Queensland, the common law has been codified so that criminal law is contained in legislation enacted by Parliament. Parliament, as a house of elected representatives, gives effect to community values when it proscribes certain behaviour as criminal. However, other behaviours have not been seen as being criminal. Over time, as social values and mores change, some behaviours come to be viewed as being criminal, while others are decriminalized.

What are the characteristics of some serious crimes?

Crime	Definition	In Queensland
Homicide	To cause the death of another person without legal justification or excuse. Includes murder and manslaughter.	<ul style="list-style-type: none">• Homicide is the least frequent crime.• Homicide victims are more likely to be killed by a relative or acquaintance than by a stranger.
Serious Assault	To strike, touch or apply force to another person against their consent with the intent of inflicting, attempting to inflict, injury upon that person. Serious assault includes aggravated assault, occasioning bodily harm, dangerous driving causing bodily harm, malicious wounding, and assault occasioning actual bodily harm. Minor assault inflicts less serious bodily or actual harm than serious assault and includes resisting arrest, common assault and threatening to apply force to another person.	<ul style="list-style-type: none">• Assault is the most common type of violent crime.• The rate for serious assault has increased by over 200% in the past decade and it is the offence category that is of most concern to all arms of the criminal justice system.• Victims of serious assault are usually males under 30 years.
Rape	To have unlawful sexual intercourse with a female by using force or without her consent.	<ul style="list-style-type: none">• The rate for rape has increased by 160% in the past decade, however it is still probably under-reported.
Robbery	To take or attempt to take the property of another person by force or threat of force or physical violence.	<ul style="list-style-type: none">• The rate for robbery has increased by 190% in the past decade.

Note: Definitions are based on classifications used for statistical purposes.

An example of this is increased community pressure to penalize drink drivers. In Queensland, drink driving offenders face hefty fines and repeated offenders are sentenced to periods of imprisonment after their third offence.

Certain acts defined as crimes are in some instances, subject to laws which are not strictly enforced. Violence in the family, such as wife bashing, could legally be classified as criminal assault, but the prevailing morality with regard to the status of women and children in society, inhibits the reporting of offences and prosecution of the perpetrators. Law has been enacted in 1989 to address some aspects of this problem appropriately.¹

N.B. For the purposes of this report the definitions of selected categories of crime do not correspond with those in the Queensland Criminal Code. Instead, they are adapted from definitions used by law enforcement and other justice agencies for statistical purposes.

The past three or four decades have seen rapid changes in scientific technology that has been unprecedented in history. The introduction of new technologies have resulted in criminal activities not always anticipated by the law. This has necessitated changes to the law to define and sanction conduct in these areas. In fact, in many instances, legislators experience difficulty in keeping pace with technology related crimes. Examples of these offences are computer hacking (obtaining unauthorised entry into an organization's computer databank to steal or corrupt information) and theft by the electronic transfer of money.

Crime	Definition	In Queensland
Break & Enter	To gain illegal entry, either by force or other means, to a dwelling, shop, building, complex or other structure with the intent of stealing, causing damage or committing another offence.	• Break & enter accounts for more than 30% of all reported offences.
Stealing	To take or attempt to take property (other than a motor vehicle) from another person by stealth, rather than by deceit or by using force, with the intent of permanently depriving that person of their property.	• Nearly 50% of all reported offences involve stealing.
Motor vehicle theft	To take or attempt to take a motorized vehicle owned by another person with the intent of depriving that person of its possession, either temporarily or permanently; including unlawful use of a motor vehicle.	• Motor vehicle theft accounts for nearly 10% of all reported offences, however the rate is fairly low in terms of property offences.
Fraud & false pretences	To obtain or attempt to obtain the property of another person by deliberate fraudulent misrepresentation of the status of their situation.	• Fraud, false pretences etc. have shown the most erratic patterns in the past decade. The rate has fallen dramatically in the past 3 years.
Drink driving	To operate a motorized vehicle with a blood alcohol content in excess of the prescribed maximum level of 0.05 for a licensed driver and 0.00 for a probationary driver.	• Increased public concern has seen the introduction of several government initiatives aimed at reducing drink driving.
Drug offences	To produce, grow, manufacture, possess, use, deal in, traffic in, import or export narcotics, opiates, hallucinogens, cannabis or any other substance which is prohibited or under legal control, excluding alcohol and tobacco.	• Drug related offences rank about third in the charges laid by police.

How do violent crimes differ from property crimes?

Violent crimes usually result in the injury of a person. Examples of these types of crime are homicide, rape and assault. Robbery is also classified as a violent crime because it involves the use of force or threat against a person.

Property crimes involve criminal activities in which the intent is to gain property. Examples of these offences include the unlawful use of a motor vehicle, breaking and entering, burglary and stealing.

Criminal offences are also classified by how they are handled by the criminal justice system. Non-indictable or simple offences are dealt with in the Magistrates Court, whilst more serious offences, e.g. homicide, rape, etc. are dealt with in the Supreme or District Courts.

What are some other common crimes in Queensland?

Sex Offences are a category of offences defined under the *Criminal Code* which covers such offences as indecent assault, incest, indecent dealings with both males and females, unlawful carnal knowledge, bestiality and wilful exposure. They are broadly described as offences against morality.

Malicious Damage involves the wilful and unlawful damage to or destruction of property. In law, damage is 'wilful' if it is done deliberately by a person who was aware at the time of doing the act that the damage was a likely consequence of their act, and did the act regardless of the risk.

Good Order Offences this category of offence includes such matters as 'disorderly behaviour' which can really be anything but usually means drunkenness. Other offences in the category include evading rail or taxi fares; indecent behaviour; using obscene language; and either resisting or inciting arrest. Confusion is created by the fact that some offences that could be included in this category are instead categorised as liquor offences, e.g. consuming liquor in a public place.

Prostitution itself is not illegal but it is an offence to solicit for immoral purposes in a public place. Other offences that fall within this category include using premises for the purposes of prostitution; to knowingly live on the prostitution earnings of another person; knowingly permit premises to be used for prostitution; and to keep, manage or assist in keeping or managing any premises for prostitution. Contrary to what is commonly assumed to be the case, it constitutes no offence to engage the services of a prostitute. Nor is it illegal for a prostitute to work from a private home or to visit other homes or hotel rooms.

Stock Offences - statistically this category includes such offences as altering brands on cattle and other livestock; being found in possession of either the hide or carcass of a stolen animal; and stock permit and waybill offences, e.g. using a stockroute for mustering without first obtaining a permit, etc. Stock permit and waybill offences made up nearly 90% of the offences in this category in Queensland in 1988-89. Significantly, instances of livestock stealing, or 'cattle duffing' have been excluded by the police from this category.

Homicide, robbery, and break and enter are examples of crimes

Homicide

Homicides in Queensland during 1989-90

What is homicide?

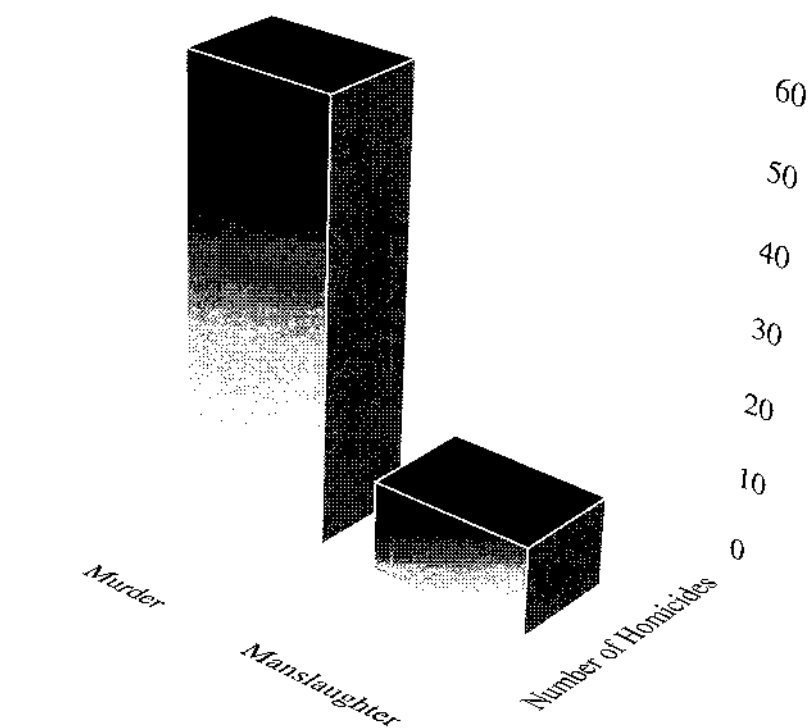
There is a commonly held belief that 'homicide' is just another term for murder. The term 'homicide' is really a general category that applies to any criminal event that results in the death of another human being, without lawful excuse.

The category of homicide in statistical collections includes:

- murder
- attempted murder
- conspiracy to murder
- manslaughter
- dangerous driving causing death
- homicide (unspecified)

Section 300 of the *Criminal Code* provides, "Any person who unlawfully kills another is guilty of a crime, which is called murder, or manslaughter, according to the circumstances of the case". This report only includes murder and manslaughter as homicides.

Societal values place a great emphasis upon the sanctity of human life, therefore homicide experiences the highest public profile of any crime. However, it is the least frequent of any offence category. The media report homicide cases in a manner which is very influential in moulding community attitudes towards the crime and its perpetrators. The societal reality of homicide however is very different to that portrayed in the media and fiction. Many people who commit murder have never offended before nor are they ever likely to offend again.



Source: Queensland Police Service Annual Report, 1990.

Who are the victims of homicide and who are the perpetrators?

Australian studies have shown that men are more likely to be victims and perpetrators of homicide than women. On the other hand, women are more likely to be victims than perpetrators of homicide. Approximately one-third of homicide victims are women, but fewer than 15 percent of killers are women (Grabosky, 1989).²

A study by Najman (1980)³ revealed that being a victim of homicide varied inversely with occupational status. People in the most prestigious occupational groups had the lowest homicide death rates, whilst those in the lowest occupational groups ran a higher risk of being a homicide victim.

Indigenous people are exceptionally vulnerable to homicide mortality. Wilson (1982)⁴ in a study of 17 Aboriginal communities in Queensland found that the homicide rate on these reserves was 39.6 per 100,000. This is more than ten times the Australian national homicide rate.

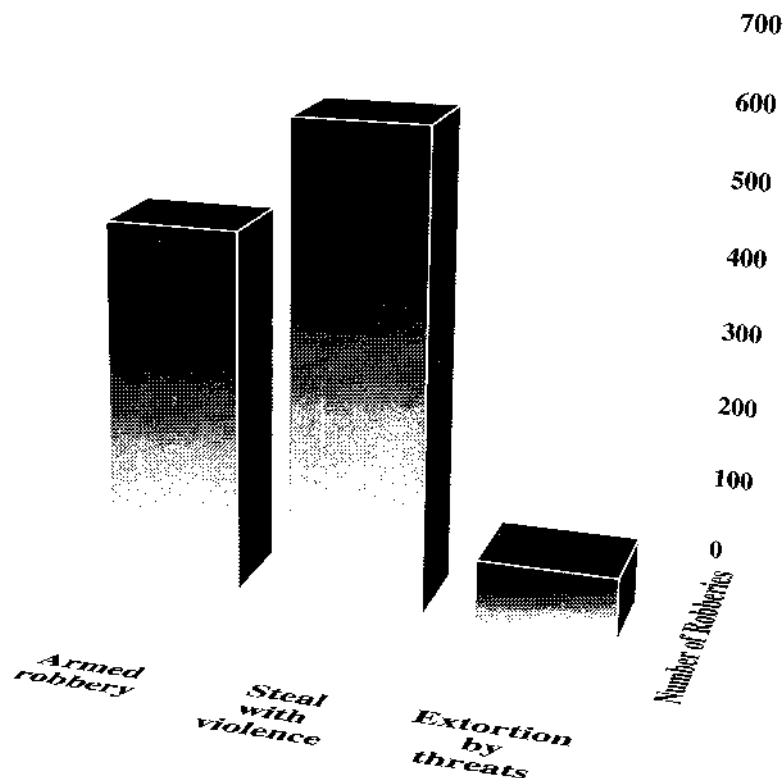
Homicide victims are more likely to be killed by members of their family (43%) or by friends or acquaintances (20%) than by strangers (18%) (Wallace, 1986).⁵ Moreover, domestic violence is an important factor in many homicides. Nearly one-quarter of all homicides are spouse killings (Bonney, 1988).⁶

The rate of family killings is significantly higher in rural areas than in urban areas and they are much more likely to involve guns. Firearms are the most frequently used weapons in homicides and their use is higher in cases where murder is coupled with suicide.

Most child victims are killed by family members (85%) and many of these killings occur within the context of murder-suicides, the majority of which are committed within the family (78%). Relatively few children are killed by strangers (4.7%) and the majority of children killed are aged 5 years or less. Women (55%) are more likely to be responsible for child killings than men (45%).

Robbery

Robberies in Queensland during 1989-90



Source: Queensland Police Service Annual Report, 1990.

What is robbery?

Robbery is a form of stealing. Robbery is defined in Section 409 of the *Criminal Code* as stealing accompanied by the use or threatened use of violence against the person of another or even property. Robbery attracts a penalty of up to fourteen years imprisonment. If the offender is, or pretends to be, armed; or is in the company of another, or at the time wounds or uses violence against a person, then the penalty can be as high as life imprisonment.

There is increasing concern about the rise in robberies reported to the Queensland Police. In the past decade the rate per 100,000 has increased from 13 in 1979-80 to 39 in 1989-90.

Offenders carry weapons in almost half of all robberies

The increased use of weapons during robberies is of concern to the community. In 1989-90 about 40 percent of all robberies reported to the police involved the use (or threatened use) of a weapon. Queensland and Tasmania have the highest percentage of armed households in Australia.

The distinction between armed and unarmed robbery is not always clear. It should be noted that in some cases the perpetrator is not armed at all or carries only an artificial or replica weapon. Either way, there is little qualitative difference to the victim.

Do robberies differ in both their nature and effect?

Robberies tend to fall into two categories:

Commercial robberies tend to have characteristics which:

- involve greater amounts of money and/or more valuable property;
- require some degree of planning on the part of the perpetrators;
- often require perpetrators to negotiate more difficult physical and spatial conditions; and
- entail specialist attention to security measures aimed at deterring robberies.

Personal robberies tend to:

- involve much smaller amounts of money;
- result in more injuries and injuries of a more serious nature to the victim;
- involve less use of firearms; and
- generally be less planned and more impulsive in nature.

Commercial robberies tend to be directed at business premises, commercial moneys or goods in transit (payrolls) or mobile enterprises (taxis). Most bank robberies involve the use of a weapon. In their choice of weapon these offenders tend to be more selective than those offenders who target shops and service stations (NSW Bureau of Statistics, 1987).⁷ Personal robberies tend to occur on streets or in parks and happen most frequently at night.

Victims of personal robbery tend to be male and the most "at risk" age group is 25-44 year olds. Also, incidences of personal robbery tend to be disproportionately concentrated amongst people in the lower occupational status groups (Chappell, 1990).⁸

Robbers tend to be overwhelmingly male, mostly under 30 years of age. Most are unemployed, have little formal education and usually have prior criminal records involving property offences. Alcohol and drug use/addiction play a role in both commercial and personal robbery.⁹

Break and enter

Break and enter is unlawful entry usually, but not necessarily, accompanied by theft

Break and enter offences are of great public concern due to their prevalence within the community. Break and enter is defined in Section 418 of the *Criminal Code*. It is to gain illegal entry to a building by force or otherwise.

The offence is known as *Housebreaking* if committed between the hours of 6.00 a.m. and 9.00 p.m. and the more serious *Burglary* if committed at other times.

What is the size of the problem?

In 1989-90 nearly 46% of all break and enters were residential. Break and enters represented about 31% of all selected offences reported to police in 1989-90. Trends indicate that since 1978-79 the break and enter rate has increased from 817 per 100,000 population to 1,690 in 1989-90. Break and enter has more than doubled in the past decade. The areas worst affected by break and enters are Beenleigh, Fortitude Valley, Gold Coast, Oxley, South Brisbane and Cairns.

When do break and enters occur?

The survey of *Community Crime Prevention Attitudes (1987)*¹⁰ found that an estimated 10.3% of households in Queensland had been broken into in the past 5 years. There is little difference concerning the time of day that break-ins occur as 46.8% of break-ins occur during the night and 42.7% during the daytime. Of these break-ins 72.8% were reported to the police.

Of the households broken into, 46.3% had some type of security device installed at the time of entry indicating that security devices have no apparent effect. In 12.24% of cases, entry was gained through a door or window protected by a security device. In 44.3% of cases in the survey, break-ins occurred while someone was at home.

What type of households are most at risk?

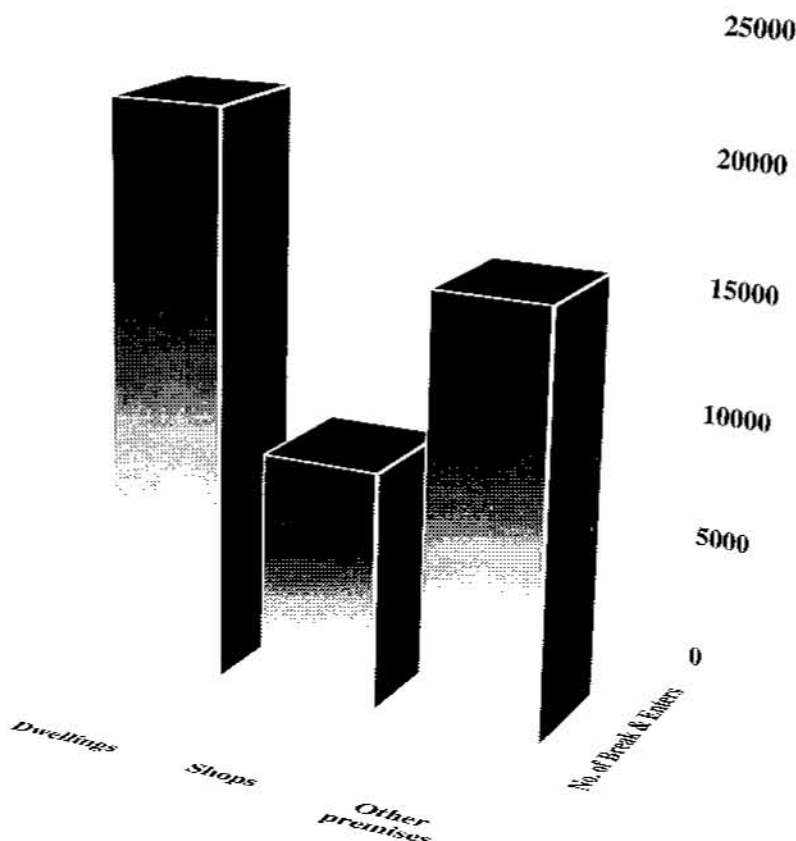
The elderly do not appear to be any more at risk of break-in than other age groups. The survey showed that 10.6% of victims were aged 65 years and over, which is the same as their percentage representation in the Queensland population.

Marginal differences were found in the composition of households. In the sample surveyed 18.1% were single person households; yet of these only 15.9% had been broken into. Single parents seemed to be more at risk (9.55%) [their representation in the sample was (7.25%)] than single occupant households. Of married couples without children 20.6% had experienced break-ins and those with children 40.1%.

Genderwise, households that were all female in composition were twice as likely to suffer break-ins (19.5%) as all male households (9.16%).

Households where all of the members are employed (45.5%) are almost twice as likely to be broken into than households where no one is employed (23.1%).

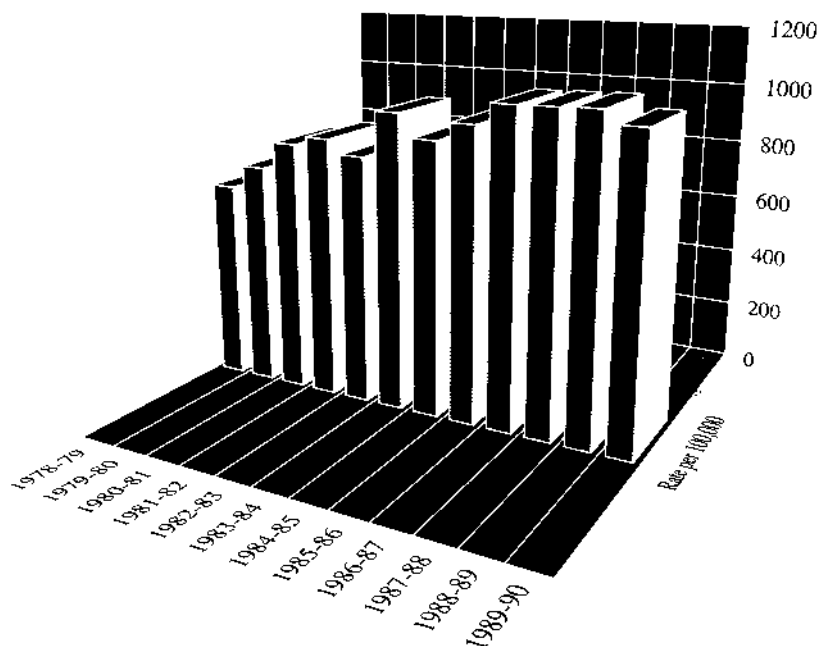
Break and enters in Queensland during 1989-90



Source: Queensland Police Service Annual Report, 1990.

Driving while intoxicated has been defined as a crime because of public concern over traffic safety

Drink driving rate trends in Queensland



Source: Queensland Police Service Annual Reports, 1979 to 1990.

Alcohol-related accidents pose a great threat to public safety

Of the 428 traffic related deaths in 1989, one in four were found to have a positive blood alcohol analysis. Some 1,585 road users who were involved in traffic accidents were tested for blood-alcohol content and 75% were found to have some alcohol in their bloodstream.

The crime of driving while intoxicated differs from most other crimes

- Drink driving lacks the usual criminal motives of gaining property, harming another person, or trafficking in contraband.
- A physiological test is used to determine whether or not an offence has been committed.

Drink driving is not an offence under the *Criminal Code*, rather it is an offence under the *Traffic Act*. There are driving offences in the Code, namely *Dangerous driving*, and the more severe offences of *Dangerous driving causing either grievous bodily harm or even death*.

In these criminal driving offences, being under the influence of alcohol or another stupefying drug is an aggravating circumstance to the commission of the offence. A person found guilty of *dangerous driving with circumstances of aggravation* will be subject to far greater penalties.

Although not strictly a criminal offence, drink driving has been included as part of this publication as a separate category because of:

- the widespread concern about this particular offence, and its impact on the community; and
- the heavy concentration of police resources allocated to its eradication, that necessarily impacts on other areas of law enforcement.

Under the *Queensland Traffic Act*, it is an offence under *Section 16* to have the control of a motor vehicle while having a blood alcohol concentration exceeding 0.05 for licensed drivers and 0.00 for provisional drivers. It is of particular note that once the blood alcohol level of a driver reaches 0.15 they are conclusively presumed to be under the influence and the act constitutes a more serious offence.

The State Government uses a variety of methods to prevent and deter drink driving

To prevent and deter drink driving the government uses its authority to regulate alcohol and driving as well as to invoke criminal sanctions. Regulatory authority may be exercised through administrative channels. For example liquor licensees who sell alcohol to a minor may lose their license.

Administrative remedies such as driver's licence revocation are used for alcohol-related driving offences. In some instances, prior convictions may result in a mandatory prison sentence. Scientific tests are used to determine whether drivers are intoxicated.

If a driver is suspected of being intoxicated, police officers may require the driver to take a test (either a breath test or a blood test) to determine the alcohol level in their blood.

In the past decade a number of government initiatives have been effected:

- In December 1982 the legal alcohol limit was lowered from 0.08 to 0.05.
- April 1985 saw the introduction of a legal limit of 0.02 for 18 year olds.
- Alcometers were introduced in June 1985.
- The first R.I.D. (Reduce Impaired Drivers) scheme was implemented in 1987.
- R.B.T. (Random Breath Testing) was introduced in December, 1988.
- Police began to use the Drager Alcotest Model 7710, the most sophisticated breath testing machine in the world, in December 1988.
- Recently introduced is a blood alcohol limit of 0.00 for all commercial drivers and drivers under 25 with less than three years driving experience.

Organised crime includes many traditional crimes as well as offences such as racketeering

What is organised crime?

Although organised crime has been considered a problem for some decades, no universally accepted definition of the term has been established. Organised crime involves the provision of illegal goods and services by a group of people commonly known as 'gangsters' or 'racketeers'. It consists of large scale activities in gambling, SP bookmaking, prostitution, illegal dealings in drugs, loan-sharking (money lending at extremely high interest) and 'laundering' of illegal money through a legitimate business and by computer manipulation. Organised criminal activity uses the illegally obtained capital to expand into other enterprises, legal and illegal, and corrupts government officials with the aim of gaining protection. Some organised crimes are considered victimless because the buyer and seller willingly participate.¹¹

Organised crime groups often are protected by corrupt officials in the government and private sector

Such officials include inspectors who overlook violations, accountants who conceal assets, financial officers who fail to report major cash transactions, law enforcement officers who provide enforcement activity information to drug traffickers, and lawyers who provide legal advice to assist in concealing illegality. The public also supports organised crime by sometimes knowingly or unknowingly purchasing illegal or stolen goods and services.

Some characteristics of organised crime are generally cited:

- **Restricted membership:** Membership may be limited by race or common background and generally involves a lifetime commitment to the group, which can be enforced through violent group actions.
- **Criminality/violence/power:** Power and control are key organised crime goals and may be obtained through criminal activity of one type or in multiple activities. Criminal activity may be designed directly to generate 'income' or to support the group's power through bribery, violence, and intimidation. Violence is used to maintain group loyalty and to intimidate outsiders and is a threat underlying all group activity. Specific violent criminal acts include: murder, kidnapping, arson, and robbery.
- **Legitimate business involvement:** Legitimate businesses are used to 'launder' illegal funds or stolen merchandise. For example, illegal profits from drug sales can be claimed as legitimate profits of a noncriminal business whose accounting records have been appropriately manipulated. Legitimate business involvement also elevates the social status of organised crime figures.
- **Use of specialists:** Outside specialists, such as pilots, chemists, and arsonists, provide services under contract to organised crime groups on an intermittent or regular basis.

What are the key organisations in the fight against organised crime?

Organised criminals do not recognise state boundaries, therefore a number of federal and state bodies have been established to co-ordinate the activities of crime fighting agencies at both a federal and state/territory level. These include:

The Criminal Justice Commission (C.J.C.) Queensland was established by the *Criminal Justice Act 1989-90*. The decision to establish the C.J.C. was taken in response to the recommendations of the Commission of Inquiry which was appointed following media revelations on crime and corruption in Queensland.

The C.J.C. consists of five organisational units:

- Official Misconduct Division;
- Misconduct Tribunals;
- Research and Co-ordination Division
- Intelligence Division; and
- Witness Protection Division

In addition to an advisory role and continuing the investigations commenced by the Commission of Inquiry, the C.J.C.:

- investigates all complaints of, and information concerning, alleged or suspected misconduct by members of the Police Service and official misconduct by persons holding appointments in units of public administration;
- through Misconduct Tribunals, hear and determine disciplinary charges of Official Misconduct;
- investigate and take measures to combat organised and major crime; and
- inform the Legislative Assembly of these activities.

It functions as required by the Criminal Justice Act, and encompasses the entire criminal justice system of the State. Also it is required to monitor, review, co-ordinate, initiate reform of the administration of criminal justice, and to investigate the incidence of official misconduct throughout the State. Further, it is required to conduct research and recommend law reform, and reform in law enforcement, and to develop and foster co-operation between agencies in the State concerned with the administration of criminal justice.

The C.J.C. is required to build up a database of intelligence information concerning criminal activities and persons involved in such. It monitors and reports on the use and effectiveness of investigative powers, suitability and use of law enforcement resources and the performance of the Police Service. It also reviews the effectiveness of programs and methods of the Police Service including community policing, crime prevention, recruitment and training of members of the Department, and the use of intelligence information concerning crime. The C.J.C. can conduct investigations of its own initiative.

Subject to the judicial controls, the C.J.C. has powers which include search and seizure of evidence, and the compulsory production of documents and the giving of evidence at Commission hearings. It performs the functions that are provided by both the S.C.C. and the I.C.A.C. in New South Wales.

Australian Bureau of Criminal Intelligence (A.B.C.I.) was established in 1981 by the signing of an agreement by the Australian Police Ministers' Council following consultation between the Commonwealth, all Australian States and Territories. The role of the A.B.C.I. is to provide facilities for the collection, collation, analysis and dissemination of criminal intelligence with a view to providing such intelligence to the Police Forces of the Commonwealth, the States and the Territories to enable them to combat organised crime in Australia and, in particular, to assist them in combating illicit drug trafficking. The administration and operation of the A.B.C.I. and the performance of its functions are independent of any one participating Government or agency.

The A.B.C.I. has established and maintains liaison in matters of criminal intelligence with appropriate agencies and also undertakes research and recommends proposals for legislative changes to combat organised crime.

The National Crime Authority (N.C.A.) which was established in 1984 as a law enforcement agency whose investigations are not limited by jurisdictional or territorial boundaries, was designed primarily to minimize the incidence and impact of organised crime in Australia. The N.C.A. has been granted the power to investigate that criminal activity which is considered 'relevant'. 'Relevant' offences are those which involve two or more offenders, substantial planning and organisation, the use of sophisticated methods and techniques, that are committed in conjunction with similar offences. This involves such crimes as theft, tax evasion, illegal drug dealings, extortion, violence, bribery and corruption.

The N.C.A. performs its functions at two levels. Firstly, at the *General* level the N.C.A.:

- investigates specified criminal activities;
- disseminates information and intelligence relating to investigations;
- works in co-operation with other law enforcement agencies;
- establishes and co-ordinates task forces for investigations;
- makes recommendations to governments regarding reform of the law, administrative practices, and of the courts.¹²

Secondly, at the *Special* level the N.C.A.:

- investigates matters referred to it by the Commonwealth or a State. In this instance the N.C.A. is able to utilize its coercive powers and hold hearings; requiring a person to then appear before the hearing, to give evidence and to produce documents.

Australian Federal Police (A.F.P.) is a Commonwealth statutory authority established by the Parliament under the Australian Federal Police Act 1979. Its responsibilities include the prevention, detection and investigation of criminal offences against Commonwealth laws. A priority of the A.F.P. are those investigations relating to drug importation, organised crime, fraud against the Commonwealth and specific references from the Commonwealth Government. It is also empowered to undertake general criminal investigations into such matters as currency offences, offences against marriage laws, electoral offences and immigration offences.

Of particular importance to the A.F.P. is the identification and prosecution of major offenders involved in the importation of illicit drugs and the dismantling of syndicate operations. To assist in these objectives, the A.F.P. undertakes 'proactive' inquiries which help to develop its intelligence data and assists in determining the level of criminal activity involved.

To assist in its investigations the A.F.P. has the power to utilize listening devices, telecommunications interceptions and to conduct 'controlled deliveries' of drugs in order to identify and prosecute those responsible for their importation.

An important objective of the A.F.P. is to create close liaisons with other law enforcement agencies such as the Australian Customs Service, the National Crime Authority, the Australian Bureau of Criminal Intelligence and relevant overseas bodies.¹³

Australian Securities Commission

(A.S.C.) began operating on January 1, 1991 replacing the National Companies and Securities Commission and the State and Territory Corporate Affairs Commissions. This reform was initiated to enable a more uniform enforcement and regulation of Corporation Law including such areas as the collection and dissemination of company information, documents and fees.

The A.S.C. is now the sole national authority responsible for administering a national Corporations Law which regulates corporations, securities and futures markets. It provides an information service to the public and also deals with the registration of companies.

There are also 'Regional Offices' in each capital city which conduct the corporate regulation duties of the A.S.C. such as:

- the regulation of occupational licensing and fund raising activities;
- market liaison and surveillance, and
- investigations of contraventions of the Corporations Law (and, where appropriate, civil litigation or prosecution).¹⁴

The New South Wales Crime Commission (N.S.W.C.C.)

