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South Australia Juvenile Justice and Criminal Justice Research on Conferencing and Sentencing

Technical Report No. 3
3rd Edition

Sexual Assault Archival Study (SAAS):
An Archival Study of Sexual Offence Cases Disposed in Youth Court and by Conference and Formal Caution in South Australia

by

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SAJJ-CJ Technical Report No. 3, 3rd Edition

Preface to the Third Edition

This third edition of *Technical Report No. 3* updates the second edition published in September 2005 (Daly et al. 2005). It describes studies that has been carried out and completed since the second edition and gives up to date citations to recently published papers. Unlike the second edition, this edition does not introduce new results.

In December 2003, we published the first edition of *Technical Report No. 3* (Daly et al. 2003a), which described the materials gathered and how they were coded, and presented selected results from the Sexual Assault Archival Study (SAAS) in the *Final Report* (Daly et al. 2003b). During 2004, after further cleaning of the data, the dataset was revised. The revisions were prompted by an analysis of sentencing remarks for 55 finalised, judge-sentenced court cases. The remarks revealed some inaccuracies in the data we had received from the South Australia Justice Data Warehouse for cases that went to trial, and they filled some gaps in the court's Certificates of Record and the Police Apprehension Reports. The changes made to the dataset had a negligible effect on the results presented in early publications (Daly 2005a; Daly and Curtis-Fawley 2005).

In September 2005, we produced *Technical Report No. 3*, second edition, to reflect these changes to the dataset. The second edition of *Technical Report No. 3* differed from the first edition in several ways. The background section was expanded, with more information on the context of the juvenile justice system in South Australia and the sentencing options available to Youth Court judges and magistrates. New appendices explained the coding procedures for handling missing data and gave more information on the types of sanctions (or outcomes) received. A new section was added, Part IV, which presented summary findings. These findings, based on the revised data, superseded those reported in the *Final Report* (August 2003).

Note on terminology
We are mindful of the terminology that ideally should be used to describe complainants (victims) and those accused of crime. Legally speaking, only those young people who have admitted to an offence (or are found guilty) can be termed "offenders;" thus, the term is appropriate for all the formal caution and nearly all the conference cases, but it is not appropriate for half of court cases that were dismissed or withdrawn. We use the terms "young people" or "youth" to describe the accused more generally, and "defendants" when referring to the court cases; however, when describing some elements of the case, such as relationships and age differences we use the standard term "victim-offender." Some argue that a complainant is not a victim unless there is a legal determination that an accused person is an offender, but we use victim for ease of presentation. We are also mindful that a police report on the offence "facts" is a record of alleged offending (by a victim, complainant, and witnesses), coupled with the report writer's interpretation of a suspect's attitude and words. We refer to the suspect's reported actions as offending or alleged offending.

Note on accuracy of legal context
Our summary of the legal context and uses of conferencing is accurate as of July 2007.

Sexual Assault Archival Study (SAAS): An Archival Study of Sexual Offence Cases Disposed in Youth Court and by Conference and Formal Caution in South Australia

Study context

The Sexual Assault Archival Study (SAAS) is one of several studies in a programme of research on the race and gender politics of new justice practices in Australia, New Zealand, and Canada. It has two empirical components: studies of the appropriateness of restorative justice (RJ) in cases of sexual, partner, and family violence; and of white-Indigenous justice relations in sentencing practices (i.e., Indigenous sentencing courts and Community Justice Groups). Since 2003, these components have overlapped as we explore the views of Indigenous and non-Indigenous women toward restorative justice in cases of partner and family violence, and how family violence cases are handled in Indigenous sentencing courts.

The Sexual Assault Archival Study (SAAS) is part of the first component, the technical features of which are reported in this document. A content analysis of judicial sentencing remarks for 55 cases has also been carried out (Bouhours 2006; Bouhours and Daly 2007; Daly and Bouhours 2007). Further analyses of the SAAS dataset are underway; they include analyses of attrition of sexual cases in court, re-offending, and the character and diversity of youth sex offending.

In addition to the quantitative dataset, we gathered more in-depth qualitative data on sexual assault and family violence cases that went to conference (see Daly et al. 2007 for the technical report of the in-depth study). To date, one article has been published on the sexual assault cases (Daly and Curtis-Fawley 2006), and a second, on family violence, is forthcoming (Daly and Nancarrow 2007). Daly and Curtis-Fawley (2006) analysed two sexual assault cases, having adolescent offenders and victims, and described the experiences of the victims as their cases moved from reporting the offence to the police, to the pre-conference period, the conference itself, and their reflections on the experience. Daly and Nancarrow (2007) took a similar approach, but the cases were of sons assaulting their mothers.

Other studies by the research group include interviews of victim advocates or opinion leaders in Australia (Curtis-Fawley and Daly 2005); interviews of Indigenous and non-Indigenous women's views on restorative justice in the response to sexualised and gendered violence (Nancarrow 2003, 2006); and observational and interview studies of urban Indigenous sentencing courts and other justice practices in more remote areas of Australia (Marchetti and Daly 2004; Marchetti and Daly 2007). A special issue of *Theoretical Criminology* on Gender, Race, and Restorative Justice (2006) has been produced (co-edited by Daly with Kimberly Cook and Julie Stubbs); in that issue and elsewhere (Daly and Stubbs 2006; Daly 2005b; Daly and Stubbs 2007) are overviews of feminist engagement with restorative justice and the race and gender politics of new justice practices in Australia, New Zealand, and Canada.

The current project (2001-03) differs from the South Australia Juvenile Justice (SAJJ) Research project on conferencing (1998-99), which analysed the dynamics and outcomes of conferences for youthful offenders in South Australia. *SAJJ Technical Reports Nos. 1* and *2* describe this first major SAJJ project and its instruments. Many papers have been published using the SAJJ 98-99 datasets. All the published work relating to these two programmes of research is available at the Project Director's website, www.griffith.edu.au/school/ccj/kdaly.html .

Abstract

SAJJ-CJ Technical Report No. 3 (3rd edition) describes the documents gathered, outlines how they were prepared for analysis in the Sexual Assault Archival Study, and provides some descriptive results from the project. Several follow-up studies are currently in progress, and there are more planned publications coming from the study's datasets. Part I gives the study's background and context, situating it in feminist debates on the appropriateness of restorative justice in cases of sexualised and gendered violence. Part II details the data collection and coding of the sexual offence cases dataset, describing the temporal context, sampling frame, data gathered, and creation of the variables and codebook. Part III describes how the criminal histories dataset was assembled. Part IV provides some descriptive results, and Part V reflects on the research process. Several Appendices provide further documentation on the administrative and legal contexts of youth justice cases, definitions of offences, variable construction, offence classification, penalties, and statistical summaries.

How research actually gets done, including the constraints and opportunities in the research process, are rarely described in the literature. Research students, in particular, are hungry to learn about the "doing" of research, but the research record largely reflects the "reconstructed logic" of the research enterprise, rather than its "logic in use" (Kaplan 1964). Our aim is to foreground the "logic in use" in the Sexual Assault Archival Study and to make a methodological contribution to research on restorative justice and the handling of sexual violence in the legal process.

Acknowledgments

The Sexual Assault Archival Study was one of several studies funded by an Australian Research Council Large Grant (Daly, Chief Investigator, 2001-03, with continued ARC funding in 1004-2006). Grant funds were augmented by the Australian American Fulbright Commission, which sponsored Sarah Curtis-Fawley to live and work in Australia from October 2001 to October 2002. The project could not have gone forward without considerable in-kind support and the cooperation of the South Australian Police and the Courts Administration Authority. The South Australian Youth Court and the Family Conference Team provided staff support and office infrastructure; the South Australian Police provided key police documents; the South Australian Justice Data Warehouse provided the data for the sexual offence cases and criminal histories datasets; and the South Australian Office of Crime Statistics and Research supplied data on offence classifications. The archival study data and documents were identified and collected in South Australia (the Youth Court in Adelaide) during October to December 2001; they were

coded and analysed in Queensland (School of Criminology and Criminal Justice, Griffith University), beginning in March 2002, with preliminary results reported in May 2003 and further revisions of the dataset in 2004 and 2005.

Many people have contributed to the success of this project, and we are grateful for their generosity. In particular, the support and assistance of (the then) Senior Youth Court Judge Andrea Simpson, (the then) Youth Court Manager Janet Kitcher, Senior Youth Justice Coordinator Carolyn Doherty, Senior Sergeant Dave Wardrop, and Senior Consultant Maire Mannick were pivotal in the planning and execution of the research.

In preparing the first and second editions of *Technical Report No. 3*, we thank Thierry Bouhours, Hennessey Hayes, Heather Nancarrow, and Ian Nisbet for their comments; Youth Justice Coordinator Grant Thomas for providing documents and advice on the legal contexts of conferencing in South Australia; and Senior Sergeant Peter Evans for advice on penalties.

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Part I
Background and Context

The past decade can be viewed as the coming of age of restorative justice[1] throughout the world, and particularly in Australia. A well-established form of restorative justice (RJ) for juvenile offenders, *diversionary conferencing*, now exists in all Australian states and territories (Daly and Hayes 2001, 2005). As RJ programs have gained credibility and support by practitioners and policy makers, some states have expanded their use, and others are now piloting them for adult offenders. Despite the growth of RJ programs in Australia and elsewhere, certain types of crime have been considered inappropriate for restorative interventions, most notably gendered and sexualised violence.[2]

The feminist and RJ advocacy literature has been marked by intense debate addressing the benefits and potential dangers of RJ for gendered and sexualised violence. The vigour of the debate has been limited by a paucity of empirical data: opponents and supporters of RJ rely on assumptions and may make comparisons with related but distinct practices, such as mediation. Research opportunities are limited because few jurisdictions use RJ for these offences. One Australian jurisdiction, South Australia, is an exception in that it routinely uses conferencing in youth justice cases gendered and sexualised violence. During 2001-03, the Sexual Assault Archival Study research team conducted a set of studies on the appropriateness of conferencing in cases of gendered and sexualised violence, drawing from data in South Australia. *SAJJ-CJ Technical Report No. 3* (3rd edition) describes the methods, data, and coding decisions used in one of these studies: an archival study of sexual offence cases disposed of by court, conference, and police formal caution in South Australia over a 6.5 year period, from 1995 to mid-year 2001.

1. Feminist debates on restorative justice

The Sexual Assault Archival Study (SAAS) is motivated by a dearth of knowledge on the application of RJ to sexualised violence, coupled with an interest in the politics of justice and the limits of law and legal reform to address sexualised violence. There are only two jurisdictions in the world, South Australia and New Zealand, that have routinely used an RJ process (conferencing) in responding to youth accused of sexual offences (largely sexual assault, but also including indecent behaviour). In all other jurisdictions, sexual offences have been placed off the restorative justice agenda. Sexual violence is generally considered "too sensitive" or "too risky" to be handled by an RJ conference or to be diverted from court prosecution.

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[1] The term r*estorative justice* refers to a variety of practices emerging worldwide, including conferencing, sentencing circles, and types of victim-offender mediation. Compared to established criminal justice, its procedures are more informal, and non-legal actors are given a prominent role. To date, RJ practices are largely used for admitted offenders, that is, in the penalty, not fact-finding phase of the criminal process (for overview, see Daly and Immarigeon 1998).

[2] *Gendered and sexualised violence* is an umbrella concept that captures Liz Kelly's (1988) idea of a continuum of violence: child sexual abuse, incest, sexual assault, rape, domestic violence, and family violence.

Several key arguments are used to bolster the position against using RJ in cases of gendered and sexualised violence.[3] They focus on concerns for the victim, assumptions made of "the community," the orientation of offenders, and the symbolic ramifications of RJ. The general assumption underlying a critical stance toward RJ is that gendered and sexualised violence should be dealt with "seriously" by the police and legal system, that is, by adjudication in juvenile or criminal court. Critical commentary (Acorn 2004; Busch 2002; Coker 2002; Goel 2000; Hooper and Busch 1996; Lewis et al. 2001; Shapland 2000; Stubbs 1995, 2002, 2004; see Curtis-Fawley and Daly 2005; Daly and Curtis-Fawley 2006; Daly and Stubbs 2006 for review) puts forward these points:

Concerns for victims

- RJ processes may put victims at risk of continued violence.
- An informal process can permit power imbalances to go unchecked and reinforce abusive behaviour.
- Some victims may be unable to advocate on their behalf effectively, and consensus building of a group may minimise a victim's interests.
- There may be pressure to accept an apology.
- Outcomes are not serious enough.
- There may be hopes raised in a victim's mind that an offender will change, when a relationship should be severed.
- Some victims may want the state to intervene on their behalf and do not want the burdens of participating in an RJ process.

Assumptions of "the community"

- Community norms may reinforce, not undermine male dominance and victim blaming.
- Friends and family may support victims, but they may also have divided loyalties.

Orientation of offenders

- RJ may not reduce re-offending.
- Offenders may view RJ processes as a "soft option," reinforcing their belief that violence is not wrong.
- Offenders may use RJ processes to diminish guilt, trivialise the violence, or shift blame to a victim.

Symbolic implications

- Informal process and penalties may appear to deliver "cheap justice" (Coker 1999).
- It will appear that serious cases are not being treated seriously, after decades of legal reform to respond to them as "real crime."

Although there are a variety of claimed potential problems with RJ processes for gendered and sexualised violence, there are also potential claimed benefits. Positive commentary (Blagg 2002;

[3] Most of the critical literature has addressed RJ for domestic violence rather than for rape, sexual assault, and child sexual abuse, although one may see similar arguments made across these disparate forms of violence. The literature on feminist critiques and concerns with RJ oriented our approach to the study and the identification of key variables for analysis.

Braithwaite and Daly 1994; Daly 2002; Hopkins, Koss, and Bachar 2004; Hudson 1998, 2002, 2003; Koss 2000; Martin 1998; Mills 2003; Morris 2002a, 2002b; Morris and Gelsthorpe 2000; Pennell and Burford 2002; Presser and Gaarder 2000; Snider 1998; see Curtis-Fawley and Daly 2005; Daly and Curtis-Fawley 2006; Daly and Stubbs 2006 for review) makes these points:

- RJ processes may validate a victim's experiences and acknowledge that she is not to blame for the abuse.
- RJ may address violence between intimates who will be in continued relationships.
- RJ processes may create forums that are better tailored to child victims' needs and capacities.
- RJ procedures are open and flexible; because they are less formal, they may be less threatening to victims.
- RJ processes can give victims a chance to voice their story and to be heard.
- Victims can be empowered by participating in decision-making and negotiating desired outcomes.
- RJ procedures expect that offenders will take responsibility for their behaviour.
- RJ may create opportunities for relationships to be repaired, if that is what is desired.

In addition to the lack of empirical evidence on the appropriateness of RJ for gendered and sexualised violence, debates are limited in several other ways. What evidence is available comes from research on *youth justice* conferences, as *a diversion from court*. Critics typically have in mind the use of RJ for adult offenders, and they assume that RJ is principally or solely used as diversion from court. RJ processes could be used in other legal contexts, such as pre-sentence advice, an element (or condition) of sentencing, and pre-prison (or community penalty) release meetings. The archival study is of conferences as a diversion from court for youthful offenders; however, we would emphasise that RJ processes need not necessarily be confined to this legal context or age group.

2. The South Australian youth justice system and legal context

In July 2005, a South Australian Parliamentary Select Committee on the Youth Justice System (hereafter "Select Committee") tabled its *Report*. It made 43 recommendations on the operation of the youth justice system with respect to the terms of reference that established it in December 2003. The proposed recommendations are animated by "the principle of minimal involvement of young people and early intervention," which "should govern … all parts of the system (Select Committee 2005: 37). In this section, we turn first to describing the South Australian youth justice system, and then we itemise several key recommendations proposed by the Select Committee which, if enacted, will change current practices considerably.[4] The proposed changes include the revised status of "minor offence" in diverting cases from court prosecution, a more flexible interpretation of "admission to offending" for referral to conference, a greater role for the courts in referring cases to diversionary conferences, and an expanding use of conferences, including victim impact conferences.

[4] We understand that as of July 2007, no action has been taken on the recommendations.

In the early 1990s, the South Australian government reviewed the *Child Protection and Young Offenders Act 1979*, which resulted in new legislation, the *Young Offenders Act 1993* and an entirely new structure of juvenile justice in the state (McInnes and Hetzel 1996; see Daly et al. 1998: 5-7 and accompanying footnotes for detail on the legal and organisational contexts of the *Act* and its application up to 1998; see also the Select Committee's 2005 review.) The *Act* introduced a three-tiered response to offending: diversion from court by caution (informal or formal) or by family conference, or referral to the Youth Court (see Appendix 1 for police responses to youth crime in South Australia). Police officers have discretion to decide which level of intervention is appropriate in each case. Sections 6 and 7 of the *Act* specify when the police may divert cases from the Youth Court, using this language, "if the youth admits the commission of a *minor offence*" (emphasis added). A minor offence is defined in Section 4 of the *Act* as

> an offence … that should, in the opinion of the police officer … be dealt with as a minor offence because of
>
> (a) the limited extent of the harm caused through the commission of the offence; and
> (b) the character and antecedents of the alleged offender; and
> (c) the improbability of the youth re-offending; and
> (d) where relevant—the attitude of the youth's parents or guardians.

With the exception of the offence of homicide (section 17(3)(a) of the *Act*) and unlike other Australian jurisdictions (except Queensland), the *Young Offenders Act* did not specifically prohibit offences from being diverted from the court to family conference or formal caution. As a consequence, the police have developed and refined a series of administrative orders to guide the referral decision over the years.

The *Young Offenders Act 1993* does not specify which offences are to be considered minor offences. Ordinarily, diversion is seen as appropriate when dealing with summary and minor indictable offences as defined under Sections 5(2) and 5(3) of the Summary Procedures Act 1921. Major indictable offences are generally **not** considered suitable to be dealt with as minor offences and, unless mitigating circumstances exist, are dealt with before the Youth Court.

The South Australian Police Special Purpose Manual, General Order 8980 Youth Justice and Community Programs (August 2004), is currently under internal review. However the current General Order (section 4.1) states that when determining "if an offence is a minor offence," a police officer is to

> assess each case on its merits, considering the:
>
> - nature and gravity of the offence;
> - circumstances under which the offence was committed, including the degree of involvement or participation by the youth;
> - attitude of the youth to the offence;
> - personal circumstances of the youth (including character, age, mental or physical condition, and cultural identity);
> - extent to which the victim (if any) has been inconvenienced, or has suffered emotionally, psychologically, physically, or financially as a result of the offence;
> - the victim's views on the suggested method of dealing with the matter;

- nature and extent of the youth's previous offending (if any), including previous cautions and family conference appearances; and
- public interest

For offences outside these guidelines, the advice to police officers is as follows:

> ... Such matters ... must not be diverted in the first instance without prior authorisation from the Community Programs Section manager or Juvenile Justice Coordinator.
>
> When you suspect more than one youth of committing an offence, consider the minor offence criteria and deal with each youth according to their involvement. It may be appropriate to discriminate between youths and deal with them by different methods.
>
> If you believe that, due to:
> - the circumstances of the offence,
> - the level of involvement of the youth, or
> - the personal situation of the youth,
>
> A matter outside of these guidelines should be dealt with by diversion from court, liaise with your Community Programs Section manager for a direction before dealing with the matter.
>
> Before a Community Programs Section manager authorises the diversion of any offence which is
>
> - a major indictable offence,
> - a complex or contentious matter, or
> - involves a large number of offences (irrespective of the nature of individual counts),
>
> This course of action must be authorised by the State Juvenile Justice Coordinator, Community Programs Support Branch to ensure the proposed method of disposition adheres to current guidelines and policy.
>
> Major indictable offences before the Youth Court can be considered for diversion. These ... will not be diverted without the prior approval of the Officer in Charge, Adelaide Criminal Justice Section, [who] will maintain liaison with the Juvenile Justice Coordinator to ensure consistency in diversions.

