



THE UNIVERSITY OF  
WESTERN AUSTRALIA

**Aboriginal involvement in the  
Western Australian criminal justice system:  
A Statistical Overview**

*crime*

RESEARCH

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**For the  
Aboriginal Justice Council**

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## **Aboriginal involvement in the Western Australian criminal justice system: A Statistical Overview.**

The following Report provides the most up to date statistical information about the extent and nature of Aboriginal involvement in the criminal justice system in Western Australia.

The Report has been compiled by the Crime Research Centre, University of Western Australia on behalf of the Aboriginal Justice Council of WA.

The statistical information presented here has been compiled from the computerised records of the WA Police Service (for details of arrests, cautioning and police lockups) and from the Ministry of Justice (for information about the activities of the courts, prisons and community corrections areas). Statistics relating to deaths in custody have been obtained from the Australian Institute of Criminology.

Where possible, the data describe criminal justice activities up to and including 31 December 1997.

Data describing the level and nature of Aboriginal victimisation is also provided in this Report and is based on reports made to the police during 1997. The use of official statistics to describe levels of victimisation is problematic, however, since not all offences are reported to or recorded by the police (the so-called 'dark figure' of crime). Surveys, on the other hand, measure the extent of crime regardless of whether they are reported to authorities. However, these are time-consuming, more expensive to organise and are generally restricted by methodological and sampling issues. The last comprehensive national survey of Aboriginal and Torres Strait Islanders was conducted in 1994 (NATSIS, ABS 1995) and included eleven questions related to law and justice matters, several of which asked respondents about being victims of assault.

### **1. Victimisation of Aboriginal people**

Aborigines are a highly victimised section of the WA community.

Based on 1997 police recorded crime reports, Aborigines were victims of 2,525 violent (against person) offences, which is equivalent to a rate of 44 offences per 1,000 persons. This rate is considerably higher than the rate for non-Aboriginal people. Non-Aborigines were victims of 16,506 offences - a rate of 9.5 offences per person. Thus, for Aborigines, the risk of being a victim of a violent crime in 1997 was about 4.6 times greater than for non-Aborigines. Three-quarters of all Aboriginal victims were women (compared with less than half for non-Aboriginal victims).

Tables I and II below show how victimisation varies with offence type and sex.

**Table I: Reported offences against the person by victim sex and race, 1997**

	Ab		Non-Ab		Ab:non-Ab
	n	rate	n	rate	ratio
<i>Females:</i>					
<b>Homicide*</b>	6	20.7	22	2.5	8.1
<b>Assault</b>	1,521	52.5	3,702	4.3	12.3
<b>Sex offences</b>	224	7.7	2,176	2.5	3.1
<b>Other</b>	69	2.4	791	0.9	2.6
<b>Robbery</b>	10	0.3	741	0.9	0.4
<b>Total</b>	<b>1,830</b>	<b>63.2</b>	<b>7,432</b>	<b>8.6</b>	<b>7.4</b>
<i>Males:</i>					
<b>Homicide*</b>	9	31.8	61	7.0	4.6
<b>Assault</b>	614	21.7	6,967	8.0	2.7
<b>Sex offences</b>	32	1.1	589	0.7	1.7
<b>Other</b>	31	1.1	738	0.8	1.3
<b>Robbery</b>	8	0.3	708	0.8	0.3
<b>Total</b>	<b>694</b>	<b>24.5</b>	<b>9,063</b>	<b>10.3</b>	<b>2.4</b>
<i>Combined:</i>					
<b>Homicide*</b>	15	26.2	83	4.8	5.5
<b>Assault</b>	2,135	37.3	10,671	6.1	6.1
<b>Sex offences</b>	256	4.5	2,772	1.6	2.8
<b>Other</b>	100	1.7	1,531	0.9	2.0
<b>Robbery</b>	18	0.3	1,449	0.8	0.4
<b>Total</b>	<b>2,524</b>	<b>44.1</b>	<b>16,506</b>	<b>9.5</b>	<b>4.6</b>

Note: Rates are per 1,000 relevant population for all offences except homicide.

\* Homicide rates are per 100,000 persons

The greatest difference between Aboriginal and non-Aboriginal victimisation is in the assault category (Table I). For these offences, Aborigines were about 6 times more likely than non-Aborigines to become victims. For females, the difference is even greater than this: Aboriginal women are 12 times more likely to be victims of an assault than non-Aboriginal women.

Homicide is also a category that shows differences between Aboriginal and non-Aboriginal victimisation. In 1997, Aboriginal women were 8 times more likely to become victims of homicide than non-Aboriginal women, and Aboriginal males were more than 4 times more likely to become victims than non-Aboriginal males. Note, however, that the number of homicide cases in 1997 were small: 15 homicide cases involved Aboriginal victims and 83 cases involved non-Aboriginal victims. Thus, some variability in year to year results can be expected.

**Table II: Comparison of male and female Aboriginal victimisation rates**

	Female	Male	<i>Female:Male ratio</i>
<b>Homicide*</b>	20.7	31.8	0.7
<b>Assault</b>	52.5	21.7	2.4
<b>Sex offences</b>	7.7	1.1	6.8
<b>Other</b>	2.4	1.1	2.2
<b>Robbery</b>	0.3	0.3	1.2
<b>Total</b>	<b>63.2</b>	<b>24.5</b>	<b>2.6</b>

Note: Rates are per 1,000 relevant population for all offences except homicide.

\* Homicide rates are per 100,000 persons

The risk of victimisation of Aboriginal women not only exceeds the victimisation risk of non-Aboriginal people but is also greater than the risks faced by Aboriginal males. As Table II shows, about 52 per 1,000 Aboriginal females were victims of an assault, as compared with about 22 per 1,000 Aboriginal males. Thus, Aboriginal women were about two and a half times more likely to be victims of an assault than Aboriginal men.

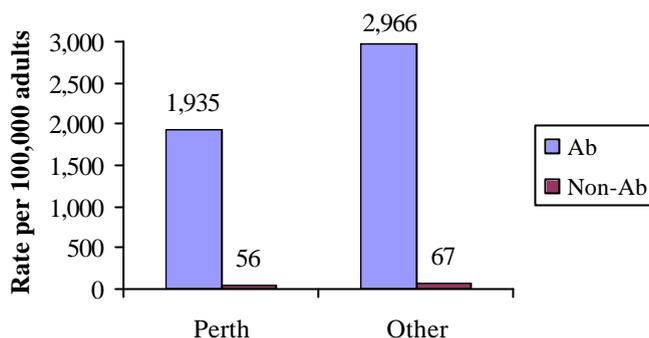
This finding contrasts sharply with that for non-Aboriginal people. When comparing the victimisation rates of male and female non-Aborigines for assault offences, males were at greater risk than females. This latter finding accords with the more general criminological wisdom that males are at a greater risk of victimisation of assault than women.

A closer examination of assault cases against Aboriginal women reveals that in 53% of cases, the offender was known to the victim, and in 69% of these cases, the violence was domestic, that is, the offender was the spouse or partner of the victim.

Similar high rates of victimisation for Aboriginal females were also found in a study of domestic violence in WA (Ferrante et al, 1996). That study analysed police records and hospital admissions and found that Aboriginal victims were vastly over-represented in the official statistics on domestic violence. Aborigines made up half of all reported cases of domestic violence, with women making up 90% of victims. The study found that Aborigines were 45 times more likely to be a victim of domestic violence than non-Aborigines. The study also found that :

- Aboriginal victims sustained more serious injuries than non-Aboriginal victims;
- incidents involving Aboriginal victims had slightly higher clear-up rates than those involving non-Aborigines; and
- the risk of victimisation for Aborigines and non-Aborigines was greater in rural areas than in the Perth metropolitan area.

**Figure 1: Rates of domestic violence in WA, 1994**



Note: Based on figures from Table 2.7 in Ferrante et al (1996).

Table III shows that victimisation also varies with age.

**Table III: Aboriginal and non-Aboriginal victimisation, by age-group**

<u>Age-grp</u>	<u>Ab</u> <u>rate</u>	<u>Non-Ab</u> <u>rate</u>	<u>Ab:non-Ab</u> <u>ratio</u>
<18	17.3	7.9	2.2
18-24	88.0	19.7	4.5
25-34	86.7	14.0	6.2
35 & over	41.6	6.0	7.0
<b>Total</b>	<b>44.1</b>	<b>9.2</b>	<b>4.8</b>

Note: Rates are per 1,000 relevant population age-group.

Young people (those aged between 18 and 24 years, and between 25 to 34 years) generally have higher rates of victimisation than other age-groups, irrespective of race (Table III). Note, however, that while the risk of victimisation decreases substantially with age for non-Aborigines, the decrease in risk is less pronounced for Aborigines - to the extent that the highest *differential* risk between Aborigines and non-Aborigines is in the '35 & over' age-group. In this age-category, Aborigines are 7 times more likely to become victims of violence than non-Aborigines.

## 2. Contact with the police

In this section, we describe the level of contact that Aboriginal people have had with police as 'offenders', that is, as persons processed via arrest (or summons), as juveniles cautioned by police or referred to teams, or as admissions to police lockups (either following arrest or as drunken detainees).