The N.S.W.C.C. was established in 1991. This Commission subsumes all the functions of the independent statutory body, the State Drug Crime Commission (S.D.C.C.) created in January, 1986. The main aim of this organisation is to combat illegal drug trafficking and organised and other crime in New South Wales. The Act empowers the S.C.C. to make inquiries into 'relevant offences'. In this case, 'relevant offences' include:

- a serious drug offence that involves substantial planning and organisation; or
- any other offence that involves substantial planning and organisation and that involves, or is a kind that ordinarily involves the use of sophisticated methods and techniques.

To assist in its investigation of serious organised crime, the N.S.W.C.C. has been granted the power to conduct hearings where witnesses may be compelled to give evidence on oath and to produce documents or other material relevant to the investigation. The Commission is also permitted to use telephone intercepts and listening devices.

The N.S.W.C.C. was also recently made responsible for overseeing the Drug Trafficking (Civil Proceeding) Act 1990 which allows for the forfeiture of the assets of drug traffickers.¹⁵

The Independent Commission Against Corruption (I.C.A.C.)

The I.C.A.C. was constituted as a statutory corporation under the Independent Commission Against Corruption Act 1988. It came into existence on May 13, 1989. It is an independent body which reports directly to the Parliament and not to the Government.

The purpose of the I.C.A.C. is to minimize corruption in the public sector of New South Wales. In order to achieve its objectives, the I.C.A.C. performs three functions:

- conducts Investigations to expose and deter corrupt behaviour and initiates prosecutions where necessary.
- aims to Prevent Corruption by lessening the opportunities for corruption to happen by initiating revision of laws and practices and, by assisting public authorities in identifying and implementing systems of work to achieve operational integrity.
- Public Education designed to inform the public of the adverse effects of corruption and to encourage them to take action.

To assist in its investigations, the I.C.A.C. has been granted the power to conduct hearings; to enter and inspect premises; and may apply for warrants to use listening devices.¹⁶

Cash Transactions Reports Agency was established under the Cash Transactions Reports Act 1988. It was an initiative by the Federal Attorney General to assist the Australian Tax Office and Federal and State law enforcement agencies in the detection of tax evasion and criminal activity, such as money laundering from drug trafficking. To achieve those aims, the Act places certain obligations on cash dealers and on the public generally.

The Cash Transaction Reports Agency has been established to:

- receive the reports of significant cash transactions and other transactions;
- disseminate information from those reports to the taxation and law enforcement authorities;
- analyse the report information for taxation and criminal intelligence purposes;
- generally oversight the operation of and compliance with the Cash Transaction Reports Act.

When opening new accounts and facilities such as safety deposit boxes, cash dealers will need verification of the identification of the person or firm opening the account or facility.

A cash dealer must report to the Cash Transaction Reports Agency details of currency transactions involving \$10,000 or more that the dealer has with its customers in Australia. Cash dealers must also report to the Agency suspect transactions, (i.e. where there are reasonable grounds to suspect that the information about the transaction would assist law enforcement agencies in respect of evasion of tax, confiscation of monies from criminal activity and other offences).

Cash dealers include:

- banks, building societies and credit unions;
- insurance companies and insurance intermediaries;
- security dealers and futures brokers;
- managers and trustees of unit trusts;
- firms that deal in travellers cheques, money orders and the like;
- currency and bullion dealers;
- casinos and gambling houses;
- T.A.B.'s, on-course totes and bookmakers.

Failure to carry out obligations under the Act can in some cases result in imprisonment and/or monetary penalties.¹⁷

White collar crime refers to a group of crimes that generally involve deception or abuse of power

What is white collar crime?

White collar crime originally included acts committed by businessmen and professionals. The scope of this crime has changed significantly over the years. Today it includes theft by employees, corruption, cheating on taxes, social security fraud, medi-fraud (billing by physicians for services not performed), as well as those acts involving millions of dollars such as stock market swindles, consumer fraud, and price fixing. It would appear from this list, and the general population appears to agree, that white collar crime is non violent in nature. That is not necessarily so. Pharmaceutical companies have been found by the courts to be responsible for many deaths and serious birth defects.

White collar crime can cause loss to society in general as in cases of tax evasion, for example. White collar crimes may not always be detected and are more difficult to investigate.

Little data are available on the extent of white collar crime

Measuring white collar crime presents special problems:

- **No uniform definitions** exist that define either the overall scope of white collar crime or individual criminal acts.
- **Wide variation** in commercial record keeping procedures make it difficult to collect and classify data on the loss.
- **Uncertainty over the legal status** of financial and technical transactions complicates the classification of data.
- **Computer technology** can conceal losses resulting from computer crimes.
- **Crimes may not be reported** to protect consumer confidence.

Corporate crime falls within the domain of white collar crime

Corporate crime is white collar crime on a larger scale than individuals who use their positions of power, influence or trust to make illegal gains. In contrast to those white collar offences, such as embezzlement or misuse of computers for fun or profit, which are committed by individuals against companies, corporate crime involves offences committed by companies or their agents against members of the public, the environment, creditors, investors or corporate competitors.

Corporate crime can be quite deliberate - such as a medical practice that fraudulently bills the government for services that were never performed. Or it can arise from recklessness, negligence or inattention to detail - such as a factory that discharges dangerous chemicals into a nearby watercourse.

In a *Trends and Issues* publication (No. 5) ¹⁸ the *Australian Institute of Criminology* identifies a number of areas of corporate conduct where breaches were likely to occur:

- **Companies and security offences** which range from improprieties inherent in the formation and structure of the company to management practices which result in the liquidation of the company.
- **Taxation offences** which involve the evasion of taxation obligations on either a Federal or State level.
- **Occupational health and safety** violations which include unguarded machinery, inadequate fire precautions, improper use of equipment, and the misuse of harmful substances in the workplace.
- **Environmental offences** such as the emission or discharge of dangerous or harmful substances into the air, water or land; noise pollution; waste management and the control of other dangerous substances.

- **Consumer affairs** offences which include deceptive advertising, the manufacture or sale of defective or hazardous products, unlawful recovery of debts, consumer fraud and violation of licensing restrictions.
- **Restrictive trade practices** which includes various types of anti-competitive conduct including resale price maintenance, exclusive dealing boycotts, price fixing and monopolisation.
- **Food standards** which cover State and Commonwealth statutes regulating the manufacture and sale of food for domestic consumption and export.
- **Prudential regulations** which require banks, insurance companies and other financial institutions to ensure that the funds of depositors and policy holders remain secure.
- **Economic offences against employees** which includes non-payment of wages and offences against various industrial and wages legislation.
- **Discriminatory practices** in areas such as employment, provision of goods and services, access to public places and accommodation.

High technology has provided new opportunities for crime

High-technology procedures are used in some types of crime

Over the past decade the use of computers and advanced communication techniques for business and industrial purposes has radically altered traditional means of doing business. These changes have created an environment in which abuse of fiscal trust and responsibility can result in unusually large losses. The centralized storage of individually identifiable information has also created new opportunities for white-collar crimes that involve unlawful acquisition and disclosure of data. Manipulation of computer programs can also conceal illegal transactions and prevent, or at least postpone, discovery of loss by a victim or financial institution.

Prosecution of computer-related crimes presents special problems

- Traditional laws are not always applicable to violations that involve automated activity.
- Evidence of computer abuse (and computer-generated evidence of other abuses) may not always be admissible in court.
- Investigators, prosecutors, judges and juries do not have the training needed to become familiar with computer terminology and procedures.

Automatic teller machine fraud is of special concern to consumers

The advent of automated teller machines and the rapid growth in the electronic transfer of funds industry generally have led to a corresponding growth in ATM fraud. The theft of cash cards, and the manufacture of fake cash cards using account numbers and PINs, have led to widespread abuse of the banking system.

Greater use of high technology increased concern about computer crime

The advent of the computer age has created opportunities for crimes that have not existed before, and this has in turn generated new techniques for the detection of such crimes. Ever increasing numbers of people with computing skills means that there are more potential computer criminals.¹⁹

Computer crime can take the form of:

- **theft of money** where payments are transferred into wrong accounts;
- **theft of information** where databases or data transmission lines are tapped into at no cost; or
- **theft of goods** by diverting them to the wrong destination.

It can also take the form of hacking, sabotage and blackmail.

The extent and monetary cost of computer crime are difficult to estimate because they are difficult to detect. In fact, many crimes go undetected and those that are detected are often discovered by accident. Also, few computer frauds are made public because companies are loathe to admit that their security systems are fallible.

Non-reporting of computer crime is also widespread because *"there is very little benefit to the victim. The law is unlikely to be able to undo the damage caused, the criminal is unlikely to be convicted, much staff time is likely to be tied up assembling evidence (if it can be collected at all), and wider knowledge of the crime is likely to harm the future prospects of the victim organization"*.²⁰

Computer crime techniques have generated a whole new industry jargon to describe certain activities

- *The Salami* which involves spreading the theft over a large number of transactions like slices of salami, e.g. a bank clerk may shave a trivial sum off many customer accounts to make up a large sum in their own account;
- *The Trojan Horse* which involves the substitution of false information into a program in order to profit by the outcome, e.g. a false instruction to make payments to a bogus company;
- *Piggybacking* which involves tapping into communication lines and riding into a system behind a legitimate user with a password;
- *Data Diddling* which involves exchanging one piece of data for another;
- *Scavenging* for stray data which may provide clues for unlocking the secrets of a system;
- *Zapping* which involves penetrating a computer by unlocking the master key to its program and then destroying it by activating its own emergency program;
- *Worms* are programs that delete portions of a computer's memory which leads to loss of information;
- *Time Bombs* which involves the insertion of routines which are triggered later by the computer's clock or other events which cause the entire system to crash; and
- *Viruses* which are self-replicating programs that have similar effects to *Time Bombs*.

This list is by no means exhaustive.

Australian Bureau of Statistics (ABS), Australian Institute of Criminology (AIC) and state law enforcement and other justice agencies are the main sources of crime statistics

Queensland crime statistics are generated by the various arms of the criminal justice system

The four major arms of the criminal justice system are police, courts, custodial corrections (prisons) and community corrections (probation and parole). All of these government departments collect and compile statistics for their own use, and for publication in annual reports. However, there is very little comparability and co-ordination of statistical information within the state.

The *Queensland Police Service* gathers statistics on offences and offenders and refer to all incidents becoming known to the police. Statistics are also kept on police force strength and financial expenditure. Offences are grouped into twenty categories and recorded across twenty seven police districts. Details of specific offences such as drugs, prostitution, liquor and gaming, rape and traffic accidents are also recorded. Special attention is given to juvenile involvement in crime. The *Queensland Police Service Annual Report* is produced annually and refers to the fiscal year July 1 to June 30.

Court statistics are collected by the *Queensland Justice Department* on an annual basis for the higher courts (Supreme and District) and the lower courts (Magistrates and Children's). Offences are recorded in eight major categories for all court jurisdictions by court districts. Tables are produced showing both number of appearances and number of charges heard. The *Queensland Justice Department Annual Report* covers the fiscal year.

Following the Kennedy Commission of Review into corrective services in Queensland, the former *Prisons Service* and *Probation & Parole Service* were amalgamated into the *Queensland Corrective Services Commission* in December 1988. Statistics for custodial corrections are collected by the *Australian Bureau of Statistics*, and community corrections collect their own data on offenders and types of orders imposed.

The *Australian Bureau of Statistics* (ABS) publishes all of the aforementioned statistics in its *Law and Order* publication. Produced annually, this publication provides a comprehensive view of recorded criminal activity in Queensland.

As well as this ABS devotes a chapter of the *Queensland Year Book* to Law and Order, besides publishing irregular survey results - *Victims of Crime, Australia (1983)* and *Community Crime Prevention Attitudes, Queensland (1987)*. Both of these publications provide information on victims of crime, and on offences not reported to police.

The *Australian Institute of Criminology* produces a number of useful publications on criminal statistics such as *Australian Prison Trends* (monthly), *Australian Community-Based Corrections Data* (monthly), *Australian Prison Census* (Annual), *Australian Community-Based Corrections Census* (Biennial), *The Size of the Crime Problem in Australia*, *Source Book of Australian Criminal and Social Statistics*.

COMPARISON OF OFFENCE CATEGORIES BY CRIMINAL JUSTICE AGENCY

POLICE	COURTS	PRISONS	PROBATION & PAROLE
Homicide	Homicide	Homicide	Homicide
Murder	Murder &	Murder	Murder &
Attempted murder	attempted murder	Attempted murder	attempted murder
Manslaughter	Manslaughter	Manslaughter	Other related offences
Driving causing death	Other related offences	Other related offences	Assault
Serious assault	Assault	Assault	Assault
Minor assault	Major assault	Major assault	Sexual assault
Robbery	Minor assault	Minor assault	Other sex offences
Rape & attempted rape	Rape	Rape	Other offences against persons
Other sexual offences	Other sex offences	Other related offences	Robbery & extortion
Break and enter	Other violation of persons	Robbery & extortion	Robbery
Dwellings	Robbery & extortion	Robbery	Extortion
Shops	Robbery	Extortion & blackmail	Fraud, misappropriation
Other premises	Extortion	Fraud, misappropriation	Theft, break & enter
Malicious damage	Fraud, misappropriation	Embezzlement	Motor vehicle theft
Motor vehicle theft	Embezzlement	False pretences	Other stealing
Stealing	Fraud & forgery	Fraud & forgery	Receiving & unlawful possession of property
False pretences	Theft, break & enter	Theft, break & enter	Break & enter
Receiving	Motor vehicle theft	Motor vehicle theft	Property damage
Handling stolen goods	Other stealing	Other stealing	Arson
Drug offences	Receiving & unlawful possession	Receiving & unlawful possession	Other property damage
Prostitution offences	Burglary & housebreaking	Burglary & housebreaking	Driving, traffic
Liquor offences	Other break & enter	Other break & enter	Drink driving
Gaming offences	Property damage	Property damage	Dangerous/negligent driving
Racing, betting offences	Arson	Arson	Other driving/traffic
Good order offences	Other property damage	Other property damage	Other offences
Vagrancy	Driving, traffic	Driving, traffic	Drug offences
Stock offences	Drink driving	Drink driving	Breach of probation
Drink driving offences	Dangerous/negligent driving	Dangerous/negligent driving	Other
Other driving/traffic offences	Licence offences	Licence offences	
Miscellaneous offences	Traffic Act offences	Other driving/traffic	
Other offences	Other traffic offences	Other offences	
	Other offences	Possession/use of drugs	
	Drug offences	Dealing/trafficking in drugs	
	Drunkness	Other drug offences	
	Offensive behaviour	Drunkness and other offensive behaviour	
	Trespassing	Enforcement of order	
	Other vagrancy		
	Firearm offences		
	Liquor offences		
	Other		

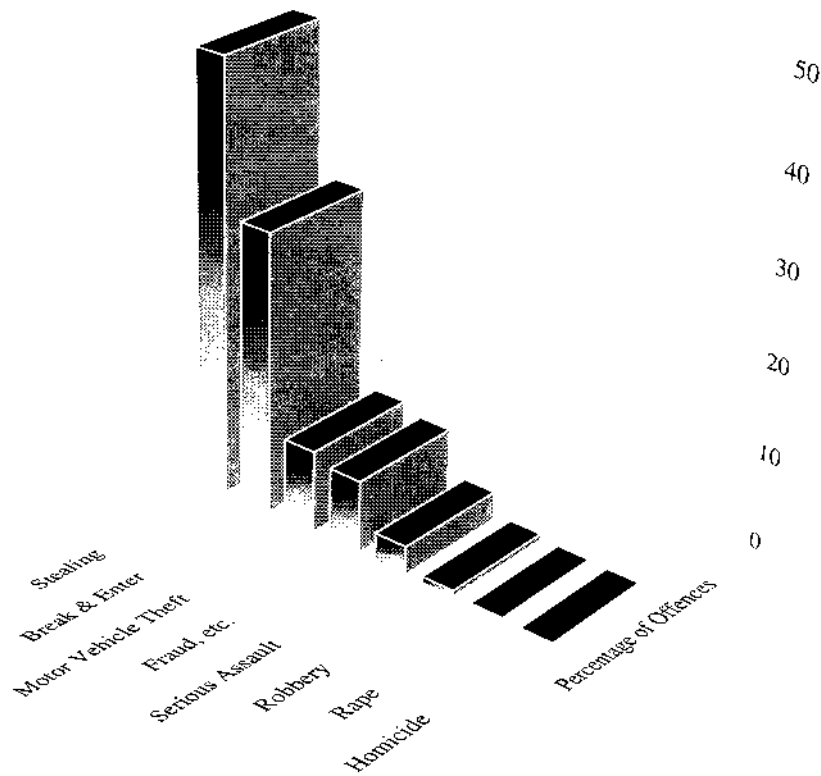
How much crime is there?

The number of offences reported to the police in 1989-90 indicated that approximately 1 person in every 21 was touched by crime

According to statistics published in the Queensland Police Service Annual Report, 1990, the selected violent and property offence rate was 5,317 offences per 100,000 head of population.

- Property offences outnumber violent offences by about 24 to 1.
- There is a ratio of 1 violent crime for every 438 persons, compared to 1 property crime for every 19 persons.
- 48% of all offences involve stealing, 15% of which involve stealing from dwellings.
- There are 2 murders per 100,000 population and 12 rapes.
- 175 people in every 100,000 will experience a serious assault which will result in some kind of bodily harm.
- 1% of all reported crime involves credit card fraud.
- 39 people in every 100,000 will be robbed, 17 (43%) of which offences will involve a weapon.
- Motor vehicle theft accounts for 9% of all reported crime.

Stealing is the most frequently reported of all offences



Community attitudes towards crime and its prevention vary throughout Queensland

Source: Queensland Police Service Annual Report, 1990.

According to the ABS Community Crime Prevention Attitudes, 1987, 21 34.7% of respondents considered that there were problems with crime in their neighbourhood. These perceptions varied throughout the state with 42.1% of residents in the Inner Brisbane City area expressing concern about crime problems in their neighbourhood, compared with only 17.1% of Sunshine Coast residents expressing the same concerns.

- The most commonly perceived problems were burglaries/housebreaking and youths creating a public nuisance.
- On issues of public safety such as feeling safe walking alone at night, only 46.7% of women felt that they were very/reasonably safe compared to 87.7% of males. Age also had an effect on people's perceptions of safety. Fewer people in the over 65 years age group felt safe walking alone at night than those in younger age groups.
- Survey findings revealed that an estimated 10.3% of households had been broken into in the preceding five years. Of these households only 72.8% reported the break-in to the police.

Over 155 thousand crimes were reported to Queensland Police in 1989-90

PROPERTY OFFENCES			VIOLENT OFFENCES		
	No.	%		No.	%
Break & enter	48,330	31.01	Homicide	71	0.05
Dwellings	22,362	14.35	Murder	59	0.04
Shops	9,408	6.04	Manslaughter	12	0.01
Other premises	16,560	10.62			
Stealing	74,287	47.66	Rape	328	0.21
Stealing from dwellings	10,933	7.01	Serious assaults	4,923	3.16
Shop-stealing	13,373	8.58	Robbery	1,089	0.70
Stock theft	261	0.17	Armed robbery	467	0.30
Steal from person	649	0.42	Steal with violence	622	0.40
Other stealing	49,071	31.48			
Motor vehicle theft	14,239	9.14	Total Violent Crimes	6,411	4.11
Fraud & false pretences	12,595	8.08	TOTAL	155,862	100.00
Cheque fraud	4,432	2.84			
Credit card fraud	2,035	1.31			
Misappropriation, etc.	1,732	1.11			
Other fraud	4,396	2.82			
Total Property Offences	149,451	95.89			

What are the trends in crime?

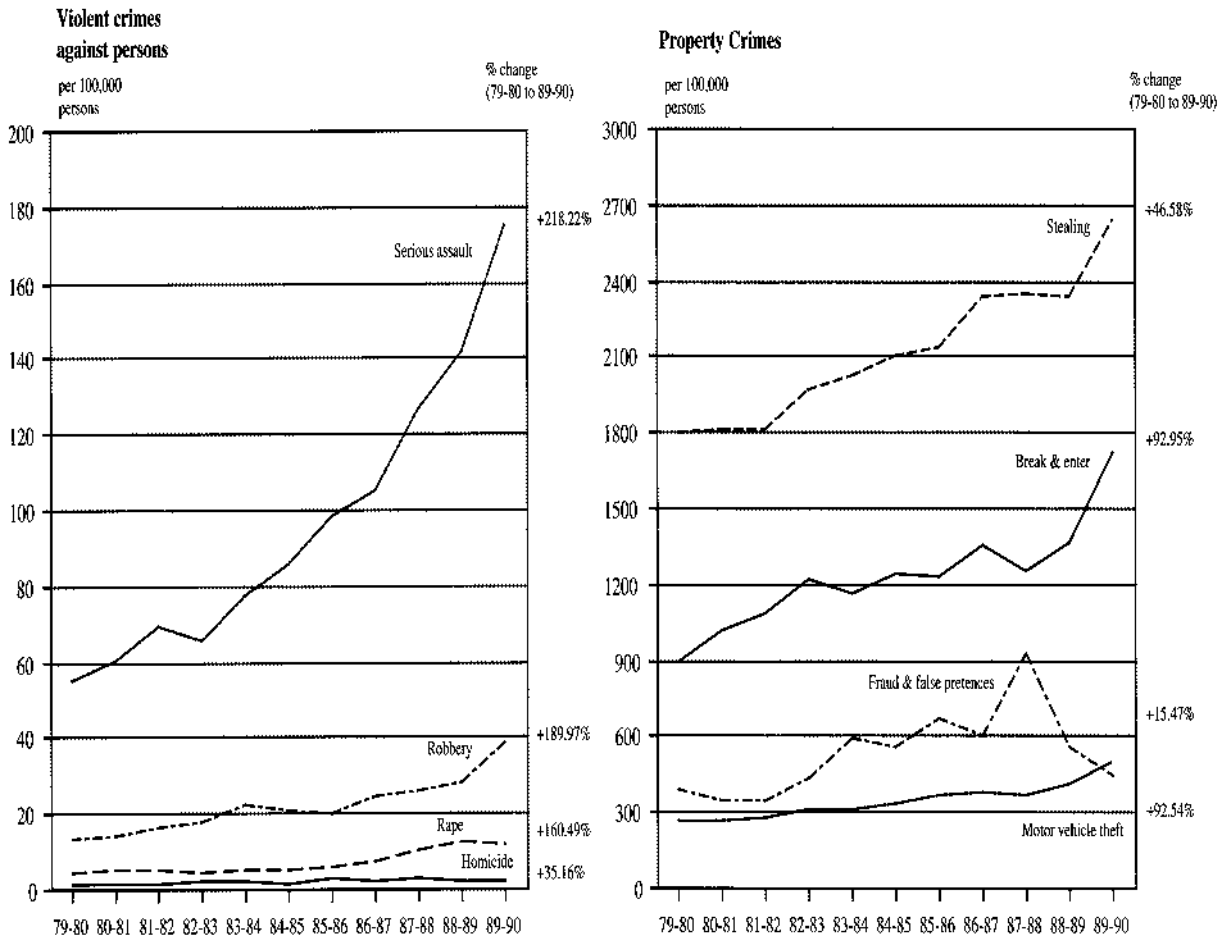
Police data show varying crime trends for different offence groups

The analysis of crime trends here is based upon the data concerning the number of crimes reported/becoming known to the Queensland Police Service. Generally, the reported crime rate has risen substantially over the past decade. Although violent crimes against the person are proportionately less than property offences, they have shown a much higher percentage increase. The homicide rate has remained fairly constant, however other violent crimes such as rape, robbery and serious assault have more than doubled.

In the case of reported rape, the rate has almost trebled. This does not necessarily mean that rape has become more prevalent in Queensland society, it may be that more people are reporting it. In the past, women have been very reluctant to report rape because of both the social stigma attached to rape victims and the harsh way that victims were dealt with in court.

Property crimes have also increased in the past decade, particularly motor vehicle theft and break and entering. The rate for reported fraud and false pretences showed a dramatic increase in 1987-88, however it showed an almost equally dramatic decline the following year. Stealing offences are always the most prevalent of all reported offences, yet they have had one of the lowest percentage increases during the eighties.

Reported crime rates are generally well above the levels of 1979-80



Source: Queensland Police Service Annual Reports, 1980 to 1990.

The percentage of people touched by crime has increased over the past 10 years

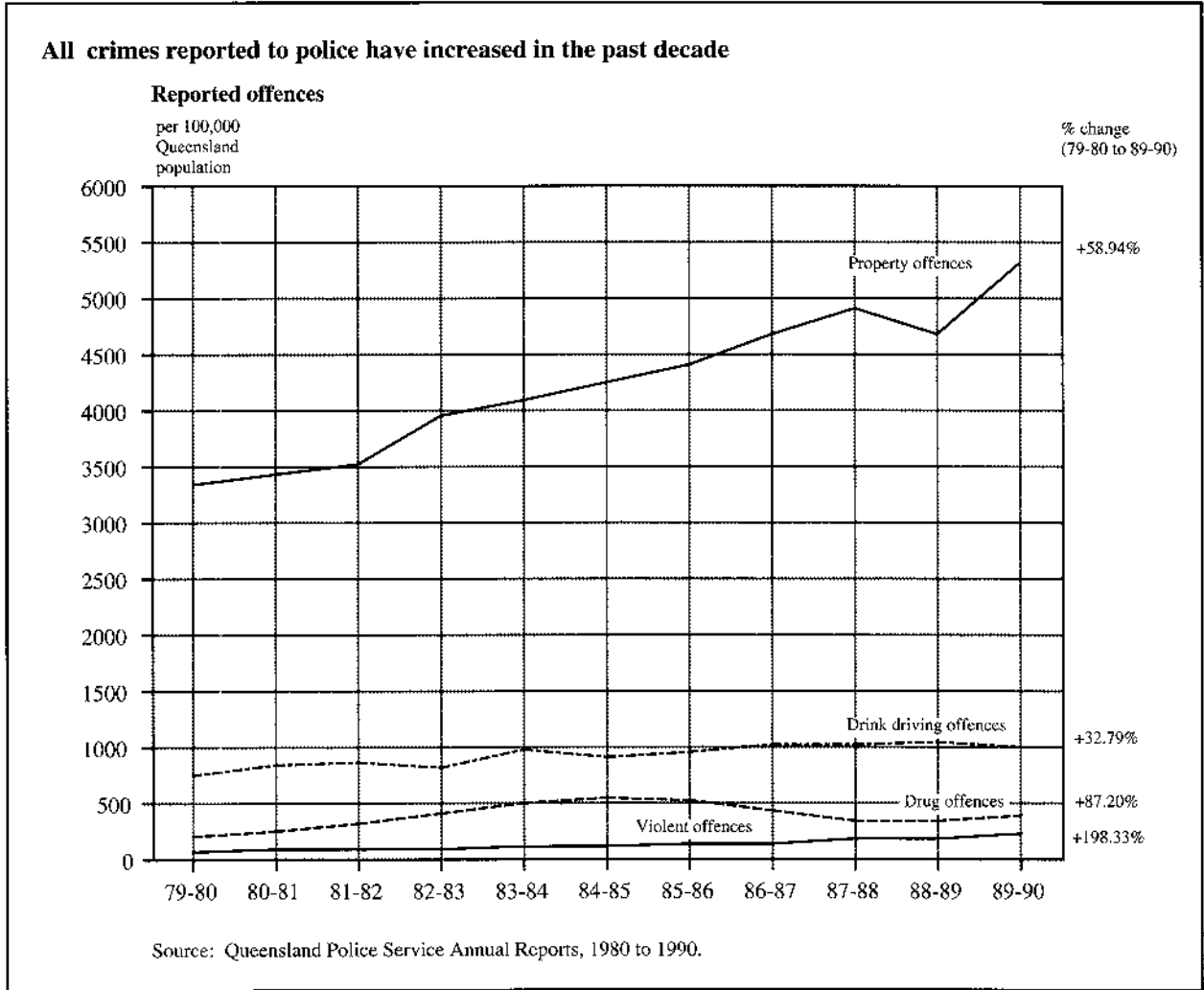
In 1989-90, at least 5% of Queenslanders were touched by crime according to figures released by the Queensland Police Service. Property offences have climbed steadily, peaking in 1989-90 at 5286 per 100,000.

Violent offences against the person which include homicide, rape, robbery and serious assaults have increased from 75 per 100,000 population in 1979-80 to 228 in 1989-90. This represents a 204% increase in violent crimes.

Regulatory offences such as drink driving have increased steadily during the past decade, from 751 per 100,000 population in 1979-80 to 997 in 1989-90. The rate reached the 1,030 mark in 1987-88 and remained at that plateau until 1988-89, then dropped in 1989-90. During the 80's a number of programs were introduced, aimed at reducing the number of drink drivers on Queensland roads. The recent decline may be an indicator that these programs are having an effect.

The offence rate for suppressible crimes such as drug offences was 202 per 100,000 population in 1979-80 and in 1989-90 it was 378. It peaked at 550 in 1984-85 and started to decline again in 1986-87. Nevertheless, there has been an increase of 87% in drug offences during the past decade.

Under the *Drugs Misuse Act*, the police have the power to seize property, and until recently, convicted drug traffickers faced mandatory life imprisonment. However, the recent decline in the rate of drug offences coming to the attention of the police may be due to police manpower shortages in enforcing the law, rather than the deterrent effect of harsh penalties.



Homicide statistics provide insights into long-term crime trends

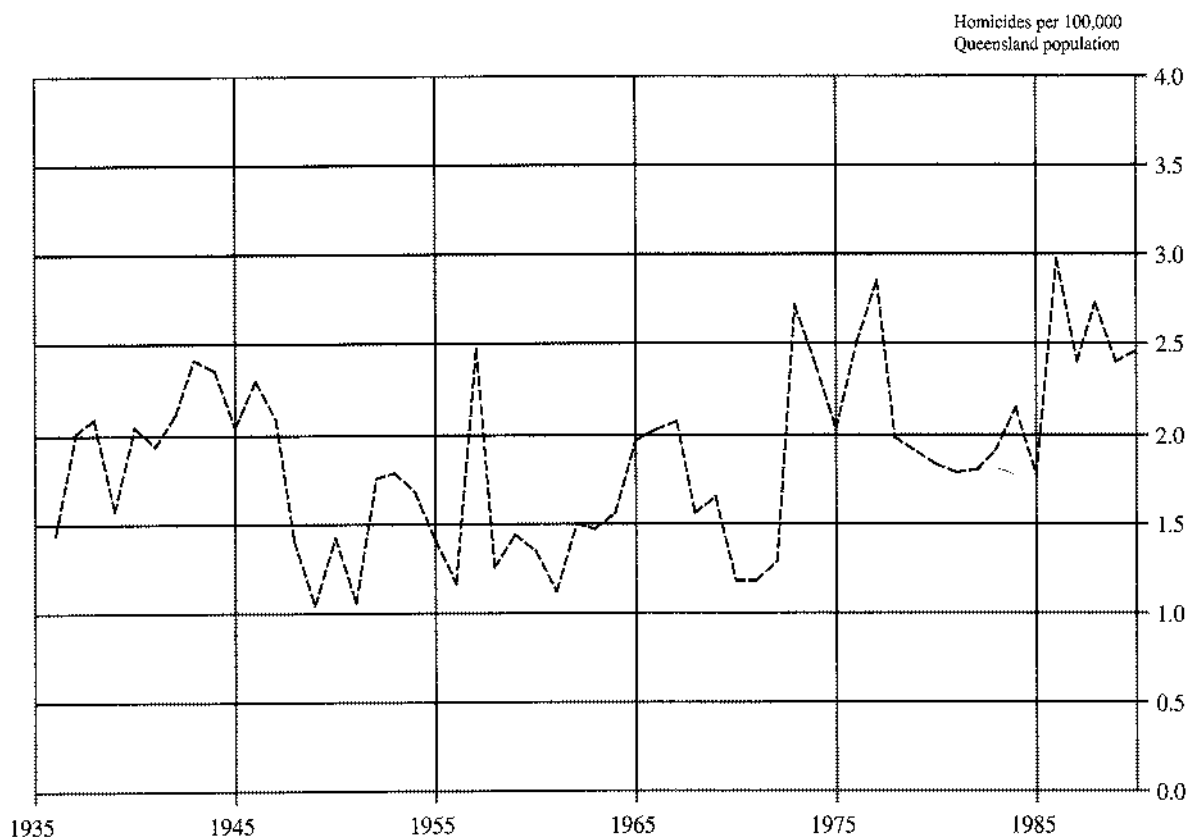
Crime trends should be examined over the longest possible period in order to gain the best possible perspective. Short-term time periods only portray part of the trend picture. For example, the most recent decade of homicide data for Queensland shows rates rising from 1982-83 and peaking in 1985-86 at the highest point for the past half century.