Thus, diverting summary and minor indictable offences is defined as "appropriate" in most cases, whereas "major indictable offences are generally not considered suitable to be dealt with as minor offences", although they may, subject to the review and approval procedures noted above. Although there are many exceptions, summary offences generally have a maximum penalty of 2 years' imprisonment, and minor indictable offences, 5 years' imprisonment. Major indictable offences attract penalties greater than 5 years' imprisonment (*Summary Procedure Act 1921*, Section 5). For sexual offences, the common major indictable offences in the archival study are rape and unlawful sexual intercourse; the most common minor indictable is indecent assault; and

the most common summary offence is indecent behaviour (see Appendices 2, 3, and 4). The major indictable offences form a higher share of offences at the start of proceedings in the Youth Court (58 percent) compared to those finalised as proved in the Youth Court (38 percent), by family conference (29 percent), or police formal caution (15 percent) over the 6.5 years of our study.

In addition to police administrative criteria in diverting cases from court or referring them to court, a Supreme Court decision (*R v Police* [2002] Gray J) articulated an expanded interpretation of the Youth Court's role in diverting cases from court. Justice Gray challenged earlier Supreme Court decisions as "too narrow" (p. 11) or "not appear[ing] to correctly reflect the terms of Section 17 of the *Young Offenders Act*" (p. 10) (that is, *Police v W* (1994-95) Cox J; *H v Police* (1998) Nyland J; and *Police v CB* [1999] Wicks J).[5] He stated:

> There is no reason in principle to limit the court's power to refer only minor offences … Parliament chose not to limit the judicial discretion to divert in the same way that the police discretion has been restricted. The judicial discretion to divert is a broad, unfettered discretion that creates a legitimate sentencing alternative (p. 11).

Justice Gray's decision that the "court's power to refer [to caution or family conference] is not limited to minor offences" (p. 9) anticipates one of the major recommendations of the Select Committee's *Report* (2005: 42, recommendation 2): "the term 'minor offence' be amended to 'divertible offence' in the *Young Offenders Act 1993*." This recommendation reflects practices that the police have taken for some time in interpreting the meaning of a "minor offence." In South Australia, young people are routinely referred to family conference for more serious offences than normally occurs in other Australian jurisdictions.[6] The Select Committee's recommendation also reflects confidence that the Family Conference Team can handle serious cases (like sexual assault), coupled with endorsements by the Victim Support Service and a programme for the treatment of youth sex offenders (see below on the Mary Street Programme).

Over the 10-year period 1994 to 2003, the Family Conference Teams in Adelaide and Port Augusta finalised about 180 sexual offence cases (about 10 percent are indecent behaviour; most are forms of sexual assault). Writing in 1996, Magistrate Rosanne McInnes (McInnes and Hetzel 1996, Part A of the article is written by McInnes) saw many benefits to conferences, especially in cases where there exists a relationship between the victim and offender, and she believed that "court imposed penalties are designed to destroy relationships, not repair them" (para 112). Further, she said that "sexual abuse … [is] not easily picked up in a formal courtroom. [It] may not be picked up at a conference either, but there is more chance that it will happen" (para 123). Despite her support for conferencing serious family harms, including sexual abuse, Magistrate

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[5] Justice Gray's decision was confirmed by a recent appellate decision of the Supreme Court that the "Youth Court's power under [*Youth Offender Act*] s. 17(2) [is] not restricted to minor offences or offences which are not major indictable offences" (*Police v G, PA* [2007] Duggan J).

[6] In South Australia, a victim of an offence disposed at a family conference can claim compensation from the Criminal Injuries Compensation Fund, adjusted for any monies the victim may have recovered from a family conference outcome. In addition, a family conference disposition is not a bar to any subsequent civil proceeding.

McInnes acknowledged that "a family conference cannot deal with deep-seated and long standing problems in the course of an hour, or an afternoon" (para 114).

After more than a decade of operating under the *Act*, family conferencing is highly regarded and supported by the South Australian legal establishment and social services professionals as an effective form of diversion for young people in South Australia. This is underscored in the Select Committee's (2005) *Report* and its recommendation 10 for expanding the number of cases referred to conference (by both the court and the police) by proposing that an admission is no longer required "to gain access to a family conference" (p. 49); rather "the accused would have to acknowledge involvement in an offence" (p. 49). The justification for the proposed change is to increase the number of Indigenous youth who may be eligible for court diversion. Another source of expansion of conferencing is recommendation 5, which proposes that the Youth Court refer cases to conference for a Victim Impact Meeting before sentencing.[7] Although the Select Committee sees a greater role for court diversion and conferencing, it remains an open question as to whether or not it is appropriate for sexual abuse or other forms of intimate violence. The Sexual Assault Archival Study (and related sub-studies) were expressly designed to address this question. The first published paper from the archival study dataset (Daly 2006) finds that whatever concerns the critics may have of the conference process (as enumerated above), the court process fails victims. Specifically, half of cases finalised in court were dismissed or withdrawn without any sexual offence proved. It appears, therefore, that "serious cases" are not being treated seriously in court, as legal reformers might have imagined.

Penalties and undertakings

Under the *Young Offenders Act 1993*, a hierarchy of sanctions is available to the Youth Court, and a range of undertakings can be agreed to by the young person in a conference or at a formal caution. In court, an offender can be discharged without penalty, although this is usually accompanied by an admonishment from the bench. During a conference, it may be agreed that the youth is not required to complete any undertakings. When a formal caution is administered by a police officer, the youth may or may not be required to enter into an undertaking.

The Youth Court can impose the most severe penalties, including detention in a youth training centre for a maximum of 3 years. However, this is to be imposed only at a last resort because of the gravity of the offence or because the offence is part of a pattern of repeated offending. Unlike other Australian jurisdictions, the South Australian Youth Court cannot require youths to enter into a bond, such as a good behaviour bond, which permits the immediate release of the youth under certain specified conditions. Breach of these conditions means the offender is brought back to the court for re-sentencing for the original offence (Warner 1997: 320). However, the South Australian Youth Court can impose *obligations* that are similar to those imposed under a bond. Failure to comply with these obligations is an offence punishable by a fine or a maximum of 6 months detention. Undertakings agreed to by a young person (YP) during a conference or entered into when formally cautioned are also legally binding. If a YP does not comply with caution undertakings, a police officer may then refer the matter to a conference youth coordinator (or to court if requested by a YP). If a young person does not

[7] Such Victim Impact Meetings have been carried out in the past; this recommendation ratifies their value "to facilitate insight, understanding and accountability on behalf of the offender" (p. 43).

comply with the conference undertakings, the matter may then be referred to court. Appendix 5 provides an outline of penalties that can potentially be imposed on, or agreed to by young people in South Australia. Among the Australian jurisdictions that use conferencing, South Australia has the highest maximum of community service hours (300 hours) and the longest length of conference agreement (12 months) (Daly and Hayes 2001)

One important component to the handling of sexual offences in South Australia is the Mary Street Adolescent Sexual Abuse Prevention Programme. Mary Street provides an intensive therapeutic intervention, typically of one year's duration, to address adolescent sex offending by young people aged 12 through 17 years. Conference and court outcomes may include participation in the Mary Street Programme as part of the undertaking or penalty (see Appendix 6). Thus, any analysis of the strengths and limits of the court or conference response to sexual offending must also include the presence (or not) of an effective therapeutic process that works alongside the legal process.

3. Why cases go to court or conference

To date, there has been no study comparing the advantages and disadvantages of engaging the conference or court process for sexual assault. The SAAS is the first of its kind in the world. It was designed to address questions concerning the "kinds of cases" (offence facts, offender profile, victim profile, victim-offender relationship) that were finalised by formal caution, conference, and court; and the "kinds of outcomes" (penalties and undertakings) in conference and court cases.

In the research literature on the criminal process, we know that offence seriousness and an offender's previous history are the strongest and most consistent predictors of sentencing outcomes (Daly 1994). We would expect these more serious cases to be referred to court, rather than conference or formal caution, and certainly, as noted above, the South Australian Police General Orders guide police discretion in this way. However, for a case to be referred to conference (or caution), a young person must also have admitted to the offence. Thus, it is conceivable that court and conference cases are similar in many respects, except for the young person's admission. One question guiding the study was whether admission to the police for offending was a key factor differentiating court and conference cases.

Distinguishing "more serious" from "less serious" cases is not a straightforward exercise. Coded elements of offences and the precise legal charges (at the start of offence and admitted to later) offer some way into the question of seriousness. Ultimately, however, seriousness cannot be measured precisely or objectively. For instance, our dataset shows that some cases with similar behavioural (or coded) elements had different legal charges. Furthermore, we know from the literature on adult sexual cases that from arrest to charging to final disposition, the offence(s) charged will reduce in number and legal severity (LaFree 1989; Spohn and Holleran 2001). Therefore, it was essential to represent the seriousness of the offence with several measures, including: (1) the original legal charges and changes in legal charges over time and (2) the actual behavioural elements of the offence (e.g., the type, length, and pattern of the violence; whether force, intimidation, manipulation were used to carry out the assault; the degree of victim injury,

among other elements). Prosecutorial decision-making in sexual assault cases is guided by the quality of physical evidence, the contexts of the offending, and indicators of the victim's character and "stand up" potential as a witness at trial.[8] Thus, we needed to investigate how these factors affected the criminal process in South Australia.

Drawing from the South Australian Police General Orders (above), we find that there are many other elements that could distinguish court and conference cases, including the offender's "attitude" and "personal circumstances" and a victim's "views" or degree of harm suffered—words having a variety of interpretations. Our aim was to extract from the documents available to us virtually all the information that best described these cases, both legally and socially, and which conceivably guided legal actors' decision-making. We were especially concerned to craft variables that tapped victims' views of the offence and the criminal process.

In addition to the legal process variables, a key measure of how court officials judge the seriousness of offending is the outcome (court penalty or conference undertaking). Here, we assumed that court penalties would be more onerous than those in conference, if for no other reason than the court has power to impose a harsher penalty than does a conference. For example, the court can sentence a youth to serve time in detention, but a conference cannot; and the court can impose a maximum of 500 hours community service, whereas the conference maximum is 300 hours.

Another measure that combines legal process and outcome is a youth's history of detected offending before the SAAS case and afterwards. We wondered, for example, the extent to which a young person's prior criminal history affected the referral to conference and court, and what effect, if any, different legal interventions (court or conference) had on the young person's future re-offending.

4. Strengths and limits of the archival study

The archival study can answer key questions about the advantages and disadvantages of court and conference handling of cases, but it is limited to the kinds of information contained in legal documents. It would have been physically impossible, ethically inappropriate, and financially prohibitive to attempt to compare the *actual processes* of what happened or what was said in a courtroom or in a conference room across many years, or to interview victims or defendants to seek an understanding of their experiences with the legal process. In another sub-study in the programme of research, we gathered detailed data on conferences and victim experiences for a set of 14 sexual assault and domestic violence cases disposed of for 6 months, from July to December 2001 (see Daly and Curtis-Fawley 2006 for an analysis of two sexual assault cases). With an in-depth study of conferences, we can say more about the dynamics of conferences and how victims view them. In addition, the project is investigating the roles of and decisions taken by police prosecutors and defence lawyers in prosecuting cases (or deciding to withdraw the charges) and in representing and defending young people accused of sexual assault.

[8] There is a large and sprawling literature in this field. For reviews, see Cook, David, and Grant (2001), Estrich (1986), Frohmann and Mertz (1994), Kelly (2001), Koss (2000), Lievore (2004), and Spohn and Holleran (2001).

There are potential advantages of conferences, none of which can be readily seen in the archived files, including a group-based discussion of the wrongfulness of violence, the empowerment of victims (or family members) in the decision-making process, and the opportunity for victims to tell the story of what happened and how it affected them. In addition, conferences create an opportunity for modelling appropriate (that is, not aggressive or violent) behaviour by offenders, and a discussion about what the young person should do to address abusive behaviour.

Likewise, court intervention may present distinct advantages for victims and offenders, none of which is visible in the archived records. The benefits include a sense of vindication by a victim if a young person pleads or is found guilty and sentenced, public denunciation of an offence, an ability for a victim to describe his or her experience to the court, and the potential for an offender to recognise the seriousness of the offence. We will be able to depict the flavour of these courtroom phenomena when we analyse the judges' sentencing remarks in the 55 cases sentenced by judges.

In addition to the potential advantages of court and conference that are not recorded in the archived files, there are potential disadvantages that are also not recorded. For example, a common concern is that victims may be re-victimised in the conference process. The archival study cannot tell us whether this occurred or not because information on what happened during the conference process and the subjective experience of the participants are not given.

The legal process embodies complex transactions and interactions; its elements and effects are not readily available or documented in court records. Our study had to rely on several documentary trails, including the legal record of charges, case flow over time, and penalties and undertakings. We also drew from the police report of the offence and police records of detected offending.

While direct measures of advantages and disadvantages were not available to us, there were indirect measures. For example, one indicator of the "re-victimisation" of the victim by the legal process is whether the state proceeded with the case, once it reached the court. It is well established that sexual assault is less likely to be successfully prosecuted than other crimes (Cook, David, and Grant 2001). Thus, the kind of adjudication (conviction, or withdrawn or dismissed) is indicative of the state's willingness, ability, or interest to proceed with the case. An indicator of the state's validation of the harms suffered by the victim is the kind of penalty imposed in court or undertaking agreed to in conference. In the absence of direct measures of interactions and behaviours of the participants, these and other indirect measures of the legal process were identified.

The major strength of the archival study is its size and detailed documentation of the character of sexual assault and indecent behaviour offences, and how they were handled by the legal process over a considerable period of time. We have gathered documents for the universe of cases, not a selected sample, for an extended period of time, that is, over 6 years. Thus, we are confident in making generalisations from the data about sexual offence cases in the legal process.

5. Research questions

The archived data permit us to address these questions:

- What distinguishes a court case from a conference case? Are there significant differences in the age of the offender or the victim? the type and "seriousness" of offending? the victim-offender relationship? the young person's prior contact with the justice system? whether or not the YP admits to the offence when interviewed by police?

- What happens to a case once it is referred to court? How long does it take to finalise a case from the time an offence is reported to the police? How do the legal charges "erode" over time, either in terms of pleas to lesser charges or the withdrawal of charges altogether? What kinds of penalties are imposed in court? How do these compare with undertakings agreed to in conference?

- What do family conferences for sexual offences look like? Who attends the conference? What is the ratio of the offender's supporters to the victim's supporters? What are the typical agreements produced by these conferences? Are the undertakings more likely to be centred on the offender or the victim (for example, counselling for the YP versus reparations to the victim)?

- What is the prevalence of officially detected re-offending in the period following the court or conference? Are there differences between court and conference, holding other relevant variables "constant"?

Part II
Data Collection and Coding of the Sexual Offence Cases

1. Sub-studies and time frame

The Sexual Assault Archival Study is one sub-study in a programme of research on the race and gender politics of new justice practices. Other studies include (1) an analysis of the sentencing remarks for 55 SAAS cases sentenced by a Youth Court judge (Bouhours and Daly 2007; Daly and Bouhours 2007); (2) interviews with directors or managers of Australian victim advocacy or service provider groups, to elicit their views on what the criminal justice system can (and cannot do) for victims of sexual assault and domestic violence (Curtis-Fawley and Daly 2005); (3) interviews with Queensland Indigenous and non-Indigenous women, asking them a similar set of questions about criminal justice and restorative justice (Nancarrow 2006); (4) an in-depth analysis of 14 conferences of sexual assault and domestic violence, with a focus on what happened at these conferences and how victims were affected (Daly and Curtis-Fawley 2006; Daly and Nancarrow 2007); and (5) observations of urban Indigenous sentencing courts and other justice practices and interviews with legal officials and community members (Marchetti and Daly 2004; Marchetti and Daly 2007).

From October-December 2001, Daly, Curtis-Fawley, and Weber were based in offices in the South Australian Youth Court (Adelaide), gathering the data and documents for the archival study and the in-depth analysis of 14 cases.[9] From February 2002 onward, the project shifted to Daly's academic base at Griffith University, School of Criminology and Criminal Justice. Curtis-Fawley supervised the creation of the dataset and codebook, working with research assistants Bouhours, and later, Scholl, until October 2002, when visa requirements necessitated Curtis-Fawley's return to the United States. Bouhours and Scholl continued to enter and clean the data, revise the variables and codebooks, and prepare the dataset for analysis during the rest of 2002 and first part of 2003. Curtis-Fawley returned to Australia early in 2003, and she assisted on the project during 2003 and 2004. Preliminary results were first presented in May 2003 in Adelaide, and other presentations were given in 2003 to 2005 to conferences and seminars in Australia, Canada, England, and Scotland.

In 2004, analyses of the penalties imposed revealed some inconsistencies, and further data cleaning was required. The sentencing remarks for 55 court cases were obtained in 2004, and these highlighted some inaccuracies, especially for cases that went to trial. As a result, the dataset was revised in 2004 and early 2005 to incorporate this new information. The main changes were that the total sample was reduced from 387 to 385 cases (one less court and conference case each); three sexual offence cases, not one, were proved at trial; two, not three

[9] Also during this time, Daly and Weber observed the two Indigenous urban courts in South Australia (in Port Adelaide and Murray Bridge)--the Nunga Court--and interviewed the key legal officials and community people associated with it.

court youth, were sentenced to serve time in detention for a proved case of sexual offending.[10] These small changes had a negligible effect on the results, but it was important that subsequent papers present the data with the revised dataset. We estimate that, at a minimum, over 2000 hours of research time was spent on the initial phase of gathering the documents, creating the datasets, and preparing and cleaning the data for analysis. During 2004-05, an additional 400 hours was spent on data cleaning and analysis.

2. Sampling frame: creation of the defendant list

The sampling frame for the archival study was all youth cases having at least one sexual offence at the start of the criminal process, which were finalised by police formal caution, family conference, or in the Youth Court from 1 January 1995 to 1 July 2001. Excluded were cases that were finalised in Magistrates' Court, District Court, or the Supreme Court that had juvenile defendants with a sexual offence charge. The data available to us suggest there were few such cases (see Appendix 7 for the circumstances under which juvenile cases are heard in adult or higher courts in South Australia).[11]

Finalised means the case is "finished," having been disposed by formal caution, conference, or in court by a range of outcomes possible (dismissed, withdrawn, proved [with or without conviction][12] and found not guilty at trial). The time frame was chosen to be the longest possible, within the constraints of the Justice Data Warehouse, whose crime and justice records are most complete from 1994 onwards (and some offences in our dataset would have occurred in 1994 before finalisation in 1995), as well as the constraints of conferencing in South Australia (it began in February 1994). For selecting the end point date, mid-year 2001, this permitted a standard time interval for analysis and took into account the lag time between case finalisation and data incorporation into the Justice Data Warehouse files.

Sexual offences are all forms of criminalised sexual behaviour, ranging from rape to indecent behaviour. All these offences are coded 13 (the category is termed "sexual assaults and offences")[13] in the JANCO classification system. JANCO is South Australia's adaptation of the Australian Bureau of Statistics' ANCO (Australian National Classification of Offences) classification system, with the "J" standing for "Justice Information System" to distinguish South

[10] An additional two youth were sentenced to some time in detention for a proved case of non-sexual offending. Of all the proved court cases (N=123), 115 were proved of a sexual offence, and eight were proved of a non-sexual offence (see Table 2.2).

[11] A requested extraction from the South Australian Justice Data Warehouse shows that just nine sexual offence cases (some having many charges) were disposed in adult or higher courts from 1995 to mid-year 2001.

[12] "Proved" means that the court has accepted a guilty plea to an offence or found the young person guilty at trial. "Without conviction" is a legal device whereby the court can accept a young person's plea, but not lodge an official conviction. It is viewed as a less serious form of conviction and is typically used for offenders who have had less exposure to the court, to avoid their developing a criminal record.

[13] The category includes assaults against the person (e.g., rape and indecent assault) and hands-off offences (e.g., gross indecency).

Australia's version of ANCO from the original (see Appendix 8 for description and background on JANCO).

