Obstacles to Prosecution in Child Sexual Assault Cases: A Preliminary Report on Some Victorian Data*

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It is commonly assumed by people working in the field that even if a sexual assault on a child does not get reported to the police, the chances of the offender being prosecuted are very small. According to a former coordinator of the Victorian Community Policing Squad, Inspector Bob Lovell, 'there were only about a dozen successful prosecutions as a result of 177 reports of sexual assault against children aged fourteen years and under in 1986-87' (*The Age*, 6 November 1987). Elsewhere within the Victoria Police, it is frequently suggested that only about one in every ten reports leads to a prosecution.

This apparently low prosecution rate has been attributed to a number of factors. A particularly significant obstacle is said to have been created by the requirement that the evidence of a child witness be corroborated (s.23(2) Victorian *Evidence Act 1958*). The effect of this requirement is reinforced by the hearsay rule which generally disallows admission of out-of-court statements made by the child to people such as parents, teachers or welfare workers.

* This paper is based on research commissioned by the Law Reform Commission of Victoria, as part of a general inquiry into the law relating to sexual offences against children. The authors wish to express their gratitude to the Victoria Police for their cooperation in this study. The opinions and interpretations offered in this paper are those of the authors, and do not necessarily represent the views of either the Law Reform Commission of Victoria or the Victoria Police.
Another set of obstacles is said to be found in the trial process itself. It is argued that the alien nature of the court environment, the presence of the accused in the same room, and the sometimes vigorous techniques of cross-examination employed by counsel, often have a traumatic effect on child witnesses and may make them incapable of giving convincing testimony. This has led to a variety of proposals aimed at making it easier for a child to give evidence, such as suggestions for the use of closed-circuit television and/or prerecorded interviews, and calls to restrict the defence's right to cross-examine child witnesses.

Unfortunately, much of the discussion in this area has proceeded in an empirical vacuum. On closer examination, it becomes apparent that assertions about the low prosecution rate have been based on casual observation and fragmentary bits of data, rather than on the results of systematic research. Similarly, it has been assumed rather than shown that the removal of perceived obstacles such as the corroboration requirement will significantly increase the number of prosecutions.

The purpose of this paper is to present and discuss some data which bears directly on these issues. This data has been obtained from the internal records of the Victoria Police, and relates to the disposition of reports of sexual assault on children under the age of fourteen. As part of this study, nearly 100 briefs of evidence prepared by the Victoria police were examined, along with a larger number of crime report forms processed by local offices. To our knowledge, no similar study has been undertaken elsewhere in Australia. As such, the material presented here should be of particular relevance to the debate over the desirability, and implications, of changing the laws of evidence as they relate to child witnesses.

The report is organised along the following lines. The first section outlines how cases of child sexual assault are processed by the Victoria Police and describes the types of data which were collected from police files. The second section uses this data to estimate an overall prosecution rate and to compare prosecution rates in sexual assault cases involving adults and children. The third section focuses specifically on those reports which did not make it to the prosecution stage and endeavours to explain why they were screened-out. Particular attention is paid here to assessing the impact of the corroboration requirement. In the concluding section of the paper, some policy implications of the findings are briefly discussed.

Police Procedures for Processing Reports: An Overview

As with other offences, reports of sexual assaults on children are subject to a fairly elaborate process of filtering. In this process, three decisions are of crucial importance. First, the police must be reasonably satisfied that an offence has been committed, that is, the acts reported have actually occurred and fit the legal definition of a sexual assault. Second, when and if an alleged offender is located, it must be decided whether a brief of evidence against that person should be prepared. This decision may be influenced not only by the adequacy of the evidence available, but also by 'public interest' considerations and the willingness, or otherwise, of the victim to proceed. Third, if a brief is prepared it must then be determined whether it should also be authorised, that is, if prosecution of the accused person should be initiated and, if so, on what charges.

In the case of sexual assaults on children, primary responsibility for taking the above decisions is shared by three groups: the Community Policing Squad (CPS), the Criminal Investigation Branch (CIB) and the Child Exploitation Unit (CEU). (The role of the now disbanded Sexual Offences Squad was restricted to taking statements from victims and arranging medical examinations).
The Community Policing Squad

A section of the CPS operates in each of the 11 metropolitan police districts and most of the 12 country districts. These squads, which are part of the uniformed branch, have been established to provide a specialist response to problems associated with families and children. They are empowered, inter alia, to ‘interview, take proceedings against and assist with adults offending against children’ (Victoria Police Manual, 43:4(2)(b)). Most reports of sexual assaults on children are initially processed by the CPS. Where such reports are received it is unusual for the CPS itself to prepare briefs, except where the assault is relatively minor in nature, but all of the squads visited were reasonably active in carrying out preliminary investigations and establishing whether further police action was warranted. The CPS sometimes also acts to protect child victims from further assaults, by obtaining care and protection orders under the Community Welfare Services Act 1970 (Vic.), or intervention orders under the recently proclaimed Crimes (Family Violence) Act 1987 (Vic.).