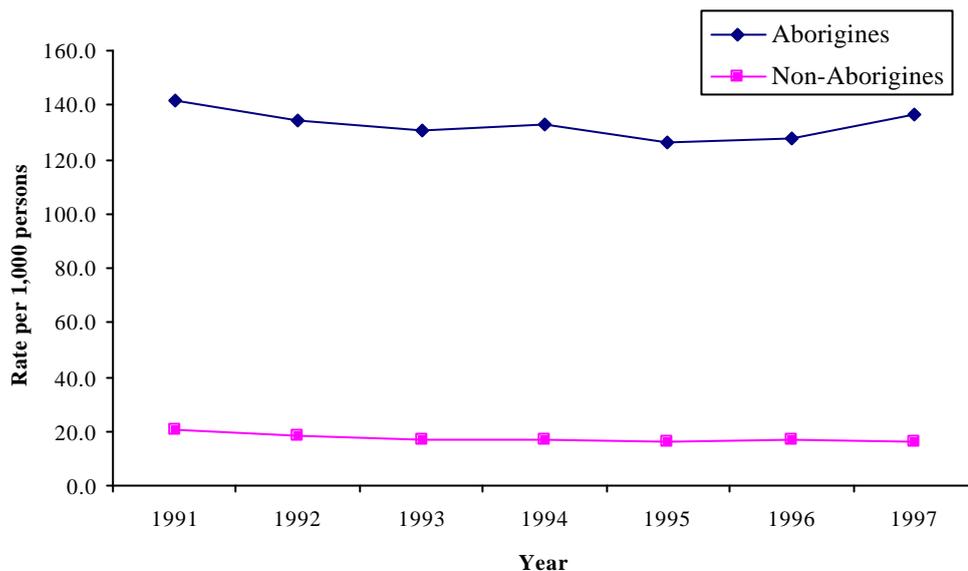
## 2.1 Arrests

Table IV and the associated figures (Figures 2, 3 & 4) summarise trends in Aboriginal and non-Aboriginal arrests since 1991. Annual arrest rates are presented per 100,000 persons aged 10 and over, and are prevalence rates, meaning that they measure the number of *persons* in the relevant population that are arrested each year, rather than the number of *arrests* per group per year.

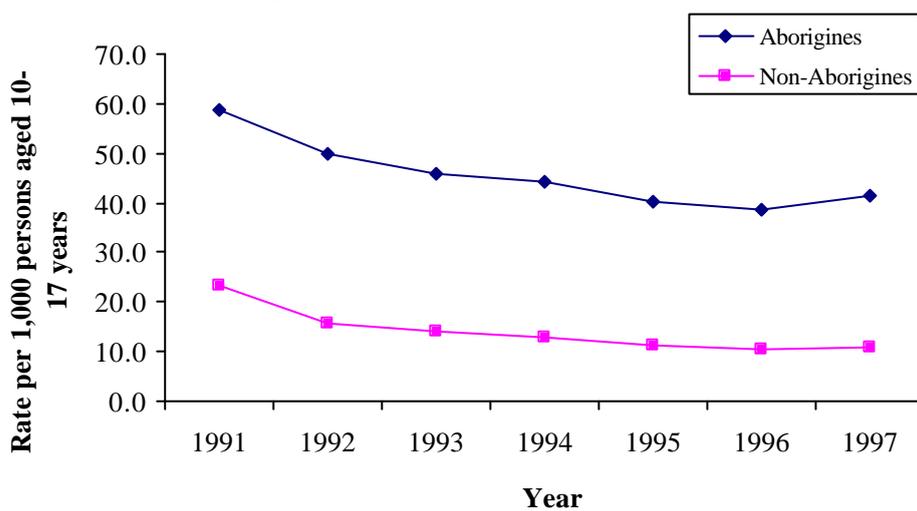
**Table IV: Trends in the (prevalence) arrest rates of Aborigines and Non-Aborigines, 1991-1997**

	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
<b>Total offences charged</b>	115,945	107,360	101,528	99,549	95,117	98,350	104,261
<b>Total arrests (charges)</b>	91,680	83,517	78,859	77,987	76,494	79,854	84,581
<b>Distinct persons arrested</b>	40,539	37,463	34,602	35,226	35,030	36,186	36,904
<b>Charges per person</b>	2.9	2.9	2.9	2.8	2.7	2.7	2.8
<b>RATES</b>							
<b>Basic Race</b>							
<i>Aborigines</i>	141.7	134.4	130.9	132.8	126.1	128.0	136.6
<i>Non-Aborigines</i>	20.6	18.7	16.8	16.7	16.5	16.7	16.4
<i>Ab:nonAb ratio</i>	6.9	7.2	7.8	7.9	7.7	7.7	8.3
<b>Sex</b>							
<b>Males</b>							
<i>Aborigines</i>	194.1	185.5	185.9	195.8	184.8	186.6	194.6
<i>Non-Aborigines</i>	33.5	30.9	27.7	25.0	26.8	27.4	26.8
<i>Ab:nonAb ratio</i>	5.8	6.0	6.7	7.8	6.9	6.8	7.3
<b>Females</b>							
<i>Aborigines</i>	67.6	63.0	62.5	70.9	68.1	70.1	79.1
<i>Non-Aborigines</i>	7.1	6.3	5.7	5.5	5.9	5.6	5.8
<i>Ab:nonAb ratio</i>	9.5	10.0	10.9	12.8	11.6	12.4	13.7
<b>Male:female ratio</b>	4.2	4.3	4.3	4.3	4.0	4.2	3.9
<i>NA male:NA female</i>	4.7	4.9	4.8	4.5	4.5	4.9	4.6
<i>Ab male:Ab female</i>	2.9	2.9	3.0	2.8	2.7	2.7	2.5
<b>Age status</b>							
<b>Juveniles (10-17)</b>							
<i>Aborigines</i>	58.6	49.9	46.0	44.3	40.4	38.8	41.4
<i>Non-Aborigines</i>	23.5	15.7	14.1	12.9	11.5	10.6	10.7
<i>Ab:nonAb ratio</i>	2.5	3.2	3.3	3.4	3.5	3.7	3.9
<b>Adults (18+)</b>							
<i>Aborigines</i>	191.2	186.5	189.5	207.8	198.5	203.0	216.3
<i>Non-Aborigines</i>	22.8	23.9	22.8	20.4	18.5	20.1	20.4
<i>Ab:nonAb ratio</i>	8.4	7.8	8.3	10.2	10.7	10.1	10.6
<b>Adult:juv ratio</b>	1.0	1.4	1.4	1.5	1.7	1.8	1.7
<i>NA adult:NA juv</i>	1.0	1.5	1.6	1.6	1.6	1.9	1.9
<i>Ab adult:Ab juv</i>	3.3	3.7	4.1	4.7	4.9	5.2	5.2

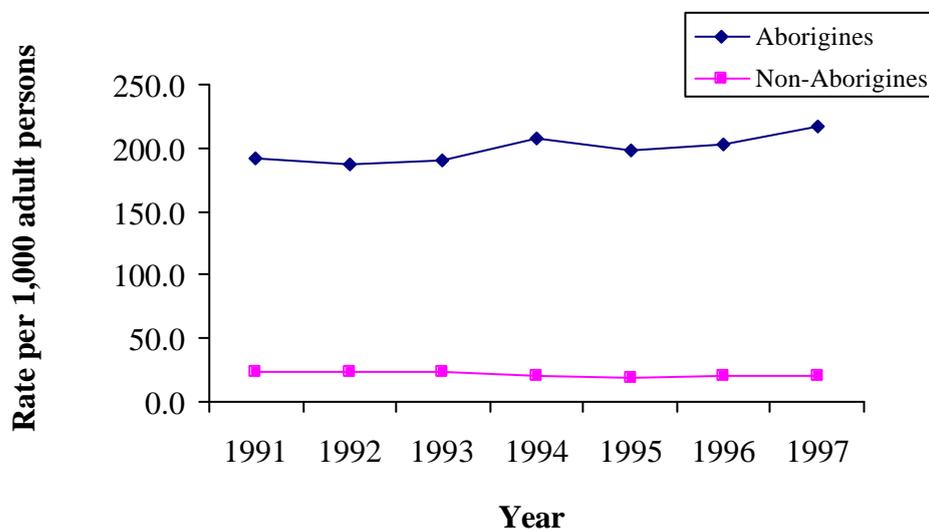
**Figure 2: Prevalence arrest rates**



**Figure 3: Arrest rates of juveniles**



**Figure 4: Arrest rates of adults**



Compared with 1991, the arrest rate of Aboriginal people has declined slightly from 142 per 1,000 persons, to 137 per 1,000 persons in 1997. The arrest rate of non-Aboriginal people also declined during this period from 21 per 1,000 to 16 per 1,000. Ironically, however, the arrest rate of non-Aboriginal people declined more significantly than the arrest rate for Aboriginal people, so that the differential risk (over-representation) of Aboriginal people has actually increased from 6.9 in 1991 to 8.3 in 1997. In other words, in 1997 Aboriginal people were 8.3 times more likely to be arrested than non-Aboriginal people, yet in 1991, they were only 6.9 times more likely to be arrested than non-Aboriginal people.

A closer examination of these trends reveals that the decline in Aboriginal arrest rates is mostly related to a decline in juvenile arrests. Since 1991, the Aboriginal juvenile arrest rate has fallen from 59 per 1,000 persons to 41 per 1,000 persons in 1997. For Aboriginal adults, however, the arrest rate actually increased from 191 per 1,000 persons in 1991 to 216 per 1,000 persons.

It is interesting to note that the arrest rate for Aboriginal women has increased from 68 per 1,000 females in 1991 to 79 per 1,000 females in 1997. In 1997, Aboriginal women were almost 14 times more likely to be arrested by the police than non-Aboriginal women.

Overall, the trends for non-Aboriginal people are quite different to Aboriginal people. In all cases - whether juvenile or adult, male or female - the non-Aboriginal arrest rate declined between 1991 and 1997.

Much of the decline in juvenile arrests can be attributed to the introduction and increased use of cautioning (from 1991 onwards) and to the introduction of diversion through juvenile justice teams. However, some questions arise:

- Does the fall in juvenile arrest rate signify a decline in the overall level of contact between young Aboriginal people and the police or merely a shift from the process of arrest to diversionary elements?
- Or, has the introduction of diversionary processes actually widened the net of juveniles coming into contact with the police?

The figures in Table V (and their graphical depiction in Figures 5, 6 & 7) begin to provide an answer to these questions. The data show that while the number of juveniles arrested annually has declined, the number being cautioned (or cautioned and arrested) has increased substantially. Overall, the *total* number of juveniles who have had contact with the police each year, whether through arrest, cautioning, or both, has increased substantially since 1992. The increase being most notable in 1995, following formalisation of the cautioning scheme. In other words, it appears that while cautioning may have diverted many young offenders from the arrest process, the scheme also appears to have widened its net, 'capturing' a significant number of additional offenders within its domain.