The project began by compiling the "defendant list," an exhaustive list of all the cases fitting the research parameters. The list was initially generated by requesting data records from the Justice Data Warehouse, South Australia's electronic data management system for crime and justice records; it was compiled with the assistance of Maire Mannik. The only identifier in the data was the Justice Information System (JIS) pin number, a unique identifier assigned to each person who has any contact with the police in South Australia as a suspected offender. The data included all charges and file numbers; the Police Apprehension Report number ("AP" number) associated with the case; the form of disposition; and the penalty (or undertaking) for court, conference, and formal caution finalisations.

The SAAS count of cases differs from how the South Australian Office of Crime Statistics and Research (OCSAR) counts cases in its annual reports. We counted as one case all the matters relating to an individual defendant, which were finalised at the same court hearing or conference, even though this could include several distinct sexual offences or multiple victims that were reported on more than one police report. By comparison, OCSAR compiles statistics based on the "major charge," if the defendant had more than one charge (see, e.g., OCS 2001).[14] We did not use this criterion because it would not capture those cases for which the major charge was not a sexual offence.

Identifying and finalising the defendant list, especially for the court cases, proved to be difficult and tedious. The reasons were partly related to the quality of the Justice Data Warehouse records (some were duplicates), but mainly to how the legal process works and how legal activity is codified. Our main problem was deciphering what actually happened when a defendant had multiple court file numbers or multiple sites of disposition. Was this one case or two? Was this one offence or more? In time, we were able to identify why there were multiple files for one case, and we established rules to code them, as follows:

a. *Bundling of files*. The youth had two files (relating to different matters), which were finalised on the same day in the Youth Court. When this occurred, we considered it one court case, with two or more files consolidated.

b. *Disposition site duplication*. The youth had two files relating to the same matter, but both were recorded as finalised on the same day in court or conference. We discovered that this occurred from time to time when the court referred the case from court to conference. The conference file was included in the dataset, and the court file number was noted in the record for that case.

c. *File duplication related to jurisdictional movement*. The youth had two or more files relating to the same matter because a new file number would be issued when the case shifted to another jurisdiction. For example, a case would begin in the Whyalla court

[14] Beginning in 2003, this office was renamed Office of Crime Statistics And Research (OSCAR); previously, it was the Office of Crime Statistics (OCS).

with a file number, but when it was transferred to the Adelaide court, it would be assigned another file number. This was one case with multiple file numbers.

d. *File duplication related to the plea process*. The youth had two files relating to the same matter, which were finalised in a short time period. This came about because the first file was disposed as a dismissal (or charges withdrawn), and the second file was for a less serious offence to which the offender was pleading guilty. While there were two file numbers, this was clearly one continuing case. We coded all the relevant information (original charge and lodgement date, offence pled to and outcome) from both files, but it was one (not two) lines on the defendant list.

After many hours of reading documents, and refining and revising the defendant list, we ultimately identified 365 different young persons, who were associated with 385 cases:[15] 226 court cases (59 percent), 118 conference cases (31 percent), and 41 caution cases (10 percent).

While 95 percent of the YPs appeared in the dataset just once, 15 appeared twice, and two appeared three or more times (Table 2.1).

Table 2.1. Number of times YPs appeared on the defendant list

N of cases per YP	N of YPs	N of cases on the defendant list
1	348	348
2	15	30
3	1	3
4	1	4
Total	365	385

3. Data collection

Having identified the defendant list, the research team collected the documents associated with each case: the Police Apprehension Report (AP) from the police, the Family Conference file from the Family Conference Team, and the Certificate of Record from the Youth Court. Later, the remarks for cases that were sentenced by a Youth Court judge were obtained.

Police Apprehension Reports

The Police Apprehension Report (AP) is generated by the police each time a person is charged with one or more offences. The first page contains identifying information about the youth, including name, address and contact information, date of birth, age, and, at times, employment or student status. This page also shows the name and Local Service Area (LSA) of the police

[15] There were 391 cases that met the project criteria, but six had no police report available (all were court cases). Without this document, there would have been a good deal of missing data for each case. An inspection of the six cases showed that they were like other court cases, that is, there was nothing unusual about them. Their inclusion would not have added any new information or variability to the dataset; and thus, they were not included.

officer entering the AP, the number and date of the AP, the legal charge(s) (e.g., rape, indecent assault, indecent exposure), and the JANCO code(s) and the number of counts for each charge; and it shows the name and address, and occasionally the age or date of birth, of the victim(s). It may also show the location and date of the offence(s), but this is more often given in the narrative of the offence, that is, in the victim's, witness's, or accused person's description of what occurred.

The next several pages of the AP describe the case "facts," showing the victim's, YP's, witness's and police officer's versions of the incident. It may include a brief summary of the offence, which varies in length and quality, but typically outlines the date, location, and circumstances of the offence. The victim's version may include information such as whether or not a weapon was used or if the victim was restrained or threatened. It describes any actions taken by the police (gathering evidence or interviews with victims). In the accused person's version of the incident, the AP indicates whether or not the YP admitted to the offence during police questioning, whether the YP had legal advice before or during questioning, and if the accused expressed remorse for the offence. A portion of the AP's, about 20 percent, we described as "skimpy," having only the barest information on the incident and the parties involved.

At the end of the report, the AP has sections on "arrest/report details" and "accused description." For the latter, a composite description was given of the YP, including birth place, height and weight, ethnic appearance, particularities such as tattoos or scars, and only occasionally, some notes about the YP, such as "obesity has been noted as a medical issue for YP," "YP is already undergoing counselling at the Mary Street programme," "YP has mental age of 4 and is on medication for Attention Deficit Disorder," or "YP has been sexually abused at age 7."

For the arrest/report information, occasionally we found that the report date was in error, for example, witness interviews were recorded as having taken place on a date prior to the "report date" shown in the AP, or the report date was missing. When this occurred, we recorded the report date as being the date when the AP was written.

Court Files and Certificates of Record

To obtain information about the legal history of each court case, we initially considered photocopying the documents in each court file for the defendants on our list, but we abandoned this approach for several reasons. First, the content and quality of the court files varied widely: some contained extensive material such as psychological, medical, and social history reports on the young person; others included transcripts of the judge's remarks and handwritten notes regarding the disposition or other matters related to the case; and still others were thin files, which had only the barest details on when and how the case was disposed of. Second, the court files were stored in varied locations in the Adelaide Youth Courthouse, but many others were stored in regional courts where the cases had been finalised. We would have had to travel to all the court registries in South Australia to locate and copy these files. This would have been time-consuming and costly, and thus, not feasible. We also found that we could not rely on the Justice Data Warehouse data to give us an accurate legal history of each case because when we compared a sample of court files with what was shown in the electronic data, we noted some discrepancies.

We were unsure what to do until a court administrative worker suggested that we obtain the Certificate of Record for each case. We had been unaware of this document, but it turned out to be the key that unlocked many puzzles of duplicate or multiple files and dates of finalisation. We came to rely almost exclusively on it to code the legal history variables.

The Certificate of Record details the legal history of a case after it has been referred to court by the police. It lists all scheduled court appearances and related information (court location, whether or not the YP was present, prosecutor and legal representation, the presiding judge or magistrate), the plea history, the disposition (guilty, not guilty, withdrawn, etc.) of each individual charge, and the penalty imposed. We obtained the Certificate of Record for all files located in Adelaide. For the remaining cases, we extracted the Certificate of Record from the Court Administration Authority's "CrimCase" database.

Family Conference Files

For each of the family conference cases on our list, we located and photocopied relevant information from the Family Conference Team's archived files in the Adelaide office. Each file contains all the information related to the conference; it includes correspondence related to a conference, as well as notes of the family conference coordinator responsible for the case. The relevant information for our study was as follows: (1) the "orange sheet," the name for the cover sheet for a "closed file," which provides information about the conference, including its date, location, offences admitted to, the names of the professionals present (the coordinator and police officer), the participants present (the YP[s], victim[s], their supporter[s], other interested parties), and the outcome (agreement); and (2) the young person's compliance (or non-compliance) with the conference undertaking. The latter was typically in the form of a letter from the Youth Justice Coordinator to the young person, informing him or her that the undertaking had been completed as agreed at the conference. For files held in the Family Conference Team's Port Augusta office, we obtained the relevant information from the CrimCase database, supplementing this, when it was necessary, by speaking with the administrative officer in Port Augusta.

Police Formal Cautions

For the Police Formal Cautions in the defendant list, we obtained the AP for each case. It has the date of finalisation (that is, the date the youth was formally cautioned, typically within two weeks after the offence was reported to the police). Forty-six percent of the caution cases had some conditions attached to the caution (e.g., an apology to the victim or community service). The APs specify these conditions for a small number of cases, but in most cases, these were listed in a separate electronic file kept by the Justice Data Warehouse.

Sentencing Remarks

The idea of analysing judicial sentencing remarks arose from Judge Andrea Simpson in June 2003, upon reviewing the preliminary results of the archival analysis. Judge Simpson was Senior Youth Court Judge from October 1998 to August 2002. Except when they are on circuit in remote areas, judges deal with the most serious cases of rape, unlawful sexual intercourse, and indecent assault. Of the 55 sets of sentencing remarks we obtained, only 3 percent are for summary offences; 20 percent, minor indictable offences (typically indecent assault); and 77 percent, major indictable offences. Sentencing remarks provide a justification for the sentence and a record of the factors the judges say they took into account when fashioning a sentence.

They contain a brief summary of the facts of the offence, some details of the court proceedings (e.g., whether the YP pleaded guilty, whether a trial took place and the outcome), mitigating and aggravating factors, the aims that judges hope to achieve through the penalty, and the penalty imposed. Because court records reveal little of what is said in the courtroom, a judicial officer's sentencing remarks may shed light on the degree to which the offence was censured and a victim was vindicated. They may show that more apologies occur in court cases than the documentary trail reveals.

The sentencing remarks were also useful for providing information that was missing in the AP, such as the victim's age or the relationship between the YP and the victim. In a few cases, the sentencing remarks helped clarify what happened during the proceedings in relation to pleas and the outcome of trials. The remarks formed the basis of an Honours thesis by Brigitte Bouhours on the sentencing process for the most serious sexual offences in the Youth Court (Bouhours 2006). The results will be published in two papers (Bouhours and Daly 2007; Daly and Bouhours 2007).

Identifying, gathering, photocopying, and searching for missing records for nearly 400 cases took two months, beginning in mid-October, and finishing just before Christmas 2001, when all the documents were boxed and shipped by freight courier to Brisbane. A provisional coding scheme was established in November 2001; it was revised and expanded many times over the next several years, as we read and digested the material.

4. Creation of the variables and code book

Variables and codebook

Early in 2002, we began the process of coding the material and developing the codebook with a sample of 90 cases, using an Excel spreadsheet. This allowed us to take notes on each case, to document coding decisions, to flag questions and problems in coding some variables, and to note missing data. The spreadsheet had nine sets of variables, each relating to a specific aspect of the case. After entering the data for the 90 cases, the variables were reviewed, and new variables were added. Although some variables had a good deal of missing data (e.g., who the victim was living with at the time of the offence), they were retained to systematically record the information we believed was important, even if the data were not available in all the documents.

The research team wrote many memos about problems encountered in coding and how they were resolved. Throughout 2002, the documents were coded, and the data were entered into an SPSS file. The dataset has over 230 variables, ordered in nine parts, as follows:[16]

Part 1, young person. The YP's demographics and living arrangements; use of drug or alcohol; any psychological, mental, or medical problems, any indication of having been sexually

[16] Data for parts 1-5 were coded from the police AP report; data for parts 6 and 8, from Youth Court's Certificate of Record; data for parts 7 and 8, from the Family Conference Team file; and part 9 was completed by the researchers. In addition, summary variables and new variables were created from the original variables.

victimised, and expressions of remorse during police questioning. In this part, we recorded as much information as we could on the young person's biography and orientation to the offence.

Part 2, offence. This part begins with an exhaustive list of all charges recorded on the AP (both sexual and non-sexual) and, from the victim's report to police, the actual behaviour that took place during the incident (e.g., penetration or fondling). Offence details such as date and location of offences[17] and whether a weapon was used were also coded. Other variables include whether the YP admitted to the offence at time of police questioning, if the YP's story differed from that of the victim, and if the YP received legal advice prior to or at police questioning.

Part 3, victim. Most cases had one victim (80 percent), but some had multiple victims (16 percent) (4 percent had no direct human victim). For the multiple victim cases, we identified a "primary victim" for the purposes of coding the features of the offence. The decision rule was to select the victim of the most serious offence; or if the offence involved several incidents, the victim of the most serious incident. If two or more victims suffered the same number of incidents, then the victim of the most serious offence was selected. In cases of equal seriousness, the youngest victim was selected; and if everything was the same (seriousness, number of incidents, and age), then the female victim was selected.

Demographic data for the victim were recorded as completely as possible, including any psychological or medical problems, the victim-offender relationship, and whether the AP reported that the victim offered any resistance during the offence (e.g., said no or struggled to get away). In order to assess if the behaviour of the victim had an effect on the referral decision or case outcome we coded, when it was possible, if the victim had used drugs or alcohol at the time of the offence.

Part 4, seriousness. In this part, we recorded those offence elements that would be associated with "more" or "less serious" cases. The elements included, among others, whether or not the offence was part of a pattern of abuse over time, the total number of victims, the age difference between primary victim and offender, whether the alleged offender used a position of trust, whether the victim was restrained or threatened, degree of victim injury, and whether the victim required medical attention.

Part 5, report. In this part, we coded who reported the offence to the police, and the circumstances in which this person (if not the victim) learned about the offence, the date when it was reported, the date of the AP, as well as information on the investigating officer and Local Service Area (LSA).

Part 6, court. This part pertains only to court cases, and it describes the legal history of the case, from first court appearance to final disposition. We constructed variables to allow us to track the various charges laid in court, in which jurisdiction(s) the case was heard, whether the YP

[17] When several offences occurred on different dates, the dates of the first and last incident were recorded, and the offence date was calculated as the mid-point of all recorded dates. When several offences occurred in different locations, the location where the offences happened most often was recorded.

appeared in court, the YP's legal representation, the presiding judge or magistrate, the outcome of each charge (including pleas to lesser charges), and whether any sexual offence was proved.

Part 7, conference. This part pertains only to conference cases, and it includes who was present at the conference, the conference location, and whether the YP agreed to the offence during the conference.[18]

Part 8, disposition. This set of variables codes the penalty imposed in court cases, the undertakings agreed to in conference cases, and for a few caution cases, what the YP was required to do by the police officer. The penalty or undertaking could include detention, supervision by Children, Youth and Family Services (CYFS),[19] a verbal or written apology to the victim, community service, counselling (for sexual behaviour or other behaviours, such as alcohol abuse), good behaviour bonds, and fines, among other outcomes.

Part 9, the case. In this part, there are codes for whether the file is a skimpy one or not, whether it was a complex case, whether there were questions raised in the researcher's mind of the handling of the case, how long it took to code, and which researcher coded the case. For questions raised in the researcher's mind, these codes are linked to narrative material on an Excel sheet, which lists what appears to be an overly lenient (or harsh) response to a case, differences in handling "like cases," and other elements. For each case, "the facts" of each case were summarised and entered on an Excel spreadsheet file. The narrative of the facts is important to retain because adding up discrete elements of offences may not give an accurate understanding of "the gestalt of the harm" (Daly 1994: 99).

The variable list and codebook went through several major revisions, as new variables were constructed and coding schemes refined. Entering all of the variables from the documents into the Excel database ranged from 10 minutes to three hours per case, with most cases requiring 30 to 60 minutes.

5. Summary variables constructed from the data

[18] At the beginning of the conference, the police officer confirms that the YP agrees that s/he committed the offences described. If the YP does not agree to all or part of the charges, the conference cannot proceed. Although a case cannot be referred to conference without the YP's admission, this is reiterated at the conference.

[19] This family and child welfare agency has had several name changes and has been part of differently named departments in the last ten years. From 2004 to 2006, the name of the service was Children, Youth and Family Services (CYFS), and it was based in the Department for Families and Communities. Immediately prior, it was called Family and Youth Services (FAYS, 1997-2004), based in the Department of Human Services. Before then, the service was based in the Family and Community Services (FACS, 1987-1997).

From the original variables, we created summary variables. These included measures of offence seriousness, length of time between offence, report and finalisation, and socio-economic measures.

Seriousness

We constructed three measures of offence seriousness. The first utilised legal charges, from which a variable called "time at risk" was derived. This variable was obtained by calculating the maximum jail time that could be imposed according to statutory penalties for adults (see Appendix 4 for the time at risk for each offence category). While the Youth Court can only impose a maximum 3-year detention sentence, it was essential to devise a measure of legal seriousness to compare cases finalised at different sites and to track the charge reduction process in court. We constructed two time at risk measures for each of the following stages or outcomes of the legal process: at the time of police charging, at the start of court or conference proceedings, at court finalisation (includes offences proved and not proved), and for the sexual offence(s) proved. One measure was the time at risk for the most serious charge, and a second was the total time at risk for all sexual offence charges. These measures depict the erosion of the legal seriousness of cases, from police apprehension to court finalisation, and in particular, for the more serious court cases for which charge reduction is typical.

A small number of finalised cases, which began with a sexual offence, were proved of a non-sexual offence, as Table 2.2 shows. The calculation of the "time at risk" measure is based only on the sexual offence(s) in each case.

Table 2.2. Cases proved of a non-sexual offence

	court	conference	formal caution	total
no offence proved	103	6	0	109
non-sexual offence proved	8	1	0	9
any sexual offence proved	115	111	41	267
total	226	118	41	385

A second measure depicted the actual harm that is, what the offender was alleged to have done, based on information in the Police AP. From the victim's version of the incident in the AP, we recorded the most intrusive sexual act that occurred during the incident (e.g., vaginal penetration with penis or finger, rubbing under or over clothing), based on our interpretation of relative seriousness and taking into account legal seriousness. Although some may argue that a crime victim's subjective experience of the offence is the "true" measure of seriousness and that we might expect to see great variability across victims' subjective experiences (for example, one victim might experience fondling as equally traumatic as another victim who is raped), we

needed a way to rank the relative seriousness of the offences. There is no such scale in the research literature; thus we coded the offences with this hierarchy, from most to least serious:

1 vaginal penetration with penis
2 anal penetration with penis
3 oral sex by victim on offender
4 oral sex by the offender on victim
5 vaginal penetration with finger(s)
6 vaginal penetration with object(s)
7 anal penetration with object(s)
8 simulated sex
9 fondling under clothing
10 fondling over clothing
11 offender masturbation in front of victim
12 offender exposure of genitals to victim

Thus, for example, while penetration is legally seen as the most serious sexual offence, we interpreted vaginal penetration as more intrusive than anal penetration because of the additional risk of pregnancy. We believed it was more serious for a victim to be forced to perform oral sex on an alleged offender than the reverse because it would most likely involve greater physical coercion. These and other considerations went into the coding the offence type variable.

A third measure coded for the presence of offence elements, as these were described in the Police AP, from which we constructed a seriousness scale that comprised these elements:[20]

- the actual act involved in the offence, a binary code indicating whether the offence involved penetration or oral sex (if yes, coded 1)
- whether any weapon was used (if yes, coded 1)
- whether there was an indication that the victim used physical or verbal resistance or both (if yes, coded 1)
- whether the YP abused a position of trust with the victim (if yes, coded 1)
- whether the victim was restrained (tied up or held down) during the incident (if yes, coded 1)
- whether the YP enticed or lured the victim (if yes, coded 1)
- whether the YP threatened to harm the victim if s/he reported the incident or did not comply with the sexual act (if yes, coded 1)
- the degree of victim (physical) injury: serious (coded 3), moderate (coded 2), or somewhat (coded 1)
- whether the case had multiple incidents with single or multiple victims (if yes, coded 1)

[20] In an earlier version of this scale, we included a variable for the legal offence (1=rape, unlawful sexual intercourse, incest, and indecent assault, 0=else). However, we dropped this variable to ensure that the scale comprised only behavioural elements. We found, for example, that some cases were identical in behavioural elements, but some offenders would be charged with indecent assault and others, with indecent behaviour.