It should be noted that after 1978 the recording method changed from calendar years to fiscal years.

During the period of the Second World War the homicide rate was about 2 per 100,000 people. Immediately after the war the rate fell to around 1 per 100,000 and did not begin to rise significantly until 1957 when the rate more than doubled at 2.48. It returned to 1.25 the following year and rose steadily to the mid 1960's.

Taken across the fifty five year time period, the homicide rate has ranged between 1.04 and 2.98 per 100,000 population. Overall, the latter half of the period has seen a slightly higher increase in the rate of homicides by comparison with the first half.

In 1985-86, the homicide rate was at the highest level in the past 50 years



Source: Source Book of Australian criminal and social statistics 1804-1988

How serious are various types of crimes?

The public's ranking of the severity of crimes was measured through a national survey

The *Australian Institute of Criminology* conducted a survey of the public's attitude towards the severity of crime across a comprehensive range of offences in 1986. In this survey, a representative cross section of 2,555 Australians aged 14 years and over were asked to rank the seriousness of 13 crimes. A single score for each of the 13 offences was developed by conjoining the ratings given by each of the 2,555 respondents. The range of offences covered in the survey varied from stabbing a victim to death to shoplifting goods worth \$5. The seriousness of these offences was compared with the theft of a bicycle.²²

Survey results indicated that people generally agree about the relative severity of offences

The offence considered to be the most serious was stabbing a victim to death, which was rated to be 27 times more serious than stealing a bicycle. The second most serious offence was smuggling heroin into the country, which was judged to be 23 times more serious than bicycle stealing. Shoplifting goods worth \$5 was considered to be the least serious and was rated as being nearly equivalent to bicycle theft.

Generally, male and female respondents did not differ much in their responses. However, women were more concerned than men about domestic violence, industrial negligence, and social security fraud. Conversely, they viewed homosexuality less seriously than their male counterparts. The age of respondents revealed significant differences in that the under 20 years and over 60 years age groups tended to view most crimes less seriously than those respondents in the middle age groups.

How do people rank the severity of crime?

Rank and Offence Type		Times More Serious Than Bicycle Theft
1	A person stabs a person to death.	27
2	A person smuggles heroin into the country	23
3	A factory knowingly gets rid of its poisonous waste in a way that pollutes the city water supply. As a result one person dies.	19
4	A worker had his/her leg caught in an unguarded piece of machinery because the employer knowingly failed to provide safety measures. As a result the worker lost a leg.	18
5	A person armed with a gun robs a bank of \$ 5,000 during business hours. No one is physically hurt.	14
6	A parent beats his/her child with his/her fists. The child is hurt and spends a few days in hospital.	11
7	A man beats his wife with his fists. As a result she spends a few days in hospital.	11
8	A person illegally received social security cheques worth \$ 1,000.	7
9	A person cheats on their Commonwealth income tax return and avoids paying \$ 5,000 in taxes.	5
10	A doctor cheats on claims he makes a Commonwealth health insurance plan for patient services for an amount of \$ 5,000.	5
11	Two adult males willingly engage in a homosexual act in private.	4
12	A person breaks into a home and steals \$1,000 worth of household goods.	3
13	A person steals \$ 5 worth of goods from a shop.	1

Source: Trends and Issues No. 2, *How the Public sees Crime: An Australian Survey*, Canberra, Australian Institute of Criminology, October, 1986.

Crimes against the person were viewed as being more serious than crimes against property

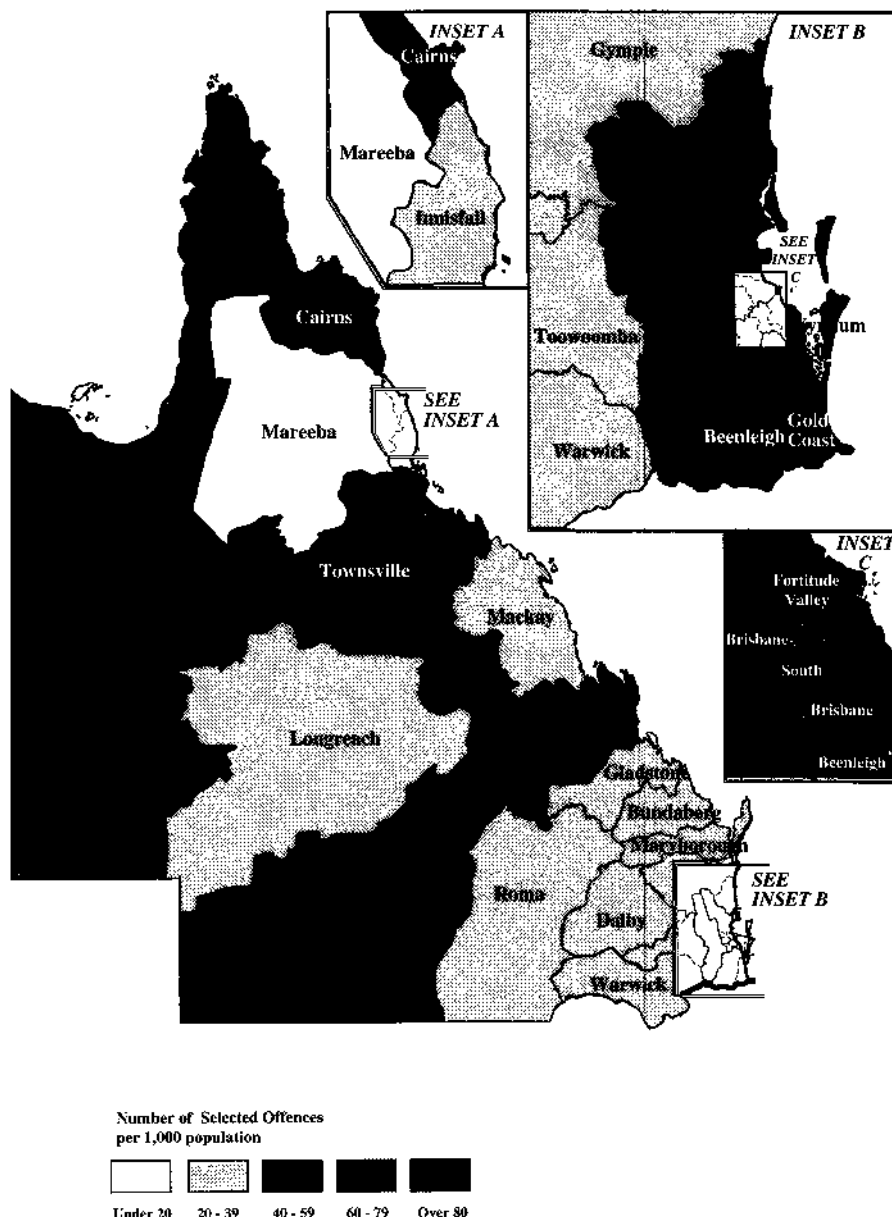
With the exception of heroin trafficking, the first seven offences ranked as most serious by the respondents all involved actual or threatened physical harm to a victim. The potentially life-threatening offence of armed robbery, which caused no actual physical harm, was considered to be more serious than either of the domestic violence offences causing actual physical harm. Domestic violence offences were rated twice as high as fraud against bureaucratic agencies.

Heroin trafficking was considered to be as serious as violent offences

Because the public perceives offences involving narcotics to be associated with death and violence, heroin trafficking is ranked between stabbing a victim to death (deliberate) and industrial negligence resulting in death.

Where does most crime occur?

154,974 Selected Crimes were reported to police in Queensland in 1989-90



Regions with the highest crime rates are diverse; those with the lowest rates tend to be rural

- High crime rates were recorded in 1989-90 for a diverse set of regions. The regions with the highest crime rate were the tourist areas of the Gold Coast, Cairns and Brisbane. Other high crime rate regions were Beenleigh, Fortitude Valley, South Brisbane and Townsville.
- Rural regions are represented in both high and low per capita crime rates. Possible explanations for this are: that the populations of these regions tend to be quite small, therefore any change in the absolute volume of crime will greatly affect the per capita crime rates; or that the geographic dispersion of rural populations and crime reporting practices may affect the perception, detection, and reporting of crimes.

In some ways, the incidence of crime differs by region

In 1988-89 reported crime figures showed that:

- Residents of Mareeba, Roma, Dalby and Gympie were least vulnerable to crime.
- People living in urban areas were less likely to be victims of violent personal offences.
- Rural residents were less likely to be victims of property offences.

OFFENCES COMING TO THE ATTENTION OF POLICE IN 1989-90 BY POLICE DISTRICT

District	Major Index Offences	Selected Offences	Clear Up on Selected Offences	Percentage Clear Up on Selected Offences	Crime Rate per 1,000 Popn. Selected Offences	Population Estimate
Brisbane	17,178	14,010	4,451	31.77	80.21	174,674
Fortitude Valley	15,862	12,934	2,767	21.39	69.45	186,223
Redcliffe	10,630	8,448	2,577	30.50	41.07	205,681
Ipswich	8,000	5,966	1,709	28.65	45.89	129,999
Oxley	9,449	7,539	1,412	18.73	58.17	129,609
South Brisbane	16,313	13,174	2,966	22.51	64.16	205,334
Wynnum	6,485	5,194	1,233	23.74	42.27	122,870
Beenleigh	17,029	13,212	3,033	22.96	72.12	183,204
Gold Coast	26,549	21,676	3,879	17.90	90.12	240,535
Charleville	596	454	255	56.17	43.75	10,378
Dalby	953	736	476	64.67	23.46	31,369
Roma	684	471	208	44.16	21.62	21,788
Toowoomba	4,766	3,666	1,663	45.36	30.84	118,880
Warwick	1,337	1,038	556	53.56	26.00	39,924
Bundaberg	2,752	2,292	960	41.88	35.71	64,192
Gympie	1,897	1,331	593	44.55	23.51	56,615
Maryborough	2,013	1,624	761	46.86	27.77	58,480
Sunshine Coast	7,446	6,298	1,670	26.52	45.12	139,587
Longreach	422	329	123	37.39	25.07	13,121
Mackay	5,504	4,240	1,556	36.70	36.46	116,299
Rockhampton	6,204	5,093	1,756	34.48	42.18	120,742
Gladstone	2,353	1,897	738	38.90	35.99	52,714
Mount Isa	2,592	1,830	855	46.72	53.68	34,088
Townsville	12,400	10,141	4,088	40.31	60.98	166,304
Cairns	12,161	9,866	2,657	26.93	81.98	120,350
Innisfail	1,088	851	377	44.30	26.53	32,072
Mareeba	931	665	269	40.45	18.65	35,663
Total	193,619		43,590	28.13	55.14	2,810,695

Source: Queensland Police Service Annual Report, 1990.

The more serious the offence, the more likely it is to be cleared up by police

The overall percentage clear up on selected violent offences in 1989-90 was 64%. This included:

- homicide 101%
- rape 86 %
- serious assault 70 %
- robbery 29 %

Property offences have poor clearance rates. Of the 148,569 selected property offences reported in 1989-90 only 39,483 (27%) were cleared up. These included:

- break & enter 16 %
- stealing 26 %
- vehicle theft 21 %
- fraud, etc. 69 %

Almost all of the suppressible offences such as drug, gaming and driving offences are resolved because action on these types of offences is usually initiated by the police.

Property offences outnumber violent offences by 24 to 1, and generally they occur in urban rather than rural areas. Beenleigh, Fortitude Valley, Gold Coast, Oxley, South Brisbane and Cairns all have Break & Enter rates exceeding one out of fifty persons. Mareeba, Longreach and Roma have rates of less than one in two hundred persons.

There were 2,146,208 motor vehicles registered in Queensland in 1989-90, of which 1 in every 151 was reported stolen. Motor vehicle theft has increased steadily during the past decade and predictably the highest rates are in the south-eastern corner of the state.

Gold Coast has the highest reported instance of motor vehicle theft and it is 100 times more likely to occur in this district than in Longreach, which has the lowest reported level.

Stealing (other than motor vehicle theft) is always the most frequently reported offence and it is the tourist areas of Gold Coast and Cairns that have the highest rates (over one in twenty-five persons) in the state. Mareeba has the lowest rate with one in 114 persons.

Fraud, forgery and false pretences have actually declined in recent years. Brisbane has the highest rate with 1156 per 100,000 persons, followed by the Gold Coast with 689.

TRENDS AND CHANGES IN SELECTED VIOLENT AND PROPERTY OFFENCES

District	VIOLENT OFFENCES			PROPERTY OFFENCES		
	1983-84 Crime Rate per 1,000	1989-90 Crime Rate per 1,000	Percent Change	1983-84 Crime Rate per 1,000	1989-90 Crime Rate per 1,000	Percent Change
Brisbane	1.52	2.60	+ 71.64	62.52	77.60	+ 24.12
Fortitude Valley	1.28	2.37	+ 85.46	57.55	67.09	+ 16.57
Redcliffe	0.84	1.24	+ 48.06	30.17	39.83	+ 32.04
Ipswich	0.62	2.02	+ 227.21	27.66	43.88	+ 58.63
Oxley	0.94	2.07	+ 120.33	37.35	56.10	+ 50.21
South Brisbane	1.19	2.38	+ 100.70	50.22	61.78	+ 23.01
Wynnum	0.63	1.22	+ 92.58	27.74	41.05	+ 47.98
Beenleigh	1.01	3.33	+ 228.46	38.91	68.79	+ 76.78
Gold Coast	1.23	2.85	+ 131.41	86.11	87.26	+ 1.34
Charleville	2.40	4.72	+ 96.73	23.20	39.02	+ 68.21
Dalby	0.34	1.31	+ 280.22	15.13	22.16	+ 46.48
Roma	1.18	2.52	+ 113.60	13.59	19.09	+ 40.48
Toowoomba	0.91	2.07	+ 128.61	27.25	28.77	+ 5.57
Warwick	0.51	1.08	+ 110.02	17.69	24.92	+ 40.87
Bundaberg	0.32	1.06	+ 227.43	15.26	34.65	+ 126.97
Gympie	0.56	1.13	+ 102.70	17.40	22.38	+ 28.59
Maryborough	0.73	0.99	+ 36.37	24.43	26.78	+ 9.60
Sunshine Coast	0.50	1.03	+ 106.32	37.22	44.09	+ 18.45
Longreach	1.67	0.99	- 40.55	17.89	24.08	+ 34.63
Mackay	0.70	1.75	+ 150.34	32.86	34.71	+ 5.63
Rockhampton	0.92	1.87	+ 103.37	26.03	40.31	+ 54.88
Gladstone	0.77	1.31	+ 69.21	25.40	34.68	+ 36.55
Mount Isa	3.41	6.45	+ 89.17	49.56	47.23	- 4.70
Townsville	1.60	2.14	+ 33.58	43.12	58.84	+ 36.47
Cairns	2.63	6.66	+ 152.96	56.14	75.31	+ 34.15
Innisfail	0.57	2.15	+ 276.50	15.64	24.38	+ 55.87
Mareeba	1.00	1.88	+ 87.87	18.23	16.77	- 8.01
Average	1.07	2.28	+ 112.24	40.96	52.86	+ 29.05

Source: Queensland Police Service Annual Reports 1984 and 1990.

What are the trends in crime?

According to Queensland Police Service statistics on reported crime for the six year period between 1983-84 and 1989-90:

- The overall percentage increase in the rate for violent offences has been greater (112%) than that for property offences (29%).

Selected violent offences which include homicide, serious assault, rape and robbery indicated that:

- Increases in violent crime rates were highest in the areas of Dalby (280%) and Innisfail (277%)
- Only Longreach had a decrease in violent offences (-40%).
- Metropolitan areas have shown relatively moderate increases in reported violent offences - South Brisbane (101%), Fortitude Valley (85%) and Brisbane (72%).

Selected property offences which include stealing, motor vehicle theft, break and enter, and fraud, etc. indicate that:

- Bundaberg and Beenleigh had the highest percentage increase in property offences with 127% and 77% respectively.
- Mareeba and Mount Isa had the highest percentage decrease in property crime with (-8%) and (-5%) respectively.
- Provincial areas such as Rockhampton (55%), Townsville (36%) and Gympie (29%) have had greater percentage increases in property crimes than metropolitan areas.

Public perceptions of the crime problem are not always consistent with the facts

There are many public misconceptions about the size and the nature of the crime problem in Queensland, particularly as to how frequently certain types of offences occur and where they occur. The media tend to focus on the more violent crimes that occur within the community.

A common public misconception is that the rate for most crimes of violence is greatest in the metropolitan area of Brisbane. The areas with the highest homicide rates are Charleville, Mt. Isa, Cairns and Longreach. All have rates of over 8 per 100,000 persons. Brisbane and Fortitude Valley both have rates of under 2 per 100,000 persons.

In the case of rape, Toowoomba, Cairns, Mount Isa and Roma all have rates in excess of 1 in 5,000 persons. In Brisbane the rate is 1 in every 10,000 persons.

Serious assault is the most rapidly increasing crime of violence and the areas of Mt. Isa and Cairns both have rates in excess of 500 per 100,000 persons. The areas with the lowest rates are Warwick, Sunshine Coast and Maryborough, all having rates under 90 per 100,000.

However, in the case of robbery, cities and tourist centres certainly have the highest rates for this offence. Fortitude Valley, Cairns and the Gold Coast all have rates over 75 per 100,000 persons. Rural areas such as Gympie, Warwick, Roma and Longreach all have rates of less than 6 per 100,000 persons.

Basic sources

U. S. Department of Justice, Bureau of Justice Statistics, 1987, Report to the Nation on Crime and Justice.

Queensland Police Department Annual Reports, 1977 - 1989.

Queensland Police Service Annual Report, 1990.

Law and Order (Queensland), Australian Bureau of Statistics, Catalogue No. 4502.3 from 1977-78 to 1988-89.

Mukherjee, S. K.; Scandia, A.; Dagger, D. & Matthews, W., 1989, Source Book of Australian Criminal & Social Statistics, 1804 - 1988. Australian Institute of Criminology, Canberra.

Mukherjee, S. K. & Dagger, D., 1990. The Size of the Crime Problem in Australia, Second Edition, Australian Institute of Criminology, Canberra.

Notes

1. Domestic Violence (Family Protection) Act, 1989.
2. Grabosky, P. N. 1989, *Victims of Violence*, Canberra, Institute of Criminology, Canberra.
3. Najman, J. M. 1980, "Victims of Homicide: An Epidemiological Approach to Social Policy", *Australian and New Zealand Journal of Criminology*, vol. 13, no.4, pp. 274-80.
4. Wilson, P. 1982, *Black Death, White Hands*, George Allen and Unwin, Sydney.
5. Wallace, A. 1986, *Homicide: The Social Reality*, NSW Bureau of Crime Statistics and Research, Sydney.
6. Bonney, R. 1988, *Homicide 2*, NSW Bureau of Crime Statistics and Research, Sydney.
7. NSW Bureau of Crime Statistics and Research, 1987, *Robbery: Final Report*. Attorney-Generals Department.
8. Chappell, D. 1990, *Violence: Directions for Australia*, Australian Institute of Criminology, Canberra.
9. *ibid*, p.4.
10. Australian Bureau of Statistics, 1987, *Community Crime Prevention Attitudes* (Queensland), Catalogue No. 4506.3.
11. Australian Encyclopaedia, 1988, Volume III, p.869.
12. National Crime Authority Annual Report, 1987.
13. Australian Federal Police Annual Report, 1990.
14. Australian Securities Commission information brochures "10 Key Questions Answered", "Where to Find the A.S.C.", "Company Searches".
15. State Drug Crime Commission Annual Report, 1990. (N.S.W.)
16. Independent Commission Against Corruption Annual Report, 1990. (N.S.W.)
17. Cash Transactions Reports Agencies information brochures.
18. Grabosky, P. & Braithwaite, J., 1987, *Corporate crime in Australia*, Trends and issues paper No. 5, Australian Institute of Criminology, Canberra.
19. Forester, Tom. Computer Crime: New Problem for the Information Society. Research Report 35. Division of Science and Technology, Griffith University, 1989.
20. *ibid*, p.4.
21. Australian Bureau of Statistics, 1987, *Community Crime Prevention Attitudes* (Queensland), Catalogue No. 4506.3.
22. Wilson, P.; Walker, J. & Mukherjee, S., 1986, *How the public sees crime: an Australian survey*, Trends and Issues paper No. 2., Australian Institute of Criminology, Canberra.

Chapter II

The victim

This chapter profiles victims of crime with data that answers such questions as

How do crime rates compare with the rates of other life events?

Is there a relationship between the fear of crime and actual risks of victimization?

Who are the victims of homicide?

How do people protect themselves from crime?

What compensation programs are available to help victims of violent crime?

The fear of crime affects many people, including some who have never been victims of crime

How do crime rates compare with the rates of other life events?	
Events	Rate per 1,000 per year
Theft	23.51
Accidental injury, all circumstances	22.90
Death, all causes	6.81
Injury in motor vehicle accident	3.03
Heart disease death	2.28
Cancer death	1.64
Serious assault	1.27
Robbery	0.26
Injury from fire	0.23
Suicide	0.15
Rape (women only)	0.15
Pneumonia/influenza death	0.09
Homicide	0.03
 <i>Sources:</i> Summary of Social Statistics, 1988, Australian Bureau of Statistics Publication, Cat. No. 401.3, Queensland Police Service	

The chance of being a victim of assault, with or without injury, is less than that of being hurt in a traffic accident

The rate of some violent crimes are higher than those of some other serious life events. For example, the risk of being a victim of a violent crime is marginally higher than the risk of death from heart disease or cancer. However, people are far more likely to die of natural causes than as a result of a criminal victimization.

Overall, people have a much greater risk of being a victim of an accidental injury than being the victim of a violent crime. However, they do have a higher risk of being a victim of theft (property offence).

About two thirds of Queensland respondents felt safe or reasonably safe at home alone or walking alone in their neighbourhood

The fear of crime cannot be measured because the kinds of fears people express vary depending on the specific questions asked. Nevertheless, asking them about the likelihood of crime in their homes and neighbourhood yields a good assessment of how safe they feel in their own immediate environment.

In the *Community Crime Prevention Attitudes Survey* (A.B.S. 1987) 99.1 percent of respondents reported that they felt safe or reasonably safe about being alone at home during the day. 65.4 percent reported feeling safe or reasonably safe about walking alone at night.

Predictably, the percentage of females who felt very safe or reasonably safe walking alone at night (46.7%) was lower than the corresponding percentage for males (85.7%). Age and place of residence also had a marked effect on people's perceptions of their safety while walking alone at night.

In the over 65 years age group only 64.5 percent of males and 29.9 percent of females felt safe or reasonably safe walking alone at night. Residents of the Gold Coast and inner suburbs of Brisbane (57.5% and 58.5% respectively) reported that they felt safe or reasonably safe walking alone at night, compared to 90.5 percent of respondents in the Gladstone area.

Peoples' perceptions of crime problems varied throughout the state, the most common concerns being housebreaking/ burglaries and louts/youths creating a nuisance in their neighbourhood. Inner Brisbane City residents (42.1%) perceived problems compared with only 17.1% of Sunshine Coast residents.

The groups at the highest risk of being victims are not the ones who express the greatest fear of crime

Residents in those areas that have a relatively high incidence of reported crime do not necessarily perceive that there are crime problems in their area. For example, residents in the Mount Isa region, which has one of the highest reported crime rates in Queensland, did not perceive any problem with crime in their area (73%). In fact, 92% thought that there was less or about the same amount of crime in their area than in other areas.

Generally, groups such as females and the elderly express a greater fear of crime than do people in groups who face a much greater risk. These impressions usually relate to the content of information about crime. Such information tends to emphasize stories about elderly and female victims. These stories may influence women and the elderly in judging the seriousness of their own condition. Perhaps groups of females and the elderly reduce their risk of victimization by constricting their activities to reduce their exposure to danger. This behaviour would account, at least in part, for their high levels of fear and their low levels of victimization.

Relatives, friends, and neighbours who hear about a crime become as fearful as the victim

When one household in a neighbourhood is affected by a crime, the entire neighbourhood may feel more vulnerable. This suggests that people who have not been victimized personally may be strongly affected when they hear about how others have been victimized. Even though only one person may have been a victim, many people may be affected by a single crime.

What are the characteristics of homicide victims?

- Persons aged 15 - 24 are the most likely to be homicide victims.
- Homicide victims are more likely to be men than women.
- People over the age of 55 are the least likely to be victims of homicide.

Victim characteristics	Homicides in 1989-90	Number per 100,000 population
Total	59	2.03
Sex		
Male	37	2.54
Female	22	1.52

What type of methods are used to commit homicide?

According to the Queensland Police Service, during the year 1989-90 the following methods were used to commit homicide:

Shot by handguns	3
Shot by rifles	12
Shot by shotguns	6
Stabbed with knives	12
Bludgeoned to death	5
Physical assault (strangling, etc.)	13
Administer dangerous drug	1
Incinerated by arson	2
Unknown	1
Other	4

Homicide compared to other causes of death

Percent of deaths by age at death

%	All Ages	%	1 - 14 years	%	15 - 24 years	%	25 - 44 years
32.69	Heart diseases	17.37	Motor vehicle traffic accidents	41.04	Motor vehicle traffic accidents	20.12	Malignant neoplasms
23.94	Malignant neoplasms					18.41	Suicide
10.07	Cerebrovascular diseases	13.15	Drownings	17.91	Suicide		
7.72	Respiratory system diseases	11.74	Malignant neoplasms	5.22	Malignant neoplasms	15.59	Motor vehicle traffic accidents
		7.51	Nervous system disorders	3.23	Homicide	11.17	Heart diseases
2.71	Motor vehicle traffic accidents	7.04	Infectious & parasitic diseases	2.99	Nervous system disorders	4.23	Respiratory system diseases
		5.63	Respiratory system diseases	2.74	Respiratory system diseases	3.12	Cerebrovascular diseases
2.16	Suicide						
1.58	Diabetes	3.76	Homicide	1.74	Heart diseases	3.12	Homicide
1.48	Mental disorders						
1.45	Nervous system disorders	2.35	Heart diseases	1.74	Drownings	2.92	Liver disease & cirrhosis
1.26	Nephritis & nephrosis	1.41	Blood disorders & anaemias	1.74	Mental disorders	1.91	Nervous system disorders
				0.75	Infectious & parasitic diseases	1.81	Mental disorders
0.84	Falls	1.41	Suicide	0.50	Benign neoplasms	0.91	Infectious & parasitic diseases
0.80	Liver disease & cirrhosis	0.47	Benign neoplasms	0.05	Cerebrovascular diseases		
0.73	Hypertensive diseases	0.47	Cerebrovascular diseases	0.50		0.91	Drownings
0.71	Infectious & parasitic diseases	0.47	Falls	0.25		0.80	Diabetes
0.38	Blood disorders & anaemias	0	Diabetes		Blood disorders & anaemias	0.60	Benign neoplasms
		0	Hypertensive diseases	0		0.40	Falls
0.37	Homicide	0	Liver disease & cirrhosis	0	Diabetes	0.30	Blood disorders & anaemias
0.37	Drownings	0	Nephritis & nephrosis	0	Hypertensive diseases	0.30	Hypertensive disease
0.29	Benign neoplasms	0	Mental disorders	0	Liver disease & cirrhosis	0.30	Nephritis & nephrosis
					Nephritis & nephrosis		
10.47	Other	27.23	Other	19.15	Other	13.08	Other
Total deaths	18,803	Total deaths	213	Total deaths		Total deaths	994
%	45 - 54 years	%	55 - 64 years	%	65 - 74 years	%	75 years & over
39.21	Malignant neoplasms	39.08	Malignant neoplasms	35.86	Heart diseases	38.24	Heart disease
23.73	Heart diseases	31.00	Heart diseases	30.78	Malignant neoplasms	17.20	Malignant neoplasms
5.40	Suicide	7.87	Respiratory system diseases	8.78	Respiratory system diseases	14.77	Cerebrovascular diseases
4.58	Cerebrovascular diseases	5.07	Cerebrovascular diseases	8.20	Cerebrovascular diseases	8.37	Respiratory system diseases
4.58	Respiratory system diseases			1.49	Diabetes		
		1.90	Diabetes			2.43	Mental disorders
3.97	Motor vehicle traffic accidents	1.69	Liver disease & cirrhosis	1.18	Nervous system disorders	1.76	Diabetes
		1.61	Suicide	1.14	Nephritis & nephrosis	1.76	Nephritis & nephrosis
3.67	Liver disease & cirrhosis	1.57	Motor vehicle traffic accidents	0.85	Motor vehicle traffic accidents	1.54	Nervous system disorders
1.83	Diabetes					1.28	Falls
0.92	Infectious & parasitic diseases	0.82	Nervous system disorders	0.76	Hypertensive diseases	0.95	Hypertensive diseases
0.81	Nervous system disorders	0.78	Nephritis & nephrosis	0.71	Suicide	0.67	Infectious & parasitic diseases
		0.62	Mental disorders	0.67	Liver disease & cirrhosis	0.40	Blood disorders & anaemias
0.81	Falls	0.49	Infectious & parasitic diseases	0.45	Infectious & parasitic diseases	0.39	Motor vehicle traffic accidents
0.71	Homicide	0.45	Blood disorders & anaemias	0.45	Falls	0.28	Suicide
0.61	Hypertensive diseases	0.37	Hypertensive diseases				
0.51	Benign neoplasms			0.40	Mental disorders	0.22	Benign neoplasms
0.51	Nephritis & nephrosis	0.33	Falls	0.36	Blood disorders & anaemias	0.16	Liver disease & cirrhosis
0.51	Drownings	0.16	Benign neoplasms	0.33			
0.31	Mental disorders	0.12	Drownings	0.13	Drownings	0.08	Drownings
0.10	Blood disorders & anaemias		0.08	Homicide	0.11	Homicide	0.01
7.23	Other	5.98	Other	7.35	Other	9.48	Other
Total deaths	982	Total deaths	2,426	Total deaths	4,487	Total deaths	8,959

Source: Causes of Death, Queensland, Australian Bureau of Statistics, Publication No. 3302.3, 1988.

How do people protect themselves from crime?

About a half of all households have taken at least one measure to prevent crime

The Community Crime Prevention Attitudes Survey (Australian Bureau of Statistics, 1987) inquired in households about what measures had been taken to prevent crime. Of the households that responded:

- 54% had some type of security device installed
- 33% had security doors
- 31% kept a dog as a security measure
- 35% had deadlocks or improved locks fitted to their doors
- 16% had security screens or bars fitted on their windows.

Households in which occupants felt unsafe or only fairly safe were more likely to have taken at least one measure to prevent crime than those that felt their neighbourhood was very safe from crime.

Many businesses employ security measures

In the past decade there has been a significant increase in the number of businesses employing security measures to reduce the amount of crime affecting them. Banks and financial institutions have increasingly resorted to installing security screens to protect their tellers from armed robbers.

Most businesses have some type of burglar alarm fitted to their premises to prevent burglary after hours. Similarly, many businesses are also employing the services of private security firms to patrol their premises after hours to deter would-be break and enters.

Neighbourhood Watch Programs are becoming increasingly active

In recent years the Queensland Police Service has placed increasing emphasis on community policing in Queensland, and this has led to the introduction of Neighbourhood Watch Programs in many urban areas. The aims of these programs is to reduce and minimise the incidence of residential crime.

Communities are encouraged to work together and co-ordinate their efforts with local police to effectively reduce the amount of crime in their neighbourhoods. Neighbourhood Watch Areas are structured hierarchically using the local police station as their base. Each area has about 500 dwellings and these are divided into zones of about 100 dwellings. Area committees are elected and area, zone and block co-ordinators are appointed.