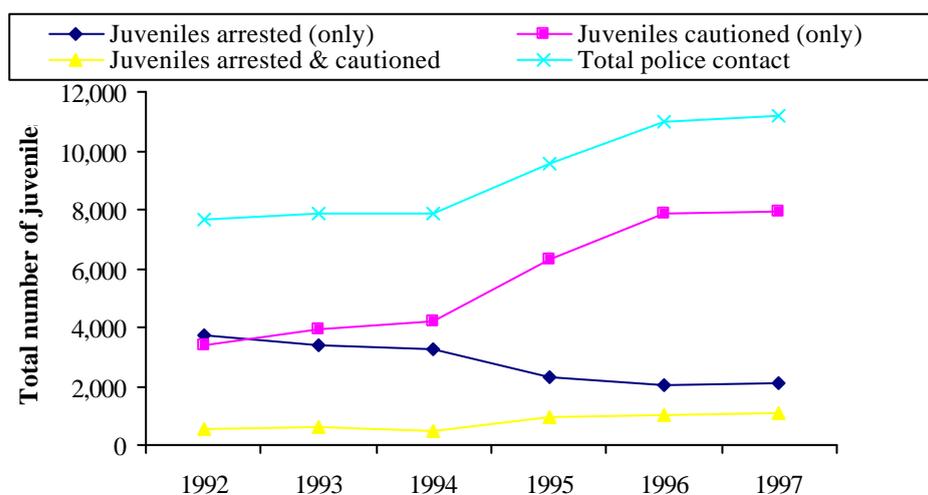
Note, also, that the increase in juvenile-police contact was experienced by both Aboriginal *and* non-Aboriginal juvenile sub-groups. The level of police contact by non-Aboriginal juveniles increased by 46% between 1992 and 1997, while the level of Aboriginal juvenile contact increased by 34%.

**Table V: Juvenile contact (prevalence) with police via arrest and cautions, 1992-97**

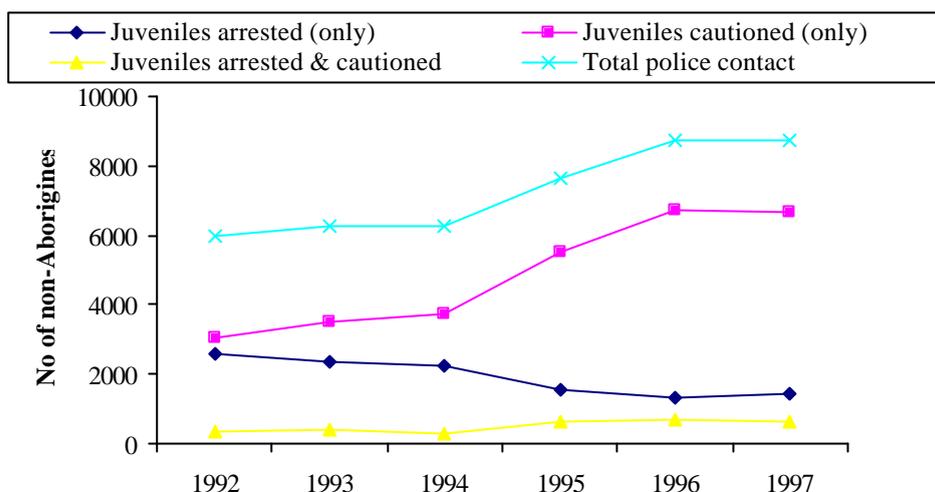
Type of contact	1992	1993	1994	1995	1996	1997
<b>Total juveniles</b>						
Juveniles arrested (only)	3,732	3,362	3,230	2,326	2,064	2,131
Juveniles cautioned (only)	3,418	3,921	4,174	6,283	7,895	7,948
Juveniles arrested & cautioned	519	586	476	931	1,047	1,111
<b>Total police contact</b>	<b>7,669</b>	<b>7,869</b>	<b>7,880</b>	<b>9,540</b>	<b>11,006</b>	<b>11,190</b>
<b>Aboriginal juveniles</b>						
Juveniles arrested (only)	1143	1018	1003	773	688	695
Juveniles cautioned (only)	382	382	436	726	1029	1167
Juveniles arrested & cautioned	166	193	159	291	342	397
<b>Total police contact</b>	<b>1691</b>	<b>1593</b>	<b>1598</b>	<b>1790</b>	<b>2059</b>	<b>2259</b>
<b>Non-Aboriginal juveniles</b>						
Juveniles arrested (only)	2578	2337	2219	1541	1348	1410
Juveniles cautioned (only)	3024	3524	3711	5499	6743	6664
Juveniles arrested & cautioned	351	389	308	624	661	647
<b>Total police contact</b>	<b>5953</b>	<b>6250</b>	<b>6238</b>	<b>7664</b>	<b>8752</b>	<b>8721</b>

Interestingly, for non-Aborigines, the number of juveniles cautioned exceeded the number of juveniles arrested from the very first year of the cautioning scheme (see Figure 6), while, for Aborigines, the utilisation of cautions did not exceed arrests until 1995 (see Figure 7).

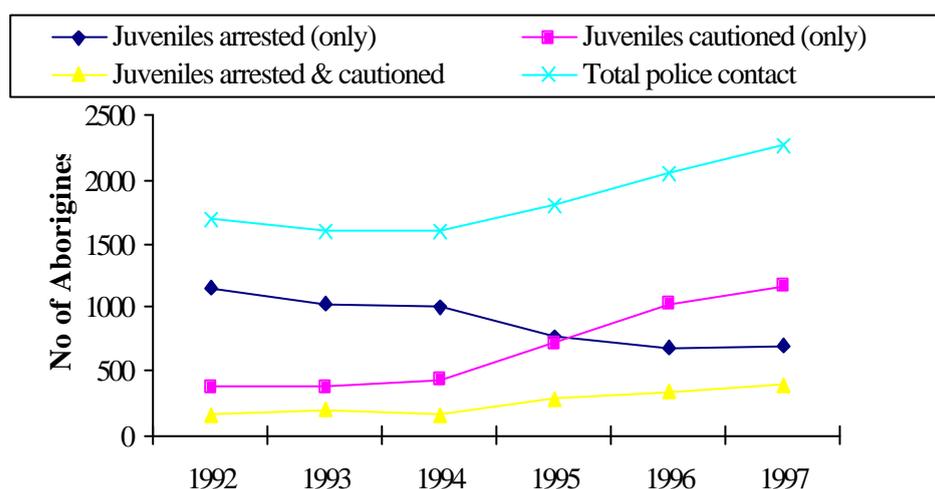
**Figure 5: Contact levels of all juveniles with police, 1992-97.**



**Figure 6: Contact levels of non-Aboriginal juveniles with police, 1992-97.**



**Figure 7: Contact levels of Aboriginal juveniles with police, 1992-97.**



## 2.2 Arrests - other factors

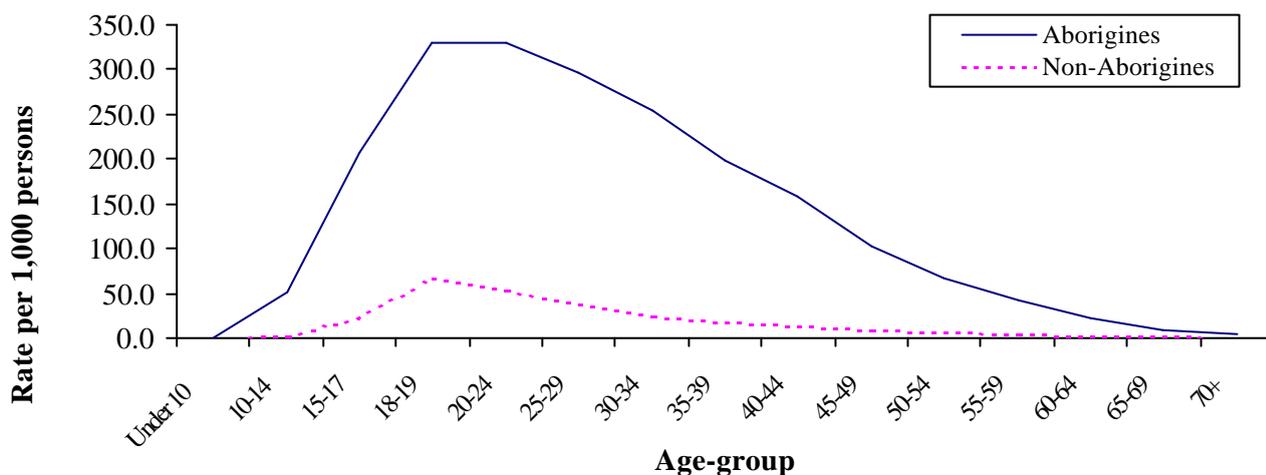
### Age

Arrest rates of Aboriginal and non-Aboriginal people vary considerably with age. As Table VI and Figure 8 show, the Aboriginal arrest rate far exceeds that of non-Aborigines for all age-groups, but particularly for children aged 10-14 years. The Aboriginal arrest rate for this group is 25 times greater than that for non-Aboriginal children of the same age. Arrest rates peak (for Aborigines and non-Aborigines) in the 18-24 year range.

**Table VI: Age-rated arrest rates by race, 1997**

<b>Age-group</b>	<b>Ab rate per 1,000</b>	<b>Non-Ab</b>	<b>Ab:non-Ab ratio</b>
Under 10	0.1	0.0	16.6
10-14	50.3	2.0	25.3
15-17	206.3	22.3	9.3
18-19	329.6	66.3	5.0
20-24	330.9	52.6	6.3
25-29	297.5	37.3	8.0
30-34	255.0	25.0	10.2
35-39	198.6	17.6	11.3
40-44	157.3	12.4	12.7
45-49	102.4	9.1	11.2
50-54	67.5	6.8	10.0
55-59	43.2	5.0	8.6
60-64	22.6	2.7	8.4
65-69	8.4	2.0	4.2
70+	4.4	0.7	6.4
<b>Total</b>	<b>136.6</b>	<b>15.9</b>	<b>8.6</b>

**Figure 8: Age-rated arrest rates (prevalence)**



### Region

Regional differences can be observed in the arrest rates of Aboriginal people in Western Australia (Table VII). Arrest rates for adults are highest in the South Eastern and Central regions and lowest in the South West area of WA. Juvenile rates are highest in the Central region and lowest in the Kimberley and South West regions.