The scale could range from 0 (least serious) to 11 (most serious), but the maximum value in our dataset was 9 (see Tables 4.8 and 4.9). These three measures afforded different ways to depict the seriousness of the cases finalised in court or by conference and caution.

Time variables

For victims, an important aspect of legal proceedings is the time it takes for their case to be heard and finalised. We recorded several temporal markers from the date of the offence through to the finalisation date; from these, we calculated time measures such as time between offence and report to police, time between report and the start of proceedings, time between the first and final court hearings, and time between the offence and the finalisation of the case. The finalisation date for the court cases is the date of the last hearing, which for the proved cases, could have been the date of sentencing or the date of both entering a guilty plea and sentencing. An analysis of the 108 court cases, which did not go to trial and were proved of a sexual offence, shows that 60 percent were sentenced on the same day as the plea was entered. For the remaining YPs, the mean time between plea and sentence was 58 days. Expectably, the major indictable offences were more likely to be sentenced at a later date (53 percent) than the minor indictable offences (32 percent).

Seven cases were proved of a sexual offence; yet, no plea was recorded on the Certificate of Record, and the cases did not go to trial. This sometimes happens when the defendant enters a guilty plea at a late stage of the proceedings. The judicial officer is able to finalise and sentence the case, but the administrative process of recording the plea is not completed, and the plea is not recorded officially. We coded these seven cases as if a guilty plea had been recorded, and used the date of sentencing as the date of the plea.

Socio-economic measure

We knew it would be important to have a measure of the socio-economic status (SES) of the victims and alleged offenders in our sample, but the police and court documents did not record any information for the profession, income, or education level of young people and victims (or, more importantly, their families). However, the documents did contain information on the suburb and postcode where a young person or victim lived.

From the Australian Bureau of Statistics (ABS) Socio-Economic Indexes For Areas (SEIFA), we selected the Index of Relative Disadvantage (IRD), which is constructed not only from income, but also educational attainment, type of job, and level of unemployment (ABS 1998). Low index values are associated with relatively disadvantaged areas, and high, with more advantaged areas. We coded the IRD based on the postcode of the suburb where the YP and victim resided at the time of the police report. If no postcode was listed because the YP or victim was homeless, we used other documents (e.g., Certificates of Record) to determine the address. For organisational victims (e.g., a church in one case), we coded the address of the organisation for the SES measure. The average (mean) SEIFA index of disadvantage for the suburbs where the unique set of 365 YPs lived was lowest for the court cases (923), rising to 941 for the conference cases, and 972 for the police formal cautions. An analysis of variance shows statistically significant differences across the three sites of finalisation. Whereas the average (mean) for South Australian postcodes is 987, the mean for the 365 YPs in the archival study was 934. Thus, those

youth accused of sexual offences are, on average, of lower SES than other residents in South Australia.

6. The coding process and its challenges

Coding each case involved a careful reading and re-reading of the documents to extract the relevant data with accuracy. While some cases were straightforward (a young person is charged with an offence that involves a discrete incident with one victim, the case is referred to court, the young person pleads guilty, is ordered to pay a fine, and the case is disposed of without conviction), many were quite complex. Box 1 shows a complex court case, illustrating the information the researcher had to sift through in order to code the variables of interest.

Coding orientation

Since the project's focus was on the experience of victims in the criminal justice process, our coding orientation was to code the case from the victim's point of view, especially when the "facts" seemed ambiguous. For example, in one case of indecent assault (SAAS case 310), the two female victims reported that the YP showed them what *looked like* a pocket knife tucked in his belt, but he did not directly threaten them with it. When police searched the YP some time later, he was not carrying a pocket knife, and he denied even owning a knife. The researcher was then confronted with the question of how to code the weapon variable. From the point of view of the two victims, a weapon was present, and they thought the YP could use a knife to harm them. Yet, from the YP's point of view, there was no weapon, and the police did not know whether or not a weapon was present, but were likely to be influenced by the victim's report about the knife. Because our coding orientation was to understand the offence from a victim's point of view, we coded that a weapon was present in this case. When such questions arose, the researchers consulted with each other and made precise notes outlining the coding decision.

Box 1. Example of a complex court case (SAAS Case 2)

Case summary

The YP, who was 17 years old at time of the offences, induced the victim, who was 5 years old at the time of offences, to take off her clothes, then touched her clitoris and performed oral sex on her. This occurred several times over the course of a year. The YP was discovered doing this by the victim's mother, who later contacted the police.

YP description

The YP is an 18 year old, unemployed, Caucasian male. He lives with his father and his grandmother.

Offence description

The YP was initially charged (at the time of the AP) with 6 counts of indecent assault, 2 counts of rape, and 1 count of inducing a child to expose her body. He did not use weapons, but the offences occurred over a lengthy period of time. The earliest offence date was estimated in the AP. The offences were not discovered for some time after the first incident, and they were not reported to the police for some time after that.

Victim description
The victim is the YP's 6-year old female cousin. She has a learning difficulty, which affected her ability to report the offence and to give information to the police.

Seriousness
There was an entrenched pattern of abuse, with offences taking place multiple times over a long period of time. The victim was much younger than the YP, indicating a manipulation of the victim's trust.

Report
The victim's mother caught the YP in the midst of an assault. She later reported the assaults to the police, saying that she did not contact police immediately because her daughter could not relate the incidents in a clear manner because of her disability. A period of 504 days elapsed
Box 1 (continued)

between the approximate date of the first offence and when the offence was reported and investigated by the police.

Court
At the start of the court proceedings, the YP was charged with 1 count of indecent assault (which is a notable difference from the original charges at the time of the AP), and an application for enforcement of a breached bond was made against him. After the case had come before the Adelaide Youth Court on 5 different dates, with no appearances by the YP, the case was transferred to Murray Bridge (a country town about l.5 hour's drive from Adelaide), where the YP appeared once (while in custody) before the case was transferred back to Adelaide. This time the case came before the court twice with no appearances by the YP. It was transferred back to Murray Bridge, and again, back to Adelaide. The case was on the court docket a total of 22 times, with 7 appearances by the YP. Throughout these appearances, 3 different solicitors represented the YP. He eventually pled guilty to both charges and was convicted. A total of 142 days elapsed between the first and final date in court.

Adjudication and sentence
One count of indecent assault was proved in court. The court imposed a 3-month detention sentence, which was suspended for 12 months. The conditions of the suspended sentence were a good behaviour bond, supervision by a probation officer, residential requirements, and participation in the Mary Street Programme for 12 months.

The operationalisation of some variables also reflected the coding orientation. Again we use the weapon variable as an example. Coding this variable was straightforward when a gun or a knife was used, or even when an item such a hairbrush was used to hit the victim. We debated, however, whether or not to include "fists" as a weapon in cases where the youth was alleged to have hit or slapped the victim. From a victim's perspective, a person's fists are weapons that can threaten and also inflict injury; from a young child's perspective, the fists of an older child also represent a threat. So, we included a code for "fists" in the weapon variable.

In some cases, the AP hinted or alluded to some circumstances, e.g., the victim or YP may have consumed alcohol, but did not offer clear evidence. For instance, one variable codes for whether the YP had any psychological or intellectual difficulties. In some cases, the AP mentioned that

the YP attended a special school, suggesting the YP had some learning or behavioural problems; however, no further details were provided. The researchers decided to code "yes" only in cases where clear evidence was documented in the AP. When no clear evidence was available, the code "possibly, but could not clearly determine" was introduced. Other cases were coded "no." Details of the context of the offence were sometimes also incomplete. For instance, some offences took place during parties where alcohol was available, but the AP did not document whether the YP or victim had consumed any alcohol. Because the APs were sometimes vague, we were not always able to fully code the elements of a youth's or victim's characteristics and the circumstances of an offence.

Defining "the victim"

A small proportion of cases (4 percent) did not have a direct victim. In some cases of indecent behaviour, no specific victim was alleged to have been targeted by the YP, and the AP only recorded a civilian or police witness. In a few other cases, the victim was a non-human animal or an organisation such as a church. For these cases, we recorded the details of the offence, but noted that no direct human victim was involved.

In another 4 percent of cases, the facts pattern suggested that the victim had consented to all or part of the sexual contact. Several cases involved boyfriends and girlfriends who were under the age of legal consent and were discovered or suspected of having sexual relations by parents or others, who, in turn, reported it to the police. Occasionally, both parties were charged with an offence; thus, each was a victim and offender! Or only the oldest person was charged with unlawful sexual intercourse. For these cases, we decided to record the victim's details but also to note that the victim agreed to the sexual activity.

Some victims were deemed by others to have been unable to give their consent to sexual contact. For example, in SAAS Case 225, the victim had spina bifida and wore legs callipers and a catheter. On the day of the offence, the victim was sitting on the YP's lap, and the YP proceeded to kiss and sexually fondle her. Witnesses reported the incident to Children, Youth and Family Services, and the police were notified. When questioned, the YP stated that the victim was his girlfriend. The victim refused to give further evidence against the YP, saying that he was her boyfriend and they loved each other. Although there was a 4-year age difference between the YP and the victim, and the victim was fairly young, it appeared she willingly agreed to participate in the sexual contact with the YP. From our perspective, this kind of sexual offence is distinct from cases that involved a clear use of coercion, force, threat, intimidation, or manipulation in the course of the assault.

Pattern of abuse

We wanted to differentiate cases that were "once-off" incidents from those that had a pattern of continued abuse over a period of time. About one-third of cases (31 percent) had more than one incident (the range is 2 to 120 incidents) over periods of time that ranged from one day to ten years (Appendix 9). It was also important to differentiate between repeated offending by a single YP against different victims in several discrete incidents, and persistent abuse against a single victim over a period of time, as is typical in cases of intrafamilial sexual offending. In several cases, a long period of time elapsed between one incident and the next (for some, over one year). A single variable could not characterise both the nature of the offending and the victimisation.

We created a series of variables that attempted to capture the number of offences and length of abuse experienced by each victim. In addition, the length of the abuse and number of incidents for the entire case (counting all victims) was recorded. From these variables, we attempted to construct a precise picture of the nature of offending and experience of victimisation, including variables that tapped the disagreement over the nature of the offence.

Date of the offence

Victims of sexual assault (especially young victims) often do not report the offences until long after the incident occurred; or they report the date of the most recent incident, and then reveal that similar incidents have taken place previously, but cannot recall on which specific dates. Therefore, offence dates were sometimes estimated by the victims or the police. When an offence included several incidents for which accurate dates, or at least the dates of the first and last incidents, were available, we recorded these dates and calculated the offence date as the mid-point of these dates. Because some cases involved a pattern of abuse over months or even years, precise dates were not available, and we had to approximate them from the victim's and YP's statements to the police. Details such as a victim stating that an offence took place on or near a holiday ("around Christmas time in 1992"), or "it started when we moved, three months ago…" or the YP's admission to having committed the offence "on a daily basis for the last four months" (SAAS Case 303) helped us time the occurrence of the various incidents, and broadly determine how many incidents took place.[21] We estimated these variables as systematically and with as much care as possible because we wanted to be able to analyse several features of the offence date, including the length of time during which offending occurred, the averages for the length of time from offence to report, and the time between the offence and finalisation at court or conference.

Missing data

It was not possible to record several variables of interest for all of the cases in our sample, or at least not with complete accuracy. For example, the "ethnic appearance" of the YP was included on most APs, but we knew that this information is often recorded from a police officer's impression rather than by asking YPs their racial or ethnic identity. Aboriginality could be assessed more reliably because this information was recorded in the court file, and it could also be inferred for YPs who had a representative of the Aboriginal Legal Rights Movement (ALRM) present at police questioning. The racial-ethnic identity of the victim, however, was rarely recorded on the AP. While various details about a YP were often given in the AP (e.g., living arrangements, whether attending school), such details for the victim were lacking. For example, the date of birth was given for all the YPs, but was rarely noted for victims. Instead, most APs gave the victim's age at the time of the report to the police, although this was not always recorded, especially in cases involving adult victims, and it had to be estimated. Appendix 10 describes how the victim's age was estimated, drawing from the JANCO codes shown on the AP, and from information in the AP and sentencing remarks. The relationship between the YP and victim was also occasionally unclear. The sentencing remarks provided additional information, and for all cases we were able to determine whether the offence was intra-familial or extra-familial, at a minimum.

[21] When only the year of the incident was known, we coded it as happening on 01 July; when only the month and year were known, we coded the incident as happening on the first of the month.

Conference variables

Some aspects of conferences were also difficult to code. One variable of interest was the number of YP supporters who attended the conference as compared to the number of victim supporters. While the affiliation of some conference participants was clear (e.g., the parents of the YP or a counsellor from Mary Street), it was not always possible to determine whether participants such as representatives from school or counselling services were present to support the YP or the victim. Moreover, in cases of intra-familial offences, the same persons could be both a YP and victim supporter (e.g., a parent in a case of sibling incest). We decided to record this information to assess the effect of possible "shared loyalty" on the conference agreement. Likewise, we had hoped to track the number of male and female participants at each conference (to further explore the gendered nature of conferencing these cases), but for many cases it was impossible to determine such information (e.g., when only a first initial was listed).

Part III
Criminal Histories

1. Criminal histories documents

After the defendant list was finalised, we obtained the criminal history for each YP based on their JIS pin number. The criminal histories raw data were provided by the Justice Data Warehouse; they included all alleged offences that were dealt with formally by the criminal justice system, as well as breaches of previous dispositions and child protection hearings.[22] They cover the period from the start of the collection of these data by the Justice Data Warehouse (1994) to the date of the SAJJ-CJ extraction (28 November 2001), and include both juvenile and adult offending. The raw data were sent to us as two Word documents: police formal cautions (53 pages in total) and court and conference appearances (265 pages in total). In both documents, the data were presented as a table (one table per YP) with one row per adjudicated offence and six columns showing the finalisation date, court or conference file number or police division (in the caution file); the outcome of the case (i.e., agreed or not, proceeded with for conferences; convicted, dismissed, etc. for court cases); the legislative code proscribing the offence; and the offence description (e.g., "indecently assault a person"). There was no further information about the alleged offence (such as the offence date) or the penalty imposed for proved court cases or admitted conference and formal caution cases. The table length for each YP varied from one row (for YPs with only the SAAS offence and no pre- or post-offending) to several pages. The raw data on criminal histories required extensive editing and coding.

2. Creation of the variables

The scope of the information available from the Justice Data Warehouse and our research questions led to the design of the variables in the criminal histories dataset. The coding scheme reflected different items of interest before the SAAS case and after it. From interviews with South Australian Youth Justice officers in 1999, as well as the legislation and administrative orders guiding the police referral and diversion decisions, we knew that an young person's history of previous official offending was an important element in the police decision to refer a case to court or to divert it to caution or conference. Thus, we were interested in how many and what kind of legal interventions the YP had before the SAAS case, for what type of offences and at which age the YP started offending. In order to analyse the degree to which previous criminal offending influenced the police referral decision (or site of disposition, since the court might refer a case to conference), we attempted to build a picture of what the police officer would see (although our information was less detailed) in making the referral decision.

By the term "offending" and when it occurred, we refer to the legal actions taken (that is, finalisation), not when the actual offence occurred. For offending after the SAAS case, we were interested to determine incidence and prevalence of offending by site of the SAAS case

[22] Family Care Meetings (FCMs) are court processes, which do not indicate an offence but may provide an indication of child neglect or abuse in the YP's home. FCMs were counted prior to and post the SAAS case.

disposition (conference and court, in particular) and by penalties imposed or undertakings agreed to in the case. Thus, for example, we were interested to compare re-offending between YPs who did and did not participate in sex offender counselling as part of a court or conference outcome. The post-SAAS case offending also permitted us to assess whether, for our sample of young people, sexual offending was a specialised form of offending or rather, as the literature suggests, it is more likely to be part of a general pattern of anti-social behaviour, which includes other types of offence such as property, drug, and non-sexual violent offences (Nisbet et al. 2004; Smallbone and Wortley 2001).

All offences that YPs were charged with, and prosecuted for (that is, both proved and not proved offences) were recorded. While only proved offences were used in preliminary analyses of pre- and post-SAAS offending, listing all the offences allows us to get a complete picture of the amount and frequency of contact with the criminal justice system. In order to examine the amount and type of offending for each YP, we recorded the number of individual offences, not just the number of court or conference finalisation dates. Thus, if several different offences had all been finalised on the same date, they were counted as distinct offences.

Like the problems we noted in coding the defendant list (pp. 20-22), we learned that some court cases were re-filed under a new file number, indicating a plea to a lesser offence (i.e., offences under the first file number were dismissed or withdrawn, and offences under the second number were proven with or without conviction). This problem also emerged in the criminal histories dataset. When it arose for the SAAS case, we could determine what had happened because these cases had been studied in detail. For non-sexual offences that were not part of the SAAS case database, we could infer that the case had been re-filed if there were related charges (i.e., less serious charges in the second file) finalised on the same or very proximal date. When this occurred, only the original offences were counted; however, it was not always possible to infer whether an offence was "old" (re-filed) or "new" (a fresh offence). In some of the SAAS sexual offence cases, offences were re-filed, but this fact was not apparent in the histories. Therefore, it is possible that redundancies have remained in the dataset (i.e., re-filed offences counted as new ones), which may result in a slight inflation of the number of offences in some youths' records.

Breaches of previous dispositions were counted separately. Usually, when an offender is on a bond or obligation to be of good behaviour, and s/he commits another offence, s/he is charged, not only with the new offence, but also with the breach of the bond or obligation. Furthermore, all the offences for which the bond or obligation were imposed are brought forward again for re-sentencing. Counting these "old" offences would inflate the number of offences on a YP's record. Instead, we recorded the new offence (the source of the breach) and separately counted the number of breaches each YP was charged with, and whether they were proven or not proven.

Figure 1 gives a schematic representation of the structure of the criminal histories dataset and the variables of interest. To gain an overall picture of how often the YP came into contact with the criminal justice system before or after the SAAS case finalisation, as well as the seriousness of that contact, we recorded the total number of offences, the total number per site (that is, police formal caution, conference, and court), and the total number per type of offending (i.e., sexual, indecent behaviour, violent, non-violent and non-sexual) for the period of time before the SAAS finalisation and the time afterward. Court finalisations were broken down into total number of

offences proved (including proved with and without conviction, sentenced, found guilty after trial) and total number of offences not proved (that is, withdrawn or dismissed). Conference finalisations were broken down into proved (agreed) and not proved (not agreed and not proceeded with).

Type of offences

We categorised the type of offence as a rough indication of seriousness (i.e., violent offences may be seen as more serious than non-violent offences). Sexual offences, the focus of the research project, remained a separate category. Indecent behaviour was also separated because this is a special type of public order or "no touch" sexual offending, which may not have any direct victim. For example, a male YP may expose his genitals in public without intending to victimise anyone in particular, but the incident is witnessed and reported (in some cases, the witnesses were police officers). In other cases, the indecent behaviour is aggressive and harassing, as when a YP targets a particular victim and follows this victim around. Generally, for indecent behaviour, there is no physical contact between a YP and victim, and the offence is non-violent; otherwise the YP would have been charged with assault or indecent assault. Separating violent and non-violent offending is not straightforward; this was a source of heated discussion between the researchers in some cases. Violent offences were operationalised as those involving common and aggravated assaults, bodily harm, endangering life, intent to injure or wound, and physical threats. The category "non-sexual and non-violent" offences included all other offences.

The JANCO categories

In addition to the categories described above, the total number of offences finalised pre- and post-SAJJ-CJ was itemised using the JANCO classification system (OCSAR 2003) (See Appendix 8).