Compensation for criminal injuries

Compensation for the victims of crime is a relatively new development in the criminal justice system. It has evolved as a reflection of community concern for the plight of innocent victims of violent crime.

The provisions governing applications for criminal compensation are found in the *Criminal Code*. Application for the payment of compensation for injury, including mental shock or nervous shock, may be made by innocent victims of violent crime where an offender has been convicted of an indictable offence. A Supreme or District Court may order that person to pay compensation to the victim as follows:

- an amount not exceeding \$20,000 for mental or nervous shock,
- in respect of an injury the same or substantially the same as an injury listed in the table set forth in section 14(1)(c) of the *Workers' Compensation Act 1916-1988*, an amount not exceeding the maximum amount set forth in that table.

An application may be made to the Minister for an *ex gratia* payment by the Crown in the following cases:

- where the victim is unable to recover from the offender the amount of compensation awarded by the court;
- where the offender has not been located or convicted;
- where any person suffers injury whilst assisting a police officer in the execution of their duty.

During the financial year ended 30th June, 1989, approval was given by the Governor in Council for the payment by the Crown of \$298,830 to innocent victims of violent crime.

Chapter III

The offender

This chapter profiles offenders with data that address such questions as:

How do we know who commits crime?

What do we know about the offender?

How many offenders are there?

Who is the 'typical' offender?

What is the relationship between age and crime?

Are women becoming more involved in crime?

To what extent do Aborigines engage in crime?

What are the family, economic, and educational backgrounds of prison inmates?

Is there a link between drug and alcohol use and crime?

How does drug and alcohol use by offenders differ from that of the general population?

Who commits crime?

How do we know who commits crime?

Three major sources provide information about the kinds of persons who commit crime:

- **Official records** compiled by police, courts and prisons have the advantage that they offer information on petty as well as more serious crimes and criminals. However, these records are limited to only the crimes and criminals that come to the attention of law enforcement officials.
- **Annual Prison Census** which provide information on all prisoners in custody on June 30 each year. The census began in 1982.
- **Victim surveys**, which obtain information from crime victims including their observations of the age, ethnicity and sex of their assailants. Victim surveys give information not only about crimes reported to the police but also about unreported crimes. A disadvantage is that in crimes of stealth (such as burglary and motor vehicle theft) victims seldom see who committed the crime. Also, many victims of crime fail to tell interviewers about being victimized by relatives and other non-strangers.

How many criminals do we know about?

During 1988-89 the official records indicated that of the 167,382 major index offences reported to police, 60,853 were cleared.

The Magistrates Courts heard 265,321 charges, resulting in 195,330 summary convictions. However, because some offenders are prosecuted for more than one offence, there is a difference between the number of charges (offences) heard and the number of appearances (people) made. Hence there were 197,643 appearances and 150,561 summary convictions. However, it should be noted that some people appear in court more than once during the year.

Which criminals do we know the most about?

The major sources do not give uniformly complete information about every kind of offender. In particular they tell us much more about common criminals than they do about white-collar criminals.

Much of what we know about offenders and their traits is limited to the common criminals who commit the offences of greatest concern to the public.

Selected Offences	Police Prosecutions 1988-89 %	Prison Admissions 1988-89 %	Prisoners On-hand at 30.6.89 %
Homicide	0.03	1.06	10.18
Serious assault	1.35	5.55	23.93
Rape	0.15	1.32	8.63
Robbery	0.13	2.14	8.95
Break & enter	3.10	10.36	14.25
Stealing	9.17	7.99	3.93
Motor vehicle theft	1.42	6.54	6.48
Fraud, etc.	5.06	6.91	5.57
Drug offences	4.32	8.72	8.58
Drink driving	12.76	11.70	3.11
Number (Total)	228,609	4,633	2,190

Source: Law and Order Queensland, 1988-89, Australian Bureau of Statistics, Catalogue No. 4502.3.

Similarly, in the Children's courts there was a total of 12,642 charges heard and 2,202 convictions. The Higher courts heard 14,297 charges which resulted in 9,454 convictions.

Some 6,418 people were imprisoned, 4,633 as sentenced prisoners and 1,785 as unsentenced detainees. There were 10,164 people admitted to some form of community corrections supervision in 1988-89:

• Probation	3,413
• Prison/probation	353
• Parole	429
• Community service	3,065
• Fine option order	2,717
• Home detention	187

What do the major sources tell us about who commits crime?

The major sources tell us which traits are more (or less) common among criminals than non-criminals. These traits hold clues for explaining why some people are more likely than others to commit crime. No single trait distinguishes all criminals.

Official records report traits of apprehended criminals, which may or may not be the same as those of all offenders including those not caught. Some observers say these traits are not similar, claiming that persons with certain characteristics (for example, Aborigines or males) are over-arrested and over-imprisoned compared with others (for example, Europeans or females).

Who is the 'typical' offender?

Most crimes are committed by males especially those under the age of 25 years. About 18% of all offenders dealt with by the police in 1988-89 were under the age of 17. Over four-fifths of offenders are males, and more than a third are aged under 25 years.

Whilst there is very little official numerical data available on indigenous offenders, they are disproportionately represented in the criminal justice system by comparison with their number in the general population.

What are the characteristics of Queensland offenders?

	Australian Population	Police Prosecutions	Magistrates Courts	Children's Courts	Higher Courts	Custodial Corrections	Community Corrections
Sex							
Male	50.07	**	85.32	87.47	88.71	95.15	83.06
Female	49.93	**	14.68	12.53	11.29	4.85	16.94
Ethnic origin							
Aborigine/Islander	2.37	**	**	**	**	20.44	11.51
Non-indigenous	97.63	**	**	**	**	79.56	88.49
Age							
Under 17	26.74	18.00	**	95.83	§	§	‡
17	1.85	**	**	4.01	6.02	1.28	‡
18	1.74	**	**	0.16	4.84	3.97	‡
19	1.69	**	**	†	5.00	5.25	25.86
20-24	8.08	**	**	†	16.87	23.52	31.68
25-29	8.38	**	**	†	11.83	20.23	16.86
30-39	15.39	**	**	†	16.57	26.57	15.85
40-59	21.25	**	**	†	10.73	17.90	7.75
60 and over	14.88	**	**	†	0.99	1.28	1.99
Unknown					27.15		

** Data not recorded.

† Not applicable to recorded dataset.

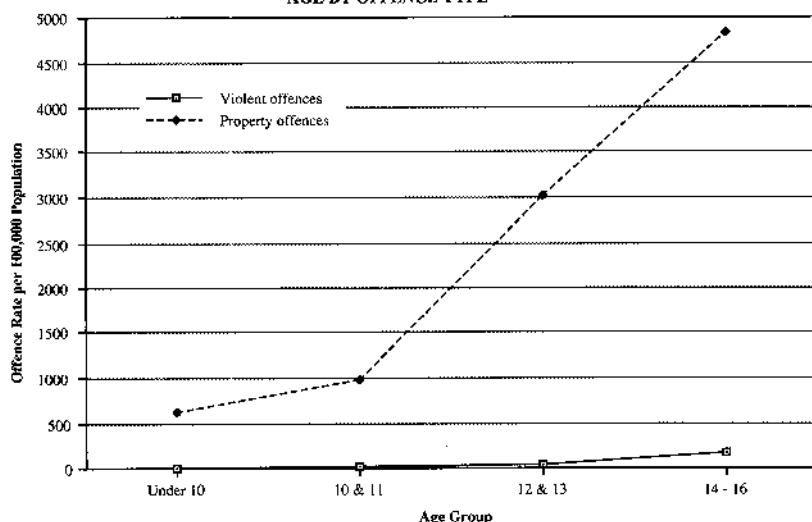
§ Data recorded as under 18 year olds.

‡ Recorded as under 20 year olds.

Sources: *Law and Order Queensland, 1988-89*, Australian Bureau of Statistics, Catalogue No. 4502.3.
Estimated Resident Population by Sex and Age: States and Territories of Australia, June 1988 and Preliminary June 1989, Australian Bureau of Statistics, Catalogue No. 3201.0.
 Census 86, *Age and Sex of Persons in Statistical Local Areas and Statistical Divisions, Queensland*, Australian Bureau of Statistics, Catalogue No. 2456.0.
 Census 86, *Aboriginals and Torres Strait Islanders: Australia, States and Territories*, Australian Bureau of Statistics, Catalogue No. 2499.0.
 Corrective Services Statistical Database System, 1988-89, Custodial Corrections Annual Statistics.

What is the relationship between age and crime?

JUVENILE OFFENDERS DEALT WITH BY POLICE 1988-89
AGE BY OFFENCE TYPE



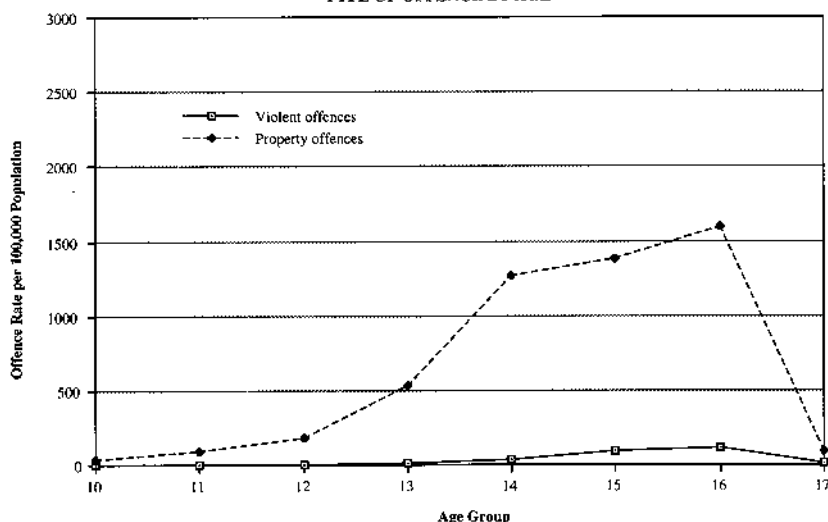
Young people make up the largest proportion of offenders entering the criminal justice system

A comparison between the number of juvenile offenders dealt with by the police and the number that appear in the Children's Courts on criminal matters, indicates that less than half will be dealt with by the courts. For violent offences about 41% of juvenile offenders appear in court, and for property offences about 23%. Police data show that in 1988-89 on selected property and violent offences, for children aged between 9 and 16 years, the ratio of offenders to population was 1:33. The corresponding ratio for court appearances was 1:141.

About 10% of all offenders arrested for violent offences are juveniles under the age of 17 years and similarly about 44% of all property offences are committed by juveniles. About 44% of all property offences are committed by juveniles. In 1988-89 13% of all robberies reported to police were committed by juveniles. Every year between 50-60% of all break and enters and almost half of all stealing offences are attributed to offenders aged less than 17 years. Overall, juveniles account for about 40% of all known offences.

As the law stands a child under the age of 10 years is not considered to be criminally liable. Yet in 1988-89 one in every 42 juvenile offenders dealt with by the police was under this age.

CHILDREN'S COURT APPEARANCES 1988-89
TYPE OF OFFENCE BY AGE



Participation in crime declines with age

Court appearance data for 1988-89 show that the majority of offenders appearing in court are under 30 years of age. In both the higher and lower courts the offender rates peak at around the age of 19 and drop away steadily after the age of 30.

The data show that the intensity of criminal behaviour slackens after the late teens/early twenties, and continues to decline with age. Court appearances, however, are only a general indicator of criminal activity. The greater likelihood of appearing before the court for young people may result partly from their lack of experience in offending and also from their involvement in the types of crime for which apprehension is more likely (for example, stealing vs. white-collar crime). Moreover, because youths often commit crime in groups, the resolution of a single crime may lead to several individuals appearing in court.

In 1988-89, 17% of offenders appearing in the Magistrates Courts were under 20 years old and about 16% were aged forty years and over. Overall, around two-thirds of persons appearing before the court were under thirty years of age.

One in every 39 Queenslanders aged between 17 and 19 appears in a Magistrates court charged with the selected violent and property offences. This age group has the highest appearance rate for both violent and property offences and 85% of offenders are male.

Similar patterns can be observed in the rate for higher court appearances where the rate for property offences peaks at 19 and for violent offences at 20 years. After the age of 30 years the rate of appearances declines for both the higher and lower courts.

This decline in crime participation with age may also result from the incapacitation of many offenders. When repeat offenders are apprehended, they serve increasingly longer sentences, thus incapacitating them for long periods as they grow older.

Different age groups are apprehended and incarcerated for different types of crimes

- Juveniles under age 17 have a higher likelihood of being apprehended for break and enters, and stealing than any other age group.
- Persons between ages 17 and 30 are more likely to appear before the courts charged with violent crimes.
- Of all prison inmate admissions, property crimes, particularly break and enter, stealing and motor vehicle theft, are more common among younger inmates.
- Violent crime rates were more prevalent among 20 to 24 year old inmates admitted to prison in 1988-89, while property offence rates were the domain of those aged 20 years and under.
- Drug crimes were more prevalent among inmates age 21 to 39 years.

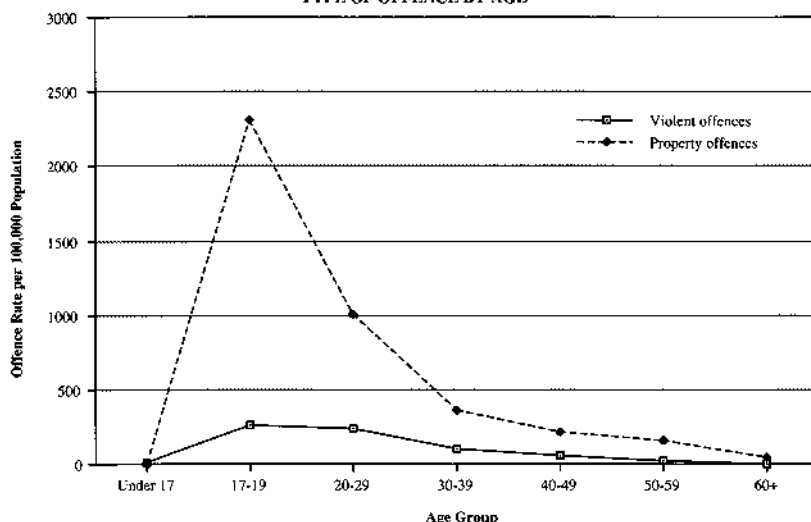
Many older prison inmates had never been to prison before

Of all persons admitted to prison after age 40, more than half were in prison for the first time.

Inmates whose most recent admission to prison was at or after age 40 were more likely to be serving time for a violent crime than inmates who had the longest most continuous criminal careers. The seriousness of their offences alone probably explains why so many inmates were incarcerated for the first time at or after age 40.

Persons who were returning to prison at or after age 40 generally were more likely to be admitted for non-violent offences.

MAGISTRATES COURT APPEARANCES 1988-89
TYPE OF OFFENCE BY AGE



Average age at incarceration varies by type of crime

Most serious charge

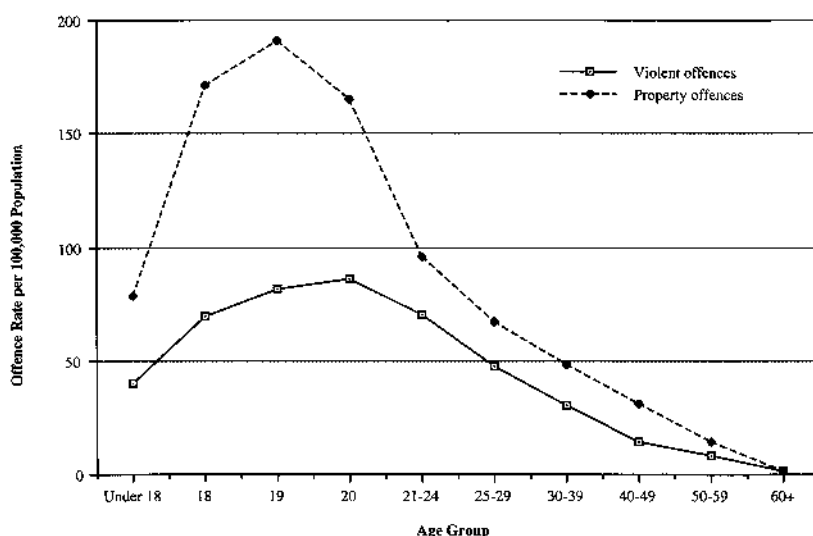
Most serious charge	Average Age at Incarceration in 1988-89
Fraud, embezzlement, etc.	37
Sex offences (not including rape)	37
Serious assault	36
Murder	32
Rape	32
Arson	31
Drug offences	30
Stealing	28
Robbery	27
Burglary and housebreaking	25
Motor vehicle theft	24

The average age of prisoners for most crimes has increased from 1978-79 to 1988-89

The average age of persons imprisoned for stealing, burglary and housebreaking, fraud, etc. and robbery has remained the same, however the average age for:

- sex offences increased
- serious assault increased
- murder increased
- rape increased
- arson increased
- drug offences increased
- motor vehicle theft decreased.

HIGHER COURT APPEARANCES 1988-89
TYPE OF OFFENCE BY AGE



Repeat offenders are responsible for much of the State's crime

Who are career criminals?

The term 'career criminal' has been used to describe offenders who:

- have an extensive record of arrests and convictions;
- commit crimes over a long period of time;
- commit crimes at a very high rate;
- commit relatively serious crimes;
- use crimes as their principal source of income;
- specialize (or some are expert) in a certain type of crime; and/or
- have some combination of these characteristics.

Such criminals are often described as chronic, habitual, repeat, recidivist, serious, high-rate, or professional offenders.

Some criminals exhibit all of the above characteristics, but most do not. Some high-rate offenders are arrested frequently and others rarely. In fact, some low-rate offenders are arrested more often than some high-rate ones. The frequency with which an offender commits crimes varies over time. Thus an offender could be high-rate one month and low-rate the next. Similarly, the offender who commits a serious crime may or may not be committing serious or other crimes at a high rate. And some high-rate and/or serious offenders have no or almost no official prior record of involvement in crime.

High rate offenders seldom specialize in one type of crime

Instead, they tend to commit a variety of both violent and property crimes. They also often engage in related crimes, such as property and drug offences.

Few repeat offenders are full-time criminals

Most chronic offenders have irregular sources of income. And they usually commit crimes during the periods they are not employed. However, some prefer a 'criminal career' to conventional employment.

Juvenile delinquency often foreshadows adult criminal activity

Most juvenile delinquents do not go on to become adult criminals, but many do continue to commit crimes.

Although very little research has been done in Queensland about the transition from juvenile to adult offender, prison officials estimate that about a quarter to one-third of offenders who have been confined in institutions as juveniles go on to become adult offenders.¹ An important indicator of future adult criminality is how early and how frequently they come to the attention of the police. Those juvenile offenders under the age of 12 who are often apprehended by the police for criminal activity, are more likely to develop into 'career criminals'.

Juveniles demand a disproportionately high level of police attention.² Although offences committed by juveniles are generally of a less serious nature than those committed by their adult counterparts, in terms of frequency they are more active. Also juveniles tend to commit offences in groups, so greater numbers of them come to the attention of police.

Juveniles account for about half of the break and enter offences committed each year and they also feature quite prominently in stealing and motor vehicle thefts. Also because they are involved in offences such as graffiti and vandalism on a fairly large scale, the financial outlay by local, state and federal government bodies to repair and prevent this type of damage is quite considerable. Arson and vandalism in school costs the community several million dollars each year, and most of this damage is caused by juveniles.

Juvenile involvement in offences during 1989-90

Offence Category	Juvenile Involvement %
Homicide	1
Serious assault	12
Minor assault	15
Rape	3
Other sexual offences	11
Robbery	19
Extortion by threats	30
Kidnapping, etc.	8
Break & enter	49
Malicious damage	27
Motor vehicle theft	31
Stealing	42
Fraud, forgery, etc.	9
Handling stolen goods	26
Drug offences	4
Prostitution offences	4
Vagrancy	3
Driving offences	2
Other offences	13
Total	17

Source: Queensland Police Service, 1990.

What do we know about delinquency predictors?

Some studies have concluded that inadequate parental supervision and discipline, discordant home environments, parental criminality and anti-social behaviour are important factors to be considered as indicators of future delinquent behaviour.³ Juvenile offenders themselves often display:

- early conduct problems - aggression, stealing, truancy, lying, drug use, etc.;
- an inability to outgrow aggressiveness by early adolescence;
- poor education performance and conduct problems;
- criminal behaviour resulting in arrest or conviction (the seriousness of the offence appears to be a better predictor of adult criminality);
- poor relationships with parents - indicators being lack of supervision/discipline, parental rejection of child, lack of parental involvement, marital discord, parental criminality and aggressiveness, parental absence and socio-economic status.

How do the offence characteristics of men and women differ?

Relatively few offenders are female

Men are more likely than women to be arrested, appear in court, and be sentenced to imprisonment or a community correction order.

Offenders dealt with by various justice agencies from 1.7.88 to 30.6.89

	Males %	Females %
Police	**	**
Magistrates Court	85	15
Children's Court	87	13
Higher Courts	89	11
Custodial corrections	93	7
Community corrections	83	17

** Queensland Police Service does not record data by gender.

Offence patterns differ for males and females

Men are more likely to be imprisoned for crimes such as serious assault, rape, break and enter, and motor vehicle theft.

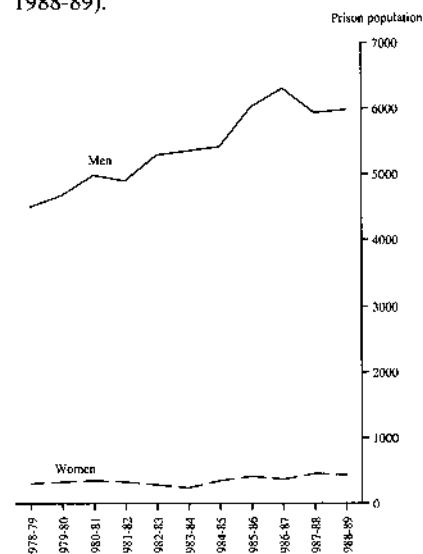
For all of the selected crimes, men are more likely to be imprisoned than women. However a higher proportion of women than men who commit crimes are involved in offences such as homicide, robbery, stealing and break and enter.

Percentage of all admissions to prison

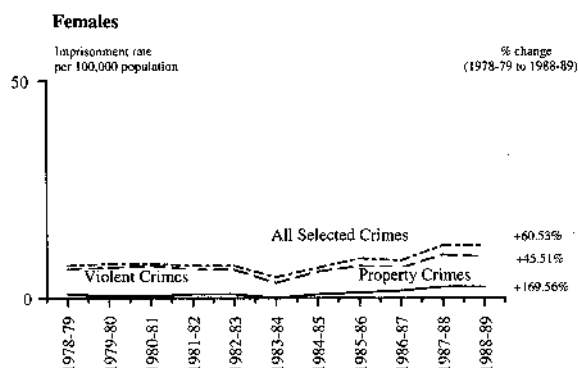
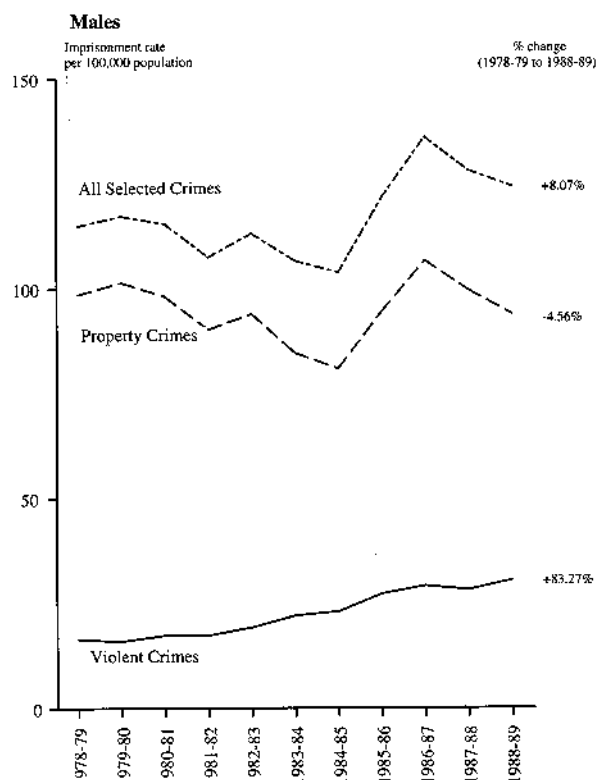
Selected Crimes	Males %	Females %
Homicide	80	20
Serious assault	95	5
Rape	99	1
Robbery	90	10
Break & enter	96	4
Motor vehicle theft	98	2
Stealing	86	14
Fraud, etc.	81	19

The prison population has grown dramatically in the past decade

Over the past 10 years, the number of women admitted to prison rose by 50% (294 in 1978-79 to 441 in 1988-89), while the number of men rose by 33% (from 4,506 in 1978-79 to 5977 in 1988-89).



For selected crimes, the rate of imprisonment for females is much lower than that of males



Source: Law and Order, Queensland, Australian Bureau of Statistics, 1978-79 to 1988-89, Catalogue No. 4502.3.

A relatively large proportion of offenders come from minority groups

The number of Aborigines and Torres Strait Islanders in the criminal justice system is disproportionately high

Indigenous people who made up around 2.5% of the Queensland population in 1989 accounted for around 20% of the prison population.

According to many researchers, the disproportionality of indigenous people in the prison population is mostly attributable to age, seriousness of crime, prior criminal record, and other legally relevant factors. This finding neither rules out nor confirms the possibility of some discrimination in the criminal justice system.

Aborigines and Torres Strait Islanders are more likely to be incarcerated for violent offences than non-indigenous people

According to the Australian Prison Census 1989 the imprisonment rate of blacks was higher for violent offences than for property offences.

Offence	Aborigines/Torres Strait Islanders	Non-Aborigines
	T.S.I. %	T.S.I. %
Homicide	20.14	79.86
Other violent offences	25.56	74.44
Robbery	13.94	86.06
Property offences	17.22	82.78
Justice offences	16.95	83.05
Good order offences	31.43	68.57
Possession of drugs	4.00	96.00
Trafficking of drugs	2.33	97.67
Motoring offences	10.66	89.34

Source: Australian Prisoners 1989, Australian Institute of Criminology, Canberra.

Information and data regarding Aboriginal involvement in the criminal justice system is extremely poor because prior to 1988 the Queensland government had a policy which precluded the collection of data based upon cultural ethnicity. Even now, very few government departments and agencies are equipped or geared towards the collection of this type of information.

An estimation based upon the annual Australia wide prison census, has indicated that the overall imprisonment rate for Aborigines is sixteen times that of the non-Aboriginal population.⁴ The report went as far as to state that this bias in a supposedly fair legal system raised *"the distinct possibility that Australia, in a more subtle way, is as racist as South Africa in its treatment of the indigenous people"*.⁵ The majority of problems that beset Aboriginal/Islander people today have their antecedents in colonialism.

Whilst legislation may not be as blatantly discriminatory as it once was towards indigenous people, there are still many social and cultural issues which clearly disadvantage them as far as the criminal justice system is concerned.⁶ Points at which Aborigines/Islanders might be disadvantaged in the criminal justice system have been identified as:

- Aborigines/Islanders are arrested for relatively minor offences more often than others;
- when arrested, they are remanded into custody more frequently than others;
- in court, they are convicted more frequently than others; and
- on conviction, they are imprisoned more frequently than others.⁷

The overall National Prison Census indicates that only 53% of non-Aboriginal remandees had been imprisoned previously, compared to 77% of Aboriginal remandees.⁸ This is because the Courts refer explicitly to prior record as a reason for remanding an offender into custody, and for greater severity in sentencing. In effect, a double punishment is imposed upon the indigenous offender, because the criteria for bail conditions are more appropriate to whites than to Aboriginal/Islander offenders, viz. the likelihood of appearance; availability of cash/security; employment and a stable family environment.⁹

Amongst victims, the indigenous population is also disproportionately high

There is a growing volume of evidence to suggest that indigenous Australians constitute a greater proportion of homicide victims than might be expected from their numbers in the general population. Homicide studies in other states have identified 10% of victims as being Aboriginal.¹⁰ In a 1982 study of living conditions on Aboriginal reserves in Queensland it was estimated that the homicide rate for the communities being reviewed was 39.6 per 100,000, which was more than ten times the Australian national homicide rate.¹¹ Similarly, the reported serious assault rate on reserves is five times greater than the general rate for the state.

What are the social and economic characteristics of offenders?

The relationship of an offender's social and economic background to crime has been hotly debated

There is no agreement over the relationship between crime and various social and economic factors. Some researchers believe that crime results from deprived backgrounds, while others see criminal behaviour as another symptom of maladjustment. Whatever the relationship might be, we can measure certain characteristics of offenders and compare them to the population as a whole to give a profile of the offending population. This profile does not indicate which came first, the social and economic characteristic or the criminal behaviour. It also does not explain why some people with similar characteristics do commit crimes and others do not.

Many offenders come from deprived and unstable backgrounds

People sentenced to prison for crimes of violence do not represent a cross-section of the Australian public. More than 90% are male, nearly half are in their twenties and most come from the lower socio-economic strata of society. The majority were unemployed at the time of the incident for which they were convicted. An estimated one-third are illiterate and lacking in basic social skills. Many are intellectually handicapped, whilst others suffer varying degrees of brain damage or neurological impairment. It has been estimated that one prisoner in eight suffers from some form of intellectual disability.¹²

A high proportion of offenders grew up in one parent families

Many offenders grew up primarily with one parent or other relatives. One Australian study found that 63% of offenders had been raised in single parent families where the parents had either separated or one parent had died. More than 80% of this sample had committed their first criminal offence before they turned 18.¹³

Many offenders have been victims of childhood abuse

A number of studies have found that many prison inmates have been victims of physical, psychological and emotional abuse or neglect as children. One study found that over one-third of serious juvenile sex offenders had themselves been subjected to physical or sexual abuse at home.¹⁴ One researcher found that the most important predictor of future adult criminal behaviour was not just abuse, but deprivation of love and affection.¹⁵ This does not mean that all people who are abused as children go on to become abusive parents themselves. Only an estimated one-fifth to one-third of abused or neglected individuals will maltreat their children.¹⁶

Most offenders have never been married

The 1989 Prison Census indicated that amongst prison inmates:

- About 59% have never been married and another 9% were either divorced or separated
- 31% were married or living in defacto relationships

The level of education reached by prison inmates is far lower than the national average

In 1988-89, of the offenders admitted to prison

- About 8% of had completed secondary education
- 10% had only primary level or no formal education
- 25% had incomplete secondary education
- 55% had completed junior level education.

Education level was associated with type of offence

Offence	Education level of inmates given as percentages across offence categories			
	No formal education or primary only	Incomplete secondary	Junior level	Completed secondary
	%	%	%	%
Homicide	11	21	53	15
Serious assault	12	26	56	6
Rape	11	30	54	5
Robbery	9	22	62	7
Break & enter	8	26	60	6
Stealing	11	25	56	8
Motor vehicle theft	10	30	55	5
Fraud, etc.	11	21	52	16
Drug offences	7	24	57	12
Drink driving	10	27	56	7
Good order offences	36	27	35	2

Source: Corrective Services Statistical Database System, 1988-89.

Many offenders were unemployed

The 1989 Prison Census shows that a high percentage of inmates were unemployed at the time they were arrested or charged.

Employment Status	Male %	Female %
Employed	48.7	22.7
Unemployed	46.5	39.5
Home duties	0.1	19.3
Student	0.1	0.0
Other	1.2	17.6
Unknown	3.5	0.8

Source: Australian Prisoners, 1989, National Prison Census, Australian Institute of Criminology, Canberra.

About 47% of all males and 40% of females in prison on 30th June, 1989 were unemployed before they entered prison.

A high proportion of adult offenders lack steady employment

Adult offenders are more likely than the general population never to have worked at all or to have held a wide variety of short-term jobs.