**Table VII: Regional variations in arrest rates of Aboriginal people, 1997.**

Region	Young (10-19)		Adult (>19)		Total	
	n	rate	n	rate	n	rate
Perth	701	18.6	1,808	21.3	2,509	20.5
South West	72	10.8	202	16.2	274	14.3
Lower Gt Southern	62	19.3	155	18.7	217	18.8
Upper Gt Southern	35	17.3	103	27.8	138	24.1
Midlands	78	19.4	190	21.7	268	21.0
South Eastern	193	19.5	735	29.3	928	26.5
Central	261	21.5	786	29.9	1,047	27.2
Pilbara	141	13.6	621	22.3	762	19.9
Kimberley	246	9.8	1,431	24.4	1,677	20.0

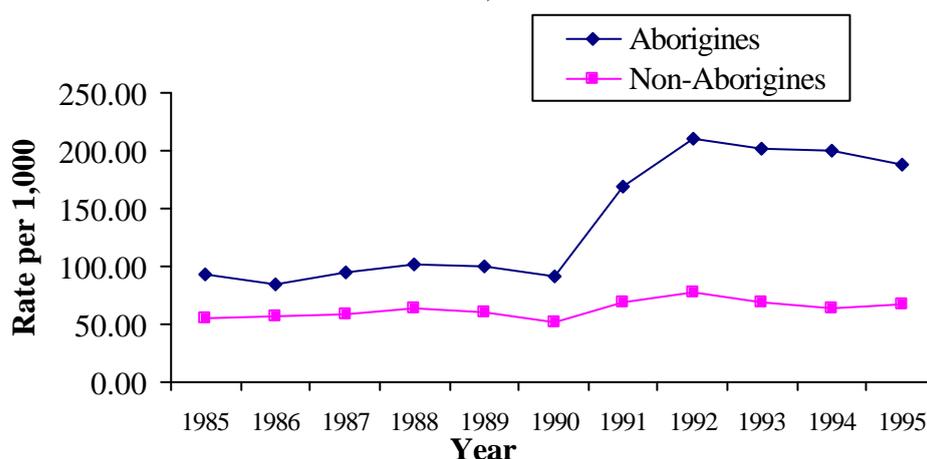
**Good order arrests**

A review of good order arrests and the *arrest* was undertaken by the Crime Research Centre in a previous report to the Aboriginal Affairs Department (Blagg and Ferrante, 1997). The review examined police arrest data from 1985 to 1995 for offences involving public order (including public drunkenness).

The following passages have been extracted from the previous report (pp 21-23):

"Annual rates of arrest for good order [...] offences are presented in the [figure] below for Aborigines and non-Aborigines and are calculated as the number of arrests involving good order or drunkenness offences per 1,000 total arrests of the relevant population. In 1985 about 92 in every 1,000 arrests of Aboriginal people and about 56 in every 1,000 arrests of non-Aboriginal people involved good order [...] charges.

**Figure 9: Aboriginal and non-Aboriginal annual arrest rates for good order/drunkenness offences, 1985-1995.**



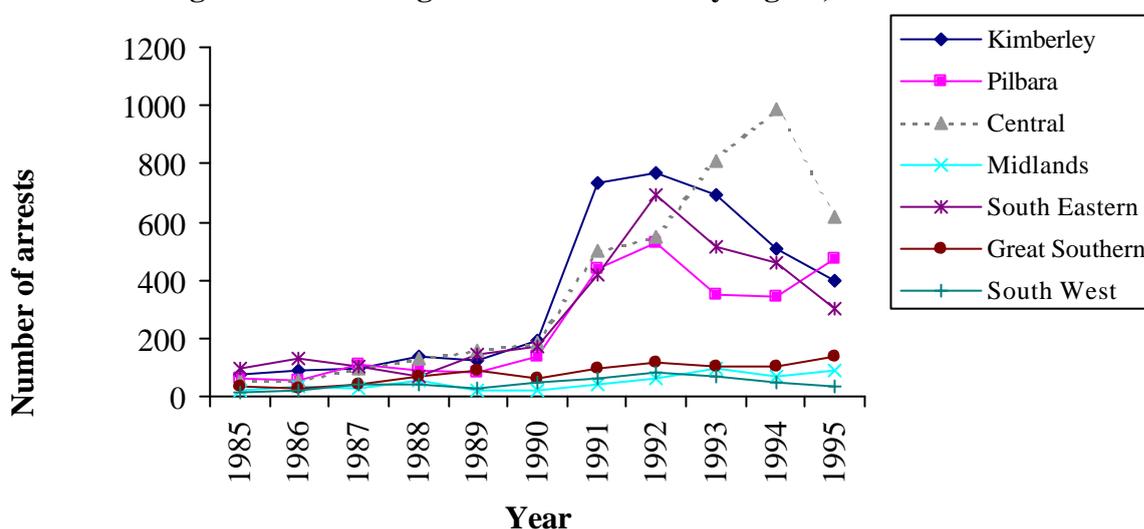
The rates of arrest for these offences increased significantly for both races (but much more significantly for Aborigines) in 1991, the year after the decriminalisation of public drunkenness. [...] The Aboriginal rate of arrest for

good order offences increased from about 91 per 1,000 arrests to 170 per 1,000 in 1991, while the non-Aboriginal rate increased from 52 to 68 per 1,000 arrests.

[The] arrest rates for good order offences peaked for both Aborigines and non-Aborigines in 1992, [and since then] have diminished slightly."

A breakdown of these trends by region is provided in Figure 10 below. As the figure shows, the increase in arrests of Aboriginal people for good order offences was not uniformly spread throughout the State, but instead located in four regions - the Kimberley, Pilbara, Central and South Eastern areas. Note, also, that with the exception of the Central region, these arrests peaked in 1992 but have declined since then. For the Central region, good order arrests peaked later (in 1994) but dropped sharply in 1995. The decline in good order arrests in these regions is encouraging and may be related to the introduction and effectiveness of patrols in these areas.

**Figure 10: Aboriginal arrests for good order offences by region, 1985-95.**



Trifectas were also explored in the previous CRC report (Blagg and Ferrante, 1997). That report found that although the arrest rate for good order offences increased at about the time of decriminalisation of public drunkenness, the number of such arrests that then escalated into trifectas (that is, subsequently involved charges of hindering police, resisting arrest or assaulting police) did *not* increase. In fact, the trifectas rate dropped dramatically, particularly for Aborigines from 337 in every 1,000 arrests in 1990 to 141 per 1,000 arrests in 1991. Clearly there were factors at work which influenced these arrest patterns. Perhaps the preventive messages relating to the escalation of charges during arrest incidents - particularly in light of the concurrent RCIADIC revelations and findings - held more weight than the foundation arguments themselves, for reducing arrests and detentions for public order offences.

Continued monitoring of arrests for both good order offences and trifectas group of offences is vital.

### 2.3 Juvenile cautioning

The use of formal cautions and the proportion of juvenile Aboriginal offenders receiving these cautions have increased since 1995. As Table VIII shows, about 20% of all cautions in 1997 were issued to Aborigines.

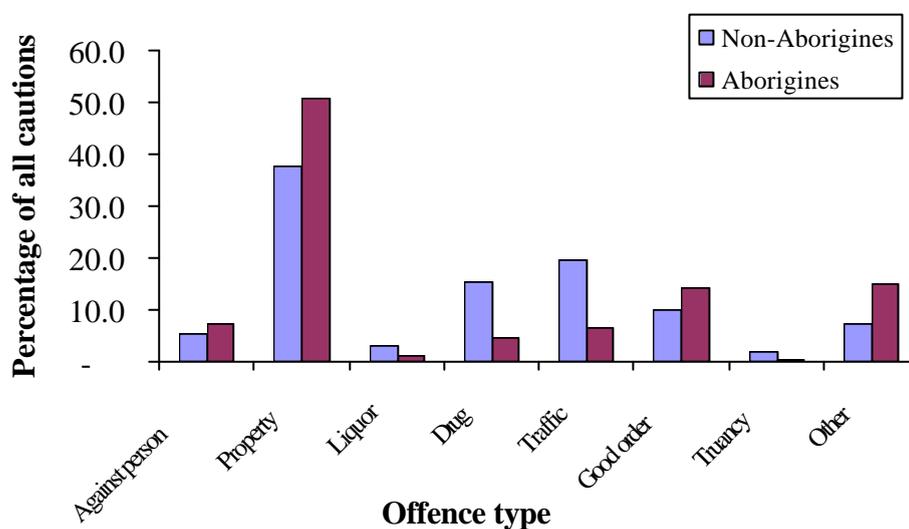
**Table VIII: Cautioning trends, 1991-1997**

Year	Total	Aborigines		Non-Aborigines	
		n	%	n	%
1991*	1,756	253	14.4	1,500	85.6
1992	3,804	549	14.4	3,255	85.6
1993	4,657	666	14.3	3,991	85.7
1994	4,770	661	13.9	4,109	86.1
1995	8,268	1,316	15.9	6,952	84.1
1996	9,506	1,699	17.9	7,671	80.7
1997	8,989	1,835	20.4	6,972	77.6
<b>Total</b>	<b>41,750</b>	<b>6,979</b>	<b>16.7</b>	<b>34,450</b>	<b>82.5</b>

\* The cautioning scheme did not start until August, 1991

About half of all cautions issued to Aborigines were for property offences and about 14% were for good order offences. Few non-Aborigines were cautioned for good order offences, however, property, drug and traffic offences featured for the group (see Figure 11).

**Figure 11: Cautions issues by offence type**



### 3. Court Activity

The courts can be divided into three jurisdictions, namely the Higher courts (Supreme and District Courts), Courts of Petty Sessions and Children's Court. The Higher courts deal with the most serious offences (about 5% of all adult court appearances), while the Courts of Petty Sessions deal with the remaining 95% of criminal charges laid against adults. The Children's Court deals with all juvenile appearances.

### 3.1 Higher courts

There were 5,555 charges finalised in the Higher courts in 1997, less than in the previous year (6,149 charges) and considerably less than in 1995 (6,910 charges). About 3.4% of these charges were laid against Aboriginal people. A total of 2,370 distinct persons defended these charges, of whom 4.4% were Aboriginal.