Temporal markers

To assess the length of the YP's offending history, we computed several temporal markers using finalisation dates. Because some YP's records were lengthy and complex, the initial dataset did not record each finalisation date, but only the first and last dates within the time spanning the dataset (1994 to the end of 2001), including the first finalisation date following the SAAS case. From these, we computed the age at first finalisation. For cautions, this date will be close to the date of the offence; for court and conference cases, the finalisation date is some time after the offence, depending on how long it took for the offence to be reported and processed through the legal system (using the median from the SAAS cases, this is 3 and 6 months, respectively, for conference and court cases from notification to the police to finalisation). These data permit us to examine if and for how long before the SAAS case the YPs had an official record of offending, and whether the YP's official offending stopped, continued as before, or escalated post the SAAS case. For YPs whose cases were finalised early in the research period (that is, in 1995), the age of first finalisation may be inaccurate because any finalisations prior to 1994 are not in the Justice Data Warehouse archives. Likewise, the last finalisation date in the criminal histories dataset does not necessarily indicate that the YP has stopped offending, but that it is the last recorded finalisation up to 28 November 2001. The criminal history dataset was revised and coding was refined in 2006 to permit to conduct hazard rate analyses.

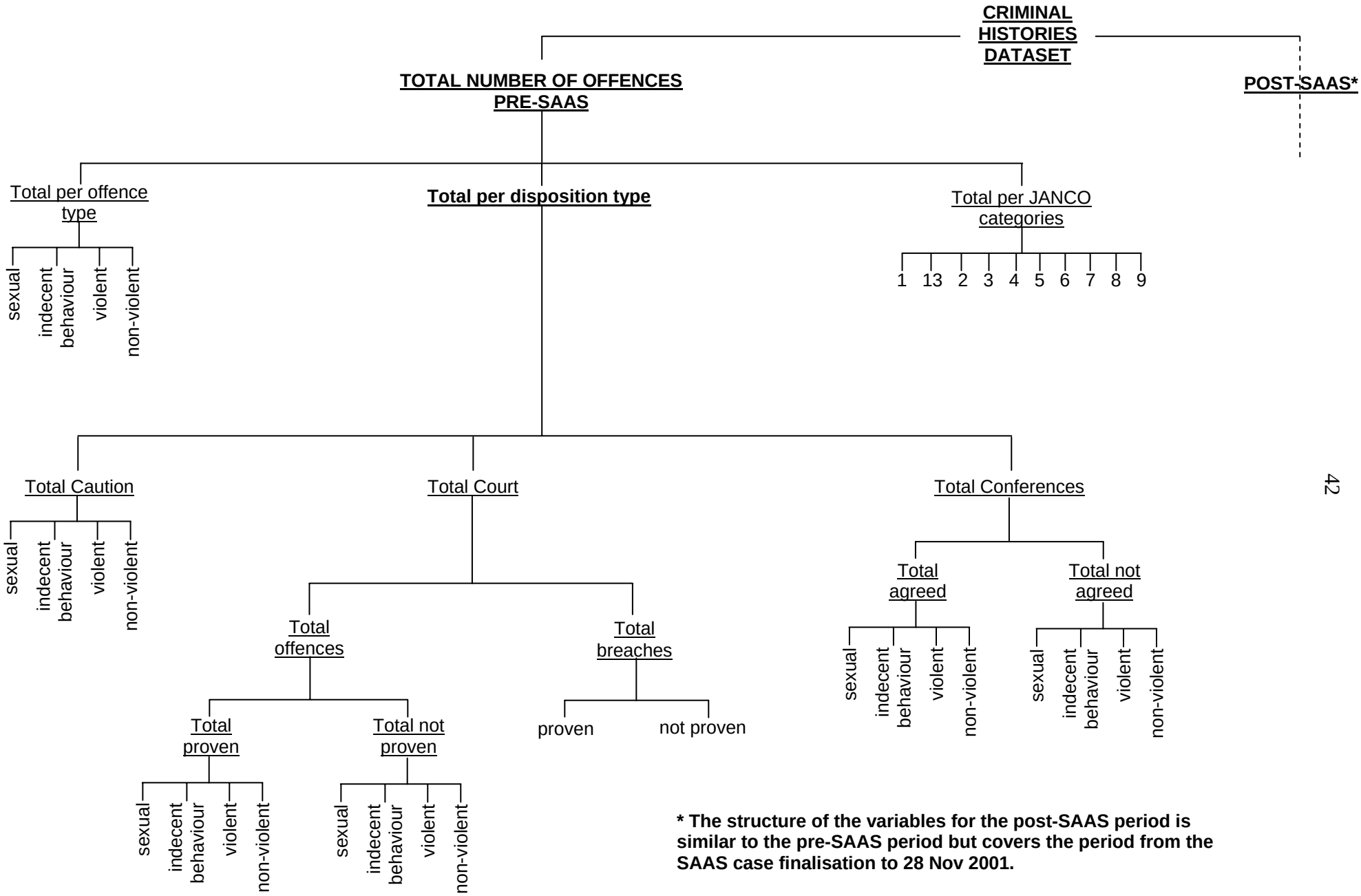

Figure 1. Structure of the criminal histories dataset

The window of time for analysing re-offending post-SAAS varies. The earliest SAAS case was finalised on 4 January 1995 and has a window of time for re-offending of nearly 7 years. The most recent SAAS case was finalised on 27 June 2001 and has a window of time of 5 months. Analyses of pre- and post-SAAS case offending will, of necessity, have to control for this variability by using a hazard rate analysis.

Offence seriousness using the National Offence Index

Criminal histories for the YPs in our sample varied in length and complexity. The number of finalised offences in the pre-SAAS period ranged from zero to 68, and in the post-SAAS period, from zero to 105. We decided not to record every offence, which would have been unmanageable, but rather to select the most serious offence prior to and following the SAAS case. It was impractical to use the time at risk measure, which we employed for the sexual offence cases, because this would have required information on over 250 different legal offences, ranging from rape (one of the most serious) to fare evasion (one of the least serious). In addition, many of the offences in the criminal histories were summary offence that did not attract jail time. Instead, we used the ABS's National Offence Index (NOI), a ranking system of the offence categories of the Australian Standard Offence Classification (ASOC) according to their level of seriousness. The purpose of the NOI is to provide the courts with a standard method of identifying the most serious offence when a defendant has two or more offences (ABS 2003). The South Australian Office of Crime Statistics and Research assisted us by coding our list of offences according to the ASOC classification. This permitted us to apply the NOI to select the most serious offence from all the offences in the criminal histories (in the NOI, the more serious the crime, the lower the rank; thus, murder is ranked one). This index of seriousness allows us to measure and compare the seriousness of offending for individual youth prior to and after the SAAS case, and to compare the seriousness of offending among youth.

Youth criminal histories dataset

The criminal histories dataset was initially organised following the SAAS sexual offence cases, that is, each SAAS case formed a record in the criminal histories dataset (N=385). Seventeen YPs, who had more than one SAAS case were entered several times, with a different SAAS offence representing the split between *pre* and *post* offending for each case. While these data (the *case* criminal histories) are useful to map a YP's offending in relation to one SAAS case, its mode of disposition and outcome, we wanted to also construct a unique picture of each youth's total criminal history. We constructed the *youth* criminal histories dataset by selecting all the YPs with only one SAAS case, and only the earliest SAAS case for YPs with multiple cases. Information regarding the subsequent SAAS cases was recorded as part of the post-SAAS criminal history data. The youth criminal histories dataset contains 365 cases and allows us to map and compare the criminal history of each YP in our sample. From this dataset we were able to design a typology of the YPs according to their offending history (independently of the length of the window for re-offending) with four categories: experimenter, desister, drifter, and persister (Figure 2).

Figure 2. Typology of youth according to their entire criminal history (N=365)

Post-SAAS case	Pre-SAAS case: *no*	Pre-SAAS case: *yes*
no	experimenter* 38%	desister 7%
yes	drifter 24%	persister 31%

*Experimenters only have the SAAS offence as part of their criminal history.

The figure shows that 38 percent of youth had just one official offence (proved or admitted), the SAAS offence (the experimenters), while about one-third had a record of official offending both before and after the SAAS offence (the persisters). While few who had offended before the SAAS offence stopped offending (7 percent were desisters), about one-fourth with no previous offending, offended post the SAAS case (the drifters). More analyses will be conducted with the criminal histories dataset to assess the effects of different interventions, different mixes of offending (i.e., sexual and non-sexual offending), and differing "windows of time" for re-offending.

Part IV
Summary Results

1. General case flow

During the 6.5 year period, 13 Youth Justice Coordinators (YJCs, the officers of the Family Conference Team) and 34 different magistrates and judges were involved in the disposition of 385 cases. These cases came from a total of 57 different Local Service Areas across the state: 62 percent from the Adelaide metropolitan area, 8 percent for the country of Whyalla and Port Augusta, and the remaining 30 percent from other parts of South Australia, including country towns, rural, and remote areas. These 385 cases were finalised by caution (10 percent), conference (31 percent), and court (59 percent) (Table 4.1).

Table 4.1. Sexual assault cases finalised over the 6.5 year period, 1 January 1995 to 1 July 2001

	N	%	any sexual offence proved (court) or by admission (conference and caution) (yes) N	% yes
finalised by a formal caution	41	10%	41 / 41	100%
finalised in conference (may also include formal cautions as part of the conference disposition)	118	31	111 /118	94%
finalised in court	226	59	115 /226	51%
	385	100%		

Note: For the 7 conference cases with no admission to a sexual offence, one was finalised by admission to a non-sexual offence (a referral from court with a charge reduction to assault), one did not admit at the conference, and five conferences were set, but they did not proceed. These cases seemed to have fallen through the cracks, and based on available data, it appears that no further action was taken by the police.

Three points can be drawn from this table. First, the SAAS data for the composition of finalisations by caution, conference, and court differ from South Australian Office of Crime Statistics And Research (OCSAR) data on police referral of sexual offences. Averaging OCS data for two years (1999 and 2001), police referred 20 percent of cases to conference, 70 percent to court, and they cautioned the remainder (11 percent) (OCS 2000: 73; OCS 2002: 85). The SAAS data show that over a 6.5 year period, 31 percent of sexual offence cases were finalised by conference, 59 percent in court, and 10 percent by police caution.[23]

Second, when cases reached court, just under half were dismissed or the charges were withdrawn. Recall we are analysing the "whole case," not individual charges. While it may cause concern

[23] These differences can be explained in part by the fact that the OCSAR numbers are "snapshots" and not "flows" (OCS 2000: 13) through the youth justice system. Moreover, of the 118 conferences in the SAAS sample, 10 percent were referred from court. Based on our dataset, then, we would estimate that the police refer about 28 percent of sexual offence cases to conference.

that for 49 percent of sexual offence cases, no sexual offence was proved in court, this figure is better than that reported by the OCSAR. There are two ways of calculating the OCSAR data: one that *includes cases where a less serious charge was proved*, and a second that *excludes these cases from the analysis*. Using the first method of calculation and averaging over 5 years (1997-2001), the percent of cases not proved is 56 percent (OCS 1998: 130; OCS 1999: 136; OCS 2000: 140; OCS 2001: 138; OCS 2002: 139). Using the second method of calculation and averaging over 5 years, the percent of cases not proved climbs to 65 percent. Depending on one's purposes, one can use either figure. However, we think the first is a more accurate reflection of the court's work. Our reasoning is that of the court cases with any offence proved in our dataset, all but eight were to a sexual offence.[24]

The reader may wonder, what accounts for the differing rates of proved and not proved sexual offences in the SAAS dataset and OCSAR statistics? The answer is that OCSAR reports data on "finalised appearances" by selecting *which charge* had the highest penalty out of the charges that were proven. If more than one charge received the same penalty, the charge that was convicted was selected. Otherwise, the charge with the highest maximum statutory penalty was selected. The SAAS project examines whether the YP's case was found proved of *at least one* sexual offence. Our study was able to more closely approximate the actual disposition of cases, by defendant, on the date of finalisation.

Third, of the total finalisations with any sexual offence proved, more of these were caution or conference (N=152) than court (N=115) dispositions. Cases proved in court and by admission in conference were roughly equal (115 and 111, respectively) over the 6.5 year period. We analyse these cases in Section 5 to show the penalties imposed in court and undertakings agreed to in conference.

Most of the court cases with a sexual offence proved were finalised by a guilty plea. Only 18 cases (8 percent) were set for trial. Of the 18 cases, four YPs eventually entered guilty pleas and 14 entered not guilty pleas or no plea. Of these remaining 14, eight were dismissed and three were found not guilty; three cases were proved at trial.[25]

2. Kinds of offences

Let's consider the kinds of offences and their legal seriousness at the start of proceedings (defined as charges listed on the first court appearance, on the day of the conference, or as they appeared on the AP for caution cases) (see Tables 4.2 and 4.3).

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[24] In a previous paper (Daly 2002: 78), I used the second measure in discussing whether sexual offence cases were proved or not in court. Based on the archival analysis, I would now say that it is more accurate to include these less serious sexual offences as proved. In our dataset, for example, 12 percent of the rape cases filed were found proved of rape but another 28 percent were found proved of a less serious sexual offence (see Table 4.4).

[25] In one case (SAAS Case 42), the YP pleaded not guilty to the most serious offence he was charged with (attempted rape) and guilty to the second, less serious offence of attempted unlawful sexual intercourse. The YP was found guilty of the attempted rape at trial; thus, the case was coded as one of the three cases proved at trial.

Table 4.2. Distribution of offences and legal seriousness at the start of legal proceedings

Type of most serious offence at start, percent distribution by finalisation site	legal seriousness (rank)	COURT (N=226)	CONF (N=118)	CAUTION (N=41)
Rape	1	38	7	5
Unlawful sexual intercourse with a person under 12	1	10	10	2.5
Attempted rape	2	2	0	0
Indecent assault	3	34	59	34
Unlawful sexual intercourse	4	6	9	5
Incest	4	0.5	3	0
Procuring a person to become common prostitute	4	0.5	0	0
Procuring an act of gross indecency	5	0	1	0
Gross indecency	6	0.5	2	5
Indecent behaviour	7	8	9	46
Other	7	0.5	0	2.5
Total		100%	100%	100%

Table 4.3. Type of most serious offence at the start of legal proceedings and whether any sexual offence was proved by court, conference, and caution

Type of most serious offence at start and whether any sexual offence was proved in court or by admission		any sex offence proved? (yes)	any sex offence admitted to? (yes)	any sex offence admitted to? (yes)
	N of cases	COURT	CONF	CAUTION
Rape	95	40%	75%	100%
Unlawful sexual intercourse with a person under 12	36	61%	100%	100%
Attempted rape	5	60%	no cases	no cases
Indecent assault	161	48%	94%	100%
Unlawful sexual intercourse	26	79%	100%	100%
Incest	5	100%	100%	no cases
Procuring a person to become common prostitute	1	100%	no cases	no cases
Procuring an act of gross indecency	1	no cases	100%	no cases
Gross indecency	5	100%	50%	100%
Indecent behaviour	48	72%	100%	100%
Other	2	0%	no cases	100%
Total N	385			
Average: any sexual offence proved (court) or by admission (conference and caution)?		51%	94%	100%

Table 4.2 shows that rape was more often finalised in court than by conference or police caution; indecent assault was more often finalised by conference; and indecent behaviour, by caution. From Table 4.3, we see that young persons charged with rape also had the lowest chance of having any sexual offence proved in court (40 percent). The least serious offence (indecent behaviour) was also less likely proved in court (72 percent) compared to conference or caution (100 percent).

Charges of unlawful sexual intercourse with a person under 12 also resulted in a relatively lower percent of having any sexual offence proved when finalised in court (61 percent) as compared to conference (100 percent). The same is true for indecent assault (49 percent and 94 percent for court and conference, respectively). (See Appendix 4 for the main elements associated with each of these offences.)

Let's turn to what happens when cases go to court (Table 4.4). The court cases were composed largely of rape, unlawful sexual intercourse, and indecent assault. Those charged with rape were least likely to have been proved of the original charge of rape in court (12 percent were), and they were the least likely to have been proved of any sexual offence (40 percent were).

Table 4.4. What happens when cases get to court

Court cases only (N=226); original or less serious sexual offence proved, or no sexual offence proved, by most serious charge at the start of the legal proceedings				
Most serious charge at start of legal proceedings is ...	original charge proved	less serious sexual offence proved	no sexual offence proved	total
rape (N=85)	12	28	60	100%
unlawful sexual intercourse, all ages of victims (N=37)	46	22	32	100%
indecent assault (N=77)	47	1	52	100%
rest of cases (includes incest, indecent behaviour, gross indecency, attempted rape, and other) (N=27)	63	7	30	100%

Another way to examine what happens to these cases is to use the "time at risk" measure to determine the erosion of the legal seriousness of the case, especially for those disposed of in court. We calculated the total time at risk at the start of legal proceedings and at finalisation, both for cases proved and not proved. (See pp. 27-28 and Appendix 4 for calculation of time at risk.)

Table 4.5. Erosion of legal seriousness for cases from start to finalisation, *all* sexual offences

	COURT (N=226)	CONF (N=118)	CAUTION (N=41)
Total time at risk at the start of legal proceedings (sexual offences only), in months, median	384	120	6
Total time at risk at the end of legal proceedings (sexual offences only), in months, median	240	120	6
Total time at risk, only those cases where one or several sexual offences were proved (court, N=115) or admitted (conf, N=111 and caution, N=41), in months, median	120	120	6
rate of erosion of legal seriousness: 384 - 240 / 384 = 38 percent for court cases			

Table 4.5 shows substantial erosion for the court cases, with the average (median) time at risk being 384 months at the start of the case, and 240 months at finalisation, an overall seriousness reduction of nearly 40 percent. If we consider only the cases with proved sexual offences, the median total "time at risk" reduces to 120 months, the same time at risk than for the conference cases. For the conference cases, when we include all the cases at the start of proceedings (N=118), there is no erosion, with 120 months "time at risk" at the start and at the end of proceedings. Of particular significance is that once cases are finalised as proved in court, they are as serious as those disposed by conference (using the time at risk measure). Caution cases are far less serious with just 6 months at risk at the start and end of proceedings.[26]

We also examined the erosion of cases using the time at risk for only the most serious sexual offence at start of proceedings and at finalisation (Table 4.6). If we consider only the most serious sexual offence, there is no erosion in time at risk (120 months) between the start and end of the court's proceedings (including both proved and not proved cases). However, for proved offences in court, there is erosion from 120 to 96 months. This occurs because for those charged with the most serious offence (rape) and proved of any sexual offence, there is charge reduction to unlawful sexual intercourse (44 percent) or indecent assault (27 percent), with a minority of cases proved of rape (29 percent).

Although we have shown the erosion of legal seriousness in two ways (all the sexual offence charges and only the most serious sexual offence), the former is the more accurate measure of charge bargaining and reduction, which occurs in the court process.

Table 4.6. Erosion of legal seriousness for cases from start to finalisation, *only most serious sexual offence*

	COURT (N=226)	CONF (N=118)	CAUTION (N=41)
Time at risk at the start of legal proceedings, most serious sexual offence only, in months, median	132	120	6
Time at risk at the end of legal proceedings, most serious sexual offence only, in months, median	120	120	6
Time at risk for most serious sexual offence proved (court=115) or admitted (conference=111 and caution=41), in months, median	96	120	6
rate of erosion of legal seriousness for most serious offence only: 132-96/132 = 30 percent for court cases			

[26] The *median* is generally used in reporting averages in this report, rather than the mean, which is subject to outliers in a distribution. The median is the value at the mid-point (50 percent) of a distribution. Half the sample falls above, and half below the median. The *mean* is a simple arithmetic average.

3. Actual harm and seriousness

One way to categorise crime is to use legal charges. Another is to determine what the actual harm was, that is, what was the alleged offending behaviour, and what harm did the victim suffer? Table 4.7 shows more precisely what the YP was alleged to have done to the victim, and whether any sexual assault charge was proved. It shows that the more serious the offence (as measured by penetration or physical contact), the less likely it was to be proved in court. For example, 49 percent of the court cases involving vaginal or anal penetration with a penis resulted in a sexual offence being proved by court finalisation; 93 percent of conference cases involving the same acts were admitted to by the YPs.