The prison population has a high proportion of blue-collar workers as the following table shows (based on prisoner admissions 1988-89). Many studies have found that the offender population generally belong to the lowest occupational prestige categories, particularly in relation to violent offences.¹⁷ As indicated by the table, there are a disproportionate number of labourers in the prisoner admissions population. This type of work by its nature is irregular and poorly paid, therefore it is highly likely that the offender was living below the poverty level before entering prison.

This is particularly true of female offenders who are heavily dependent upon the welfare system for their survival. This is evidenced by the increasing numbers of women (particularly supporting mothers) who are being imprisoned each year for Social Security fraud.

Occupations of prisoners admitted during 1988-89

Occupation	NO.	Occupation	NO.
Labourers	1,739	Railway transport workers	8
Pensioners	490	Tailors, upholsterers, bootmakers	8
Metal tradesmen	235	Fire brigade, protective services	8
Farmworkers, trappers, hunters	170	Architects, draftsmen, surveyors	7
Bus and road transport workers	146	Office workers, typists, stenographers	7
Painters, decorators	142	Transport/communication workers	7
Cooks, waiters, bartenders	114	Dressmakers, etc.	7
Building tradesmen	103	Builders' labourers	7
Bakers, pastrycooks, butchers, etc.	90	Compositors, typesetters, etc.	7
Salesmen, shop assistants	89	Food processors	7
Carpenters, joiners	87	Instrument makers, watchmakers, etc.	6
Home duties	85	Metal foundry workers	6
Self-employed, managers, directors	71	Engineers (not professional)	5
Fishermen	63	Glassworkers, potters, etc.	5
Farmers, farm managers	56	Plastic products workers	5
Production process workers	51	Barbers, hairdressers, etc.	5
Waterside workers	50	Teachers	4
Crane and hoist operators, etc.	48	Ship's officers	4
Clerical workers	40	Blacksmiths, moulders, etc.	4
Artists, entertainers, writers	37	Printing workers	4
Caretakers, cleaners, etc.	35	Housekeepers	4
Bricklayers, stonemasons	32	Medical workers/technicians	3
Deck/engine room hands	29	Professional lawyer	3
Plumbers, pipefitters	27	Aircraft officers	3
Building construction workers	26	Furnacemen, rolling mill operators, etc.	3
Miners, quarrymen, drillers	24	Building tradesmen's assistants	3
Electricians, electrical fitters, etc.	24	Photographic workers	3
Building contractors	21	Professional engineers	2
Metal tradesmen's assistants	20	Scientists	2
Miscellaneous craftsmen	20	Medical practitioners	2
Armed services (military)	20	Axemen	2
Shearers	16	Skilled mining workers	2
Catering, etc.	16	Mine/quarry labourers	2
Cabinet makers, etc.	15	Railway porters, ticket collectors	2
Hospital attendants, nurses' aides	15	Postmen, messengers, etc.	2
Nurses	13	Textile workers	2
Athletes	13	Photographers, camera operators	2
Technicians/technical assistants	12	Chemists (not pharmacists)	1
Greenkeepers, groundsman	12	Clergy	1
Rubber products workers	12	Telecommunication workers	1
Other professional/technical workers	10	Tanners	1
Students	10	Occupation inadequately described	92
Woodworkers, timberworkers	9	Not stated	27
Forestry workers	8		

Source: Corrective Services Statistical Database System, 1988-89

Drug and alcohol use is common among offenders

The drug use-crime link is complex

There is evidence of a relationship between drug use, including alcohol use, and crime. How strong it is and how it operates is not clear. Obviously, some drug use is illegal in and of itself. But its impact on other crimes is uncertain. As with other characteristics, drug use, may be another symptom of maladjustment. The general pattern of usage by offenders as compared to non-offenders provides a profile of drug and alcohol use.

Some ways in which drug and alcohol use could contribute to crime include:

- stimulating aggressiveness or weakening inhibitions of offenders
- motivating offenders to commit crimes to get money to buy drugs.

Different drugs supposedly have different links to crime. For example, some hypothesize that alcohol's reduction of inhibitions leads to crime, particularly aggressive acts. On the other hand, heroin's addictive nature motivates some addicts to commit crimes to get money to buy drugs. Looking at when the drugs or alcohol were consumed in relationship to the time of the offence helps to clarify if and how drugs and alcohol are involved in crime. However, in Queensland as in other Australian states and territories, there is very little accurate data available to enable this examination to be carried out.

The lack of comprehensive drug statistics in Australia makes it impossible to reliably estimate the amount of crime committed that is drug related

Most data that is collected is related to arrests for drug offences that pertain to the possession or use of illegal drugs. There is very little reliable data available about whether or not offenders were either under the influence of drugs or alcohol at the time of the offence, or whether they committed the offence to support a drug or alcohol problem. Another consideration is the fact that most of the arrests for drug offences are as a result of police initiatives.

What is the relationship between drug use and crime?

Studies in N.S.W. show increased criminal involvement with more drug usage. A survey of 225 prisoners, who were asked a series of questions about the amount of property crime they committed and the quantity of heroin they required, showed that regular heroin users committed significantly more burglaries, armed robberies and frauds than non-users.¹⁸ The study revealed that there was a correlation between heroin use and property crime, because approximately 35% of incarcerated property offenders were regular or heavy users of heroin prior to arrest.

78% of the user group reported that property crime was their main source of income, compared to the non-user group of which 65% reported that their main source of income was derived by legal means. In fact, 90% of users saw the support of their drug habit as the main reason for the commission of their major offences. Also, the heavier the individuals' heroin addiction, the more robberies they committed.

A second study interviewed persons seeking treatment for heroin dependence and comparisons were made between them and the user/offender group. The major differences that occurred related to the degree and nature of criminal activity and the level of drug use. The heroin consumption and expenditure rates of the treatment group were only about half those of the user/offender group. Again the user/offender group reported that their main source of income was property crime, but the treatment group reported that their main sources of income were drug sales, social security, employment savings as well as property crime. The treatment group was more active criminally in the supply of drugs as 86% reported having sold drugs on at least one occasion, and 69% had done so on a regular basis.

Which comes first - drug use or crime?

There is some indication that involvement in crime may precede drug use. Dobinson and Ward¹⁹ found that almost 72% of heroin users reported committing property crimes before their first use of heroin. This suggests that heroin use was not the major determinant of onset of criminal activity. Additionally, the survey found that crimes committed before regular heroin use were both less frequent and less serious than those committed after regular heroin use.

What is the relationship between the use of drugs and alcohol in the commission of violent crimes?

It is estimated that about 40% of personal robberies are committed while the offender is under the influence of alcohol, compared to only 3% of commercial robbers.²⁰ However, illicit drug users are more likely to commit commercial robberies (68%) than personal robberies (9%). Queensland police report that 70% of robberies are drug related and this proportion has been consistent since 1984.

In the case of sexual assaults it has been found that the typical offender is a male between 18 and 30, an unskilled or semi-skilled labourer, usually unemployed, and in 70% of cases has consumed alcohol in the six hours preceding the offence.²¹

Some studies have shown that in about one third of homicide cases, suspects have consumed excessive amounts of alcohol prior to the killing.²² In cases involving Aborigines, this figure rose to 60%. In over a quarter of cases both the offender and the victim had been drinking.

A N.S.W. survey of assault victims presenting at a major Sydney hospital emergency centre showed that most victims were male (85%) and that attacks occurred in the street or around licensed premises. 57% of these assaults were not reported to police.²³

Basic sources:

Law and Order Queensland, 1988-89. Australian Bureau of Statistics, Catalogue No. 4502.3.

Australian Prisoners, 1989. National Prison Census 30 June 1989. Australian Institute of Criminology, Canberra.

Census 86. Age and Sex of Persons in Statistical Local Areas and Statistical Divisions, Queensland. Australian Bureau of Statistics, Catalogue No. 2456.0.

Census 86. Aborigines and Torres Strait Islanders: Australia, States and Territories. Australian Bureau of Statistics, Catalogue No. 2499.0.

Estimated Resident Population by Sex and Age: States and Territories of Australia, June 1988 and Preliminary June 1989. Australian Bureau of Statistics, Catalogue No. 3201.0.

Source Book of Australian Criminal & Social Statistics, 1804-1988. Bicentennial Edition. Mukherjee, S. K., Scandia, A., Dagger, D., & Matthews, W. Australian Institute of Criminology, Canberra.

The Size of the Crime Problem in Australia. (1990) Mukherjee, S. K. & Dagger, D. Australian Institute of Criminology, Canberra.

References:

1. Walker, J., (1987) *Prison cells with revolving doors: A judicial or societal problem? Ivory Scales: Black Australia and the Law.* (Ed). Kayleen M. Hazlehurst, Australian Institute of Criminology. University of New South Wales Press.
2. *ibid*, p.20.
3. *ibid*, p.53.
4. Walker, J., (1987) *Prison cells with revolving doors: A judicial or societal problem? Ivory Scales: Black Australia and the Law.* (Ed). Kayleen M. Hazlehurst, Australian Institute of Criminology. University of New South Wales Press.
5. *ibid*.
6. Foley, M., (1984) *Aborigines and the police. Aborigines and the Law.* (Ed.) Peter Hanks & Brian Keon-Cohen. George Allen & Unwin, Sydney.
7. Walker, J., (1987) *Prison cells with revolving doors: A judicial or societal problem? Ivory Scales: Black Australia and the Law.* (Ed). Kayleen M. Hazlehurst, Australian Institute of Criminology. University of New South Wales Press.
8. *ibid*.
9. Finnane, M., (1990) *Criminal Justice for Aborigines and Torres Strait Islanders in Queensland.* Research paper for the Royal Commission into Aboriginal Deaths in Custody.
10. Wilson, P. (1982) **Black Death: White Hands.** George Allen & Unwin, Sydney.
11. *ibid*.
12. Grabosky, P.N. & Lucas, W.E. (1989) *Society's Response to the Violent Offender.* Australian Institute of Criminology, Canberra.
13. Howard, N. (1984) *Case Studies of Violent Offenders.* Strategic Services Division, Office of Corrections, Victoria.
14. National Committee on Violence, (1990) **Violence: Directions for Australia.** Australian Institute of Criminology, Canberra.
15. *ibid*.
16. *ibid*.
17. *ibid*.
18. N.S.W. Attorney-General's Department (1987) *Heroin use and crime.* Crime and Justice Bulletin, N.S.W. Attorney-General's Department, Sydney.
19. Dobinson, I. & Ward, P. (1984), *Drugs and Crime: A Survey of N.S.W. Prison Property Offenders.* N.S.W. Bureau of Crime Statistics and Research, Attorney-General's Department, Sydney.
20. National Committee on Violence, (1990) **Violence: Directions for Australia.** Australian Institute of Criminology, Canberra.
21. *ibid*.
22. *ibid*.
23. *ibid*.

Chapter IV

The response to crime

This chapter gives an overview of the criminal justice system in Queensland. It not only examines and attempts to provide an explanation of the criminal justice system and its various institutions, but also attempts to explain the philosophical basis upon which justice is founded, and the legal mandates of the Queensland system of justice. An explanation of some of the basic rights of individuals, as well as some of their obligations under the system is also provided, so that the reader can obtain a better appreciation of the social context in which the system of justice operates.

This chapter contains data and research findings that describe crucial actions at five key stages of the criminal justice process:

Entry into the system;
Prosecution and pretrial;
Adjudication;
Sentencing;
Corrections.

The data presented answers such question as:

How does the criminal justice system process cases?

What is discretion and how is it exercised in the handling of criminal cases?

How does police strength in one district compare with other districts?

What is the relationship between police strength and crime?

How many people were arrested in a typical year?

For what offences were they arrested?

What is the role of the prosecutor?

How many arrests result in prosecution?

How many prosecutions result in convictions?

What is bail?

What are the consequences of its breach?

What is the role of Legal Aid and the Public Defender?

How is legal assistance provided for Aborigines and Torres Strait Islanders?

Are juveniles handled differently than adults?

Can juveniles be tried in a criminal court?

What sanctions are available for juvenile offenders?

How are the State courts organized?

To what extent do the various courts interact?

What are the main differences between adult and childrens courts?

How many cases brought before the various courts result in guilty pleas?

How many result in guilty verdicts?

What is the role of the jury?

How often are cases tried before a jury?

How long does it take for a criminal case to move through the criminal justice system?

What are the key defences to criminal charges?

Is the criminal caseload of appeals courts increasing?

In what circumstances are State cases reviewed by the High Court?

What are the various sentencing alternatives?

How many people are under some form of correctional supervision?

How do sentence lengths differ from actual time served?

Are correctional populations increasing?

How many prisoners are confined in State institutions?

In what type of facilities are prisoners held?

How many parolees return to prison?

How many inmates were previously in prison?

The response to crime is a complex process that involves citizens as well as many agencies, levels, and branches of government

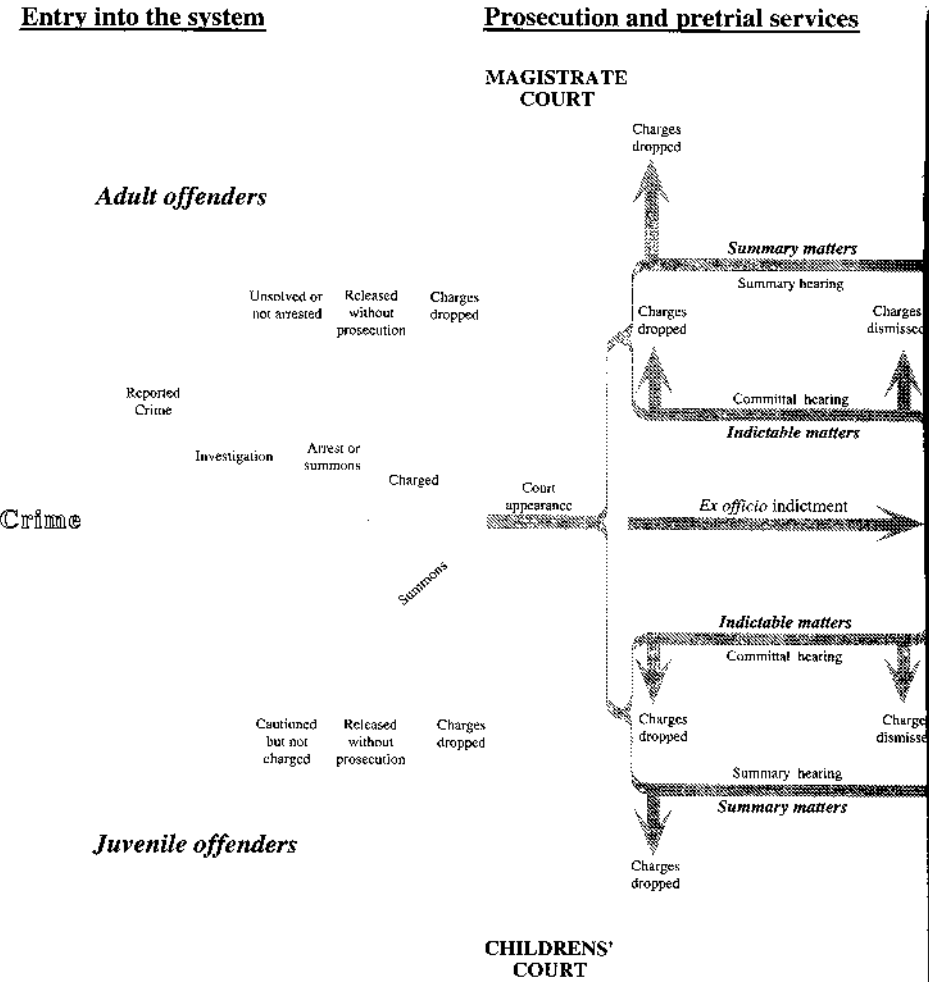
The private sector initiates the response to crime

The first response to crime may come from any part of the private sector: individuals, families, community groups, business, industry, agriculture, educational institutions, the news media, or any other private service to the public.

The response to crime involves crime prevention as well as participation in the workings of the criminal justice system once a crime has been committed. Crime prevention by the private sector amounts to something more than simply installing burglar alarms or participating in a neighbourhood watch program. It also includes a commitment to stop criminal behaviour by not engaging in, or condoning crime when it is committed by others.

Citizens participate in the criminal justice system by reporting crime to the police, and by being involved in criminal trials (as a witness or juror), and by accepting the disposition of the system as just and reasonable. As voters and tax payers, citizens also participate in the formulation of criminal justice policy. Many people will not appreciate that this is the case, and at first instance it will appear that it is the government that is responsible for the formulation of the policy that dictates how the system operates. However, government policy is guided by electoral demand and responds to community opinion. Many State elections are fought on criminal justice issues. For these reasons, the community is also responsible for determining how the criminal justice system operates, the resources that will be made available to it, and its goals and objectives. At every stage of the process, from the formulation of objectives to the decision about where to locate prisons and to the reintegration of inmates into society, the private sector has a role to play. Without such involvement, the criminal justice process cannot serve the citizens it is intended to protect.

What is the sequence of events in the criminal justice system?



NOTE: The chart gives a simplified view of the caseflow through the criminal justice system.

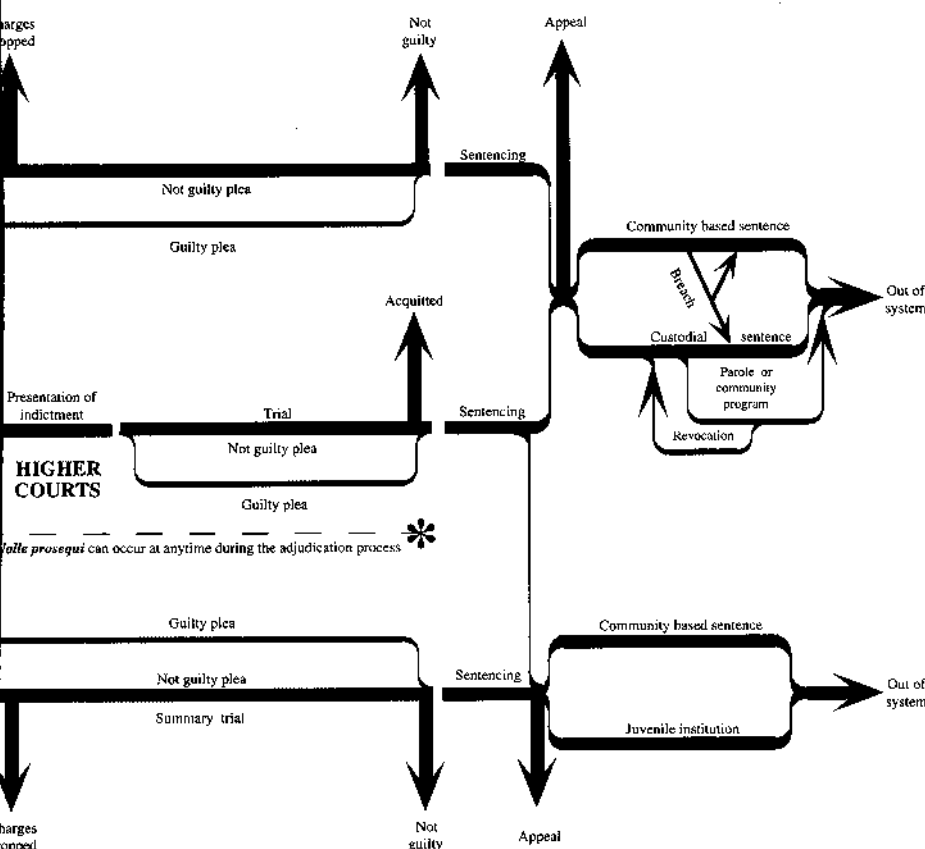
The government responds to crime through the criminal justice system

Under the criminal justice system offenders are apprehended, tried and punished by means of a loose confederation of agencies. Collectively these agencies and their operative functions comprise the visible aspects of the criminal justice system. The Queensland system of justice has evolved from the English common law into a complex series of procedures and decisions.

Today in Queensland, the system of criminal law has been codified into a single criminal code, however there are still other statutes that contain offences that are not to be found in the Criminal Code.

The description of criminal and juvenile justice systems that follows, portrays the most common sequence of events in the response to serious criminal behaviour.

Adjudication and sentencing process



Entry into the system

The justice system can not respond to some crime because much crime is simply not discovered or reported to the police. Law enforcement agencies learn about crime from the reports of citizens, from discovery by police officers in the field, or from investigative and intelligence work.

Once a law enforcement agency has established that a crime has been committed, a suspect must be identified and apprehended for the case to proceed through the system. Sometimes a suspect is apprehended at the scene however, identification of a suspect sometimes requires an extensive investigation. Often, no one is identified or apprehended.

Prosecution and pretrial services

After an arrest or summons for an indictable matter, police will present information about the case to a magistrate. In Queensland, it is usual for the investigating officer to hand the brief in a matter to the police prosecutor who will handle the matter at its committal hearing before a magistrate, or upon its Magistrates court trial or sentence. The police prosecutor has a discretion not to proceed with the prosecution at any stage before or during the committal. This discretion may be exercised because they consider that there is insufficient evidence or for any other legitimate reason.

A suspect charged with a crime must be taken before a Magistrate as soon as is practicable. At this stage the accused may avail themselves of the services of the duty solicitor. At the initial appearance, the Magistrate informs the accused of the charges.

A bail decision is usually also made at the time of the initial appearance, but this decision may occur at other hearings or may be changed at another time during the process. Pretrial detention of defendants accused of serious offences and deemed to be dangerous is often permitted to prevent them from committing crimes in the pretrial period. However, the court may decide to release the accused on their own undertaking on the promise of satisfying certain conditions, or after the posting of a bond.

If the offence is a summary offence, the determination of guilt and assessment of a penalty may occur at this initial stage.

The main function of the committal hearing is for the magistrate to decide whether the evidence, if it were presented to a jury, would be sufficient to enable them to convict that accused person. This is generally referred to as the Magistrate making a determination as to whether or not a *prima facie* case exists against the accused. If the Magistrate does not find a *prima facie* case, then the matter will be dismissed, however, if the Magistrate finds that sufficient evidence exists, then the matter will be committed to a higher court.

Adjudication

Once an indictment has been presented to the trial court, the accused is listed for trial. At the trial the accused is *arraigned*, arraignment being the process by which the accused is informed of the charges, advised of the rights of criminal defendants, and asked to enter a plea to the charges.

If the accused pleads guilty, the judge may accept or reject the plea. The plea may be rejected if, for example, the judge believes that the accused may have been coerced or that the plea is not supported by the evidence. If this occurs, the case may proceed to trial. If the plea is accepted, no trial is held and the offender is either sentenced immediately, or sentence will be held over until a later date.

If the accused pleads not guilty, the matter proceeds to trial. A person accused of a serious crime is guaranteed a trial by jury. The prosecution and defence will present their cases by questioning witnesses and producing documentary and other evidence. Matters of fact are decided by the jury, while the judge decides on issues of law. The jury must reach a unanimous verdict. The trial will usually result in acquittal or conviction on the original charges, or in some cases acquittal or conviction of one or more lesser offences. For example, an accused person facing a charge of dangerous driving causing grievous bodily harm may be found guilty of dangerous driving but the jury may not be satisfied that the dangerous driving also caused grievous bodily harm. Accordingly, the accused would be convicted only of dangerous driving *simpliciter*.

If the jury is unable to reach a unanimous verdict, the Judge will discharge the jury and the Crown will usually recommence the prosecution before a fresh jury. A *hung jury* results in a very large expense for the administration of justice, involving as it does the need for a re-trial covering virtually the same issues before a new jury. However, it is a cost that is unavoidable, and is really a necessary aspect in ensuring that an accused person is provided with due process and that they have their case retried. The cost of re-hearing the case is one of the matters that the Crown prosecutor will weigh up (against the public interest that the law be enforced) in determining if the case against the accused should be heard again.

After the trial, a defendant may seek to appeal against the conviction or sentence, or both.

Sentencing and sanctions

After a guilty verdict or guilty plea, sentence is imposed by the judge.

In order to determine an appropriate sentence, a sentencing hearing may be held at which evidence of aggravating or mitigating circumstances will be considered. In assessing the circumstances surrounding a convicted person's criminal behaviour, courts often rely on pre-sentence reports furnished by community correctional officers or by reports by social workers, psychiatrists or other designated authorities and on criminal histories.

The sentencing choices available to a judge include one or more of the following:

- imprisonment in a prison;
- probation - where the convicted person is allowed to remain at liberty, but subject to certain conditions and restrictions;
- good behaviour bond;
- fines - which are primarily applied as penalties in minor offences;
- restitution - which requires the offender to reimburse the victim;
- community service orders;
- fine option orders under which the accused can either pay a fine or perform community service;
- besides the more common alternatives listed above, a sentencing judge as part of their discretion may choose to impose a more novel form of punishment, e.g. an accused in a minor offence may be required to write a letter of apology to their victim.

Usually, the judge sets the sentence length within certain limits, but there are some determinate sentencing laws. The best example of which is murder for which the sentence is life imprisonment.

Corrections

Offenders sentenced to imprisonment usually serve time in a state prison. Persons admitted to the State Corrective Services system, may be held in prison with varying levels of custody, or in some form of community corrections facility.

A prisoner may become eligible for parole after serving only a specified period of their sentence. Parole is the conditional release of a prisoner before the prisoner's full sentence has been served. The decision to grant parole is made by a community corrections board. Additionally prisoners can apply for release on home detention, transfer to community corrections centres or prescribed half-way houses to participate in release-to-work programs, and other early release programs which have strict eligibility and supervisory criteria.

Offenders may also be required to serve out their full sentences prior to discharge. Those sentenced under determinate sentencing laws can be released only after they have served their full sentence, less any *remissions* on sentence received while in prison. Prison inmates earn such credits against their sentences for good conduct and industry, or by earning it through participation in specific programs.

If an offender has an outstanding charge or sentence in another state or territory they may be transferred to that state or territory.

If released by a community corrections board, the prisoner will be under the supervision of a community correctional officer in the community for the balance of their unexpired sentence. This supervision is governed by specific conditions of release, and the prisoner may be returned to prison for violations of these conditions.

The juvenile justice system

The method of dealing with child offenders is not entirely dissimilar to that of adult offenders, but there are crucial differences in the procedures. Most juveniles are referred to Children's Courts.

In disposing of cases, Children's Courts usually have far more discretion than adult courts. In addition to normal court powers, various state laws grant Children's Courts the power to order removal of children from their homes to the care and custody of the state. Children's Courts also may order participation by child offenders in special programs aimed at shoplifting prevention or drug counselling. In some cases the Children's Court may refer matters to a higher court for trial before a judge and jury.

Discretion is exercised throughout the criminal justice system

Discretion is "*an authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgement and conscience*".¹ Discretion is exercised throughout the government. It is a part of decision making in all government systems from mental health to education, as well as criminal justice.

So far as the criminal justice system is concerned, Parliament has recognized that statutes cannot anticipate the range of circumstances surrounding each crime, anticipate local mores, and enact laws that clearly encompass all conduct that is criminal and all that is not.² Therefore, persons charged with the day-to-day response to crime are expected to exercise their own judgement within *limits set by law*. Basically, they must decide:

- where the situation fits in the scheme of law, rules and precedents;
- whether to take action;
- which official response is appropriate.

To ensure that discretion is exercised responsibly, authority is often delegated to professionals. Professionalism requires a minimum level of training, as well as an orientation based on the ethics of the various professions, which guides officials in making decisions. The move towards professionalism in policing, (discussed later in this report), is due largely to the desire to ensure the proper exercise of police discretion.

The limits set for the exercise of a discretion vary depending upon under which law the discretion is exercised and by whom. For example, judges have a relatively wide discretion as to the type of sentence that they may feel is the appropriate one to impose. There are some limits to the judges' discretion in sentencing brought about with the passing of mandatory imprisonment laws that require prison sentences for certain offences.³

Judicial discretion is particularly significant at the time of the actual trial of the accused. Once an accused is arraigned for trial, and *put in charge of a jury*, it is the trial judge who has sole control of the conduct of proceedings.

While it is the Jury that deliberates over the facts of the criminal event and determines if the accused is guilty of the charge, it is the trial judge acting alone who determines points of law and the admissibility of certain evidence. While it has been said that:

*"Discretion, when applied to a Court of Justice, means sound discretion guided by law, not by humour; it must not be arbitrary, vague and fanciful; but legal and regular."*⁴

The system of justice reposes a great deal of faith in those individuals who are appointed as judges and magistrates. Quite often, the course of justice is in their hands and due process is dependant upon their sound judgement. It would be unwise to lose sight of the significance of discretion in the criminal justice system.

A trial judge has the discretion to exclude illegally or improperly obtained evidence, and/or to declare a witness hostile (which has an effect on the way that evidential testimony may be extracted from them). If a witness is deliberately silent, evasive or in any way recalcitrant the trial judge has the discretionary power to commit that witness for contempt.

"The witness who deliberately evades questions by falsely swearing that he cannot recall, interferes with or obstructs the due administration of justice just as much as the witness who openly and directly refuses to answer those questions. The interference with the administration of justice by the man who swears falsely that he has no recollection is achieved in a subtle and insidious way; but it is no less contempt than the blunt refusal of the honest by recalcitrant witness. The Court must have power to punish for contempt the liar who parries questions with a pretended inability to remember. The due administration of justice demands that the Court have power to deal itself in a prompt and summary way with the conduct of that kind, instead of referring the matter to the Attorney-General in the expectation that the offender will in due course be prosecuted for perjury".⁵

Trial judges have a discretionary power to order the severance of charges from an indictment if it is in the interests of justice. The judge will exercise his discretion to do so for several reasons:

"Oppression of the Accused is but one of several complementary considerations, not least of which is public policy evidenced in such matters as reducing the burden on all participants in the trial process, minimising the risk of mistrial through error, preventing the possibility of illness of an Accused during the currency of a trial resulting in its abandonment, avoiding excessive and wasteful expense, and keeping the trial within manageable proportions.....It therefore behoves the judges of the courts to keep firm control over charging arrangements independently of whether or not objection is taken to joinder; to sever the charges in their discretion to ensure that the trial is kept within manageable proportions: in short, to act as a watchdog in the public interest".⁶

Some legislation also gives judges sweeping discretion with respect to trials. For example, section 617 of the **Criminal Code** gives judges the discretionary power to continue the trial notwithstanding the absence of an accused person through illness. It is the duty of the judge to exclude from the jury's consideration evidence which is inadmissible.

The performance of this duty is based largely on judicial discretion. It is not only the exercise of discretion by trial judges that is essential to the day to day operation of the criminal justice system. Discretion is exercised at all levels of the system, by a variety of officers. Some of the functions of various people in the system that depends upon the exercise of an individuals discretion have been summarised in the table below. Police officers for example may exercise discretion as to which type of offence they will prioritize, or which particular repeat offender they will target for immediate apprehension.

Prosecutors exercise discretion in an equally important way to make decisions based on discretion that will have effects on later stages of the system. As an example, prosecutors make decisions about charges or even whole cases that they will drop. Such decisions are made after the prosecutor reviews the available evidence and makes a discretionary decision based upon his or her own opinion, as to whether the matter is unlikely to result in a conviction or if another more serious matter warrants the more immediate attention of the courts.

Who exercises discretion?

These criminal justice officials.....must often decide whether or not or how to -
Police	Enforce specific laws Investigate specific crimes Search people, vicinities, buildings Arrest or detain people
Crown Prosecutor	Determine the appropriate charges for the indictment Draft and present indictment Drop cases Reduce charges
Judge or Magistrate	Set bail or conditions for release Determine relevance and admissibility of evidence Declare witness hostile Determine delinquency Dismiss charges Impose sentence Revoke probation
Correctional officials	Classify security ratings Assign to type of correctional facility Award privileges Punish for disciplinary breaches
Community Corrections Boards	Determine date and condition of parole Revoke parole

More than one agency has jurisdiction over some criminal events

The response to most criminal actions is usually begun by state police who react to breaches of state law. However, some criminal events because of their characteristics and location may come under the jurisdiction of more than one agency. For example, in some major drug trafficking offences where an organised criminal gang is importing drugs from overseas and distributing them throughout the state, the Queensland Police, the Federal Police, Customs and the National Crime Authority and the Criminal Justice Commission could all conceivably have an interest in the case as well as some jurisdictional control over it. In such cases some co-ordination between agencies is required if the government's response to such crime is to be effective. An investigation may be undertaken by all authorized agencies, or alternatively those with some jurisdictional interest in the matter may agree amongst themselves to let one such agency take responsibility for that particular matter.