Note, however, that in 33% of charges (and 41% of distinct defendants), the race of the individual was not recorded!

The large number of records with 'unknown' race details makes any analysis of trends or sentencing patterns extremely difficult. Therefore, caution should be exercised in interpreting the results that are presented. In the analyses that follow, an 'unknown' race category has been included to fully describe these cases.

#### *Plea*

**Figure 12: Plea by race, higher court charges 1997**

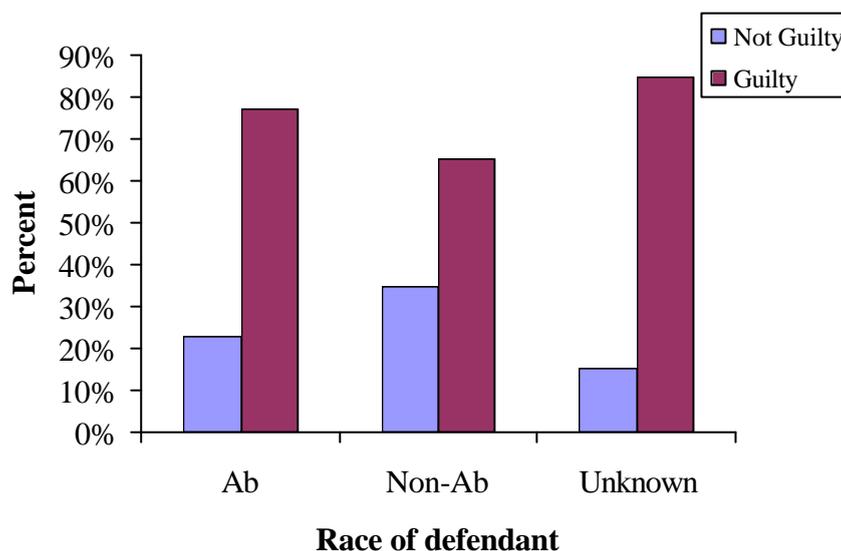


Figure 12 shows how plea varies with race. In 1997, Aboriginal defendants were significantly more likely to plead guilty to offences in the Higher court<sup>1</sup>. More than three-quarters (77%) of Aborigines pleaded guilty, compared with less than two-thirds (65%) of non-Aborigines.

Of those that pleaded not guilty, about 39% of charges faced by Aborigines eventually resulted in conviction, while 42% of non-Aboriginal charges also resulted in conviction. There was no statistical difference in the 'conviction rate' of Aboriginal and non-Aboriginal defendants, once the effect of plea had been controlled.

The overall conviction rate of the Higher court is quite high. Including cases where the defendant pleaded guilty, about 86% of charges against Aborigines result in

<sup>1</sup> Chi-square=11.96, df=2, p=0.003

conviction and about 80% of non-Aboriginal charges resulted in conviction (see Table IX).

**Table IX: Higher court results by race, all charges 1997**

<b>Result</b>	<b>Ab</b>	<b>Non-Ab</b>
<b>Convicted - <i>pleaded guilty</i></b>	77%	65%
<b><i>pleaded not guilty</i></b>	9%	15%
<b>Other</b>	14%	20%
<b>Total</b>	<b>100%</b>	<b>100%</b>

### ***Penalties***

A breakdown of the range of penalties issued by the Higher courts, by defendant race, is presented in Table X. As the table shows, equal proportions of Aborigines and non-Aborigines (79%) were sentenced to terms of imprisonment by the court. However, only a small percentage of Aborigines were fined (1%), compared with 7% of non-Aborigines, and one in five (20%) Aborigines received non-custodial sanctions (community-based orders, intensive supervision orders, etc), compared with 14% of non-Aborigines. The differing usage of non-custodial options (that is, fines versus other orders) by the courts is statistically significant<sup>2</sup> and suggests that the courts favour the use of financial options (fines) for non-Aborigines and less pecuniary orders for Aboriginal offenders.

**Table X: Higher court penalties by race, all charges 1997.**

<b>Penalty</b>	<b>Ab</b>	<b>Non-Ab</b>
<b>Fine</b>	1%	7%
<b>Non-custodial orders</b>	20%	14%
<b>Custody</b>	79%	79%
<b>Total</b>	<b>100%</b>	<b>100%</b>

These results differ somewhat from those reported in Harding et al (1995). Using 1993 Higher court data, the earlier researchers found that Aborigines in WA were significantly *more* likely to be incarcerated than non-Aborigines. However, since that time a number of changes to sentencing legislation have occurred and it is likely that these have affected the sentencing patterns of the Higher courts. Legislative changes have included the abolition of short sentences; an expanded set of non-custodial options, and some mandatory sentencing for certain offenders and offences.

### ***Sentence length***

The sentence lengths of charges resulting in conviction and imprisonment were examined and compared (see Table XI). The table shows the median sentence length (in months) of Aboriginal and non-Aboriginal cases (charges) in 1997.

<sup>2</sup> Chi-square=9.4, df=2, p=0.009

**Table XI: Median sentence length (imprisonment only), higher court charges, 1997**

Offence group	Ab	Non-Ab
	median (in months)	
Homicide*	-	144
Assault	24	18
Sex offences	24	24
Other person	24	18
Rob/extort	57	48
Burglary	12	24
Fraud/Theft	4	18
Property*	19.5	24
Good Order*	4	12
Drugs/Other*	-	15
<b>Total</b>	<b>18</b>	<b>24</b>

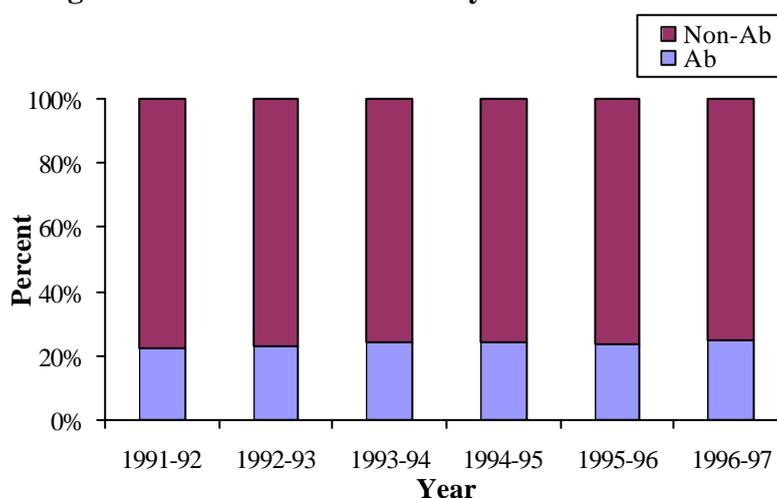
\* For these offences, the number of cases involving Aborigines were too small to conduct reliable tests.

Median tests of these sentence lengths found statistical difference in the Burglary and Fraud/Theft categories only.<sup>3</sup> In both categories, the imprisonment sentences imposed on Aboriginal offenders were significantly *shorter* than the sentences handed down to non-Aboriginal offenders.

### 3.2 Courts of Petty Sessions

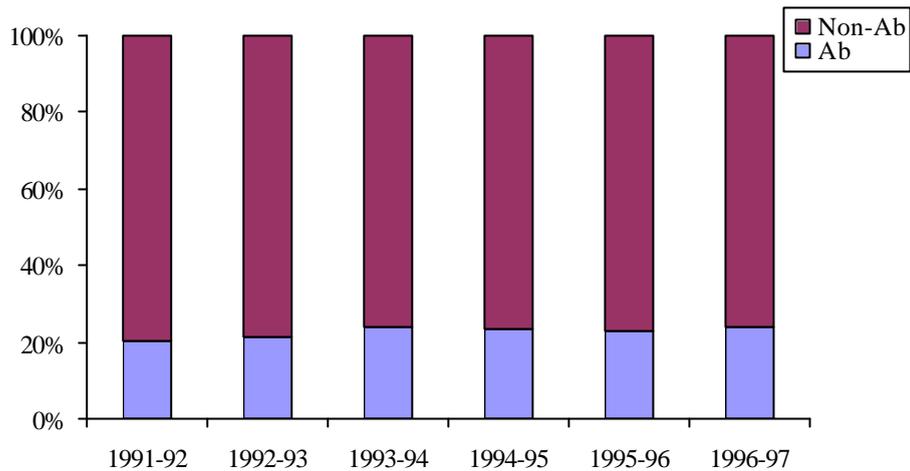
Data about the activities of the adult lower courts (Courts of Petty Sessions) have been limited in WA. The following information has been obtained from the ABS (Cat. No. 4504.5 and 4502.5) and is based on police records of court outcomes of charges laid by the WA Police Service. It is anticipated that the collection and reporting of lower court data will improve in the near future, following changes to computer case management systems at the WA Ministry of Justice.

**Figure 13: Charges finalised in Courts of Petty Sessions**



<sup>3</sup> Burglary: chi-square=3.9, df=1, p=0.0482  
 Fraud/Theft: chi-square=4.97, df=1, p=0.026

**Figure 14: Distinct persons prosecuted in Courts of Petty Sessions**



As Figures 13 & 14 show, Aborigines have accounted for almost one in four persons/charges dealt with by the courts.

Conviction rates in the lower courts are very high (greater than 95%), for all offence groups and for all types of offenders (Aboriginal/non-Aboriginal, male/female, young/old).

### 3.3 Children's Court

In 1997, young Aborigines accounted for 19% of offenders and 32% of all offences heard by the Children's Court. Note, however, that in 41% of offender records (and 43% of offence records), the race of the offender was not recorded.

About half (53.2%) of Aboriginal juveniles had their cases heard by the Perth Court.