Table 4.7. Actual offence and whether any sexual charge was proved (court) or admitted (conference and caution)

Actual offence distribution by site and whether any sexual assault was proved (in %)	COURT % DISTRIB. (N=226)	COURT % PROVED	CONF % DISTRIB. (N=118)	CONF % ADMIT	CAUT % DISTRIB. (N=41)	CAUT % ADMIT
vaginal or anal penetration with penis	39	49	25	93	5	100% of caution charges admitted
oral sex (on YP or Vic)	8	59	6	86	5	
vaginal or anal penetration with fingers or object	10	43	11	100	2	
simulated sex, and fondling under and over clothing	28	48	45	94	34	
YP masturbation in front of Vic or exposure to Vic	8	61	9	91	37	
other offence	7	63	4	100	17	
Overall	100%	51%	100%	94%	100%	100%

Another measure of seriousness, constructed from the offence elements (see p. 29 for the elements forming the scale), shows that the median seriousness score for the court cases is higher (3) than conference (2) or caution (1) cases. On four of the nine measures, the court cases are more serious than the conference cases; on five measures, there are no difference. On the elements that comprise the seriousness scale, a higher share of court than conference cases have these elements: the offence involved penetration or oral sex[27], a victim used physical or verbal resistance (or both), the victim was restrained, and the offence had a higher degree of victim injury. At the point of referral, then, court cases are more serious than conference cases. However, as we will see in Sections 5 and 6, these more serious cases were less likely to be proved in court, and, consequently, less likely to receive a penalty or therapeutic intervention.

[27] Under South Australian law, sexual intercourse is defined as including both penetrative and oral sex.

Table 4.8. Seriousness scale constructed from the elements of the offence(s)

	COURT (N=226)	CONF (N=118)	CAUTION (N=41)	COURT/CONF DIFF?
Offence involved penetration or oral sex (genitals or anus) (1 if yes)				
YES	57%	42%	12%	yes (court more)
Any weapon use (1 if yes for any weapon, including gun, knife, fist, other object)				
YES[28]	12%	10%	0%	no
Indication of physical or verbal resistance or both by victim (1 if yes)				
YES	51%	35%	32%	yes (court more)
YP abused a position of trust (1 if yes)				
YES	46%	49%	27%	no
Vic was restrained (tied up or held down) (1if yes)				
YES	35%	17%	10%	yes (court more)
YP enticed or lured victim (1 if yes)				
YES	7%	3%	2%	no
YP threatened victim if s/he reported the incident or did not comply (1 if yes)				
YES	17%	14%	2%	no
Vic seriously injured (3), moderately injured (2), or somewhat injured (1); else is 0				
seriously	1%	0%	0%	yes (court more)
moderately	17%	9%	2%	
somewhat	7%	6%	2%	
Multiple incidents with single or multiple victims (1 if yes)				
YES	34%	31%	20%	no

[28] Of the 385 cases, weapons were used in 10 percent. Of the 10 percent, fists were 4 percent; 6 percent were other types of weapons including guns, cutting objects (e.g., knives, fishing spear), and other objects such as lit cigarettes, a rope tied around the victim's neck, wooden handles and branches, stones, and one syringe.

Table 4.9. Seriousness scale frequencies

Seriousness scale frequencies (0= least serious to 9=most serious)		COURT % DISTRIB. (N=226)	CONF % DISTRIB. (N=118)	CAUTION % DISTRIB. (N=41)
Less serious	0	8	8	41.5
	1	13	31.5	27
	2	22	18.5	19.5
	3	22	26	5
	4	14	9	5
	5	11	3	2
	6	4.5	2	0
	7	4	2	0
	8	1	0	0
Most serious	9	0.5	0	0
		100%	100%	100%
median		3	2	1
mean		3	2.2	1.1

4. Young people, victims, and case characteristics

There are many variables in the dataset that describe the YPs, victims, and the character of the cases. The following lists some of the variables; the results highlight frequencies and averages shown in Tables 4.10, 4.11, and 4.12:

- Depending on the site of finalisation, the YP's median age at the time of the offence was 14.1 to 15.7 years (court and caution YPs were older), and the victim's median age was 8.6 to 13 years (based on N=322 cases where the victim's age was indicated in the AP). Victims aged 16 or under were more likely to be victim of an indictable offence (96 percent) than victims 17 or older (53 percent). Conference cases had the youngest victims, with 16 percent being under 5 years of age.[29]
- Almost all the alleged offenders were male (97 to 98 percent across all types of cases), and most primary victims were female (66 to 79 percent, lower for caution cases). Of all victims (N=449), 78 percent were female.
- Most alleged offenders (83 percent) were white Australian; 10 percent were Aboriginal Australian, 4 percent were another ethnic identity, and for 3 percent racial-ethnic identity was not provided. Aboriginal Australians were a somewhat higher share of court cases (13 percent) than those in conference (8 percent) or cautioned (5 percent).

[29] The young people in 46 SAAS cases (12 percent) had already turned 18 when their case was finalised in court or by conference (43 court cases and 3 conference cases). However, they were under 18 when the alleged offence took place; thus they were under the jurisdiction of the Youth Court.

- Students (at the time of the offence) formed a substantially higher share of YPs in conference and caution cases (83 to 85 percent) than in court cases (58 percent).
- YPs had a somewhat greater degree of reported problems (psychological, mental handicaps, histories of sexual victimisation, drug/alcohol abuse) in conference (23 percent) than court (14 percent) or caution (10 percent) cases.
- Conference cases had a higher share of intra-familial sexual victimisation (40 percent) than court (18 percent) or caution (5 percent) cases (caretakers or babysitters were included in the category of intra-familial, even if the YP was not strictly related to the victim, because of the care and trust this relationship involves).
- A higher share of YPs in court cases had legal advice at police questioning (22 percent) than in conference or caution cases (2 to 4 percent).
- A significantly higher share of YPs in court cases made no admissions or refused to comment to the police (53 percent) than in conference (5 percent) or caution (0 percent) cases.
- A significantly higher share of YPs in caution (39 percent) and conference cases (20 percent) than in court cases (4 percent) were explicitly described as remorseful in the police report.
- A substantially larger proportion of YPs in court cases had previous proved offending in caution, conference, or court finalisation (53 percent) than YPs in conference or caution cases (17 to 22 percent).
- Whereas 66 percent of the YPs in proved court cases re-offended after the SAAS case, 48 percent of YPs in conference and 24 percent of cautioned YPs re-offended. (This includes all types of proved offending, not just sexual offences.)
- Of the 192 unique YPs who had proved post-SAAS offending, 16 percent were charged with a sexual offence, and 11 percent had a least one sexual offence proved.
- There was a significantly higher share of “experimenters” among conference and cautioned YPs (47 to 66 percent, for whom the SAAS case was their first and last contact with the justice system) compared to the YPs in court cases (29 percent).
- Court YPs were significantly more likely to be “persisters” (43 percent), having offended both before and after the SAAS case, compared to their numbers among conference (16 percent) and cautioned (7 percent) YPs.

Table 4.10. YP and victim demographics, victim-offender relationship, and offence location

	COURT (N=226)	CONF (N=118)	CAUTION (N=41)
YP			
Age at time of offence (median, in yrs)	15.7	14.1	15.5
Male	97%	98%	98%
Aboriginal Australian	13%	8%	5%
What doing at time of offence (% student) [a]	58%	86%	83%
YP's suburb SEIFA index of disadvantage (median) [b]	923	938	974
YP has one or more problems (psychological difficulties, mental handicap, medical problems, has history of sexual victimisation, or abuses drugs or alcohol)	14%	23%	10%
Victim (primary victim)			
Age at time of offence (median, in yrs) [c]	11.9	8.6	13
Age difference between YP and V (median, in yrs) [c]	4.2	5.9	3.9
Estimated age at time of offence (median, in yrs) [d]	13	8.9	14.1
Estimated age difference between YP and V (median, in yrs) [d]	4.2	5.9	4.3
Female	77%	79%	66%
Aboriginal Australian [e]	1%	1%	2%
What doing at time of offence [a] (% student)	67%	64%	51%
(% child under 5)	4%	16%	5%
Victim has one or more problems (intellectual or other disability)	3%	2%	5%

[a] The remainder are unemployed, employed, or could not be determined from AP.

[b] The lower the index figure, the more disadvantaged the suburb. A multiple t-test (analysis of variance) shows statistically significant differences across the three sites of finalisation. The SA postcode mean is 987 (SD=77.5). Scores are standardised.

[c] Estimate based only on victims whose age was given in the AP (court, N=190; conference, N=102; caution, N=30).

[d] Estimate based on 322 victims whose age was provided in the AP and 49 victims (court, N=31; conference, N=12; caution, N=6) whose age was estimated (see Appendix 10).

[e] Data were missing for 88 percent of court cases, 78 percent of conference cases, and 81 percent of caution cases.

Table (continued)

Table 4.10 (continued)

Primary victim-YP relationship	COURT % DISTRIB. (N=226)	CONF % DISTRIB. (N=118)	CAUTION % DISTRIB. (N=41)
sibling (biological)	5	19	2.5
sibling (foster or step)	6	9	0
other relative	5	9	2.5
YP is caretaker (babysitter)	2	3	0
sub-total % relative or caretaker	*18*	*40*	*5*
friend same age as YP	12	6	10
boyfriend/girlfriend	5	3	2.5
friend younger (YP more than 3 yrs older)	13	8	7
casual acquaintance or known by sight	35	27	29.5
stranger	15	13	34
sub-total % friend, acquaintance, and stranger	*80*	*57*	*83*
NA, no direct victim or organisational victim	2	3	12
	100%	100%	100%

	COURT (N=226)	CONF (N=118)	CAUTION (N=41)
Offence location: at, in or near the home of the victim, YP, relative or neighbour (yes)	58%	60%	22%

Table 4.11. YP received legal advice, admission at AP, and YP remorse

	COURT % DISTRIB. (N=226)	CONF % DISTRIB. (N=118)	CAUTION % DISTRIB. (N=41)
YP had legal advice before or during questioning			
yes	22	4	2
no	76	96	98
cannot determine	2	0	0
	100%	100%	100%
YP admission or denial , as indicated in the AP			
full admission immediately	19	67	61
initial denial but then full admission	1	6	12
full admission immediately or later	20	73	73
admission to some, but not all or initial denial then partial admission	27	22	27
no admission at all, complete denial	27	3	0
refused to comment	26	2	0
	100%	100%	100%
YP showed remorse, as indicated in the AP*			
remorse clearly indicated on AP	4	20	39
no remorse clearly indicated on AP	1	2	0
nothing about remorse indicated on AP	95	78	61
	100%	100%	100%

* Remorse was coded according to the information available on the AP. The variable was coded “remorse clearly indicated” if the AP expressly mentioned that “the YP was sorry for what happened,” “the YP was remorseful,” or “the YP regretted what s/he had done.” The variable was coded “no remorse indicated,” when the AP reported “the YP was not remorseful” or “the YP did not regret what s/he had done.” Cases when there was no mention of remorse or being sorry or when the AP only mentioned that the YP knew what s/he had done was wrong were coded “nothing about remorse indicated on AP.”

Table 4.12. Youth criminal history (proved offending only)

	COURT % DISTRIB. (N=226)	CONF % DISTRIB. (N=118)	CAUTION % DISTRIB. (N=41)
Experimenter (SAAS case was first and last offence)	29	47	66
Desister (has pre-SAAS offending, no post-SAAS offending)	10	6	10
Drifter (has no pre-SAAS offending, but has post-SAAS offending)	18	31	17
Persister (has both pre- and post-SAAS offending)	43	16	7
	100%	100%	100%
YP has one or more proved pre-SAAS offences? (yes)	53%	22%	17%
If yes, how many? (range)	1-59	1-11	1-5
(median)	5	2	1
YP has one or more proved post-SAAS offences (yes)	61%	48%	24%
If yes, how many? (range)	1-85	1-24	1-34
(median)	7	3	3

5. Penalties and undertakings

Table 4.13 shows the penalties imposed by the court and the caution and conference undertakings for the 115 court cases, 111 conferences, and 41 caution cases where a sexual offence was proved or admitted.

On balance, the YPs whose cases were finalised by conference were expected to do more for their victims (for example, to apologise), were more likely to receive community service hours, and were more likely to be sent to counselling at Mary Street (Adelaide's Adolescent Sexual Abuse Prevention Programme), as compared to YPs who were sentenced in court. On the other hand, court offenders were more likely to be supervised by Children, Youth and Family Services (CYFS), to be subject to obligations (such as being of good behaviour), or to receive custodial sentences (although 91 percent of these were suspended sentences; just two YPs with sexual offence proved were to serve any time in detention, with the median time served being 15 weeks).[30]

[30] We note that 13 percent of 115 proved court cases proved had no penalty applied.

Highlighting some results:

- Overall, nearly 80 percent of conference YPs and nearly half of court YPs had to undertake some type of counselling (Mary Street or other); only 10 percent of cautioned YPs had to do so (see Appendix 11 for coding of counselling referrals and the range of counselling services YPs were referred to).
- While 37 percent of court YPs had to undergo Mary Street counselling, over half of conference YPs (52 percent) were expected to do so.
- More conference YPs (19 percent) were in Mary Street in the pre-conference period than court YPs (11 percent) in the pre-trial period.
- Written apologies by YPs to victims were recorded in 32 percent of conference cases, and verbal apologies in 77 percent of conference cases, but were generally not part of documented evidence in the court cases.
- A higher share of conference YPs (23 percent) were expected to do community service than court YPs (11 percent); although the median number of hours was higher for court (96 hours) than conference (50 hours) cases.
- A higher share of conference YPs (23 percent) were ordered to stay away from the victim than court YPs (10 percent). (These results will be explored further to determine how they relate to victim-offender relations.)

Table 4.13. Penalties and undertakings, proved cases (court) and admitted cases (conference and caution)

	COURT (N=115)	CONF (N=111)	CAUTION (N=41)
	% of cases		
No penalty (court) or formal caution only (conf & caution)	13	5	54
Verbal or written apology only	N/A	11	N/A
Verbal apology	0	77	34
Written apology	1[a]	32	5
Mary Street counselling	37	52	0
length of time (median, in wks)	52 wks	35 wks	N/A
Other counselling	15	29	10
length of time (median, in wks)	52 wks	52 wks	12 wks
Any counselling (Mary Street and/or other)	49	79	10
Compensation to victim	0	1	0
YP work for the victim	0	3	0
YP to stay away from the victim	10	23	0
Fine (median amount for court cases is $175)	7	0	0
Community service	11	23	5
length of time (median, in hrs)	96 hrs	50 hrs	12 hrs
YP to be of good behaviour	75	6	5
Supervision by Children, Youth and Family Services (CYFS)	60	1[b]	0
YP to attend an educational/job placement programme[c]	24	9	2
Residential requirements	31	3	0
Detention imposed	18	0	0
length of time (median, in wks)	26 wks	N/A	N/A
Detention suspended (of those with detention)	91	N/A	N/A
Actual detention time to serve (median, in weeks, 2 cases of 4 and 26 weeks)	15 wks	N/A	N/A

[a] In one court case, a penalty element was that the YP write an apology letter to the victim.

[b] CYFS supervision was part of the agreement for one conference case; however, CYFS supervision was probably already in place prior to the conference. The CYFS representative was present at the conference and may have been the YP's guardian.

[c] This includes attending school, participating in job training, attending programmes such as "Scared Straight," or participating in personal development courses such as anger management classes.

6. Mary Street Programme and re-offending

We were interested to determine if re-offending varied for those YPs who did (or did not) participate in the Mary Street counselling programme. From a bivariate analysis, we found that re-offending was lower for both court and conference YPs who attended Mary Street. For conference cases, of those who went to Mary Street, 43 percent re-offended; for those who did not, 53 percent re-offended. For court cases, of those who went to Mary Street, 50 percent re-offended; for those who did not, 75 percent re-offended. Mary Street participation appeared to have a somewhat greater effect on reducing re-offending for the conference than court cases. In the absence of Mary Street, re-offending was the same for both conference and court YPs. (This analysis is only of those cases where it was clear from the court record that the YP had to attend Mary Street. The programme may be an element in CYFS supervision of young people, but we do not currently have data on this.) Further analyses will be carried out to determine the role of Mary Street interventions in reducing re-offending. Initial bivariate and multivariate analyses suggest that the programme has a significant effect in reducing re-offending for both conference and court offenders (see Daly 2006).

Table 4.14. Mary Street Programme and re-offending

	COURT (N=115)	CONF (N=111)
YP was to attend Mary Street programme and had one or more post-SAAS offences (yes)	50%	43%
YP was not to attend Mary Street programme and had one or more post-SAAS offences (yes)	75%	51%

* Chi-square test (one sided) statistically significant at .05 error level

7. Marking time

It takes twice as long for a case to be finalised (from the time of the offence to finalisation) in court (median of 7.3 months) than conference (4 months) (Table 4.15). (Using the mean, the same result is obtained: court cases take 12 months, and conference cases, 6 months.) The mean amount of time from when an offence was reported to the police to finalisation was also longer for court (5.3 months) than conference (3.1 months) cases.

The median number of times a case was set for a court hearing was six, although this ranged from one to 29. Over 40 percent of the cases shifted from their first jurisdiction to another, and a small number (6 percent) shifted three or more time (typically back and forth between two jurisdictions). By contrast, for conference cases, 8 percent of the 118 cases shifted jurisdiction; all but one of these were referrals from court to conference.

Table 4.15. Time between offence, report to police and finalisation

Marking time	COURT (N=226)	CONF (N=118)	CAUTION (N=41)
Days between the offence* and report to the police (*median*)	14	23	4
Days between report to the police and finalisation (*median*)	172	76	27
Overall: months between offence* and finalisation (*median*)	7.3	4	1.3
Overall: months between offence* and finalisation (*mean*)	11.8	6.1	2.5
Overall: months between report to the police and finalisation (*mean*)	5.3	3.1	1.3

* In cases where several incidents occurred, the offence date is calculated as the mid-point between the first and last incident.

8. Summary and discussion

Recapping the main questions:

- For sexual assault, what distinguishes a court case from a conference case?
- What happens to sexual assault cases in court?
- How do the court and conference outcomes (penalties and undertakings) compare?

Highlighting the main findings:

Court cases differed from conference cases in three expectable ways: the YPs did not make an admission or did not talk to the police when questioned, the YPs had a history of previous offending, and the legal seriousness of the cases at the start of the legal process was greater than cases going to conference. In addition to these variables, court cases differed from conference cases in ways that need further explanation: older YPs and extra-familial offences were more likely to be referred to (and finalised in) court.

Once cases were in court, their legal seriousness eroded substantially. The proved court cases and conference cases were identical in legal seriousness at finalisation. Sexual offence victims would have to attend court, on average, 6 times to follow their case, and nearly 20 percent would have to attend 10 or more hearings. Using the median as the average, the amount of time from the offence to a finalisation was 7.3 months. If victims came to court on the day of finalisation, half would learn that their case had been dismissed or the charges withdrawn. Although some portion of YPs may not have committed the offence, the volume of "not proved" cases suggests a wider problem.

We plan to investigate the reasons for the high share of dismissed and withdrawn cases with South Australian legal and judicial officers. In the meantime, we note that when sexual offence

cases go to court, a substantial share of youth are not held accountable for their offending and victims' harms are denied. From a legal point of view, "nothing happened."

One path towards change is directing attention to what occurs when an accused person is questioned by the police. Much flows from this moment in the legal process, when a young person admits to an offence or refuses to admit or talk to the police. As long as young people know that "not talking" will often mean "you walk," they will deny that they have done anything wrong, or refuse to talk to legal authorities. Defence solicitors have a role to play because in defending their clients, they may be aiding patterns of denying responsibility for sexual offending. Again, while we recognise that some YPs may be wrongly or unfairly accused, surely it cannot be in half of cases.

Our study suggests that "talking" to legal authorities is easier to do when the sexual assault is intra-familial; denying or not talking is more frequent when the victim is a friend, casual acquaintance, or a stranger. Further, we find that previous offending is strongly linked to non-admission (45 percent of previous offenders did not admit, whereas 23 percent of those with no previous offending did not admit). From this we may infer that offenders with previous exposure to the justice system may have learned that non-admission means that the charges against them will eventually fade away. Further analyses will be conducted of pre- and post-SAAS offending to determine the mix of sexual and non-sexual offences in the group of persistent offenders.