Another example of crossed jurisdiction is with offences that involve property owned by the Commonwealth. Telecom which is a Commonwealth instrumentality, owns all public telephones in Queensland. If a telephone is vandalised, the state police may apprehend the offender and that person will be brought before a Queensland court. However the Commonwealth will generally provide the prosecution service and pay for the costs of the prosecution as for the violation of Federal Law.

Within the State the response to crime will vary from one locality to another

The response differs because of differences in how discretion is exercised. Local crime response policies and programs, whether they are formal or otherwise, change in response to local attitudes and needs. For example, the police in one locality may concentrate on particular types of offences that plague the local community while the police in another locality may concentrate on quite a different set of local issues.

The response to crime also varies on a case-by-case basis

No two cases are exactly alike. Every case will have circumstances and factual issues that distinguish it from all other cases. For this reason it is not possible for the criminal justice system to adopt rigid inflexible plans of action to respond to crime. At every stage of the criminal justice system officials must make decisions that are based upon their professional discretion, taking into account the varying factors of each case. Two similar cases may have very different results because of various factors, including differences in witness co-operation and physical evidence, the availability of resources to investigate and prosecute the case, the quality of the lawyers involved, and the age and prior criminal history of the suspects.

An important factor that has little appreciated impact on the exercise of discretion is prevailing public opinion. If for example, a local community is particularly concerned about railway station vandalism, then that fact will help to determine the police decision to target railway station crime. Community attitudes will also be reflected in the type of sentence that a judge hands down for an offender convicted of that offence.

Notes

1. Roscoe Pound, "Discretion, dispensation, and mitigation: The problem of the individual special case," *New York University Law Review* (1960) 35:925, 926.
2. Wayne R. LaFare, *Arrest: The decision to take a suspect into custody*. (Boston: Little, Brown & Co., 1964), pp.63-184.
3. The best examples of this is murder under the **Criminal Code, 1899-1990**.
4. Lord Mansfield C.J.
5. *Keeley v Brooking* (1979) A.L.J.R. 526.
6. McGuire, D.C.J., *The extent and exercise of the judge's discretion in criminal trials*. Paper delivered at a Conference of District and County Court Judges of Australia, Brisbane, 1983. p.55.

The system responds directly to a fraction of crime

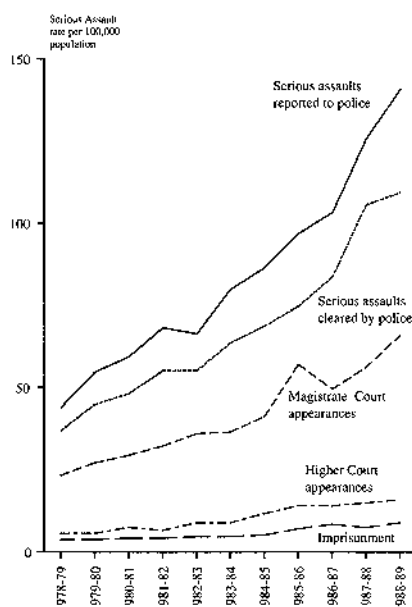
Not all crimes are reported to police

Only about two-thirds of all crimes are reported to police. The crimes most likely to be reported are those more serious in terms of injury or economic loss.

The criminal justice system responds to crimes that are brought to its attention either by reports from citizens or as a result of police investigation. Crimes are reported most often by the victim. Police discover very few reported personal and household crimes.

Most reported crimes are simply never solved and do not result in an arrest. For that reason, the proportion of crimes handled directly by the criminal justice system through the processing of suspects is relatively small. Indirectly, the criminal justice system may be dealing with more crime than appears from arrest data because in some cases the offenders who are arrested and proceed to later stages of the system may have committed many more crimes than those for which they are arrested.

Fallout for the crime of serious assault is shown in this chart:



The first contact with the criminal justice system for most citizens is the police

In emergencies, citizens can report crimes by telephoning an emergency number, such as 000. In other circumstances, the citizen must call the police directly. The police will ask for facts about the crime, such as what happened, where, when, whether or not it involved injury or loss. This information helps the police to select the most appropriate response. Police in Queensland are currently under-staffed when compared to other states. This is particularly the case after hours and on weekends. For this reason calls for assistance to the police at these times are often diverted to a central number and must be prioritized by a police dispatcher. The dispatcher must use their discretion based on the facts that they are given by the caller and their own police experience to determine what sort of response priority should be accorded to the caller.

Law enforcement is one of several police roles

The roles of police officers are:

- **Law enforcement** - applying legal sanctions (usually arrest) to behaviour that violates a legal standard.
- **Order maintenance** - taking steps to control events and circumstances that disturb or threaten to disturb the peace. For example, a police officer may be called on to mediate a family dispute, to disperse an unruly crowd, or to quiet an overly boisterous party.
- **Information gathering** - asking routine questions at a crime scene, inspecting burgled premises, and filling out forms needed to register criminal complaints.
- **Service-related duties** - a broad range of activities, such as assisting injured persons, supervising disaster relief, animal control, dissemination of community related information, etc.

Most crime is not susceptible to a rapid police response

With respect to most crimes police response time is important in securing arrests only when they are called while the crime is still in progress or within a few seconds after the crime was committed. Otherwise, the offender has had plenty of time to escape.

Where discovery of crimes is involved (those noticed after the crime has occurred), few arrests may result even if the public has reported it immediately upon discovery; by this time, the offender may be safely away. If a suspect is arrested in these types of cases, the length of delay between the offence and arrest may crucially affect the Crown's ability to prosecute the suspect successfully. This is because the availability of evidence and the ability to locate witnesses with a reliable memory of what occurred at the time often diminishes quickly after the event.

Today police officers do not always respond to calls for service

In a bid to improve efficiency, many police departments throughout the world now use a number of response alternatives to calls for service. This is also the case in Queensland. The types of alternative response modes depend upon a number of factors such as whether the criminal event is in progress, has just occurred, or occurred some time ago and whether anyone is or could be injured. Police officers may be sent, but the call for service may also be responded to by:

- **Delayed response** - if officers are not needed at once and can respond when they are available.
- **Referral to other non-criminal justice agencies** - such as the fire brigade, or social service agencies.
- **A request for a walk-in report** - where the citizen comes to the police station and fills out a report.

A variety of public agencies provide protection from crime

The function of law enforcement and protection from crime in the state is largely the responsibility of the Queensland Police Service. Other bodies also have a role to play. Other organs of government as well as certain private bodies and community groups provide protection from crime. In this sense, crime prevention could be said to be the collective and integrated function of the community at large.

The Queensland Police Service is responsible for the enforcement of laws under a variety of Acts, as well as for the fulfilment of a variety of crime prevention and other policing roles.

The Criminal Justice Commission is responsible for the investigation, prevention and detection of organised and major crime including drug trafficking and white collar crime; and misconduct in the Queensland Police Service and official misconduct in other units of public administration.

As well as the State Police, the Commonwealth government exercises jurisdiction over selected crimes as a result of its constitutional powers. For example, income tax and social security fraud, crimes against Australia Post, Telecom, violation of customs law etc. The Federal Police are responsible to a large degree, for crime prevention efforts and enforcement of these laws. Additionally, Commonwealth bodies such as Australia Post and Telecom have their own investigation and crime prevention officers. Customs officers are responsible for policing of immigration, quarantine and other customs regulations in addition to assisting in the detection of narcotic importation.

Urbanization and social change have had a great impact upon policing

- The dramatic shift in population to urban areas since World War II and ongoing migration to Queensland from southern states and overseas, has had a great impact on the demand for police service.
- During the recent period of increasing concern about employment discrimination, the police service have added women and minorities to their ranks. This is also part of the recognition that the police service should be a proper reflection of the community it serves. At present, the police service has a policy which commits it to an increase in the proportion of women in the service to 7% by recruiting 20% of women in each intake. The proportion of sworn officers who were women dropped from 16% in 1973-74 to only 5.4% in 1987-88. Efforts to attract ethnic minorities to join the police are ongoing.
- Effective, February 1991, the training of all recruits will be university based. After nine months of deliberation a police education advisory council has recommended the introduction of a two semester course. Some of the universities in Queensland have initiated a bachelor level program in Justice Studies and Justice Administration. The two semester course for new recruits, once completed will constitute one-third of the requirements for the degree. Having completed one-third of the degree requirements in their basic training will create a great incentive for police recruits to complete the degree. Procedures are underway to facilitate completion of the remaining two years through part-time studies and/or distance education. It is gradually becoming a requirement of Queensland police service personnel policy to have tertiary qualifications for career advancement.

Professionalism and advanced technology have also transformed policing in the past half century

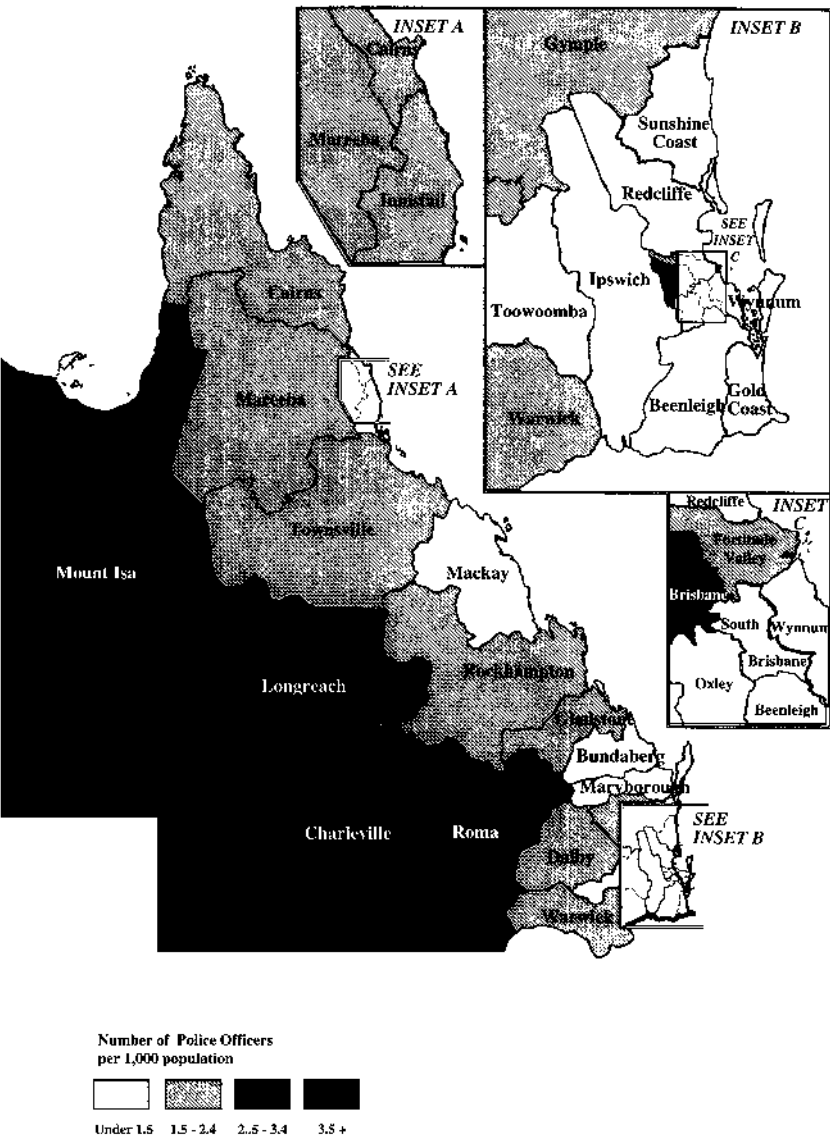
Basic and in-service training is now regarded as an indispensable aspect of Police preparation. Queensland Police receive basic training at the Oxley Police Academy. In-service training is provided both in the form of refresher courses run at the Police Academy and in the various police districts and at the Chelmer in-service centre. Police Officers and Technical and Scientific Support Staff are often degree holders or qualified tradespeople. They may be sent interstate or overseas to study police methods, and may undertake extra training and study at their own initiative.

The importance of professionalism and the need for better qualified police officers has been recently recognised in Queensland and police education is currently subject to review. The police service is making increasingly greater use of technology such as computers and sophisticated communication equipment. This is in addition to the use of patrol cars, motorbikes, motorboats and aircraft that have already become an everyday feature of police work. Moves are also underway to increase civilian employment within the police service to execute those aspects of police work that do not require the direct attention of a police officer. The ongoing civilianization of the police service results from the desire to:

- free up sworn officers for patrol duties;
- cater for the need for highly specialised technical expertise (such as computer programming), that police officers usually do not have.

The demand for law enforcement services varies among districts

Most Districts have between 1 and 3 police officers per 1,000 residents



There is no standard level of police protection

Police employment in Queensland ranges from 0.65 per 1,000 residents in Redcliffe to 3.85 per 1,000 in Charleville. The average for the state is 1.91 officers per 1,000 residents. The ratio of police officers per 1,000 square kilometres ranges from less than 1 in districts like Longreach and Charleville to over 1,000 in Brisbane and South Brisbane. The state average is around 2.28 officers per 1,000 square kilometres. Yet, some districts that greatly differ in population and land area have similar levels of police protection. For example, Innisfail has a population of about 32,000 and Rockhampton around 121,000, both have about 1.7 officers per 1,000 residents.

No single factor determines the police strength of a given area

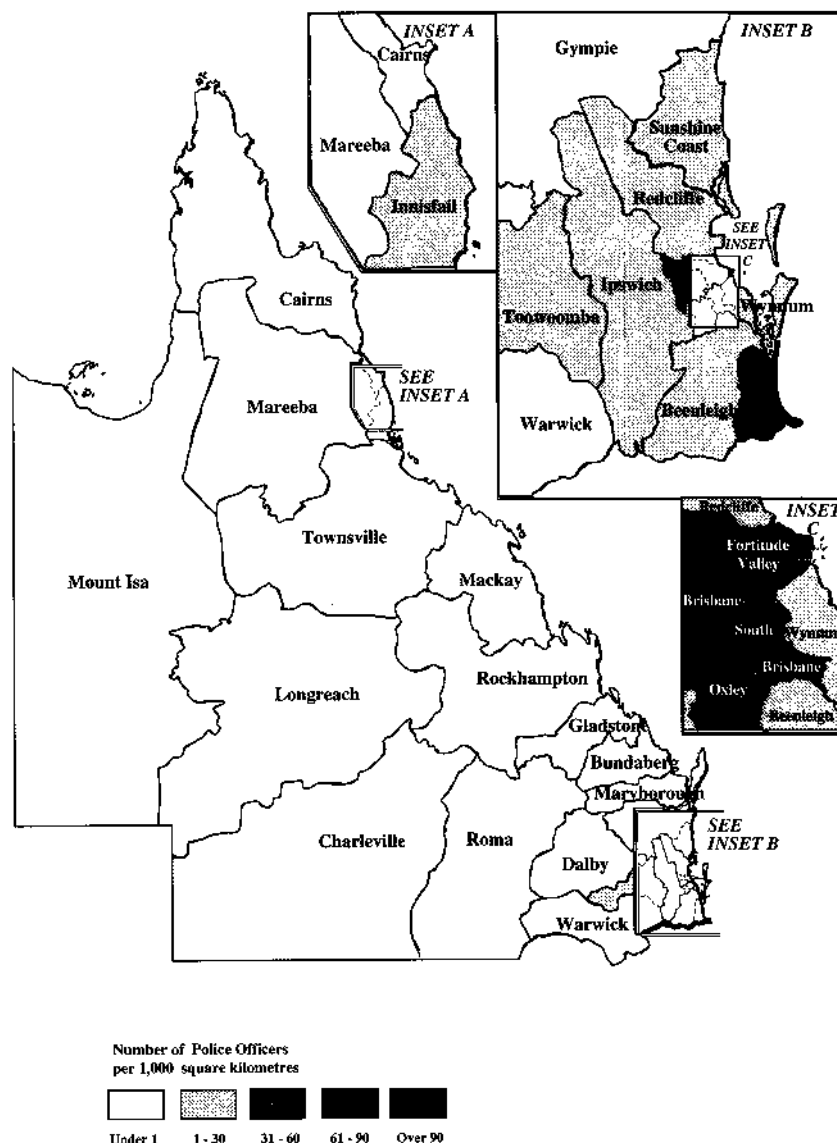
Decisions on the size of the police service may be determined by a variety of factors, including the budgetary constraints of the state.

- Many people believe that increased police employment equates with higher levels of protection and will consequently lead to reductions in crime. Researchers disagree as to whether there is a relationship between either the number of police and the rate at which crime occurs or between crime rates and budget allocations for law enforcement.

Some contend that if a relationship is to be found between crime rates and police, it may be associated more with the tactics of law enforcement than with their numbers.

- The area of a district also shows little or no relationship to either police employment levels or the number of police per square kilometre.

Most Districts have fewer than 1 police officer per 1,000 square kilometres



State police employment per capita rose by 7.5% in 12 years

Between 1978 and 1990, the number of citizens per police officer in Queensland decreased from 565 to 523. An improvement of 7.5%. Around the same time, the reported crime rate rose 100%. During this period, growth in the number of police officers per capita:

- occurred in about 70% of districts in the state
- was highest (59%) in the South Brisbane district
- was lowest (-39%) in the Redcliffe district

Note: Because police district boundaries have changed, and the method of estimating population figures for these areas has altered in the past twelve years, these estimates are only approximations.

Australian ratios of police to population

Queensland	1 : 523
New South Wales	1 : 462
Victoria	1 : 438
Western Australia	1 : 428
Tasmania	1 : 419
South Australia	1 : 394
Northern Territory	1 : 222

Source: Queensland Police Service Annual Report, 1990.

Although the ratio for the Queensland Police Service improved between 1978 and 1990, it did not improve at the same rate as New South Wales, South Australia and Victoria.

This may be partly because Queensland's population has grown at a faster rate than the population in other states.

Police numbers will always be subject to economic constraints. However, the material presented does demonstrate that Queensland has failed to maintain its police to population ratio at a rate comparable to New South Wales and/or Victoria during a period of rapid state development and accelerated social change. Increases in tourism and the associated policing problems with large numbers of short term visitors in the population are a compounding factor.

One basis recognized widely by other policing studies for determining police to population ratios is the Eric St Johnston ratio. Applying the ratio to the establishment of the Queensland Police Service reveals that police districts and regions display a wide range of variance from the staff numbers determined by means of this ratio.

Projected police numbers required based on Eric St Johnston Ratios ¹

Population over 20,000	1:350
From 5,000 to 20,000	1:530
Under 5,000	1:1,000

Projected police numbers

District	Present Police Numbers	Population	Police Nos. Adjusted +	Present Police Nos. as % of Adjusted
Brisbane#	1,660	518,246	1,418	112%
Redcliffe	177	187,221	535	33%
Ipswich	152	131,586	376	40%
Oxley	157	122,000	349	45%
Wynnum	115	130,750	374	31%
Beenleigh	170	201,475	576	30%
Gold Coast	300	221,323	632	47%
Charleville	45	10,716	20	225%
Dalby	57	30,804	88	65%
Roma	56	22,186	63	89%
Toowoomba	116	117,563	336	35%
Warwick	68	38,920	111	61%
Bundaberg	74	61,581	176	42%
Gympie	84	55,731	159	53%
Maryborough	68	57,665	165	41%
Sunshine Coast	143	130,540	373	38%
Longreach	48	12,780	24	200%
Mackay	145	118,901	340	43%
Rockhampton	186	123,602	353	53%
Gladstone	82	53,195	152	54%
Mount Isa	96	33,674	96	100%
Townsville	319	169,085	483	66%
Cairns	194	110,319	315	62%
Innisfail	48	31,957	91	53%
Mareeba	59	34,480	99	60%
Grand Total	4,519	2,726,300	7,767	
Actual Strength	5,085	2,726,300	7,767	65%
Present Rates	1: 536		Adjusted Ratio	1:351

Includes Regional resources.

+ Calculation based on Eric St Johnston Ratio.

Source: Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. Fitzgerald Report. 1989.

Although somewhat subjective, and its relevance untested, the application of these ratios in Queensland would require an additional 2,700 police officers.

There is much variation between the police coverage of different parts of the State, and great variation in the extent to which each establishment varies from the ideal.

The impact of development and population growth has apparently not been translated into alterations in staff allocations in some areas of Queensland.

There are also some obvious anomalies among police districts. Charleville and Longreach, for example, are apparently over-resourced, while Beenleigh, within the fastest growing area in the State and an area which has high crime rates, appears to be grossly under-resourced. It has been claimed that such variations are partly dictated by social and historical factors and partly by political factors.

The ratio is useful in highlighting the need to resolve such anomalies, and can provide a guide to overall police numbers.

In this context, it is interesting to note that the Brisbane metropolitan area (comprising the police districts of North Brisbane, South Brisbane and Fortitude Valley) has been relatively well supplied with resources. It has staffing levels which are close to requirements, predicted by the Eric St Johnston ratio and experiences a significantly lower crime growth than the rest of the State between 1984 and 1987.

Private security plays an important role in crime control

Private security continues to grow

Recent growth in private security is in response to a market demand that has been the result of growth in crime, and security needs in businesses.

The private security industry protects private concerns against losses from accidents, natural disasters, or crime

This for-profit industry provides:

- personnel, such as guards, investigators, couriers, bodyguards;
- equipment, including safes, locks, lighting, fencing, alarm systems, closed circuit television, smoke detectors, fire extinguishers, and automatic sprinkler systems;
- services, including alarm monitoring; employee background checks and drug testing; evacuation planning; computer security planning.

Private security is provided either by direct hiring or by hiring specific services or equipment (contract security).

Most criminal cases are initiated by charges being laid

When a crime has been committed, a suspect must be identified and apprehended for the case to proceed through the system

Occasionally, a suspect is apprehended at the scene; however, extensive investigations are often required before a suspect can be identified, and, in many cases, no one is either identified or apprehended. Law enforcement agencies have wide discretion in determining whether to make an arrest or proceed by way of summons. In some offences police may arrest a suspect without a warrant if they have reasonable cause to believe that the suspect has committed the offence. In respect of other offences police require a warrant for arrest. A suspect who is arrested (taken into physical custody) must then be 'charged'.

Most persons enter the criminal justice system through arrest, but some enter in other ways

A person may be issued with a summons (a written order by a judicial officer requiring an appearance in court to answer specific charges). Generally, a summons creates an obligation to appear in court. However, in some cases, a payment of money can be made in lieu of a court appearance; the common example of such a provision is the case of a minor traffic violation. Alternatively, a person may be issued a summons.

117 thousand offences were give "clearance" and charges were laid by Queensland Police in 1989-90

Rank	Offence	Number of Charges
1	Drink driving offences	28,033
2	Good order offences	12,231
3	Drug offences	10,622
4	Shop stealing	9,552
5	Other stealing	7,981
6	Break & enter	7,716
7	Malicious damage to property	5,956
8	Minor assault	3,795
9	Driving & motor vehicle offences	3,710
10	Serious assault	3,469
11	Other fraud	3,307
12	Motor vehicle theft	3,014
13	Other offences	2,514
14	Cheque fraud	2,407
15	Handling stolen goods	1,953
16	Stealing from dwelling	1,735
17	Misappropriation, embezzlement etc.	1,516
18	Fraud involving credit cards	1,473
19	Liquor offences	1,249
20	Sexual assaults on females	1,114
21	Miscellaneous offences	619
22	Other sexual assaults	611
23	Indecent treatment of boys under 17 years	597
24	Rape	282
25	Stock related offences	235
26	Kidnapping, abduction, deprivation of liberty	225
27	Armed robbery	181
28	Vagrancy	162
29	Prostitution offences	137
30	Attempted murder	134
31	Steal with violence	133
32	Stealing from person	111
33	Driving causing death	74
34	Stock stealing	70
35	Extortion by threats	61
36	Murder	59
37	Gaming offences	41
38	Racing and betting offences	23
39	Manslaughter	12

Source: Queensland Police Service Annual Report, 1990.

Nearly a quarter of all charges laid involve drink driving

- 24% of charges are for drink driving.
- 11% of charges are for good order offences.
- 9% of charges involve drug abuse violations including sale, manufacture and/or possession of cocaine, heroin, marijuana, or synthetic and other manufactured drugs.

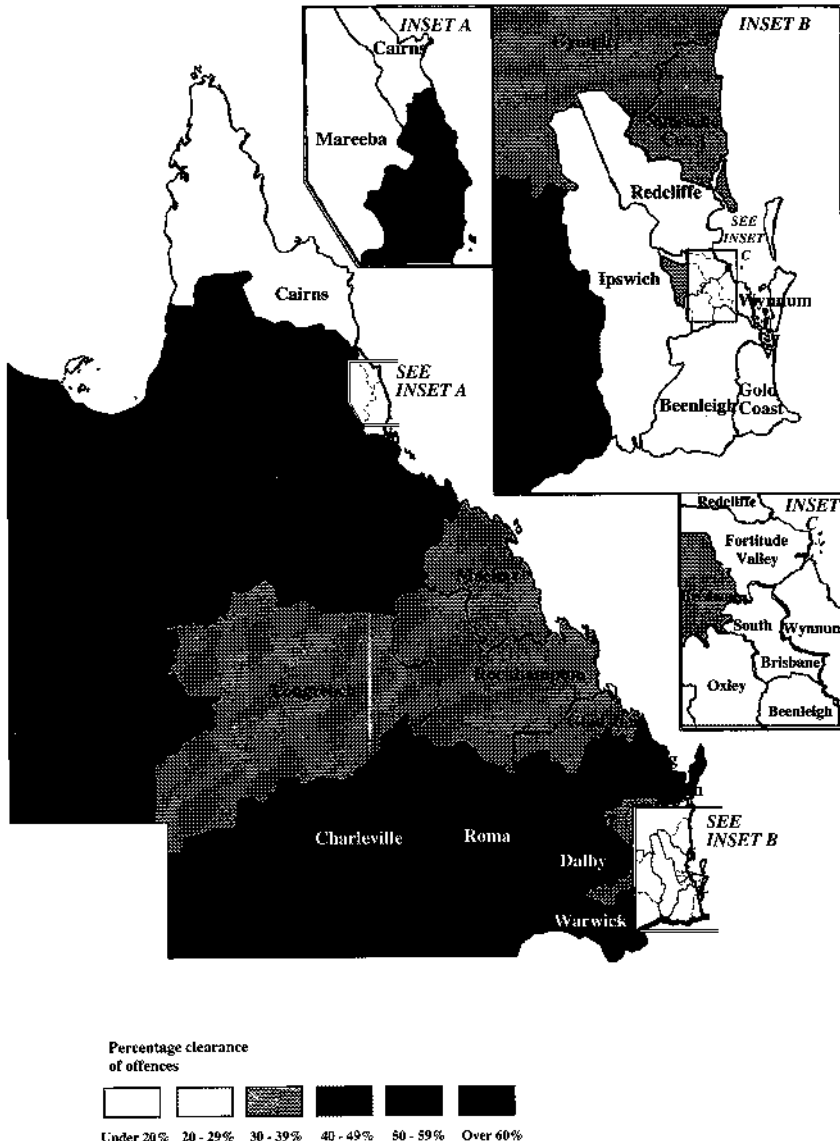
When is a crime considered cleared?

The Queensland Police Service deems an offence to be cleared under the following circumstances:

- An offender has been arrested, summonsed, or information laid with a view to the issue of a process for the purpose of bringing an offender before a court, e.g. warrant.
- An offender has been dealt with in accordance with departmental policy, e.g. cautioning of juvenile and elderly persons.
- An offender has admitted the offence but will not be charged due to circumstances, e.g. the victim refuses to proceed or the offender has diplomatic immunity.
- An offender has died before a charge can be made.
- An offender has been committed to a psychiatric institution.
- An offender is serving a sentence of imprisonment and no useful purpose would be served by prosecution.
- A victim or essential witness is deceased and proceedings would be aborted.

For most crimes, no one is apprehended

For every 10 offences reported to the police 3 are "cleared"



Most crimes are not cleared

	<u>Reported crimes cleared</u>
Homicide	100%
Serious assault	70
Rape	71
Robbery	30
Break and enter	16
Motor vehicle theft	21
Stealing	26
Fraud, etc.	56
All Selected Crimes	28%

Source: Queensland Police Service Annual Report, 1990.

The interpretation of clearance statistics must be approached with caution. For example, a number of criminal offences may be committed by an offender who has been apprehended for their commission. Because the crimes may have involved the participation of multiple suspects, the term clearance may suggest that a criminal investigation has closed. However, investigations may be continued and the remaining suspects will not be processed for that offence or are later absolved of wrongdoing. The concept of clearance has done little to shed any light on the actual level of crime in Australia, and the statistics that are produced by police are often misunderstood as a result of people's lack of understanding of what in fact a *cleared* offence entails.

Serious violent crimes are more likely to be cleared than serious property crimes

The rate of clearance for crimes of violence (murder, rape, serious assault and robbery) is about 65% versus the 27% clearance rate for property crimes (break and enter, motor vehicle theft, stealing and fraud). This wide variation is largely because:

- victims often confront perpetrators in violent crime;
- witnesses are more frequently available in connection with violent crimes;
- intensive investigative efforts are used more frequently with crimes of violence, resulting in a greater number of arrests.

Arrest

To arrest a person it is to deprive them of their liberty by some lawful authority.

All citizens have certain powers to apprehend people who have committed, or who are committing crimes. In practise it is usually the police who exercise these powers and police powers to make an arrest have been extended by legislation.

The accused, depending upon the seriousness of the offence, may either be arrested or summonsed.

No physical contact is necessary to render an arrest valid but when a person is taken to a police station by a police officer, the officer should use very clear words, such as "I arrest you", to make it plain to that person that they are under arrest.²

It depends on the circumstances of any particular case whether it has been shown that a person has been arrested. No formula will suit every case and it may well be, that different procedures might have to be followed with different persons depending on their age, ethnic origin, knowledge of English, intellectual qualities and physical or mental disabilities.³

The person making the arrest must, if practicable, give notice of the cause of arrest to the person arrested. A police officer making an arrest on reasonable suspicion without a warrant, must in ordinary circumstances inform the person arrested of the substance of the charge. Unless, of course, the circumstances are such that they must know the nature of the offence for which they are being detained, or that they themselves make it practically impossible to be informed, e.g. by immediate counter-attack or by running away. These principles equally apply to a private person who arrests on suspicion.

Procedure at the police station.

When an arrested person is brought into a Police station (or watchhouse in larger centres), and has been charged, the charge will be entered into the *charge book*. The accused person will usually be searched, and items such as valuables or potentially harmful items (such as belts and shoes) will be removed. The police are entitled to do this as the accused person is in *lawful custody* and their usual rights as citizens are temporarily diminished. Personal items removed from the accused person must be recorded and kept in safe custody by the police ready for return upon release. Items will not be returned if they are to become evidence. e.g. A person charged with unlawful wounding with a flick-knife should not expect it to be returned.

In most cases, when a person has been arrested it is lawful for the police to fingerprint and photograph the accused person.⁶ If the persons from whom they are taken is found not guilty, they should be destroyed. With the exception of offences under the *Police Act*, the discharged accused person is entitled to have copies of fingerprints destroyed in their presence. If an accused person enters the correctional system, (i.e. they are found guilty and sent to gaol), destruction of fingerprints does not happen. Fingerprints can include palm and footprints.

If the accused person is charged with an offence of such a nature that a medical examination would be likely to provide evidence that the accused person in fact committed the offence, then the police may order one. The *Queensland Criminal Code*, makes provision for examination by either a police officer (of the same sex) or a doctor.⁷ Such examination can include full body searches including body cavities and the taking of samples of hair, saliva or blood. The section even empowers the taking of dental impressions, if this would reasonably afford evidence of the commission of an offence. It is acceptable to object to such examinations, as the code provides that the written consent of the person is required first. The police must inform the accused person of their right to have two persons present. The accused person can request to have their solicitor or doctor present for this procedure.

If the accused person does not consent in writing to such a medical examination, the police may then make application to Magistrate for lawful permission. This application can even be made and permission granted over the telephone late at night.