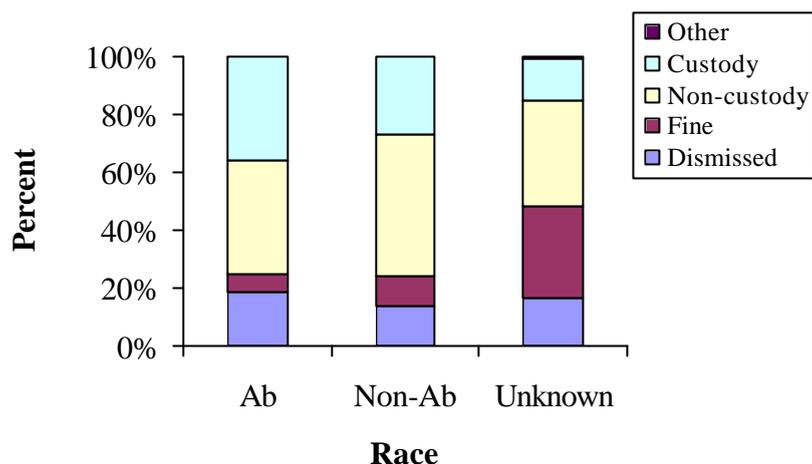
Where race was recorded, about 81% of charges against Aboriginal juveniles resulted in conviction, compared with 71% for non-Aborigines (see Table XII).

**Table XII: Children's court results, all charges 1997**

<u>Result</u>	<u>Ab</u>	<u>Non-Ab</u>	<u>Unknown</u>
<b>Guilty</b>	81%	71%	77%
<b>Other</b>	19%	29%	23%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Of convicted charges, about one-third (35%) of those against Aborigines received a custodial sentence, compared with 27% for non-Aborigines. The most common sanctions were non-custodial orders - about 40% of Aboriginal charges and about 49% of non-Aboriginal charges received such sanctions (see Figure 15).

**Figure 15: Penalties imposed by the Children's Court, 1997**



#### 4. Non-custodial orders

Non-custodial orders are sentences imposed by the courts that do not involve a period of detention or imprisonment. As alternatives to imprisonment, some of these orders provide offenders with an opportunity to engage in a number of hours of community work and/or undertake special training or educational programs.

In late 1996, the range of non-custodial orders available to the courts was overhauled by the *Sentencing Act 1995*, the *Sentence Administration Act 1995* and the *Sentencing (Consequential Provisions) Act 1995*. The effect of these changes was to replace the use of good behaviour bonds, community service orders (CSO) and probation with a wider range of alternatives including intensive supervision orders (ISO), community-based orders (CBO) and conditional release orders (CRO). The use of suspended sentences and spent convictions were also reviewed by the *Sentencing Act*.

**Figure 16: Participation of Aborigines in non-custodial orders, 1990-97**

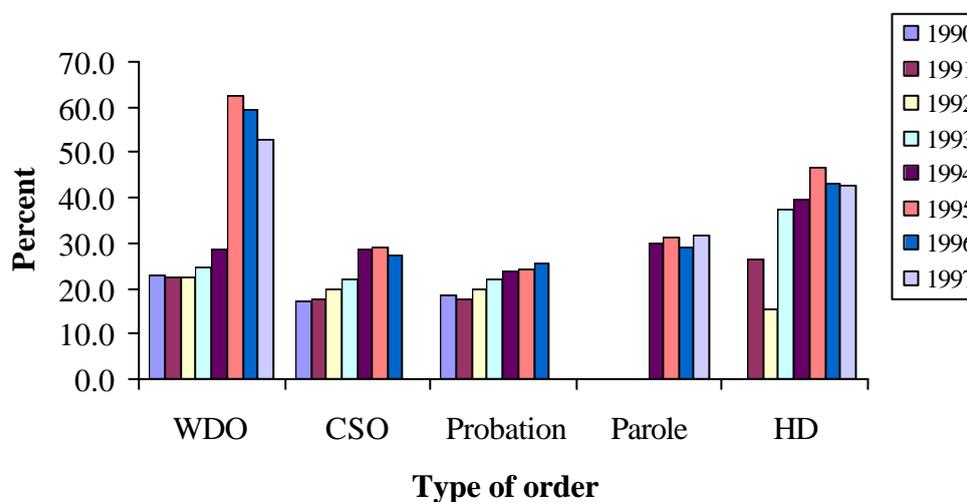
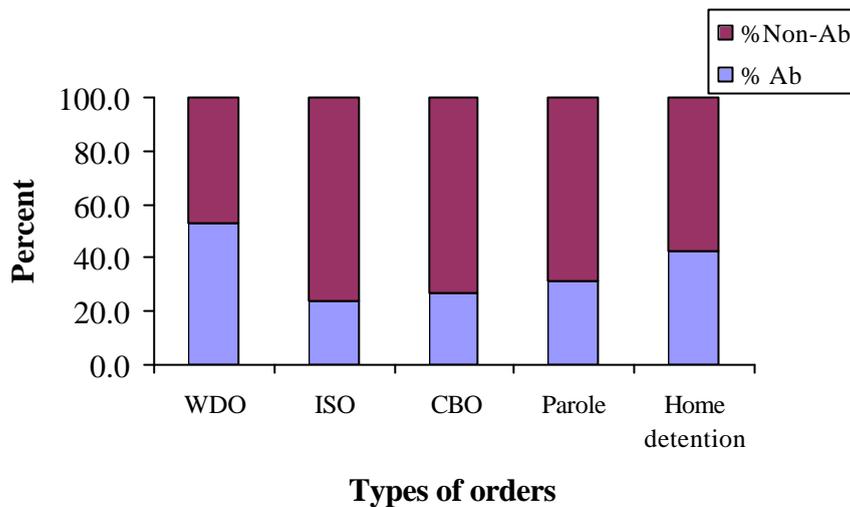


Figure 16 presents trends in the level of Aboriginal participation in non-custodial orders, from 1990 to 1997, for work and development orders (WDO), community service orders (CSO), probation, parole and home detention orders (HDO). Note that CSO and probation orders were abolished by the Act, so trends for these orders cease at the end of 1996.

As the figure shows, Aboriginal participation in almost all types of non-custodial orders has increased over the past seven years. For example, the level of Aboriginal participation in CSO increased from about 17% in 1990 to more than 27% by 1996. In 1997, Aborigines accounted for 27% of community-based orders (CBO) - see Figure 17.

**Figure 17: Aboriginal participation in non-custodial orders, 1997**



Note that since 1995, the level of Aboriginal involvement in work and development orders has increased significantly. Prior to that time, WDOs were extensively used in cases of fine default and Aborigines accounted for about one-quarter of all WDOs issued annually. However, after the introduction of the *Fines, Penalties and Infringement Notices Enforcement Act* (1995), the number of offenders subject to WDOs for the non-payment of fines dropped dramatically from 12,742 in 1994 to only 189 in 1995, and of this smaller group, Aborigines accounted for 62%. Since that time, the number of offenders serving WDOs for non-payment of fines has increased from 189 in 1995 to 1,311 in 1997, with Aborigines still accounting for a large proportion of these offenders.

***More about work and development orders in 1997:***

- Aborigines accounted for 53% of all offenders issued with work and development orders.
- 37% of Aborigines issued with WDOs were female. In contrast, only 20% of non-Aborigines issued with WDOs were female.
- Young offenders (aged between 18 and 25 years) made up 48% of Aborigines serving WDOs.

- WDOs issued to Aboriginal offenders were mostly for good order offences (33%), burglary/theft offences (25%) and against person offences (22%).
- Of WDOs issued to Aboriginal offenders in 1997, about 31% were breached either through non-compliance or through re-offending, while the breach rate for non-Aborigines was slightly higher at 36%.

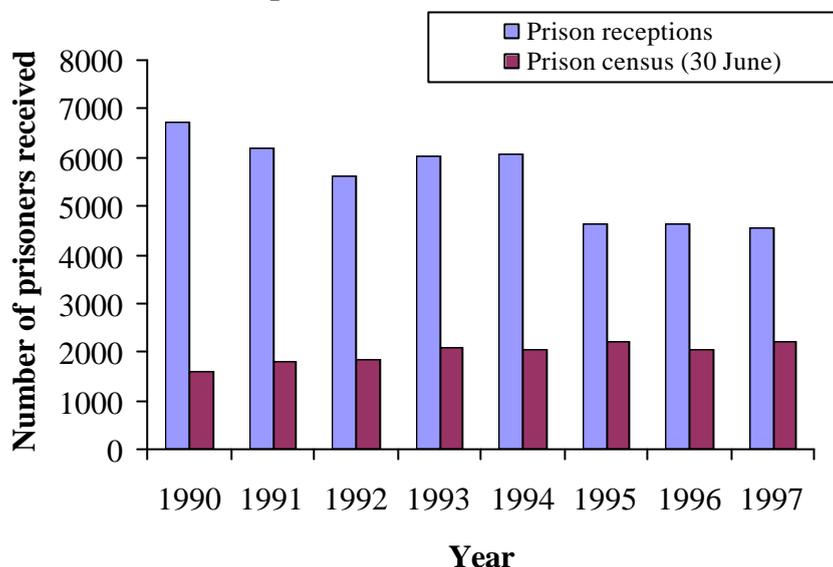
**More about intensive supervision orders (ISO) and community-based orders (CBO) in 1997:**

- Both of these types of orders were *ənewə* in 1997. There were 904 orders of this kind issued. As Figure 17 (above) shows, Aborigines accounted for about 24% of ISOs and 27% of CBOs.
- Aboriginal women were more likely to be issued with CBOs rather than ISOs. They accounted for 33% of CBOs and 22% of ISOs issued to Aboriginal people.
- Young people (aged between 18 and 25 years) served most of these orders. They accounted for 45% of CBOs and 54% of ISOs issued to Aboriginal people.
- ISOs issued to Aboriginal people were mostly for violent offences (44%) and burglary/theft offences (30%), while CBOs were issued mostly for motor vehicle/driving offences (28%) and burglary/theft offences (27%).
- CBOs are generally served in a shorter time span than ISOs. Almost 28% of CBOs issued to Aboriginal people were required to be completed within 6 months. The median length of CBOs for Aboriginal offenders was 355 days - about the same as for non-Aboriginal offenders (360 days). However, the median length of ISOs for Aboriginal offenders was 364 days - considerably shorter than the length of ISOs for non-Aboriginal offenders (536 days).
- Of orders completed (at the time of data extraction), about 21% of CBOs and about 49% of ISOs issued to Aborigines had been unsuccessfully completed (breached) either by non-compliance or through re-offending.