Several other points should be made about admissions. We find that of the 111 court cases where a sexual offence was not proved, 29 YPs (26 percent) had made full or partial admissions to the police about their involvement in the offence. From a victim's point of view, it may have been preferable that these cases were referred to conference, rather than to court. On the other hand, of the 115 cases that were proved in court, 37 YPs (32 percent) did not admit to the police or refused to comment to the police. Thus, non-admission, while a predictor of a case not being proved in court, is no guarantee that a defendant will "walk."

The comparison of court and conference cases suggests that conferences have the potential to offer victims a greater degree of justice than court. The YP's admission to the offence serves as an important public validation of the harm suffered by the victim, and the conference offers a forum for apology and reparation. For victims whose cases go to court, half will be disappointed (and perhaps angry and disillusioned) when charges are withdrawn or dismissed after lengthy proceedings. On all measures of what YPs have to do for victims (apology), for the community (community service), and for themselves (Mary Street counselling), it appears that conferences outperform court. Court outcomes put YPs under a potential cloud of further legal intervention (to be of good behaviour, suspended sentences), but it is not certain how this helps victims, the community, or the YPs. Contrary to feminist concerns, our data suggest that the court, not conference, is the site of cheap justice.

Part V
Remarks on the Research Process

1. Data entry process

As noted throughout this report, interpreting and coding the documents required a good deal of reflection and discussion to ensure accuracy and consistency. One major source of data—the Police AP reports—had major discrepancies in victims' and offenders' views of what happened. The APs were written in different styles and contained varying levels of detail. During the data entry process, it was essential for the researchers to write complete and precise notes to summarise information and document coding decisions. That is why the data were initially entered using an Excel worksheet before they were transferred to an SPSS dataset. While this was time consuming, it provided the team with a record of the coding decisions that were made and allowed us to review decisions taken and why they were taken without having to look back through the paper files.

The complexity of some cases, lack of sufficient information in others, and varying detail and clarity of information across the APs slowed the coding process. There was wide variation in the amount of information about the victim and his or her version of the incident, along with the offence circumstances and "facts." The facts were not always reported clearly, especially when the case involved several YPs, several victims, or several incidents over an extended period of time. In such cases, it was necessary to write a detailed summary of the case to understand the sequence of events or the relationship between the people involved. Sometimes the researcher would find information in the AP and not in the court file, or vice versa, requiring a thorough check of all documents to seek out missing data.

The Youth Court's Certificates of Record were more standardised than the police APs, which made them easier to read and code. However, the Certificates of Record could be lengthy and confusing, detailing dozens of hearings in multiple jurisdictions. The legal history of the case was not self-evident from the documents, and it had to be re-constructed by the research team.[31] Although the researchers had surmised that court cases generally took longer to code than conference cases, the "time to code" variable showed that court and conference cases took about the same to code (about 30 minutes), although this was less than formal cautions (20 minutes).[32] We created the "time to code" variable halfway through the data entry process, and by that time, nearly three-quarters of the court cases had been entered. The time it took to code was recorded for 176 cases (45 percent of all cases): 27 percent of court cases, 61 percent of conference cases,

[31] As a method of coding the more complex court cases involving, for instance, multiple hearings, several defence counsels and changes in the charges, we created a template (Appendix 12) that facilitated the recording of these variables. The template allowed us to make note of important dates (e.g., plea date) and to sketch the sequence of court appearances and what occurred.

[32] The median conference time excludes five conference cases, which were more complex and took more time than the average conference case.

and all of the formal cautions. It is likely that the researchers became more proficient in reading and coding the court cases over time. Moreover, some conference cases were also complex. For all the cases in the dataset, we coded the degree of case complexity. Although complexity is a subjective judgment, it includes elements such as these: the offence "facts" and dates are unclear; a large number of hearings, re-filed cases, and jurisdiction transfers; a large number of offences and outcomes; and a conference with many participants whose affiliation is not clear. Complex cases took longer (median 35 minutes) than simple cases (median 30 minutes); the share of complex court and conference cases was about the same (20 and 17 percent, respectively) and higher than that for formal cautions (10 percent).

Criminal history records could be lengthy, and we had to be careful to clearly differentiate *pre*- and *post*-SAAS case offending. Like for the coding of the court variables, we designed a template that helped us categorise and code the number of offences (Appendix 13). These templates also served as a record of the data entry process and helped to document the more complex or unusual cases.

The documents we were relying on, especially the police APs, which contain statements and views given by the victim, the YP, and a police officer, varied in format and detail. Over the 6.5 years, the researchers noted that the APs became longer and more detailed.

Although a coding scheme had been established at the start of data entry, new variables and revisions occurred as the coding progressed. This meant that the researchers had to go back through all the cases that had already been coded to re-enter new variables or codes. Some cases required further research, when for example, the AP was sketchy or missing, and information had to be sought from another document or pieced together. Technical language and acronyms were often used in the APs and Certificates of Record; these were initially unfamiliar to the researchers, and we had to determine what they meant (e.g., we learned that N.E.T. stood for No Evidence Tended). Court penalties and conference agreements sometimes included referral to particular South Australian agencies; and when this happened, we needed to determine what kind of service the agency provided.

2. The emotion inside the archive

Anyone who works with the phenomenon of sexual violence, whether as victim advocate, counsellor, or researcher, realises that it is work with a particular emotional weight (see also Campbell 2002; Kelly 1988). On the surface, the archival study was a "paper project" in that we amassed, examined, deciphered, coded, and analysed thousands of pages of legal documents related to 385 sexual assault cases. This was not a simple exercise of codes and numbers. Each case was a snapshot of the harms caused by sexual violence for victims, their families, and even for some offenders. Many cases were disturbing and violent: some involved very young victims, others related to patterns of abuse stretching over years, and some offenders were themselves victims of sexual abuse.

In the initial coding phase, we spent over 2000 hours reading the cases and then translating the accounts of abuse into variables. Sometimes we found that in order to get the work done we had to "forget" that these were stories of real lives and real harms. At other moments, we were

overcome with sadness or anger at the legal system's inability to effectively respond. Talking and debriefing between the researchers was essential, not only to confer about the technical aspects of coding and data entry but, as importantly, to express and share these emotions.

We learned that the work could not easily be left at the end of the day in that many offences were imbedded in our consciousnesses. We sometimes talked about the victims and young people as if we knew them. When leaving work, we found that our perception of the world shifted. For example, one of us, who is the mother of a teenage daughter, found that she was less willing to permit her daughter to socialise with male peers.

The archival study required thousands of hours of intellectual labour, with added emotional costs and burdens. It was sustained by the researchers' commitment to social justice and to finding a more constructive and meaningful response for sexual assault victims and offenders.

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Appendix 1. Police responses to youth crime in South Australia

The following summary is accurate as of July 2007.

Under the *Young Offenders Act 1993*, there are four types of police responses to youth crime: an informal caution, formal caution, or referral to conference or court.

Defining a "minor offence." The police officer has discretion in deciding what is a minor offence, based on the circumstances of the offence, the youth's involvement in it, the youth's personal circumstance, the victim's views and how much the victim suffered, the nature and extent of the youth's previous offending, and the "public interest." The nature of the offence and the youth's previous contacts with the criminal justice system are often the determining criteria. See discussion in this *Technical Report*, pp. 13-18.

Informal Caution. When a youth admits to committing a minor offence and a police officer thinks the matter does not require formal action, s/he can informally caution the youth and proceed no further. No official police record is kept.

Formal Caution. When a youth admits to committing a minor offence and the police officer thinks the matter requires formal action, s/he can formally caution the youth. A caution is normally given in the presence of a guardian or other adult. As part of a formal caution, an officer can require a youth to pay compensation to the victim (not to exceed $5,000, set by policy), to carry out community service (not to exceed 75 hours, set by statute), to apologise to the victim, or "to do anything else that may be appropriate under the circumstances of the case." Undertakings have a maximum duration of 3 months. The caution is put in writing, acknowledged and signed by the youth, and an official police record is kept.

Family Conference. When a youth admits to committing a minor offence and the police officer thinks the matter requires formal action, the officer may refer the matter to a family conference. For a conference to go forward, the young person and police officer, at a minimum, must be present; but the conference coordinator typically arranges to have the youth's parent or guardian, the victim, and other supporters or community people present. As part of a conference, the conference may require a youth to pay compensation to the victim (not to exceed $25,000, set by policy), to carry out community service (not to exceed 300 hours, set by statute), to apologise to the victim or "to do anything else that may be appropriate in the circumstances of the case." Undertakings have a maximum duration of 12 months (the longest of any Australian jurisdiction). The conference outcome is put in writing, acknowledged and signed by the youth, and an official record is kept.

Youth Court. When a youth admits or does not admit to a minor or major offence and the police officer thinks the matter requires formal action, the officer may lay a charge for the offence before the Youth Court. "A charge may only be laid if the youth requires the matter to be dealt with by the Court, or in the opinion of the police officer, the matter cannot be adequately dealt with by the officer or a family conference because of the youth's repeated offending or some other circumstance of aggravation." The Youth Court can require a youth to pay compensation to

the victim, to carry out community service (not to exceed 500 hours, set by statute), or to impose other conditions. The Court may sentence the youth to detention for no more than 3 years. (See also Appendix 5 for a detailed description of potential penalties and undertakings.)

Appendix 2. Legal definitions of selected sexual offences in South Australia

Definition of *sexual intercourse*: includes any activity (whether of a heterosexual or homosexual nature) consisting of or involving (a) penetration of the vagina or anus of a person by any part of the body of another person or by any object or (b) fellatio or (c) cunnilingus.

Rape
SA Criminal Law Consolidation Act 1935, Section 48.
Having sexual intercourse with another person without the consent of that other person, knowing that that other person does not consent to sexual intercourse, or being recklessly indifferent as to whether that other person consents to sexual intercourse (maximum penalty: life imprisonment).

Unlawful Sexual Intercourse with Person under 12
SA Criminal Law Consolidation Act 1935, Section 49.
Having sexual intercourse with any person under the age of 12 years (maximum penalty: life imprisonment).

Unlawful Sexual Intercourse
SA Criminal Law Consolidation Act 1935, Section 49.

- Having sexual intercourse with any person above the age of 12 years and under the age of 17 years. Defences: person alleged to have had sexual intercourse was 16 or older and the offender was either under 17 years or believed the person alleged to have had sexual intercourse was 17 or older.

- Having sexual intercourse with a person under 18 years by a person who is their guardian, schoolmaster, schoolmistress, or teacher.

- Having sexual intercourse with a person who by reason of intellectual disability is unable to understand the nature or consequences of sexual intercourse. Consent to sexual intercourse is not a defence to a charge of unlawful sexual intercourse. (For all three, maximum penalty: 7 years)

Indecent Assault
SA Criminal Law Consolidation Act 1935, Section 56.
Assaulting a person in an indecent, immoral, or obscene manner (maximum penalty: when victim is under 12, 10 years; otherwise, 8 years).

Incest
SA Criminal Law Consolidation Act 1935, Section 72.
Sexual intercourse between persons who are related, either as parent and child or as brother and sister (maximum penalty: 7 years).

Indecent Behaviour
SA Summary Offences Act 1953, Section 23(2).
Behaving in an indecent manner (a) in a public place, or while visible from a public place, or in a police station; or (b) in a place, other than a public place or police station, so as to offend or insult any person (maximum penalty: $1,250 or 3 months).

Appendix 3. Summary and indictable offences summarised in legislation

South Australia *Summary Procedure Act 1921* – Section 5

Classification of offences

(1) Offences are divided into the following classes:

(a) summary offences and
(b) indictable offences, which comprise minor indictable offences and major indictable offences.

(2) A summary offence is:

(a) an offence that is not punishable by imprisonment;
(b) an offence for which a maximum penalty of, or including, imprisonment for 2 years or less is prescribed;
(c) an offence against Part 5 of the *Criminal Law Consolidation Act 1935* involving $2,500 or less not being--
(i) an offence against Division 3 of that Part (robbery); or
(i) an offence of violence; or
(ii) an offence that is one of a series of offences of the same or a similar character involving more than $2,500 in aggregate;

but an offence for which a maximum fine exceeding twice a Division 1 fine is prescribed is not a summary offence.

(3) All offences apart from summary offences are indictable and of these:

(a) the following are minor indictable offences:

(i) those not punishable by imprisonment but for which a maximum fine exceeding twice a Division 1 fine is prescribed;

(ii) those for which the maximum term of imprisonment does not exceed 5 years;

(iii) those for which the maximum term of imprisonment exceeds 5 years and which fall into one of the following categories:

(a) an offence involving interference with, damage to or destruction of property where the loss resulting from commission of the offence does not exceed $30,000;
(b) an offence against section 23 (malicious wounding) or 40 (assault occasioning actual bodily harm) of the *Criminal Law Consolidation Act 1935* ;
(c) an offence against section 56 of the *Criminal Law Consolidation Act 1935* (indecent assault);

(d) an offence involving $30,000 or less against Part 5 of the *Criminal Law Consolidation Act 1935*, other than an offence against Division 3 (robbery) or an offence of violence; and

(e) an offence against section 169(1) or 170(1) of the *Criminal Law Consolidation Act 1935* (serious criminal trespass, etc.), where the intended offence is an offence of dishonesty (not being an offence of violence) involving $30,000 or less or an offence of interference with, damage to, or destruction of property involving $30,000 or less.

(b) All other indictable offences are major indictable offences.

Exceptions are any offence declared to be Minor Indictable or Indictable by the Act creating the offence.

Appendix 4. Summary and indictable offences in the archival study with measure of "time at risk"

Offence	SA Legislation Code	Offence category	Time at Risk (mos)	Legal seriousness (rank)
Rape	CLCA 48	Indictable	Life = 720	1
Attempted rape	CLCA 270A(3)	Indictable	12 yrs = 144	2
Unlawful sexual int. w/person < 12	CLCA 49(1)	Indictable	Life = 720	1
Unlawful sexual int. w/ person 12 thru 16	CLCA 49(3)	Indictable	7 yrs = 84	4
Attempted unlawful sexual int. w/ person < 12	CLCA270A(3)	Indictable	12 yrs = 144	2
Attempted unlawful sexual Int. w/person 12 thru 16	CLCA270A(3)	Indictable	2/3 7 yrs = 56	4
Detaining with intent to have sexual intercourse	CLCA 59	Indictable	14 yrs = 168	2
Indecent assault w/ person <12	CLCA 56	Minor indictable	10 yrs = 120	3
Indecent assault with person 12 & over	CLCA 56	Minor Indictable	8 yrs = 96	3
Incest	CLCA 72	Indictable	7 yrs = 84	4
Buggery with animals	CLCA 69	Indictable	10 yrs = 120	3
Procuring person to become prostitute	CLCA 63	Indictable	7 yrs = 84	4
Assault with intent to commit rape	CLCA 270B	Indictable	7 yrs = 84	4
Incite/procure commission by child (under 16) of indecent act (expose body)	CLCA 58A	Summary	2 yrs = 24	5
Exhibit indecent material to a minor	SOA 33 (2)(f)	Summary	6 mos	6
Gross indecency (public place)	SOA 23 (2)	Summary	6 mos	6
Indecent behaviour (public place)	SOA 23 (1)	Summary	3 mos	6
Solicit for purpose of prostitution	SOA 25	Summary	Fine $750	7

Appendix 5. Penalties available for court, conference, and caution cases

	Youth Court	Conference	Caution
No penalty imposed	Yes	Yes	Yes
Recording of conviction	Yes	No	No
Detention [a]	Yes max 3 years (judge) and 2 years (magistrate)	No	No
Home detention	Yes max 6 months	No	No
Fine (maximum $2,500)	Yes max $2,500	No	No
Community Service Order	Yes max 500 hours	Yes max 300 hours	Yes max 75 hours
Pay compensation to victim	Yes max $25,000	Yes max $25,000	Yes max $5,000
Apology (verbal or written) to victim	No [b]	Yes	Yes
Formal caution only	Yes	Yes	Yes
Undertaking from youth's guardian to guarantee youth's compliance and prevent further offending	Yes	No	No
Obligations	Yes max 2 years	No	No
Undertakings	No	Yes max 12 months	Yes max 3 months
Main obligations imposed and undertakings entered into [c]			
To be of good behaviour	Yes	Yes	Yes
To submit to supervision (usually CYFS)	Yes	No	No
To attend specified programmes or activities (e.g., school)	Yes	Yes	Yes
To attend counselling or treatment (e.g., Mary Street)	Yes	Yes	Yes
To carry out specific work for the victim or others	Yes	Yes	Yes
To reside where directed [d]	Yes	Yes	Yes
Not to contact or approach the victim [d]	Yes	Yes	Yes

[a] Detention may be suspended, in which case a good behaviour order is imposed which requires the YP not to offend for a specified period of time, to be under the supervision of CYFS and may

include specific conditions, such as residential requirements or attending counselling. If the YP does not comply with the order, the sentence of detention may become effective.

[b] The court can require the youth to apologise to the victim, but this is unusual.

[c] The *Young Offenders Act 1993* outlines some examples of obligations and undertakings that may be imposed by the court or entered into in during a conference or caution; however, the youth can also be required "to do anything else that may be appropriate under the circumstances" (S8 (1)(c), S12 (1)(d)).

[d] We are advised by a South Australia police prosecutor that this is general condition that can be imposed by the Youth Court, not by a family conference or caution process. However, the SAAS results suggest that 3 percent of conference cases included residential requirements and 23 percent of conference cases stipulated that the YP stay away from the victim.

Appendix 6. Mary Street Adolescent Sexual Abuse Prevention Programme

Note: The following description of the Mary Street Programme is excerpted verbatim from their information flyer. More information can be found on their website: http://www.wch.sa.gov.au/services/az/divisions/mentalhealth/asapp/

Mary Street is a prevention programme which promotes safety in families and communities by helping young people to stop sexual abuse and sexual harassment of others.

Mary Street provides counselling and help for adolescents and their families or caregivers to assist young people to:

- Take responsibility to stop sexual abuse and sexual harassment.
- Make restitution to help heal the harm caused by sexual abuse and sexual harassment.
- Respect others and develop appropriate relationships.
- Build self-respect and self-confidence.
- Make sexuality respectful and positive.

Most young people Mary Street sees have their offences investigated by police or other authorities and may have faced police charges with attendance at Family Conferences or Youth Court. Mary Street does not offer an alternative to legal intervention but works cooperatively with police, courts, welfare agencies and schools to achieve an outcome.

Mary Street also provides:

- Assessments for Youth Court.
- Assessments to assist statutory organisations such as CYFS [Children, Youth and Family Services] to plan for safe contact and family reconciliation.
- Training and consultation for health, welfare, justice and education workers.
- Consultation regarding policy development concerning prevention of sexual abuse and sexual harassment in organisations which deal with young people.

Mary Street is part of the Division of Mental Health of the Women's and Children's Hospital. There are no charges or fees for counselling services.

Appendix 7. Juvenile defendants in adult court

In South Australia, the *Young Offenders Act 1993* (Section 17) lists three circumstances when a young person (under 18 years) can be tried in adult courts:

- The youth is charged with homicide or attempt to commit a homicide. The case is automatically referred to the District or Supreme Court.

- The offence with which the youth is charged is a major or minor indictable offence; and after obtaining legal advice, the youth asks to be dealt with in the same way as an adult.

- The Court, following a request from the police prosecutor or Department of Public Prosecution, decides that the youth should be dealt with as an adult because of the gravity of the offence or because of repeated offending.

For sentencing, a youth found guilty of an offence in the District or Supreme Court may be sentenced as an adult by the Court or referred to the Youth Court for sentencing. If the offence is murder, the youth must be sentenced to life imprisonment. If the youth is found guilty of a lesser offence than the one originally set for trial, the Court cannot sentence the youth as an adult unless the offence is a major indictable and the Court is satisfied that the gravity of the offence or the youth's offending history requires the offender to be dealt with as an adult. The same procedure applies for youth who elect to be tried in an adult court.