The situation is slightly different with drink driving offences. Refusal to submit to a breathalyser test or subsequent blood alcohol test or urine test, will in itself be deemed sufficient to constitute commission of an offence under the provisions of the *Traffic Act*.⁸

Police officers may request an accused person take part in an identification parade or provide a specimen of handwriting.

Notes

1. Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. Fitzgerald Report, 1989.
2. See *Alderson v Booth* [1969] 2 QB 216; (19969) 53 Cr App R 301, which was followed in *Dellit v Small*; *Ex parte Small* [1978] Qd R 303.
3. See *R v Inwood* [1973] 1 WRL 647 at 652-3; [1973] 2 All ER 645 at 49' (1973) 57 Cr App R 529 at 536.
4. See section 43 *Vagrants Gaming & Other Offices Act*.
5. See *Criminal Code*, section 259.
6. See section 16A of the *Traffic Act*.

The prosecutor provides the link between the law enforcement and adjudicatory process

Prosecution is the function of representing the people in criminal cases

After the police arrest a suspect, the prosecutor co-ordinates the government's response to crime.

Usually, the case is referred to the police prosecution corps, who handle matters before the Magistrates Court. In remote areas these duties may be performed by regular police personnel. The Fitzgerald report has been most critical of the police also being responsible for prosecutions and committals before the Magistrates Courts. This is currently under review.

Prosecutors have been accorded much discretion in carrying out their responsibilities. They make many of the decisions that determine whether a case will proceed through the criminal justice process.

Director of Prosecutions

Under the *Director of Prosecutions Act*, the Director of Prosecutions is responsible for the prosecution of all criminal matters on *indictment* throughout Queensland.

The Director is assisted by a Deputy Director. In addition to the Director and his Deputy there are a total of thirty-four Crown Prosecutors. Twenty-five of these Crown Prosecutors are stationed in Brisbane, three are in Townsville, two each in Rockhampton and Southport, and one each in Cairns and Toowoomba.

Private legal practitioners in these centres and also in Cairns and Mackay prosecute for the Crown, and members of the prosecution staff brief and instruct those Counsel on criminal cases.

Crown Prosecutors prosecute on indictment in the Supreme, Circuit and District Courts, travelling throughout the State to attend these courts when necessary. Additionally, staff of the Directors Office occasionally appear in committal proceedings before Magistrates.

The role of Crown prosecutors in the criminal justice system is an important one. In the *Act*, the Director is charged with initiating and conducting all criminal proceedings in the name of Her Majesty.

In order to facilitate these functions, the Director of prosecutions is empowered to furnish guidelines to Crown Prosecutors and other persons acting on his behalf, and to the Commissioner of Police with regard to prosecutions in respect of offences. The Director has the power to determine which offence, or class of offence, shall be referred to him for prosecution.¹

The *Act* authorizes that it is a Crown Prosecutor, by virtue of that office, present indictments or prosecutes accused persons in the name of the Crown in any court of criminal jurisdiction. This means that it is the Crown Prosecutors who are responsible for prosecuting an accused person in the name of the public.

Crown Prosecutors also appear on behalf of the Crown in appeal matters before the High Court of Australia in its criminal jurisdiction, and in the Court of Criminal Appeal. They also appear before the Mental Health Tribunal.

The Director of Prosecutions is required, under the terms of the *Director of Prosecutions Act*, to prepare and furnish an annual report to the Minister for Justice, who in turn, is required to have it laid before the Legislative Assembly. Included in the 1988 report are statistics showing details of the criminal matters dealt with before the superior courts during that year. They disclose that a total of 3,337 criminal matters were dealt with by the superior courts in 1988. A breakdown of these figures is set out below:

• Trials resulting in conviction	512
• Trials resulting in acquittal	427
• Pleas of guilty	2,194
• Nolle prosequis	204

The decision to prosecute is generally a function of the prosecutor

Most prosecutors screen cases to see if they merit prosecution. The prosecuting authority can refuse to prosecute, for example, because of insufficient evidence. The decision to charge is not usually reviewable by any other branch of government.

Function of the Legal Aid Commission

The Legal Aid Commission provides legal services to people who are unable to afford the costs of private legal assistance. The Commission is an independent statutory body operating under the terms of the *Legal Aid Act 1978* (as amended). When providing services to the public, the Commission is known as the Legal Aid Office (Queensland).

Prior to March 1991, legal assistance was provided to members of the public through two offices - the Legal Aid Office and the Public Defender's Office. Under this system the Public Defender's Office provided assistance to people who qualified for assistance in respect of the following matters:

- Committal proceedings in the Magistrates Court in respect of charges where the maximum penalty exceeds 14 years;
- All indictable offences in the Children's Court at every stage of the proceedings;
- All District and Supreme Court criminal proceedings;
- References to the Mental Health Tribunal in respect of any prescribed criminal proceedings;
- All appeals to the Court of Criminal Appeal or the High Court with respect to criminal charges;
- Breaches or probation and community service in District and Supreme Courts;
- Any other proceedings, not being a civil proceeding, that the Commission determines.

The remainder of the criminal matters in the Magistrates Court came within the jurisdiction of the Legal Aid Office. In March 1991, the Legal Aid Office (Queensland) and the Public Defender's Office were merged so that the main provider of legal services to accused people in Queensland is ~~not~~ the legal Aid Office. All function previously carried out by the Public Defender's Office are ~~not~~ carried out by the Legal Aid Office.

The main services of the Legal Aid Office are:

- providing legal advice to members of the public, including inmates of prisons and patients of psychiatric hospitals;
- representing accused people before courts and various tribunals;
- providing duty lawyer services in Magistrates Courts.

Assistance is provided by the staff of the Legal Aid Office (which includes barristers, solicitors and interviewing staff) or alternatively by private solicitors and barristers acting as agents of the Legal Aid Office.

Eligibility for Legal Aid/Applications for Legal Aid

Duty Lawyer services are free and no means test is applied. All other applications for legal aid are subject to a means test and must be made on a prescribed form, generally available at the Legal Aid Office, Magistrates Courts, most private solicitors offices, correctional institutions and some other government offices. The means test is designed to determine the ability or otherwise of the applicant to fund their own legal representation. Applicants must provide information about their income, assets, property and business interests, insurance policies and about any property to which the applicant might be beneficially entitled. Identical information is required regarding the applicant's spouse/de facto spouse, and details are required about dependants that the applicant may have. When assessing income allowances are made for dependants, housing costs and child care costs. Where assets are concerned, an applicant's place of residence, motor vehicle, clothes and tools of trade are not normally assessed unless of exceptional value. Subject to the means test, applicants may receive assistance without cost, or be required to make a contribution to legal costs. Specific details of the Legal Aid Office's policy in relation to the means test for legal assistance is published by the Commission in a means test leaflet.

Applicants for grants of aid must also satisfy a merit test before aid can be granted. The merit test establishes the applicants likely success and/or the public benefit which might result from the applicant's case going ahead.

No merit test is applied in respect of applications for assistance in matters which are 'prescribed criminal proceedings'. These are matters which were previously managed by the Public Defender's Office.

Generally, legal assistance is more likely to be granted where an applicant:

- has little available cash;
- holds little equity in their place of residence;
- does not own more than one motor vehicle;
- has liabilities which closely match their income;
- is a minor under the care, control or custody of the Department of Family Services and Aboriginal and Islander Affairs.

Knowingly or recklessly providing false information where required is an offence under the Act.

Alternatively to the accused person making an application, the court or tribunal before which that person appears, if of the opinion that special circumstances exist, may make a recommendation that legal assistance be granted to particular persons.

Fresh applications must be lodged for each successive proceeding (i.e. committal hearing, trial and/or sentence, appeal). Judges or Magistrates are required under the Act to advise charged persons of the availability of legal aid where applicable, and of the requirement to lodge the appropriate form.

Most defendants are eligible for release pending trial

Bail procedures

Bail is a concept that most people understand. An accused person is admitted to bail when they are released from lawful custody upon giving some money as security and/or accepting some condition.

Any person who has been charged with a criminal offence has the right to *apply* for bail. Despite the existence of this right, bail will not necessarily be granted.

Determination as to whether bail will be granted is the responsibility of either the court, or the responsible police officer under the provisions of the *Bail Act*.⁴

There are certain situations where bail may not be granted, although the accused person still has a right to apply.

Bail may be granted at any stage after an accused person has been charged with an offence, after the committal hearing and before the actual trial commences, during adjournments in the trial, and while awaiting an appeal against either conviction or sentence. Bail can be varied or withdrawn at any stage. This will usually occur as the result of some breach of bail conditions.

The rationale behind the granting of bail is quite simple. It is one of the fundamental tenets of the criminal justice system that a person is innocent until proven guilty. As a corollary to this, to incarcerate a person before a determination of their guilt, is to *unnecessarily* deprive them of their liberty. This represents a denial of one of any citizen's most fundamental rights, that of freedom. The word *unnecessarily* has been emphasised to allude to the fact that in some circumstances, it is necessary to deprive an individual of their liberty despite no conclusive determination of guilt.

Criteria for a grant of bail

An application for bail will be denied if there is an unacceptable risk that the accused will fail to appear at court when required; or would either commit an offence, endanger the safety of members of the public or interfere with witnesses.⁵ The same considerations apply equally to both police officers and the courts in determining if an accused person will be granted bail. This is perhaps best demonstrated in the case of particularly horrific crimes of violence committed by mentally deranged individuals. In such a case, public safety (and often the safety of the accused person) dictates that bail be denied.

In cases where bail is denied, should the accused subsequently be found to be not guilty, nothing is done to compensate for the period in which they were lawfully detained.

If the court or police officer has insufficient information to make an informed decision about bail for the accused person, the *Act* states that the court should err on the side of caution and remand the accused person in custody until such information becomes available. In forming such a view, the following considerations are said to be relevant:

- the nature and seriousness of the offence;
- the character, antecedents, associations, home environment, and background of the accused person;
- the history of any previous grants of bail to the accused person;
- the strength of the evidence against the accused person.

In this respect the court/police officer will often consider the accused's employment, family commitments, etc.

Normally the prosecution must establish reasons why a defendant should not be released on bail. In some cases (e.g. various drug offences, when the accused person was armed etc.), the accused person must establish reasons why their detention in custody pending trial is not justified. Should they establish grounds for their release, these reasons must be duly noted on the documents that relate to this matter.

Conditions imposed in a grant of bail

Invariably conditions will be attached to a grant of bail.⁶ Release on bail may be a release on the accused person's own undertaking without sureties, with sureties, sureties and a deposit of monies, or just a deposit of money. When release, the conditions imposed may include; reporting to a designated police station at designated times, no contact with the complainant or crown witnesses and other conditions that may be specific to the nature of the offence. The *Act* provides specifically that bail conditions shall not be any more onerous than the nature of the offence necessitates.

There are several types of bail

Police bail

There are several different types of bail. The power of a police officer to grant Bail is given under *section 7 of the Bail Act*. The way that the section is framed, police officers actually have a duty to investigate the question whether or not bail will be granted. If it is not practicable to bring the matter before a court within 24 hours, the officer shall “*save where this act otherwise provides, grant bail to that person and release him from custody*”.⁷ Bail will be refused if the authorised investigating police officer is satisfied that there is an unacceptable risk in granting bail. Reasons for refusal of bail should be duly noted on the papers that relate to the accused person.⁸ In that way they may be reviewed at later hearings. In the majority of cases, an accused person will be released on their own undertaking. That is simply a promise on the part of the accused person to appear at a specified time and place to have the matter dealt with, and to abide by a particular set of conditions in the meantime (keep the peace, be of good behaviour, notify the police of your whereabouts, etc.). As part of this undertaking is also an acknowledgement of the fact that should the accused person fail to abide by the stipulated conditions, they will be in breach of the conditions and subject to penalty. Failure to comply can result in a fine or imprisonment.

In some instances the authorised police officer can grant bail on the condition that a sum of money be paid.⁹ This *Cash Bail* procedure is available only for minor offences (not including drink driving), and the only consequence of failing to appear is the forfeiture of the deposited money. This is due to the fact that under this particular provision a grant of bail is not subject to giving an undertaking to appear at the specified time before a Magistrate.

An example of its use would be in relation to a charge of public drunkenness, where the intoxicated person is detained as a precautionary measure to ensure that they do not cause any mischief to themselves or others. After a few hours in the *drunk tank* to sober up, the person is released and pays a token amount of bail which is treated more in the nature of a fine.

Court bail - The Magistrates Court

The power of the courts to grant bail is conferred by *section 8 of the Bail Act*. As well as a power to grant, the court has the power to enlarge, vary or revoke bail. This is an additional power that police do not have in relation to bail. Courts have an important duty in relation to bail that is contained in *section 9 of the Act*. In that section there is a *presumption* that bail will be granted, when a person held in custody appears before the court when charged with an offence. This section is simply one that makes bail an issue for the Magistrate to resolve. If the accused person has, or has not, been granted bail, it becomes an issue for the court to reconsider and either grant, vary or enlarge. Of course there are exceptions to this when bail will **not** be an issue for the Magistrate. The best example of this is in the case of very serious offences such as treason, murder, piracy and some serious drug offences.¹⁰ A Magistrate does not have the power to grant bail in these cases. Bail for such offences may only be granted by a Supreme Court judge.

Where an accused person is charged with an indictable offence whilst on bail for another indictable offence, bail will not be granted unless the accused person can establish that their detention in custody cannot be justified. The accused person must also prove their detention is not justified in order to be granted bail for charges of treason, murder, serious drug offence, offences against the *Bail Act* or offences involving the use of a dangerous weapon.

Grants of bail after the committal hearing

Where an accused person has been committed to one of the higher courts for trial, a fresh undertaking as to bail will be required. When the bail is granted by a Supreme Court Judge pursuant to *section 13(1)*, it is usually granted until the final determination of the matter, so that there is no need for a further application for bail after the committal.

Grants of bail by Higher Courts

The **District** and **Supreme** Courts are both able to entertain applications for bail. As well as in the case of particular serious offences, as mentioned above where bail applications must be to a Supreme Court Justice, judges of both the Supreme and District Court have powers in relation to bail. *Section 8 of the Bail Act* refers to courts generally, in practice Supreme and District Court judges entertain applications for bail when the trial of the accused person has commenced. That is to say, that once the trial has started the trial judge has the power to vary or revoke the bail of the accused person or even grant it for the first time. *Section 10(2) of the Bail Act* gives the trial judge an absolute discretion in relation to powers conferred on him by *section 8(1)* once the trial of the accused person has commenced.

The judge may make grants of bail during adjournments in the trial and even overnight. This is done to afford the accused person every opportunity to confer with their legal representatives in the ongoing preparation of the defence case and as a proper reflection of the fact that they are not yet found guilty of the offence. Even after conviction, bail may be granted pending the outcome of an appeal. However, such a grant of bail usually necessitates a special application.

Consequences of a breach of bail undertakings

People do breach the conditions under which bail is granted to them from time to time. A breach may be relatively minor, such as failing to report to the local police within the designated hours. Providing the breach is isolated, and the accused has a good excuse (serious illness, family emergency, etc.) it is unlikely that any action will result from them.

The most serious breach of bail is a failure to appear in court at the designated time in order to deal with the charge. In such case, the judge or magistrate will issue a bench warrant forthwith, directing all police to arrest the accused person. In any event, the police have the power to arrest without warrant any accused person who has failed to appear or has breached a condition of bail. The consequences of a breach of bail are that monies paid by the way of security may be forfeited, or any person who has acted as surety may forfeit their surety.

Those accused persons who breach their conditions of bail and who are subsequently arrested or surrender themselves are brought before a magistrate to *show cause*. If reasonable excuse cannot be offered then sentence for failing to appear is executed.¹² The *Act* provides for a penalty of up to 40 penalty units¹³ or two years imprisonment.

Appeals from bail decisions

Appeals from Magistrates' decisions relating to bail are heard by single judges of the Supreme Court. Should bail be refused to an Accused either before, or after a committal hearing, application may be made to the Supreme Court, for a determination as to bail. Such application is made by way of originating summons and affidavit material is required. As a result such application is not strictly by way of appeal (see *R v Snow [1950] St R Qd 1*), but rather it is an original application.

Where a judge of the Supreme Court has refused an application for bail, an accused person can apply to another judge of the Supreme Court. An application may also be made to the Full Court of the Supreme Court if a single judge has refused bail (see *R v Hughes [1983] 1 Qd R 92*). Note that section 10(2) of the *Judicature Act* makes the trial judges decision absolute (there can be no further application) with respect to bail once the trial has commenced.

Notes

1. See *Director of Prosecutions Act*, section 10(1)(a).
2. See section 8 of the *Public Defence Act*.
3. See section 83 of *Legal Aid Act 1978*.
4. See *criteria for granting bail* below.
5. As above.
6. These are to be found in section 11 of the *Bail Act*.
7. *Bail Act*, section 7(1)(b).
8. *Bail Act*, section 7(3).
9. *Bail Act*, section 14.
10. *Bail Act*, section 13.
11. *Bail Act*, section 16(3).
12. *Bail Act*, section 33.
13. At the time of writing a penalty unit was equivalent to \$60.

Trial procedure

At this point, attention is focused upon the determination of guilt (or otherwise) of the accused individual. This aspect of the system is perhaps the most emotionally demanding for an accused person and their family, as their future freedom is quite literally in the balance.

Even for a relatively minor offence that is not going to attract a term of imprisonment, a finding of guilt will have the impact of being a moral condemnation that the accused must bear for the rest of their life.

There are many different courts and tribunals in the Australian judicial system. For example, the **Family Court** deals with divorce, custody and other matrimonial matters; the **Administrative Appeals Tribunal** hears appeals against taxation assessments and other administrative decisions of government; **Mental Health Tribunals** deliberate over the mental soundness of individuals and make decisions as to whether their condition warrants their detention in an institution. Such bodies are either *wholly judicial* or *quasi-judicial* in their operation. Such a reference indicates the degree of importance that is attached to the method of procedure used in the particular tribunal. If a court is wholly judicial in its operation, strict rules of procedure and evidence will be presumed to apply unless specifically excluded by statute. For example, in a court of criminal law, hearsay (*second-hand*) evidence will not be admissible, yet it may well be acceptable before a tribunal.

It is a commonly held perception that the courts are too formal and overly procedural. Wherever possible this criticism has been sought to be addressed, but due regard for a meticulous adherence to procedure is really necessary to safeguard the rights of the accused person. This is particularly the case with regard to reception of evidence as it is this evidence that could hold grave consequences for the accused person's future. Quasi-judicial tribunals are less formal in their operation. This is because it is often easier to facilitate their objectives in a less formal atmosphere.

For the purposes of this report, commentary will be confined to those courts that form part of the criminal justice system.

The Magistrates Court

The Magistrates Court is the entry level court in the adjudication process. It is the court that has the most venues scattered throughout the state, and processes the most number of matters. It is the court that the members of the community are most likely to have dealings with, and many of the matters that go before the courts go no higher than the Magistrates Court. The Magistrates Court has a civil jurisdiction as well as its criminal justice function, but that is not the subject of this report.

The Magistrates Court has two primary functions in the adjudication process. Firstly, it has its own *Summary* jurisdiction; and secondly, it has a *Committal* jurisdiction.

The Summary Jurisdiction of the Magistrates Court

Summary Jurisdiction is the jurisdiction of the Magistrates Court to hear minor criminal cases. Under the provisions contained in *section 9* of the **Justices Act**, the Magistrates Court is given jurisdiction for all offences not declared to be indictable offences, and additionally, where no other provision is made for the *trial* of the accused person in relation to that matter.

Offences that are not indictable offences, are known as *simple offences*. These make up the original jurisdiction of the Magistrates Court, and will include such matters as traffic offences, and disorderly behaviour. Additionally, there are some indictable offences that may be dealt with summarily.

Magistrates Court Committal Jurisdiction

All offences other than simple offences, are indictable offences. Indictable offences are defined in the **Justices Act** as an offence that may be prosecuted before the Supreme Court, a district court or other court having jurisdiction in that behalf, by indictment in the name of the Attorney-General, or other authorised officer.¹

Before the trial of an accused person charged with an indictable offence can proceed before a judge and jury, the prosecution must first establish that the accused has a case to answer. This preliminary hearing is known as a *Committal* hearing, and is heard by either a Stipendiary Magistrate sitting alone, or by two justices of the peace. The purpose behind the preliminary hearing is the belief that no one should have to stand trial on any matter, unless a *prima facie* case exists against them.

In this way, the committal hearing is another safeguard built into the judicial system to protect the rights of the individual and protect individuals (so far as is possible) from wrongful prosecution.

In order to determine if there is a case that the accused person should have to answer, the prosecution presents its case against the accused to the Magistrate. After a consideration of the Crown's case, which may consist of material exhibits and the oral or written testimony of complainants, police officers and witnesses, the Magistrate will consider the evidence presented to them, in light of the various elements of the charge, and the Crown's *onus of proof* in relation to each and every one of those elements. A case to answer will be made out of the state of the evidence at the Committal hearing is such that a *reasonable* jury if given proper direction by the trial judge, could act upon it and convict the accused person.

If satisfied that a *prima facie* case exists, the Magistrate will commit the accused person to trial in the relevant higher court.

At the stage of committal hearings, it is not strictly necessary for the accused person to answer any element of the prosecution case. Usually a police prosecutor will present the prosecution case and the accused person may cross examine any witnesses so called. Provided that the accused person is legally represented, *section 110A* of the **Justices Act**, allows the use of sworn statements in lieu of appearances by witnesses. This is in order to expedite proceedings, but is subject to a right of the accused person to call and cross examine any witness. Legal counsel for the accused person will often advise to do this in order to explore the true strength of the prosecution case.

Should the Magistrate determine that the accused person has a case to answer, the accused will then have the opportunity to both give and call evidence. It is unusual for an accused person to do this, as counsel generally advise to wait until *trial by Jury* to disclose their defence. On the rare occasions that the accused person does elect to provide a defence at the Committal, the process then starts again and the Magistrate will determine if, in light of the accused person's fresh evidence, there is a case to answer.

If it is decided that there is still a case to answer, then the accused person will be committed to trial. The defendant will then be called upon to enter a plea of either *guilty*, *not guilty*, or *no plea*.

The defendant will either be remanded in custody until the trial, or granted bail. An application for bail is handled after the formal committal for trial. On occasion, the Attorney-General may file an *ex officio* indictment against an accused person committing them for Trial even although there has been no committal, or even if there has been a committal and the Magistrate has found no case to answer.

The District Court

There are 29 District Court districts in Queensland. Judges are based in Brisbane, Southport, Rockhampton, Townsville and Cairns. Other centres are visited by circuit judges.

With the passing of the **District Courts Act** and other **Acts Amendment Act 1989**, the District Court has taken on a substantial amount of the Supreme Court's criminal case load, as well as vesting the District Court with a substantially increased civil jurisdiction.

Under the new statutory regime, the District Court has jurisdiction to deal with offences such as rape, incest, armed robbery, burglary and arson that were formally heard only in the Supreme Court.² Other indictable offences with a maximum penalty of fourteen years imprisonment or more such as murder, manslaughter, and various offences under the **Drugs Misuse Act** have been retained by the Supreme Court. This change in the jurisdiction of the courts was undertaken in order to make the hearing of matters more expeditious, the Supreme Court has fewer judges and sits in fewer centres. Costs of running criminal trials in the District Court are also significantly lower.

Other than the nature of the offences, matters are dealt with in substantially the same way in both the District and Supreme Courts. In both cases, it is a trial of an accused person presided over by a judge, who determines matters of law and its interpretation, and the issue of guilt or innocence is determined in a *trial by jury*. Charges are brought by the Crown, represented by a Crown prosecutor, and the accused person provides a defence, either by defending themselves (rare) or with the assistance of counsel. The accused person's defence can be either a privately funded matter, or a defence subsidised by legal aid. Alternatively, a defence counsel will be appointed by the Office of the Public Defender to safeguard the interests of the accused. These issues have been dealt with earlier in this report (see p.57).

In saying that it is up to the accused person to provide a defence, an important qualification needs be made. With a few exceptions, the system of criminal justice vests the onus of proof for all elements of an alleged offence with the Crown. The accused person need not say anything in court to refute any allegations the Crown may make if they so elect.

District Court Appellate Jurisdiction

Summary offences decided in the Magistrates Court may be appealed to the District Court. It is provided in the **Justices Act**³ that either the defendant or the complainant can appeal against the Magistrates decision or the sentence imposed in respect of the offence charged. The right to appeal is *as of right* if the defendant is convicted and fined more than ten dollars or sentenced to more than one months imprisonment. Where the penalty is less than these prescribed amounts, then the right of appeal is dependant of getting leave from a District Court judge. The requirements for firstly obtaining leave, is simply a method of ensuring that the time and resources of a higher court are not wasted on an inconsequential or frivolous matter. The judge will examine the matter on its merits, and if it appears that there is an important issue of law or procedure involved in the case or, that the accused person has been done an injustice, then leave will be granted to take the matter on appeal.

The Supreme Court

The Supreme Court is the superior court of the state, and has an ultimate jurisdiction over all criminal matters in Queensland.⁴ The Children's Court, Magistrates and District Courts operate under legislation that has been delegated to them by the Supreme Court.

Since the change in jurisdiction offences such as murder, manslaughter, treason and drug trafficking remain matters for the Supreme Court, while the more frequent offences of rape and armed robbery have been moved down to the District Court. This change in jurisdiction has meant that the Supreme Court judges are increasingly more available for presiding over appeal matters, and for the ever burgeoning Supreme Court civil jurisdiction.

The Court of Criminal Appeal

This court is comprised of three or more judges of the Supreme Court (but always an uneven number). It has a wholly appellate jurisdiction. The statutory provisions that control an appeal to the Court of Criminal Appeal are contained in *section 668D* of the *Criminal Code*. This section provides that a person convicted on indictment (on any matter in either the District or Supreme Court), may appeal as of right with respect to any question of law. Such person may also appeal, with the leave of the Court of Criminal Appeal or upon ground of appeal which involves a question of fact alone, or which appears to the court to be sufficient. Appeal against the sentence imposed by the trial judge can only be with leave of the Court of Criminal Appeal.

The Crown may also appeal matters to the Court of Criminal Appeal.⁵ The Crown's right of appeal is held by the Attorney-General but is executed by the Director of Prosecutions.

The Director of Prosecutions will take a matter on appeal to the Court of Criminal Appeal if dissatisfied with the sentence imposed, or if he wishes to appeal a point of law decided against the Crown. It is important to note that the Crown cannot appeal the acquittal of an accused after the jury has deliberated the matter. This is an important common law defence known as *autrefois acquit* that has been formally recognised by the code.⁶

In hearing appeals, the Court of Criminal Appeal may in its unfettered discretion, allow or dismiss the appeal. In so doing, it may either affirm or vary any sentence imposed, order a new trial, or even acquit the accused person altogether. If the appeal is on the basis of a *miscarriage of justice* the miscarriage must however, be substantial, otherwise the appellant will not succeed. All decisions of the Court of Criminal Appeal are on the majority, hence the requirement for an uneven number of judges. Appeals are more common than one would think as the right to an appeal is *as of right*, in the case of appeals on points of law.

Section 669A

Section 669A of the *Criminal Code* provides that the Attorney-General may appeal to the Court of Criminal Appeal against any sentence imposed by a trial court, or a court of summary jurisdiction in the case of an indictable offence that has been dealt with summarily.

The Court of Criminal Appeal may then in exercise of its unfettered discretion, decide to alter the original sentence, or impose an alternative sentence in its place as the Court may consider proper.

Additionally, the Attorney-General may refer to any point of law that arose in the trial of an indictable offence to the Court of Criminal Appeal for its consideration if the accused person has been acquitted, or if the Crown has entered a *nolle prosequi* as the result of a determination by the trial court on that point of law.

Notice of such reference must be given to the person acquitted or discharged, and that person then has the right to be heard on the matter by the Court of Criminal Appeal if they so desire. In the case where the accused has been acquitted in their trial, an Attorney-General's reference shall not operate so as to effect that acquittal.

The High Court

The High Court of Australia is the highest court in the land, and represents the last avenue of appeal in all matters. Only a handful of matters will go on appeal to the High Court in any given year. An appeal can only be with the special leave of the High Court and such an appeal will only be entertained if it involves an important point of law, or some serious denial or travesty of justice. The costs of taking an appeal to the High Court are particularly onerous.

Leave to appeal to the High Court

Leave to appeal to the High Court may be granted in circumstances where an applicant may make out a *prima facie* case of error. However, error will not in itself be sufficient to make out grounds for special leave to appeal to the High Court.

Special leave to appeal will only be granted by the High Court in circumstances where, in addition to error, there can be shown to be some special feature of the case that warrants the attention of the High Court. It should be noted that grants of special leave to appeal are totally discretionary, and the High Court has not fettered the generality of its discretion to grant special leave, by the formulation of any special rules. Notwithstanding this fact, the High Court will still have regard to such factors as the public importance of any questions of law that may be involved in the case, and the need to resolve existing judicial differences of opinion concerning the state of the law. In addition, the court shall consider whether or not it is in the interests of justice to grant an application for special leave.

Procedurally, the High Court has determined that it shall as a matter of policy, strive to limit the circumstances in which there are grants of special leave. Grants of special leave to appeal are confined by the High Court placing an emphasis upon its role in the evolution of law, and not the private rights of individual litigants.⁷

The Children's Court

Cases involving children are handled differently than adult cases

The *Criminal Code* states that a person under the age of 10 years is not criminally responsible for any act or omission.⁸ This means no child under the age of 10 years will be liable to punishment for a criminal offence. This presumption is irrebuttable, i.e. can not be contradicted by evidence.

Children between the ages of 10 and 15 years are not liable to punishment for criminal offences unless it can be proved that the child had a capacity to know that what they were doing was wrong.⁹ To this end, police officers interviewing children invariably question them about their capacity.

As a consequence of the provisions of the Code, children over the age of 10 years are liable to conviction for criminal offences. The majority of provisions relating to the *treatment* of children charged with criminal offences are contained in the *Children's Services Act 1965-1989*. In that Act a child is defined as a person under the age of 17 years. Persons 17 years and over are (with a small number of exceptions), treated as adults.¹⁰

The *Act* creates a Children's Court, able to be constituted at any place where a Magistrates Court may be held.¹¹ The Children's Court is constituted by a Children's Court Magistrate¹², Magistrate or Acting Magistrate sitting alone. (Currently only one Children's Court magistrate acts in that capacity on a full-time basis, at the Brisbane Children's Court. All other Children's Courts are constituted by a Stipendiary Magistrate).

The jurisdiction and many of the powers of a Children's Court are identical to those conferred upon a Magistrate by the *Justice's Act*¹³, but a number of procedures and powers are unique to this Court.

Venue

Separate and distinct court rooms are to be used for housing the Children's Court wherever possible. If no separate room is available, special times must be fixed to ensure that other court business is not being conducted in the room whilst it is being used to house a Children's Court.¹⁴

Non-Public Hearings

Generally speaking, the only persons who should be present at a Children's Court proceeding are the accused, the complainant, the prosecutor, legal representatives, the witnesses, the parents/guardians of witnesses and of the accused, and a representative of the Department of Family Services and Aboriginal and Islander Affairs.¹⁵

Bail

Although children may be granted bail in the same fashion as adults (in accordance with the *Bail Act*), they may also be allowed to go at large in respect of an offence with or without recognizance. This reflects the reluctance of the legislature to keep children in custody for lengthy or unnecessary periods. If a child is remanded into custody, there are further safeguards. Remands are for no longer than eight clear days without the consent of the child or their representative.¹⁶ Children are not to be placed in prison's or watchhouses unless the Director of Family Services and Aboriginal and Islander Affairs is satisfied that the child is so unruly or the child's character is such that their safe custody cannot be provided for in any other place.¹⁷

Punishment

The Children's Court has available to it a large range of sentencing options, and may impose many penalties which do not result in the recording of a conviction.