## 5. Aborigines in Custody

### 5.1 Adult imprisonment

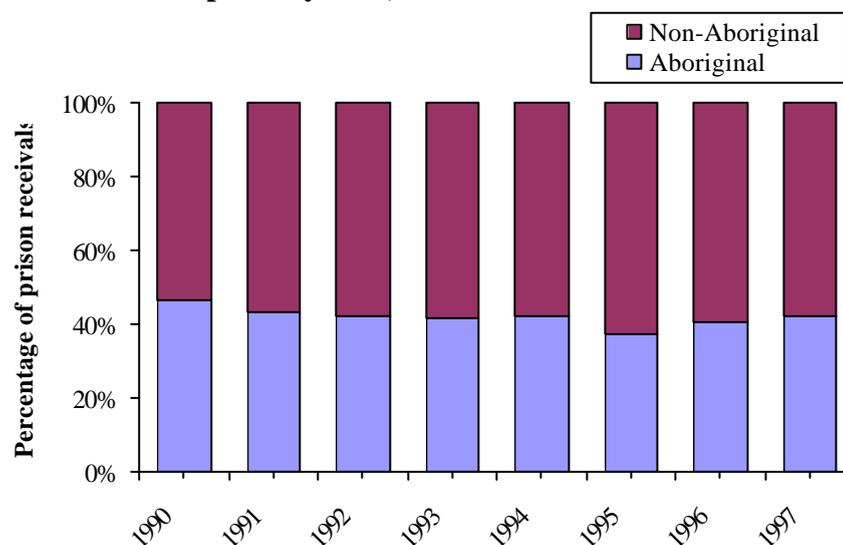
**Figure 18: Trends in adult imprisonment, 1990-97**



Since 1990, the number of offenders received into WA prisons has progressively declined (Figure 18). The largest decline was experienced in 1995 when receivals fell by 23%. This was largely due to reductions in the numbers of people imprisoned for fine default, following the introduction of fines enforcement legislation.

The proportion of Aboriginal offenders entering prison has fallen only slightly during this period (Figure 19) from about 43% of all receptions to 41%. In the case of prison census statistics, the proportion of Aborigines in gaol each year on December 31st has remained fairly constant at about one-third of the daily prison population.

**Figure 19: Prison reception by race, 1990-97**



**Table XIII: Rates of adult imprisonment by Australian jurisdiction - July 1997 (per 100,000 adult population)**

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Australia
<b>Sentenced Prisoner Receptions (Jan-Dec 1997)</b>									
<b>Fine default</b>	n.a	1.6	77	139.1	26.1	42.3	469.1	-	n.a
<b>Other sentenced</b>	n.a	60	228.1	167.9	170.3	121.2	687.3	-	n.a
<b>Total</b>	n.a	61.5	305.1	307	196.4	163.5	1156.4	-	n.a
<b>Average Daily Prisoner Population</b>									
<b>Males</b>	254.5	145.9	289.1	248.1	310.7	145	845	117.2	238.2
<b>Females</b>	13.9	8	15.3	14.9	22	3.3	31.3	9.8	13.2
<b>Total</b>	132.2	75.4	151.3	129	166.1	72.5	461.5	62.7	124
<b>Indigenous Prisoner Population</b>									
<b>Aborigines</b>	n.a	930.8	1670	2230.9	2479.5	364.6	1488.3	726	n.a
<b>Non-Aborigines</b>	n.a	72.2	116.8	108.3	113.7	67.5	173.1	58.1	n.a
<b>Abl:Non-Abl ratio</b>	n.a	12.9	14.3	20.6	21.8	5.4	8.6	12.5	n.a

Table XIII summarises national imprisonment rates as compiled by the National Corrective Services Statistics Unit, ABS. Based on average daily prisoner population, WA ranks second to the NT in rates of adult imprisonment. The Australian average daily adult imprisonment rate for 1997 was 124 per 100,000 persons, while the WA rate was 34% higher at 166 per 100,000 persons.

WA had both the highest Aboriginal imprisonment rate of all Australian states at 2,479 per 100,000 persons and the largest difference between Aboriginal and non-Aboriginal imprisonment rates. The imprisonment rate of Aborigines in WA was 22 times greater than that of non-Aborigines.

***Other facts about imprisonment:***

- In 1997, Aborigines made up 1,924 out of 4,547 (42%) receptions to prison. Of those received on remand, 46% were Aboriginal. Of those received as sentenced prisoners, 54% were Aboriginal. One in ten Aborigines entering prison was for reasons of fine default.
- The total number of persons entering prison for fine default in 1997 (334) was almost double that in 1996 (175). These figures are still far below those recorded prior to the introduction of the Fines Enforcement System, however, the potential still exists for the system to impact negatively on some sectors of the community, particularly Aboriginal people.
- Aborigines accounted for 57% of all fine defaulters entering prison in 1997, 56% of all receptions with finite sentences and 35% of all receptions serving parole sentences.
- Females made up 17% (175 out of 1039) of Aboriginal prison receptions. Nearly half of these women (48%) were in gaol for non-payment of fines.

- Non-payment of fines related mainly to good order offences (37%) and offences involving burglary/theft (25%).
- For Aboriginal fine defaulters, most sentences (74%) were less than 30 days in length. Females had slightly shorter sentences than males.
- For Aboriginal finite sentences, most (58%) were between 6 months and 1 year in length. For Aboriginal parole sentences, most (75%) were over 12 months in length.

## 5.2 Police lockups

Trends in the number of admissions to WA police lockups are presented in Table XIV for the period from 1994 to 1997. As the table shows, the number of Aboriginal people admitted to police lockups fell slightly in 1997, due to declines in the number of receptions for public drunkenness. Drunkenness accounted for about one-third (31% or 6,131) of Aboriginal receptions to lockups.

**Table XIV: Trends in receptions to WA police lockups 1994-1997**

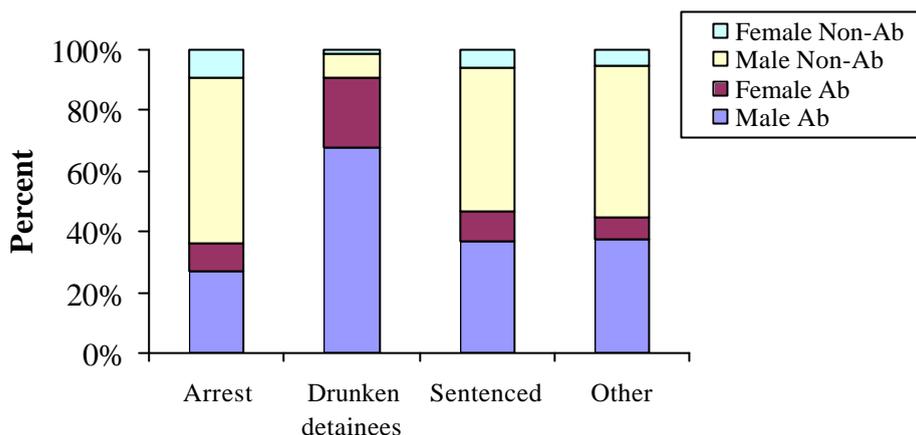
	1994	1995	1996	1997
<i>Aborigines</i>				
Receptions	22,413	18,744	20,148	19,760
Receptions for drunkenness - n	8,283	8,328	8,382	6,131
Receptions for drunkenness - %	37.0	44.4	41.6	31.0
Distinct persons received	7,579	6,651	7,181	7,382
Receptions per person	3.0	2.8	2.8	2.7
% population locked up	14.1	12.1	12.8	12.9
% juvenile	9.7	11.6	11.1	12.1
% female	25.9	24.7	26.3	27.9
<i>Non-Aborigines</i>				
Receptions	23,209	19,277	20,937	22,065
Receptions for drunkenness - n	321	398	459	578
Receptions for drunkenness - %	1.4	2.1	2.2	2.6
Distinct persons received	15,179	12,832	14,230	14,495
Receptions per person	1.5	1.5	1.5	1.5
% population locked up	0.9	0.8	0.8	0.8
% juvenile	6.7	7.2	6.3	6.9
% female	13.6	13.0	13.0	13.9

Note, however, that while *receptions* declined in 1997, the number of *distinct Aboriginal persons* who were locked up did *not* decline. There were 7,382 different individuals placed into police custody during that year - averaging about 3 receptions per person over the 12 month period. In terms of prevalence, this means that about one in every eight Aborigines in WA was admitted to a police lockup *at least once* during 1997. Compared with non-Aborigines, Aborigines were more than 16 times more likely to be admitted to a police lockup during that year.

Juveniles made up about 12% of Aboriginal receptions and females made up more than one-quarter (28%) of Aboriginal receptions. Compared with non-Aborigines, young Aborigines and Aboriginal women were twice as likely to be admitted to a police lockup than their non-Aboriginal counterparts.

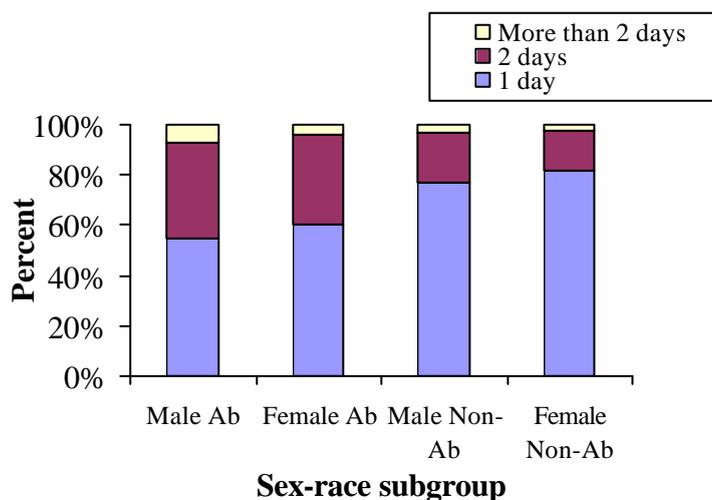
Figure 20 provides a breakdown of lockup receptions by sex, race and receipt type (reason). As the figure shows, Aborigines (male and female) feature most predominantly in the public drunkenness category of lockup admissions.

**Figure 20: Lockup receipts by sex and race, 1997**



Stays in police lockups are characteristically short - 95% of all receipts in 1997 had a stay of one or two days (see Figure 21). Non-Aborigines generally spend less time in police lockups than Aboriginal people. For example, more than three-quarters (77%) of male non-Aborigines stayed for a single day, compared with 54% of male Aborigines; 82% of female non-Aborigines stayed for a single day compared with 60% of female Aborigines.