Appendix 8. JANCO classification system

The JANCO classification system is South Australia's adaptation of the Australian Bureau of Statistics' ANCO (Australian National Classification of Offences) classification system. JANCO was adopted by the South Australian Department of Justice in 1992, using the "J" to differentiate its version from that of the ABS. JANCO is managed and administered by the Office of Crime Statistics and used throughout South Australia's Justice Information System and the Courts Administration Authority. It is more detailed than ANCO because it describes the offence and gives information on the protagonists and the incident that is not available in ANCO. JANCO codes are recorded for each offence on the police AP reports.

With JANCO, offences are grouped into nine major categories. Additional lower levels are used to distinguish between subgroups of offences. For instance, JANCO 13, sexual assaults and offences, is a subgroup of JANCO 1, offences against the person. Further subgroups detail the victim's age and gender, the relationship between the victim and the offender, and whether a weapon was used. For other types of offences (e.g., JANCO 3, break and enter), sublevels indicate which type of premises was targeted. For instance, JANCO 137112 is unlawful sexual intercourse against a female aged 12 through 16 years (13=sexual offence; 71=unlawful sexual intercourse; 1=female victim; 2=age 12 through 16 years).

JANCO 1	Offences against the person including acts endangering life (non-sexual)
	JANCO 13 - Sexual assaults and offences
JANCO 2	Robbery and extortion
JANCO 3	Burglary, break and enter, fraud, forgery, false pretences and larceny
JANCO 4	Damage property and environmental offences
JANCO 5	Offences against good order
JANCO 6	Drug offences
JANCO 7	Driving, motor vehicle, traffic and related offences
JANCO 8	Other offences
JANCO 9	Non-offence matters (e.g., child welfare matters)

In 1997 the Australian Bureau of Statistics replaced ANCO with a more detailed classification called the ASOC (Australian Standard Offence Classification). South Australia has maintained JANCO as its primary reporting classification system to allow comparability over time. It is expected that JASOC, the South Australian version of ASOC, will replace JANCO in the future. See the Office of Crime Statistics and Research (2003) for more information on the JANCO classification system.

Appendix 9. Cases with multiple incidents

Of the 385 cases, 121 involved several incidents that took place over a period of time but were finalised as one case. In some cases, the YP repeated the offending behaviour several times over a period of days or a few weeks; for instance, case 71 involved a young person who repeatedly exposed himself to passer-bys while making sexualised comments. Other cases involve a history of sexual abuse, often starting when the victim was a young child but the offences were disclosed as the victim got older. In case 10, the YP sexually abused his younger cousin from when she was 5 to when she was 13. The abuse was disclosed when the YP molested another relative; both cases (with multiple incidents) were dealt with in the Youth Court, as one case. Caution cases included cases with fewer incidents than court or conference cases; and when they did include several incidents, these took place over a shorter period of time than court and conference cases.

Appendix 9 Table. Court, conference, and caution cases involving several incidents over time

	% of cases at each disposition site	No. of incidents (range)	Length of abuse in months, *range*	length of abuse in months, *median*	length of abuse in months, *mean*
COURT (N=76)	34	2 – 60	0 – 123	3.7	11.7
CONF (N=37)	31	2 – 120	0 – 41.7	5.9	10.3
CAUTION (N=8)	20	2 – 7	0 – 18.7	0.8	4.1

Appendix 10. Estimating victims' ages

Of the 385 cases, 371 (96 percent) had a direct human victim. Of these 371 cases, for 49 (or 13 percent of cases with a direct human victim), the age of the victim was not given in the AP nor noted in the Certificate of Record or the sentencing remarks. An analysis of missing data for the 371 cases showed that the victim's age was more likely to be missing for cases where the most serious offence at the start of proceedings was a summary offence (e.g., gross indecency, indecent behaviour) and for incidents involving adult victims (17 or over). For instance, the victim's age was recorded for all 91 cases of major indictable offences with a victim under 17 years of age but was missing for 56 percent of cases involving a summary offence with a victim aged 17 or over.

Several pieces of information were used to infer the victim's age and the age difference between the YP and the primary victim:

1 – JANCO offence classification system: each offence is described by a unique JANCO code that describes the offence category (e.g., sexual offences) as well as the victim's gender, age, the relationship between victim and offender, and whether a weapon was used (Appendix 8). For instance, JANCO 137112 indicates unlawful sexual intercourse (13+71) against a female (1) aged 12 through 16 years (2). JANCO provides three age groups: under 12; 12 to 16 inclusive; 17 and over. The first step was, therefore, to record the age group of the victim, using the JANCO code as recorded in the AP.

2 – AP narrative: The unique JANCO code does not embed a victim's age for no-touch offences such as indecent behaviour. In addition, on some APs, the JANCO code was missing or indicated "indeterminate age." It was possible, however, to draw inferences from the description of the offence facts and the notes recorded by the police officers, on whether the YP and victim were close in age or the victim was younger than the YP (e.g., YP was baby-sitting the victim), and an estimated age for the victim. For instance, if the AP recorded the victim was walking in the park with her 10 year-old child, we could infer the victim was at least 25 to 30 years old.

Having estimated the victim's age range, we then coded whether the age difference between the YP and victim was greater or lesser than 2 years, using JANCO categories, AP narratives and, in a few cases, sentencing remarks. For instance, if the victim and the young person were friends from school, it was likely they were relatively close in age (less than 2 years difference). In case 172, the YP was 18; and in his remarks, the judge mentioned there was "no significant age gap"; so we could assume the age difference was less than 2 years. In case 241, both YP and victim attended a cadet army camp. The YP was 14.5, and we knew from the JANCO code that the victim was 12 and 16 years of age; thus, the age difference was coded as less than 2 years. On the other hand, in case 364, the YP was 16 and exposed himself to the victim who owned a hairdressing salon; we assumed the victim was over 18 years of age and that the age difference was over 2 years.

Once the age range of the victim and the approximate age difference between victim and YP were determined, we were able to establish the victim's age more precisely.

1. *Victim under 12*: there was only one case of indecent assault where the victim's age was not specified. The victim's age was calculated using the regression method of mean estimation (available in SPSS). In this age group, the youngest victims tended to be the victims of minor indictable offences (6.6 years, compared to 8.3 years for victims of summary offences, and 7.4 years for victims of major indictable offences). Therefore, the substitution mean was computed by selecting only the victims of minor indictable offences. In this case, the victim's age was estimated at 6.6 years.

2. *Victim 12 to 16 inclusive*: The victim's age was missing for 21 cases in this category. The missing data on victim's age were replaced with the mid-point for this age group (14.5 years), adjusting it to match the age difference with the YP. For instance, if the YP was 17.5, and the age difference was estimated to be 2 years or less, the victim's age was coded 15.5 years. In other cases, the victim's age was recorded as 14.5 years.

3. *Victim is 17 or over*: The victim's age was missing for 27 cases in this category. These cases were the most difficult to estimate because of the wide possible age range of the victims. Of the cases with missing data on victim's age, 63 percent were court cases, 22 percent conference cases and 15 percent caution cases; all were extra-familial. An analysis of the 261 cases where the victims' ages were known (excluding cases with no direct victims and cases of unlawful sexual intercourse, for which the victim's age is known) showed that victims of summary offences were on average over twice as old (24.3 years) as victims of minor and major indictable offences (means of 11.7 years and 11.1 years, respectively). Therefore, we substituted the missing age data with the victim's mean age calculated for each category of offences (using the regression method of mean substitution): victims of summary offences, 39.8 years; victims of minor indictable offences, 36.1 years; victims of major indictable offences, 24.4 years.

4. In a few cases (e.g., SAAS cases 144, 193, and 429) the victim's age could be inferred using knowledge from the AP narrative and the previously established age differences between YPs and victims. In these three cases, the victim was over 17, but the narrative indicated that she was younger than the calculated mean for indictable offences of 24.4 years and closer in age to the YP. In such cases, the age inferred from the narrative was recorded in the dataset. The Appendix 10 Table provides a case-by-case justification for the 49 cases where the victim's age was estimated.

When several incidents occurred, the age of the victim was estimated as the age of the primary victim (that is, the victim of the most serious incident) at the mid-point of all dates. However, when calculating the victim's age at the first incident, we were careful to select the specific victim in the incident and estimate her or his age. Therefore, the victim's age at the first incident is not necessarily the primary victim's age.

Appendix 10 Table. Estimating victims' age

Case	Offence	Estimated age	Age dif	Notes
Victim under 12 [a]				
361	ind assault	6.6	> 2 years	YP is 14.3; dif > 2 years.
Victim is between 12-16 included [a]				
116	rape	14.5	2 or < 2 years	V and YP both live in a hostel. YP is 15; dif < 2 years.
117	ind assault	14.5	> 2 years	YP is only 10; dif > 2 years.
134	ind assault	14.5	2 or < 2 years	YP is 15.9; V works so is over 14; dif < 2 years.
141	rape	14.5	2 or < 2 years	Both at a cadet army camp. YP is 14.5; V is between 12 and 16; dif < 2 years.
194	rape	14.5	2 or < 2 years	YP is 16.5; both live at youth shelter; dif < 2 years.
256	ind assault	14.5	> 2 years	YP is 13.7; "Whyalla Seven"; all acquaintances from school; this YP is one of the youngest, V's age estimated at 14.5 in other related cases; dif > 2 years.
257	ind assault	14.5	> 2 years	YP is 11.8; "Whyalla Seven"; all acquaintances from school; this YP is one of the youngest, V's age estimated at 14.5 in other related cases; dif > 2 years.
258	ind assault	14.5	2 or < 2 years	YP is 14.4; "Whyalla Seven"; all acquaintances from school; dif < 2 years.
259	ind assault	14.5	2 or < 2 years	YP is 14; "Whyalla Seven"; all acquaintances from school; dif < 2 years.
260	ind assault	14.5	2 or < 2 years	YP is 13; "Whyalla Seven"; all acquaintances from school; dif < 2 years.
261	ind assault	14.5	> 2 years	YP is 10.5; "Whyalla Seven"; all acquaintances from school; dif < 2 years; this YP is one of the youngest, V's age estimated at 14.5 in other related cases; dif > 2 years.
270	unlaw sex intercourse	14.5	2 or < 2 years	No JANCO code; YP is 14.5; YP and V attending same school; dif < 2 years.
356	gross indecency	14.5	2 or < 2 years	YP is 13. Both V and YP in youth facilities; probably close in age; dif < 2 years.
360	ind assault	14.5	2 or < 2 years	YP is 14.8; dif < 2 years.
413	rape	14.5	2 or < 2 years	YP is 15.3; V and YP at same school; dif < 2 years.
409	rape	14.6	2 or < 2 years	YP is 16.6; acquaintances; dif < 2 years from narrative.
138	ind assault	15	2 or < 2 years	YP is 17. Hard to infer from AP, but it seems YP and V are acquaintances and close in age. V's age estimated to be 15.
391	ind assault	15.1	2 or < 2 years	YP is 17.1; V and YP ex partners; dif < 2 years.
111	rape	15.6	2 or < 2 years	V and YP went to primary school together; YP is 17.6; dif < 2 years.
171	ind assault	16	2 or < 2 years	YP is 17.6; hard to infer from AP. V was babysitting so suggests she is probably closer to 16; also she shares a public housing unit with a friend. V's age estimated at 16.
172	rape	16	2 or < 2 years	YP is 18; judge said "no significant age gap"; dif < 2 years.

Victim is 17 or over [a]				
144	rape	18	2 or < 2 years	YP is 17.6. Vic around the same age as YP as they met through mutual acquaintances. V's age estimated at 18.
193	rape	18	2 or < 2 years	YP is 16.6. V is over 17, probably lives alone as YP came to her house at night, and no one else was in the house. YP is ex-boyfriend of V's acquaintance so likely V is around the same age as her acquaintance and YP. V's age estimated as 18.
429	rape	18	> 2 years	YP is 14.7; dif > 2 years as V is 17 or over from JANCO code. From the AP, the V was attending a party at her mother's house with several friends. Although V's age is not mentioned, the age of several witnesses are recorded, from 12 years to 16 years. This suggests V was around the same age, so age estimated at 18.
139	rape	24.4	> 2 years	YP is 17.6; V was clubbing so is over 18; hard to say how much age dif is; estimated > 2 years although V seems fairly young.
92	asslt with intent rape	36.1	> 2 years	YP is 13.9. No specific JANCO code; from the AP it seems V is adult; dif > 2 years.
150	attempt rape	24.4	> 2 years	YP is 17; V has a 7 year old son so is at least 21; dif > 2 years
231	ind behav	39.8	> 2 years	YP is 14; from the AP, it seems V is an adult; dif > 2 years.
233	ind assault	36.1	> 2 years	YP is 15.4; V is registered nurse so at least 20; dif > 2 years.
272	ind behav	39.8	> 2 years	No JANCO code; YP is 16.8; from AP it seems V is adult; dif > 2 years.
297	gross indecency	39.8	> 2 years	YP is 17.7. V is neighbour of YP's parent; she is an adult; dif > 2 years.
311	ind assault	36.1	> 2 years	YP is 13.6 so dif is > 2 years. V seems adult (going to work).
316	ind assault	36.1	> 2 years	No JANCO code; YP is 15.2; sketchy AP and hard to say but seems that V is an adult.
338	gross indecency	39.8	> 2 years	No JANCO code; V is Sunday school teacher so is adult; YP is 16.5; dif > 2 years.
349	ind behav	39.8	> 2 years	YP is 15.6. No specific JANCO code; V has 3 daughters so is adult; dif > 2 years.
355	ind behav	39.8	> 2 years	YP is 17.9. V working at a primary school so is adult; dif > 2 years.
357	ind behav	39.8	> 2 years	YP is 17.4. V has an 11 year old child; dif > 2 years.
362	ind behav	39.8	> 2 years	YP is 15; V married and adult; dif > 2 years.
364	gross indecency	39.8	> 2 years	YP is 16; V is proprietor of a hair salon so is adult; dif > 2 years.
366	ind behav	39.8	> 2 years	YP is 17.6; seems V is adult but hard to know; dif > 2 years.
371	ind behav	39.8	> 2 years	YP is 15.5; V has a daughter and is adult; dif > 2 years.
375	ind assault	36.1	> 2 years	YP is 14; V has a family so is adult; dif > 2 years.
386	ind behav	39.8	> 2 years	YP is 18; V seems to be adult; dif > 2 years.
395	ind assault	36.1	> 2 years	YP is 13. V works in a service station; dif > 2 years.
398	ind behav	39.8	> 2 years	YP is 16.6; V seems adult; dif > 2 years.
408	ind behav	39.8	> 2 years	YP is 13.5; V working and seems adult; dif > 2years.
411	ind assault	36.1	> 2 years	YP is 16.4; hard to say if V is under or over 17; works in shop; estimate dif >2 years.
415	ind behav	39.8	> 2 years	YP is 17.5; V is adult neighbour; probably dif > 2 years.

Note: [a] Age range provided by JANCO code.

Appendix 11. Referral to therapeutic and counselling services as part of the penalty

Coding of counselling and treatment referrals

The main site for referral of adolescent sexual offenders in South Australia is the Mary Street Programme (Appendix 6). The court and conference documents did not always indicate clearly whether YPs were to attend Mary Street or another counselling service. We recorded attendance at Mary Street was part of the outcome when one of these elements was present:

- The court or conference records clearly mentioned YP was to attend the Mary Street programme, or the Adolescent Sexual Abuse Program (ASAP).

- When the name of a Mary Street counsellor was mentioned (e.g., the judge would say "you are required to undertake counselling with [name of Mary Street staff]").

- In conference cases, when the agreement included "to continue counselling" and a Mary Street counsellor was attending the conference, which indicated that the YP was already attending Mary Street).

- In court cases, when the judicial officer mentioned that the YP was required to undertake specialised counselling to address sexual offending, and the YP was residing in Adelaide.[33]

Courts and conference records did not always specify the length of time that YPs were required to attend treatment or counselling, or the stipulated length of time was at the discretion of the counsellor. For instance, in several cases the judicial officer stated, "you are required to attend counselling for as long as your counsellor thinks it is appropriate for you to do so." In these cases, the length of counselling was coded as the same as the length of other obligations (e.g., CYFS supervision); or for conference cases, the same as the time given to complete the agreement.

Referral to counselling services other than Mary Street

In addition to Mary Street, some YPs were required to attend various therapeutic and counselling centres. The main categories were:

- Health centres, e.g., Second Story Youth Health Centre, which provides a range of health services to young people aged 12 to 25 years.

[33] A few YPs who were in their 20s at sentencing where ordered to attend counselling at the Sexual Offenders Treatment Assessment Programme (SOTAP). This treatment programme works exclusively with adult offenders while Mary Street works with young people. The cases involving these older YPs were coded as being referred to Mary Street programme, because the referral specifically mentioned they were to attend specialised sexual offending treatment. YPs who were over 18 but under 20 at time of finalisation were generally referred to Mary Street.

- Family support services, e.g., Youth and Parent Services (YPS), which help resolve conflicts between a young person and their parents in order to avoid the young person leaving home prematurely. YPS also provide support to young people who have already left home and their families; and it fosters family reconciliation. YPS also helps homeless young people find accommodation.

- Mental health services, e.g., Children and Adolescent Mental Health Service (CAMHS), a government service aimed at children and adolescents up to 18 years of age and their families who are experiencing emotional, behavioural, or psychiatric problems; and the Adolescent Day Program, a service for young people aged 12 to 18, who are experiencing significant mental health problems.

- Drug and alcohol treatment programmes, e.g., The West Coast Youth Services, Inc., in Port Lincoln.

- Services for young people considered at serious risk of offending or re-offending, such as the Intensive Adolescent Support Program.

- General counselling services, especially for young people residing outside of the Adelaide region, e.g., the Whyalla Counselling Service which provides relationship and substance abuse counselling, life skills training, and a Positive Parenting Program.

Appendix 12. Template for coding complex court cases

SAAS Case No: ……..

	No. Hearings	**No. Appearances by YP**	**No. Counsels**
First Date			
First Jurisdiction Name:			
Second Jurisdiction Name:			
Third Jurisdiction Name:			
Other Jurisdictions (>3)			
Plea Date			
Final/Sentencing Date			
Notes			

Appendix 13. Template for coding complex criminal histories

SAAS Case No: ……..

Part 1: Proceedings

	Sexual	Violent (non-sexual)	Non-Violent (non-sexual)	Good Order (Indecent Behaviour)	Breaches	Total Offences	Total Proceedings
Prior Cautions							
Prior Court (total)							
Prior Court Proven							
Prior Court Not Proven							
Prior FCM's (Family Care Meetings)							
Total Prior Conference							
Prior Conferences Proven							
Prior Conferences Not Proven							
Total Prior							
Post Cautions							
Total Post Court							
Post Court Proven							
Post Court Not Proven							
Post FCM's (Family Care Meetings)							
Total Post Conference							
Post Conferences Proven							
Post Conferences Not Proven							
Total Post							
Total Prior, Post and SAAS							

Part 2: Offence Categories

	JANCO 1 Against the Person	JANCO 13 Sexual Offences	JANCO 2 Robbery/ Extortion	JANCO 3 Burglary, B&E, Fraud, Forgery, False Pretences and Larceny	JANCO 4 Damage Property/ Environ-mental Offences	JANCO 5 Offences Against Good Order (excluding Indecent Behaviour)	JANCO 6 Drug Offences	JANCO 7 Driving, Motor Vehicle and Traffic Offences	JANCO 8 Other Offences	JANCO 9 Non-Offence Matters (e.g., FCMs)
Prior										
Post										
Total										

Part 3: Miscellaneous

Variable	Data
1. SAAS CASE	
2. JIS Pin Courts	
3. Alternative Pin	
4. YP Name	
5. Notes (space for data entry notes)	
6. First Finalisation Date	
7. DOB	
8. Most Serious Pre-SAAS Offence (by Time at Risk)	
9. Most Serious Pre-SAAS Offence (by ASOC Ranking)	
10. More than 1 SAAS Case?	
11. First Finalisation Date Post SAAS	
12. Last Finalisation Date	
13. Most Serious Post-SAAS Offence (by Time at Risk)	
14. Most Serious Post-SAAS Offence (by ASOC Ranking)	