Warnings/Explanations

The Act requires that a justice hearing a criminal matter in the Children's Court, must explain certain of the child's rights to them and to their parents if present, and obtain the consent of those persons before proceeding.¹⁸

The Children's Court is empowered under *section 23* to deal with children charged with *simple* offences, which are all offences able to be dealt with in a summary fashion before a magistrate.¹⁹ The Children's Court can also finally determine indictable offences with which children are charged which do not carry a maximum penalty of life imprisonment.²⁰ In relation to those offences which a Children's Court is not competent to finally determine, it has nevertheless the jurisdiction to hold the committal or preliminary hearing for those offences.²¹

Where a Children's Court has jurisdiction to hear and determine a matter, the court is directed by the Act not to exercise its power unless:

- the alternatives (a trial by judge and jury as against a summary hearing before the Children's Court), have been explained to the child and its parents;
- those persons consent to the court so dealing with the matter; and
- the case may be adequately dealt with by the court.²²

Consent may be withheld for example, on the advice of the child's legal representative, who may be of the opinion that a jury trial would be more appropriate than the Children's Courts' summary jurisdiction.

Upon a plea of guilty or a finding of guilt by the Magistrate, a number of sentencing options are open to the Court. Some options will result in the recording of a conviction, but many will not, and later references to the existence of such offences are prohibited in other court proceedings.²³

Those penalties which cannot be recorded as convictions are those most frequently imposed: admonishment and discharge, orders for supervision not exceeding two years, or orders for care and control not exceeding two years. Only one of these options may be used against a child in respect of a particular offence.²⁴ The other penalties which may be imposed without a formal conviction being recorded are orders for:

- investigations and medical examinations with concomitant reports
- parental or Departmental care; or Departmental custody
- compensation/restitution/reinstatement of property
- cost of proceedings
- fine
- parents to exercise proper care, control, protection and guardianship of the child.

Penalties which necessitate the recording of a conviction are:

- care and control orders under *section 62(1)(g)*
- supervision orders under *section 62(1)(h)*
- imprisonment (but only where the child's character is such that the court is satisfied that they should be detained in custody other than a home or institution under the control of the Director of Family Services and Aboriginal and Islander Affairs)
- Probation or Detention orders for sexual offenders pursuant to the *Criminal Law Amendment Act 1945*.

Offences over which a Children's Court has no jurisdiction are those which carry a maximum of life imprisonment for adult offenders.²⁵ Where a child is charged with such an offence, they must be dealt with in the appropriate superior court, either by way of trial or sentence. Committal hearings for these serious offences will nevertheless take place at the Children's Court.²⁶

Importantly, a child convicted either by a jury or by their own confession (plea of guilty) of an offence in the District or Supreme Court is liable to no greater penalty than if he were dealt with by the Children's Court. All children under the Act must be sentenced in accordance with the provisions of *sections 62 or 63*, irrespective of the court in which they appear.

Appeals

Appeals from orders of the Children's Court are available in accordance with provisions for Magistrates Courts appeals under the *Justices Act*.

Serious Offenders

Although the sentencing options for dealing with children guilty of criminal offences are in general far less severe than those available for dealing with adult offenders²⁷, there are provisions within the Act giving the court considerably greater power in relation to the punishment of certain serious offenders.²⁸ The punishment available to the court is detention at *Her Majesty's Pleasure* which means an open-ended, potentially infinite period of imprisonment.

Only certain offences involve the discretion to apply this provision, including all sentences carrying a maximum of life imprisonment for adult offenders and some other specified serious offences.

The power to detain a child at *Her Majesty's Pleasure* is a discretionary one for the sentencing court and no statutory guidelines are provided to assist the court in its determination. From 21st May, 1982 until June 1990, 22 orders were made detaining children at *Her Majesty's Pleasure*. In June 1990, there were nine persons detained under such orders in institutions in Queensland.

A *Serious Offenders Review Panel* exists, which was originally established as a consultative body within the (then) Children's Services Department. The function of the panel is to meet monthly and to review cases of children in custody for serious offences, including those subject to *section 63* orders. Each person's case is reviewed every three months. Full case studies are made every year of persons subject to *section 63* orders.

The panel is composed of a Chairman, Executive Secretary, the Director of Court Services (Family Services and Aboriginal and Islander Affairs Department), three managers of Departmental institutions, and a representative from the Public Defenders Office. The function of the panel is to make recommendations to the Minister regarding the release of *serious offenders*; if accepted these recommendations are then taken to the Governor-in-Council.

Family Services and Aboriginal and Islander Affairs

The presence of a departmental officer during Children's Court hearings is guaranteed under the *Act*.²⁹ After being informed by the prosecutor of the names of children due to appear in the court, Court Services Officers arrange for searches of the state-wide records held by the department to determine whether a particular child is subject to a current order of the court or was subject to a past order. Contact is then made with the departmental officer who was/is responsible for the supervision of that child during the previous order, and background information is obtained as well as the recommendations of that officer. A pre-court interview is also held with the child and their parents or guardians. This interview is designed to guide the child and their family through the court system as well as gather details of the child's personal and family history.

If the child is found guilty or pleads guilty, the departmental officer will be asked to address the court. If the officer believes that further information is required before the Magistrate sentences the child, they may request that the Magistrate order a pre-sentence report. If departmental intervention is necessary, a recommendation for supervision or care and control will be made.

If the family can be referred to outside agencies without necessitating intervention, that will be the recommendation of the officer representing the department.

The role of the Mental Health Tribunal in criminal matters

The Mental Health Tribunal, made up of a Supreme Court judge assisted by two psychiatrists, is in effect a Commission of Inquiry, with the Judge as chairman. One of the tribunal's major roles is to consider and determine the mental condition of a person alleged to have committed an indictable offence.

Reference to the Tribunal

The law authorizes a number of persons to have the mental condition of a person charged with an indictable offence, referred to the tribunal. If there is reasonable cause to believe that such a person is now mentally ill, or was so at the time of the alleged offence, the following persons may bring a reference to the tribunal:

- a Crown law officer
- the person concerned, their lawyer, or their nearest relative
- the Director of Psychiatric Services (where the person has been admitted to hospital for treatment of mental illness)

In certain circumstances, a court can also order an accused person's mental condition to be referred to the tribunal.

Consequences of referral

When the matter of a person's mental condition has been referred to the tribunal, it must decide three matters:

- at the time of the alleged offence, was the person suffering from unsoundness of mind?
- if the alleged offence was murder, and the tribunal decided the person was not suffering from unsoundness of mind, then was the person suffering from diminished responsibility?
- if the person was not suffering from unsoundness of mind, are they now fit for trial?

Once a person's mental condition has been referred to the tribunal, the tribunal may order any psychiatric, medical or other examination as it sees fit.

Effects on court proceedings

When a person's mental condition is referred to the tribunal, court proceedings are delayed until the tribunal makes a decision.

Tribunal findings and their consequences

- If the tribunal finds that a person was not of unsound mind and is fit for trial, then court proceedings against the person continue. Despite what the tribunal decides, the person can still raise the defences of insanity and diminished responsibility at their trial, and the tribunal finding can not be used in evidence.
- If the tribunal decides that the person was of unsound mind, then the person is *liable to be detained as a restricted patient*, and the court proceedings are discontinued. A *Patient Review Tribunal* then decides whether the person actually has to be detained and for how long.
- If the charge is murder and the tribunal decides the person was suffering from diminished responsibility, then court proceedings for murder are discontinued, but the person may still face trial on the lesser charge of manslaughter.
- If the tribunal decides a person is unfit for trial, it orders that the person be detained as a restricted patient. That does not mean such a person remains detained. The Patient Review Tribunal can order the person's release as it sees fit. If the patient is, after regular review, deemed to be fit for trial within a reasonable time, then court proceedings are continued. If the patient is not deemed to be fit for trial within three years of the tribunal's findings then court proceedings are usually discontinued.

The Tribunal hearing

Hearings of the tribunal are in most ways like those in any other court. Evidence is given under oath, the judge and barristers wear robes, a transcript is taken, and the person concerned can be present and is entitled to be represented by a barrister or solicitor.

However, the hearing may be held in the absence of the person concerned for health reasons, or if the tribunal decides for some other reason that it is unwise for the person to be present. Although all hearings are held in open court, there are restrictions on the publication of details of them.

Major benefit

The Mental Health Tribunal offers a speedy resolution to cases where obviously disturbed persons are charged with criminal offences. Before the tribunal existed, such a person would need to face committal proceedings and then a trial, whereas now an inquiry into their condition can be held much more quickly and any necessary treatment and rehabilitation can commence that much sooner.

Notes:

1. See *Justices Act*, section 4.
2. For a full explanation of District Court Jurisdiction, see the *District Courts Act*; section 58 and 59.
3. See *Justices Act*, section 222.
4. *Supreme Court Act*, section 24.
5. See *Criminal Code*, section 669A.
6. See Section 669A(5). Attorney-Generals reference not to affect the trial or the acquittal.
7. See *Morris vR* (1087) 74 ALR at 176.
8. See *Criminal Code*, section 29.
9. *Children's Services Act*,
Per section 29: "*Unless it is proved that at the time of doing the act or making the omission s/he had the capacity to know that s/he ought not do the act or make the omission*".
10. See *Children's Services Act*, section 28 (1) & (2).
11. See *Children's Services Act*, section 18.
12. Created per section 19.
13. See *Justice's Act*, section 21.
14. See *Children's Services Act*, section 25 (3).
15. See *Children's Services Act*, section 27.
16. See section 26 (2)(b)(ii).
17. See section 26 (6).
18. See *Children's Services Act*, section 29 (3).
19. See *Children's Services Act*, section 23.
20. See *Children's Services Act*, section 29 (1).
21. See *Children's Services Act*, section 24.
22. See *Children's Services Act*, section 29 (2).
23. See *Children's Services Act*, section 139.
24. See *Children's Services Act*, section 62 (1).
25. See *Children's Services Act*, section 29 (1).
26. See *Children's Services Act*, section 24.
27. See *Children's Services Act*, section 62.
28. See *Children's Services Act*, section 63.
29. See *Children's Services Act*, section 27 (1) (f).

How many people are under some form of correctional supervision?

In 1988-89 around 16,000 people were admitted to some form of correctional care, custody or supervision. This represents a rate of about 586 per 100,000 population.

The following table demonstrates the number of men and women who were admitted to some form of correctional care, custody or supervision during 1988-89. Offenders overwhelmingly tend to be male as they constitute about 86% of this population.

Number of men and women admitted to some form of correctional care, custody or supervision during 1988-89

Offence	Prison		Prison/ probation		Probation		Parole		Community service		Fine option		Home detention	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
<i>Homicide, etc.</i>	56	12	-	-	4	-	19	3	1	-	-	-	-	-
Murder and manslaughter	39	10	-	-	1	-	18	3	-	-	-	-	-	-
Other related offences	17	2	-	-	3	-	1	-	1	-	-	-	-	-
<i>Assault, etc.</i>	571	30	66	3	417	54	105	4	302	33	54	12	13	-
Assault	360	27	34	3	264	48	30	3	234	31	48	12	7	-
Sexual assault	60	1	18	-	55	-	55	1	27	-	-	-	6	-
Other sexual offences	*	*	12	-	82	-	12	-	36	1	6	-	-	-
Other offences against persons	151	2	2	-	16	6	8	-	5	1	-	-	-	-
<i>Robbery and extortion</i>	89	10	8	2	14	4	56	8	12	3	1	-	4	1
Robbery	89	9	8	2	14	4	56	7	12	2	1	-	2	1
Extortion	-	1	-	-	-	-	-	1	-	1	-	-	2	-
<i>Fraud and misappropriation</i>	258	62	14	3	121	85	27	8	98	35	26	4	12	-
<i>Theft, breaking and entering, etc.</i>	1,130	84	122	12	1,504	341	107	2	1,213	194	192	52	58	5
Motor vehicle theft	298	5	30	2	338	31	20	1	265	15	30	4	17	1
Other stealing	317	53	19	3	493	212	19	-	449	124	107	38	14	2
Receiving, etc.	52	9	3	-	111	42	3	-	122	22	25	4	3	-
Breaking and entering	463	17	70	7	562	56	65	1	377	33	30	6	24	2
<i>Property damage</i>	130	10	10	3	165	28	7	-	196	14	42	6	3	-
Arson	15	3	2	1	11	5	7	-	12	1	1	-	2	-
Other property damage	115	7	8	2	154	23	-	-	184	13	41	6	1	-
<i>Driving, traffic, etc.</i>	1,180	47	45	3	98	14	26	1	365	32	1,399	354	45	-
Drink driving	521	21	29	-	36	8	6	-	157	16	1,050	292	23	-
Dangerous/negligent driving	46	1	4	1	18	2	16	1	41	-	51	9	4	-
Other driving, traffic, etc.	613	25	12	2	44	4	4	-	167	16	298	53	18	-
<i>Other offences</i>	888	76	55	7	425	139	50	6	487	80	427	148	41	5
Drug offences	369	35	31	6	290	111	42	6	310	67	291	110	32	4
Breach of probation, etc.	322	29	11	-	37	2	3	-	62	6	48	7	4	-
Other offences	197	12	13	1	98	26	5	-	115	7	88	31	5	1
Total	4,302	331	320	33	2,748	665	397	32	2,674	391	2,141	576	176	11

* Data unable to be extracted

Source: Law and Order, Queensland, 1988-89.
Australian Bureau of Statistics,
Catalogue No. 4302.3

An estimated 17% of sentenced Queensland prison inmates admitted in 1988-89 were convicted of violent offences

Major factors in the decision to impose a prison sentence are the gravity of the offence for which an offender is currently convicted and the seriousness and extent of the prior criminal history of the offender. Generally, offenders convicted of violent offences tend to be sentenced to longer periods of incarceration than those offenders convicted of non-violent offences. This is why about 45% of the *on-hand* prisoner population are imprisoned for violent offences.

Most of the offenders admitted to prison come from the south-eastern corner of the state

Although Queensland is the most decentralised state in Australia, the largest proportion of the population lives in the south-eastern sector of the state. It is therefore not surprising that most prison inmates come from this catchment area. Trends over the past decade indicate that the catchment area with the greatest rate of increase is within the growth corridor between Brisbane and the Gold Coast.

Contrary to public belief, very few prisoners come from interstate or overseas. Most offenders who are imprisoned in Queensland are, in fact, Queensland residents.

About one-quarter of sentenced prisoners admitted to prison are incarcerated because of fine default

In July 1984 the Fine Option Order Scheme was introduced to allow defendants who are able to show to the satisfaction of the court that they are unable to pay a fine, the option of performing community service in lieu of serving a term of imprisonment in default of payment. In order to avail themselves of this option defendants must appear in court. Unfortunately, in excess of 80% of defendants fail to appear in court, therefore the only option in default of payment is imprisonment. However, the scheme was amended in 1988 to permit defendants to apply to a court for the option of community service, before the expiration of the time in which to pay a fine.

Usual residence of prisoners admitted to prison during 1988-89

Albert Shire	98	Logan	147
Atherton	11	Longreach	1
Aurukun	19	Mackay	80
Balonne	3	Mareeba	29
Banana	13	Maroochy	72
Barcaldine	1	Maryborough	34
Baahinia	2	McKinlay	2
Beaudesert Shire	24	Millmerran	5
Belyando	7	Mirani	2
Blackall	3	Miriam Vale	2
Boonah	2	Moreton	12
Booringa	3	Morningside	38
Boulia	1	Mount Morgan	11
Bowen	24	Mount Isa	31
Brisbane	1,282	Mulgrave	60
Bundaberg	61	Murgon	13
Bungil	4	Murilla	2
Burdekin	26	Murweh	9
Burke	7	Nanango	5
Caboolture	48	Nebo	1
Cairns	200	Noosa	29
Calliope	7	Paroo	10
Caloundra	12	Peak Downs	1
Cardwell	12	Pine Rivers Shire	26
Carpentaria	37	Pioneer	6
Charters Towers	20	Pittsworth	3
Chinchilla	5	Proserpine	18
Clifton	1	Quilpie	5
Cloncurry	4	Redcliffe	56
Cook	52	Redlands Shire	49
Crows Nest	2	Richmond	3
Croydon	3	Rockhampton	129
Dalby	10	Roma	9
Dauringa	49	Rosalie	3
Douglas	23	Sarina	11
Eacham	2	Stanthorpe	4
Eidsvold	1	Tambo	1
Emerald	9	Tara	8
Esk	12	Taroom	4
Fitzroy	3	Thuringowa	5
Flinders	2	Tiaro	1
Gatton	6	Toowoomba	115
Gayndah	1	Torres	20
Gladstone	33	Townsville	336
Gold Coast City	202	Wambo	1
Gooburrum	1	Warroo	2
Goondiwindi	3	Warwick	17
Gympie	24	Weipa	35
Herberton	6	Widgee	3
Hervy Bay	12	Winton	1
Hinchinbrook	14	Wondai	1
Inglewood	2	Queensland (undefined)	14
Ipswich	174	New South Wales	127
Isis	4	Victoria	66
Johnstone	38	South Australia	12
Jondaryan	9	Western Australia	9
Kilkivan	3	Tasmania	1
Kingaroy	8	Northern Territory	9
Kolan	2	Australian Capital Territory	2
Laidly	5	Australia (undefined)	18
Lansborough	24	Overseas	13
Livingstone	2	No fixed place of abode	194

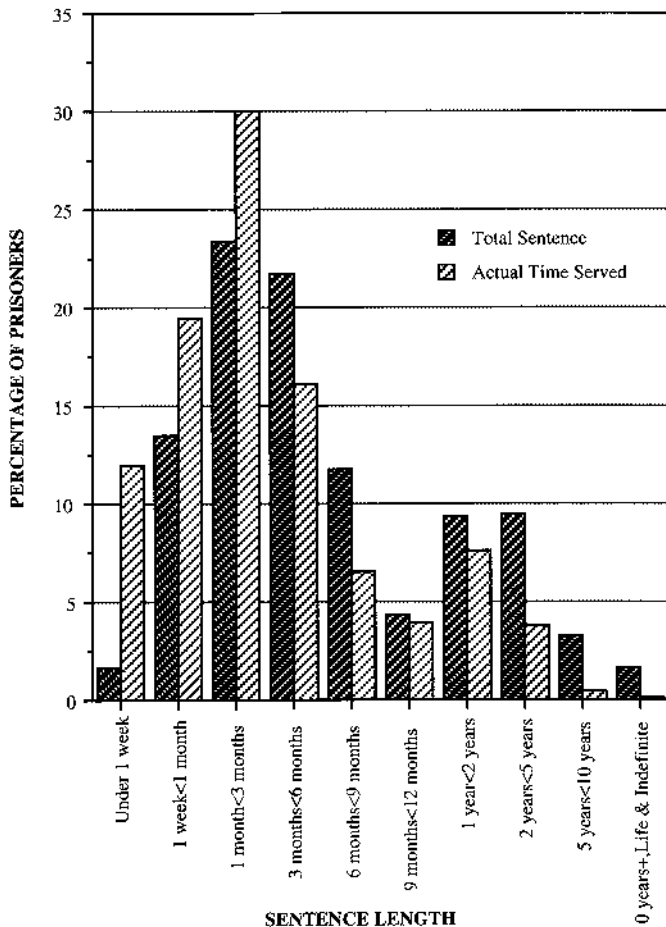
Source: Corrective Services Computerised Statistical Database.

How do sentence lengths differ from actual time served?

Comparison of sentence lengths given and sentence lengths actually served for prisoners admitted and discharged during 1988-89

Sentence	Total Sentence given	As a % of total admissions	Total Sentence served	As a % of total discharges
Under 1 week	76	1.64	554	11.98
1 week and under 1 month	622	13.43	899	19.44
1 month and under 3 months	1,081	23.33	1,389	30.04
3 months and under 6 months	1,006	21.71	745	16.11
6 months and under 9 months	545	11.76	304	6.57
9 months and under 12 months	202	4.36	182	3.94
1 year and under 2 years	435	9.39	354	7.66
2 years and under 5 years	440	9.50	175	3.78
5 years and under 10 years	149	3.22	19	0.41
10 years+, Life & Indefinite	77	1.66	3	0.07
TOTAL	4,632	100.00	4,624	100.00

Source: Corrective Services Computerised Statistical Database.



Most prisoners are given sentences of twelve months or less

Depending upon the severity of the offence, prisoners may be sentenced to terms of imprisonment ranging from a few days to life imprisonment. Most sentences are for finite periods of time to be served either concurrently or consecutively. For example, an offender may be tried and found guilty of a number of offences, the most serious of which attracts a 'head' sentence of six months, and on another less serious offence be given a sentence of three months. If the judge or magistrate determines that the sentences are to be served concurrently then the offender will receive a 'head' sentence of six months. If the sentence is to be served consecutively, then the length of the 'head' sentence is nine months.

Usually offenders do not spend the full term of their sentence in prison. Unless a minimum period of imprisonment is specified by the sentencing judge or magistrate, prisoners receiving sentences of over two months will automatically receive one third remission off their sentence. This means that for a sentence of six months a period of two months may be deducted. Prisoners receiving sentences of more than six months are eligible to apply for parole half way through their sentence, e.g. a prisoner serving a twelve months sentence can apply for parole after six months. Additionally, the prisoner could apply for entry into a half-way house or home detention program at the end of four months.

Prisoners can also earn additional remission for good behaviour, and those with low security classifications serve 28 day months. Finally, at the end of their sentence prisoners can be granted as much as 14 days early release at the discretion of the Queensland Corrective Services Commission.

During 1988-89 more than three-quarters of sentenced prisoners received total sentences of less than twelve months duration. Almost two-thirds were given total sentences of less than 6 months duration. In terms of time actually served by offenders, more than 60% were released in under 3 months; more than three-quarters were discharged in under six months; and nearly 90% were released in under 12 months. Most people sentenced to imprisonment are incarcerated for relatively short periods of time. About 17% of sentenced prisoners are discharged without remission of any type.

What are the trends in correctional populations?

Queensland's custodial correctional population is growing

At the turn of the century the daily average imprisonment rate was 114 per 100,000 population, and in 1989-90 it was 78. In terms of prisoner admission in 1901 there were 573 persons incarcerated for that year. During 1989-90 there was an all-time high of 6,885 admissions to Queensland prisons.

Daily average prisoner numbers have increased by 500% in the past 60 years

During the period between 1930 and 1955 the daily average number of prisoners on hand remained fairly steady. However, the late 60's saw a dramatic increase in daily prisoner numbers which has only started to decline in the last two years.

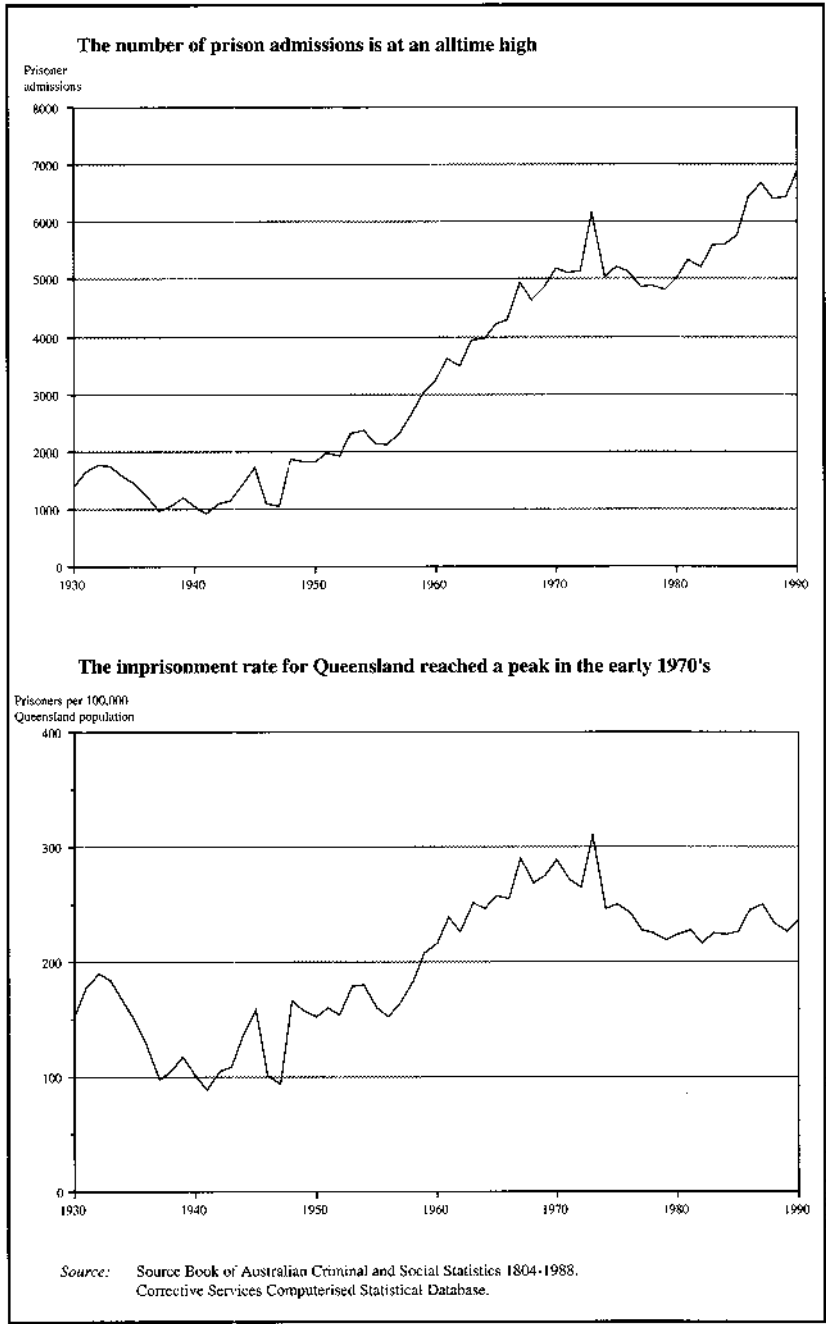
Why are prison populations growing?

Increases in the prison population can be attributed to changes in sentencing laws and practices that have placed greater emphasis on deterrence and incapacitation. The past decade saw a heavy emphasis placed upon 'law and order' issues in both the political and public arenas.

In 1979-80 some 5,016 persons were admitted to prison, either as remand or sentenced prisoners. During 1989-90 a record high of 6,885 persons were admitted to prison. Another contributing factor in the increased use of imprisonment for offenders has been the opening of four new prisons in Queensland in the past two years: Lotus Glen (Mareeba), Sir David Longland and Moreton (Wacol) and Borallon (Ipswich).

Although there has been an increased focus on placing offenders on various kinds of community correctional programs, sentencing options have increasingly included imprisonment.

During the past three years, there has been increased emphasis on the use of half-way houses and home detention programs, however it appears that prisoners are reluctant to avail themselves of these options because of the stringent supervision measures involved.



In what type of facilities are prisoners held?

Prisoners are housed in a number of custodial facilities spread throughout Queensland

There are twelve gazetted prisons operating in Queensland, most of which are located in the south-eastern section of the state. They are:

- Brisbane Correctional Centre (Woolloongabba)
- Brisbane Womens Correctional Centre (Woolloongabba)
- Moreton Correctional Centre (Wacol)
- Sir David Longland Correctional Centre (Wacol)
- Wacol Correctional Centre (Wacol)
- Numinbah Correctional Centre (Numinbah - Gold Coast hinterland)
- Palen Creek Correctional Centre (Palen Creek - Gold Coast hinterland)
- Woodford Correctional Centre (Woodford)
- Borallon Correctional Centre (near Ipswich) (contracted to Corrections Corporation of Australia Ltd.)
- Rockhampton Correctional Centre (Rockhampton)
- Townsville Correctional Centre including a Female Division (Townsville)
- Lotus Glen Correctional Centre (Mareeba).

Community based facilities

Prisoners are released to a residential Community Corrections Centre to seek or attend employment. They must return to the centre each night. They are:

- Kennigo Community Corrections Centre (Spring Hill)
- Albion Community Corrections Centre (for women)
- Gwandalan Community Corrections Centre (Woolloongabba) (contracted by the Queensland Corrective Services Commission to the Brisbane Tribal Council Ltd.)
- Dutton Park Community Corrections Centre (Woolloongabba)
- Maconochie Lodge Community Corrections Centre (Burpengary) (contracted to Shaftesbury Citizenship Centre Inc.)
- St. Vincent's Community Corrections Centre (South Brisbane) (contracted to Society of Saint Vincent de Paul State Council of Queensland).

Most Queensland prisons are quite small by world standards

Only two of the states prisons house more than three hundred prisoners at any one time - Brisbane and Townsville. Brisbane, or Boggo Road as it is more commonly known, is being phased out as a custodial facility and most of its functions are being transferred to custodial centres in the Wacol area.

With the exception of the womens facilities and the two farms at Palen Creek and Numinbah, all other custodial corrections centres are designed to house between 220 and 260 prisoners.

Prisons employ about 5 staff members for every 7 inmates

In 1989-90 it was estimated that the daily average number of prisoners per custodial officer was 1.39. There are now more staff per prisoner than during the previous year.

Security classifications of prisoners determine which facility they are housed in

Queensland Corrective Services Commission Custodial Centres have five levels of security classification for prisoners. Upon admission all prisoners are given a maximum security classification, and depending upon their behaviour and commitment to a sentence management plan whilst serving their sentence, can work their way down to a low or open classification.

Wacol, Townsville, Rockhampton, Lotus Glen and Woodford prisons all have open farms attached to them. Palen Creek and Numinbah have operated as honour farms since the mid 1930's. If a prisoner is deemed to be trustworthy and of little or no threat to the community, then they can be housed in one of the low or open class facilities. Borallon, which is the only privately run prison in the state, accommodates medium to low classification prisoners.

Correctional Centre	Security Classifications				
	Maximum	High	Medium	Low	Open
Brisbane	*	*	*	*	-
Brisbane Womens	*	*	*	*	-
Townsville	*	*	*	*	*
Townsville Womens	*	*	*	*	-
Rockhampton	*	*	*	*	*
Wacol	*	*	*	*	*
Woodford	*	*	*	*	*
Palen Creek	-	-	-	-	*
Numinbah	-	-	-	-	*
Moreton	*	*	*	*	*
Borallon	-	-	*	*	-
Sir David Longland	*	*	*	*	*
Lotus Glen	*	*	*	*	*

New management initiatives

In October, 1989 the Queensland Corrective Services Commission contracted the management and operation of the Borallon Correctional Centre to private enterprise. In Australia, this was the first time that a prison had ever been privately managed and operated. The contract was awarded to Corrections Corporation of Australia (C.C.A.), which is a Queensland company owned by Wormald Security, John Holland Constructions and Corrections Corporation of America.

The instigation of private enterprise involvement in correctional centres came from the Kennedy Report which reviewed the prison system in Queensland. The Kennedy Commission of Review¹ recommended the introduction of private sector involvement because, in terms of cost-effectiveness, the private sector can do some things cheaper and better, and it introduces a strong element of competition against which the performance of the public sector can be measured.

Recruitment and training of staff was undertaken by C.C.A. in accordance with strict guidelines and policies laid down by the Government and the Queensland Corrective Services Commission (Q.C.S.C.).

In keeping with the new policy directions of the Q.C.S.C. emphasis was placed upon Case Management Systems and Unit Management Systems, both of which have proven to be highly successful in private prisons overseas.

Sentence Management Plan

This is implemented for every prisoner entering Borallon. Under this system, the management receives basic history information about the offender such as previous institutional performance and their current security classification. To this the offender's family history is added, along with a plan agreed upon for his stay in custody and the extent to which these plans are realised during this period. Also included are details on visitors, problems, disciplinary procedure, medical, psychiatric and psychological profiles, due date of discharge and parole eligibility.

Unit Management System

The objective of this is to assist in providing security and harmony to the facility and to enhance prisoners individual adjustment, progress and rehabilitation. This system has proven to be highly successful in overseas prisons. Under it correctional officers are required to work closely with small and self-contained groups of prisoners with emphasis on individual problem solving and unit group interaction. Programs are designed to:

- gainfully occupy inmates' time
- provide upgrading of their scholastic levels
- equip them with trade skills which can be used after their release
- bridge the gap between correctional life and work life.

Educational training and work activities include:

- remedial education
- education to Year 10 level
- completion of a trade
- beginning of a trade
- updating or refresher of trade skills
- tradesmen assistant
- production worker
- other skills or career options
- trainer/apprentice master.

Notes:

1. Kennedy Commission of Review into Corrective Services in Queensland, 1988.