**Figure 21: Length of stay in police lockups, 1997**



### 5.3 Juvenile detention

National data on the number of juveniles held in juvenile detention centres are published by the Australian Institute of Criminology (AIC) and are presented in Table XV for 1997. As the table shows, the juvenile detention rate in WA was 53 per 100,000 juveniles—higher than all other States, except NT, and 1.4 times higher than the national rate. The detention rate of young Aborigines was 38 times that of non-Aboriginal youth.

**Table XV: Census of persons aged 10-17 on 30 June in juvenile detention by jurisdiction, 1990-1997**

Juvenile detention <i>As at 30 June 1997</i>	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Aust
N	357	71	100	111	77	22	21	16	775
Rate per 100,000 pop	52.2	14.3	25.3	53.0	47.7	38.1	91.5	45.8	37.6
Male rate	94.5	25.1	43.7	92.8	85.6	64.6	177.3	78.3	66.9
Female rate	7.8	2.9	5.8	10.8	7.6	10.6	0.0	11.7	6.6
Aboriginal rate	914.6	243.9	360.9	782.9	489.1	343.1	227.4	810.8	552.1
Non-Aboriginal rate	33.6	12.8	12.1	20.4	38.0	28.8	7.1	37.6	23.2
<i>Ab'l:Non-Ab'l ratio</i>	<i>27.2</i>	<i>19.1</i>	<i>29.8</i>	<i>38.3</i>	<i>12.9</i>	<i>11.9</i>	<i>32.2</i>	<i>21.5</i>	<i>23.8</i>

Source: Compiled from figures in *Persons in Juvenile Corrective Institutions 1990-1995*, by Atkinson and Dagger, and *Persons in Juvenile Corrective Institutions Nos 75 and 79* by K Higgins, Australia Institute of Criminology.

### 5.4 Deaths in Custody

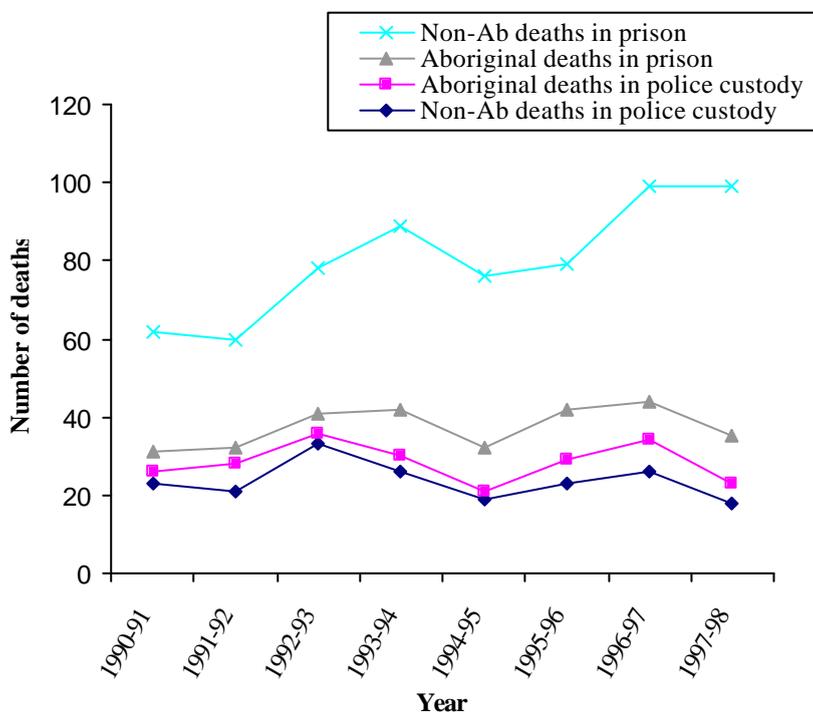
Statistics relating to deaths in custody are published routinely by the Australian Institute of Criminology. Latest figures were obtained from a number of AIC publications including *Australian Deaths in Custody & Custody-Related Police Operations, 1990-91 to 1996-97* and *Australian Deaths in Custody & Custody-Related Police Operations, 1997-98*.

The following major points (and Table XVI) have been extracted from *Australian Deaths in Custody & Custody-Related Police Operations, 1997-98* (Dalton, 1998):

- There were 99 deaths in custody during the year ended 30 June 1998. Twenty-three of these deaths occurred in police custody or custody-related police operations and 76 in prison custody. No juvenile died in the custody of a juvenile justice agency during the 12-month period (see Table XVI).
- Seventeen of the 99 deaths were of Aboriginal or Torres Strait Islander people.
- Six women died in custody during the period.
- *More people died in Australian prisons during 1997-98 than in any other 12-month period over the last 18 years.* (emphasis added)

- Deaths in prison custody have risen steadily over the last 18 years, from 28 deaths in 1980-81 to 76 deaths in 1997-98. During the Royal commission period, prison deaths averaged 31 per year and accounted for 61 per cent of all custodial deaths. Between 1990-91 and 1996-97 the number of deaths of both Aboriginal and non-Aboriginal people have risen significantly; increasing to 76 deaths (or 88 per cent of all institutional custodial deaths) in 1997-98.
- In recent years the number of Aboriginal and Torres Strait Islander people in Australia's prisons has continued to increase, as has their level of over-representation in both police and prison custody.
- The overall number of deaths in all forms of police custody fell over the 12-month period from 34 deaths to 23 deaths. The significant decrease was in the number of deaths in custody-related police operations (from 21 to 8 deaths). It is encouraging to note the decline over the last 12 month period in the number of deaths resulting from high-speed police pursuits (down from 9 in 1996-97 to 5 in 1997-98) as well as fewer deaths as a result of self-inflicted gunshot wounds during siege situations (down from 7 in 1996-97 to 2 in 1997-98).

**Figure 22: Australian deaths occurring in custody or related operations, by Aboriginality for the period *after* the Royal Commission, from 1990-91 to 1997-98.**



**Table XVI: Australian deaths occurring in custody or related operations, by Aboriginality for the period *after* the Royal Commission, from 1990-91 to 1997-98.**

Year	Police		Prison or Juv. Detention			Total			
	Ab	Non-Ab	Total	Ab	Non-Ab	Total	Ab	Non-Ab	Total
1990-91	3	23	26	5	31	36	8	54	62
1991-92	7	21	28	4	28	32	11	49	60
1992-93	3	33	36	5	37	42	8	70	78
1993-94	4	26	30	12	47	59	4	73	77
1994-95	2	19	21	11	44	55	2	63	65
1995-96	6	23	29	13	37	50	19	60	79
1996-97	8	26	34	10	55	65	18	81	99
1997-98	5	18	23	12	64	76	17	82	99
<b>Total</b>	<b>38</b>	<b>189</b>	<b>227</b>	<b>72</b>	<b>343</b>	<b>415</b>	<b>87</b>	<b>532</b>	<b>619</b>

## 6. Summary

Some of the main points to emerge from this overview are:

- The victimisation rate of Aboriginal people, particularly Aboriginal women, is very high. The risk of being a victim of a violent crime is 5 times greater for Aborigines than for non-Aborigines. Aboriginal women are 12 times more likely to be victims of an assault than non-Aboriginal women.
- Domestic violence is a major issue for Aboriginal women. Compared with non-Aboriginal females, Aboriginal women are more than 40 times more likely to become victims of spousal violence.
- The involvement of Aboriginal women in the criminal justice system is increasing. Arrest rates of Aboriginal women have increased steadily since the early 1990s. Participation in non-custodial orders has increased, especially work and development orders, and the number of Aboriginal women entering prison for fine default is beginning to rise, after the dramatic decline experienced after the introduction of the Fines Enforcement system in 1995.
- It is encouraging that juvenile arrest rates (both Aboriginal and non-Aboriginal) have declined and that the proportion of cautions issued to young Aborigines is increasing. However, there is some evidence that the introduction of diversionary schemes such as cautioning and juvenile justice teams may have widened the net of young people coming into contact with police and the justice system. The arrest rate of very young Aboriginal children is still much higher than that of non-Aboriginal children.
- Arrests for good order offences appear to have declined during the mid-1990s, particularly in the Kimberley, Central and South Eastern regions. This may be because of Aboriginal street patrols in the major towns of these regions.

- The interaction between Aboriginal people and the Courts has been difficult to assess because of the high level of non-recording of ethnicity details in the court-based information systems of the Ministry of Justice. In order to effectively monitor the effect of sentencing practices on Aboriginal people, the Ministry *must* improve its recording of ethnicity (or, at least, 'Aboriginality') of offenders appearing before the Courts.
- Our (limited) analysis of higher court data found that Aboriginal defendants were significantly more likely to plead guilty to offences than non-Aborigines. Conviction rates of Aboriginal and non-Aboriginal defendants were about the same, as were the proportions sentenced to terms of imprisonment. However, there was some evidence that the courts favour the use of fines as non-custodial sanctions for non-Aboriginal offenders, while preferring less pecuniary options for Aborigines. Our analysis also found that for burglary and theft offences (only), Aborigines were more likely to receive shorter sentences than non-Aborigines.
- With regards to community-based sanctions, there is evidence that the utilisation of almost all types of non-custodial options for Aboriginal offenders has increased since the early 1990s. 'Newer' orders, such as Intensive Supervision orders (ISOs) and Community-based orders also appear to be involving a significant number of Aboriginal offenders. However, the successful completion of orders varies with order type and, to some extent, with race.
- Regarding prisons, the number of receptions has declined during the 1990s, however, the proportion that are Aboriginal has stayed fairly constant. WA continues to record the highest rate of Aboriginal imprisonment in all Australian states and maintains the greatest differential between Aboriginal and non-Aboriginal imprisonment rates.
- The introduction of fines enforcement legislation in 1995 had a dramatic effect on prison receptions - these dropped by almost 25% in the first 12-months. However, there are signs that fine-defaulters are beginning to re-appear in the prison reception population. This situation, as well as other side effects of the legislation such as the increased number of people driving while under suspension, need to be kept under careful review.

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