The Criminal Investigation Branch

Each metropolitan police district contains several CIB offices. These offices deal with allegations of sexual assault on children as part of their general function of investigating and clearing reports of crime in the areas under their control. Most complaints forwarded to the CIB have initially been processed by the CPS, although some reports may have come directly from the general uniform branch or, in rare cases, from within the CIB itself. Where the CIB member assigned to an investigation is satisfied that an offence has been committed, s/he is normally expected to prepare a brief of evidence - provided of course that the alleged offender has been located. In cases of sexual assault, when the brief is completed it must be submitted for authorisation to a Detective Chief Inspector (or his deputy), along with a recommendation from the investigating officer. Our research indicates that this last stage is a fairly formalistic exercise - at least as far as sexual assaults on children are concerned - since the investigating officer's recommendation was followed in all cases.

The Child Exploitation Unit

At the time this research was conducted, the CEU was part of the Licensing, Gaming and Vice Squad. It now comes under the umbrella of the CPS. Its stated aim is ‘to identify and prosecute those persons or groups responsible for the sexual and drug exploitation of children’ (Victoria Police Manual, 41.48(4)). Most of the cases of child sexual assault dealt with by the CEU are referred to it by other sections of the force, most notably the CPS, but some reports are received directly. Like the CIB, CEU members have responsibility for investigating reports and preparing briefs where it is considered appropriate. The final decision to authorise prosecution is made by the Chief Inspector of the Division, or his deputy.

Data Sources

The data on which this study is based was obtained from several sources: briefs of evidence prepared by the CIB and CEU, CIB Crime Reports, CPS casebooks, and the Victoria Police Information Bureau index of sexual assault victims.
The briefs data set

In all, ninety-seven briefs of evidence relating to victims under fourteen were coded. Eighteen of these briefs came from CEU files, being all of the available briefs for 1986, plus a small number finalised in 1987. The seventy-nine remaining briefs were randomly selected from 1986 files held at CIB Central Administration. This represented around 75 per cent of all the sexual assault briefs involving children under fourteen forwarded to CIB administration in that year. These figures should not be seen as indicative of the total number of briefs prepared by the Victoria Police in 1986, as they do not include briefs prepared by the CPS or other sections of the force. Also, it is possible that some briefs prepared by local CIB officers were never forwarded to CIB Administration, or became lost somewhere in the system.

The information extracted from the briefs related primarily to offender, offence and victim characteristics, and to the type, amount, and perceived value of the evidence obtained. Only one coding sheet was prepared for each offender. In cases where more than one child victim was identified, victim characteristics recorded were those of the first named complainant. Conversely, where a victim identified multiple offenders, a sheet was prepared only for the first named offender.

The reports data set

As indicated, many allegations of sexual assault on children are screened out prior to a brief being prepared. In order to ascertain the extent of such filtering, a separate study was undertaken of crime reports and related documents held at individual CIB and CPS offices (there being no satisfactory centralised system for recording reports of sexual assault on children). Generally speaking these files contained less information than the briefs, but nonetheless it was possible to extract some useful data on case characteristics and on the justifications offered for not preparing a brief.

In the case of the CPS, the data was obtained from the casebooks maintained by the squads of four metropolitan police districts. These casebooks provided a detailed account of all the matters dealt with by members of the CPS during each working day and indicated the action, if any, taken. For the purposes of the present study, only those matters which constituted a specific complaint were coded as reports, that is the child must either have told someone about the alleged assault, or medical or other evidence indicative of sexual abuse must have been available. Using this definition, data was obtained on 126 reports. Of these reports, forty-five had to be excluded from much of the analysis because the matter had been handed over to the CIB or CEU at an early stage and the casebook did not indicate if a brief had subsequently been prepared or not.

Data on cases handled by the CIB was obtained from copies of the official Crime Reports (Arrest and Non-Arrest) held at four metropolitan offices. Where possible this data was supplemented by the Case Progress Reports prepared by CIB members for internal use, although these documents were not always available. In all, data on sixty-nine reports was collected from CIB sources. As not all Crime Reports held by the CIB show the age of the victim, it is likely that this figure underestimates the total number of reports processed by the offices studied. As discussed below, it is also possible that written records were not kept for all of the matters notified to these offices.

At most offices, files for the last two years were examined, although in two cases data was obtained for 1987 only. Ideally, the study should have been restricted to reports received in the same year as that covered by the briefs data, but this was not feasible given resource and time constraints. At any rate, there is no evidence that the screening-out rate has varied significantly from one year to the next.
Although data on a substantial number of reports was obtained, it was possible to visit only a relatively small proportion of CPS and CIB offices. As the practices of these offices varied considerably in some respects it is conceivable that a different or larger sample could have produced a somewhat lower, or higher, estimate of the prosecution rate. Again, as with the briefs sample, it is not possible to determine the size of the population from which this sample of reports was drawn.\(^6\)

*The Information Bureau data set*

The Information Bureau of the Victoria Police (IBR) maintains an index of sexual assault victims, compiled primarily from official Crime Reports. For 1987, the index recorded 152 reports where the victim could be definitely identified as under the age of fourteen. (In another 200 cases, the age of the victim could not be established.) This index contains information on the nature of the offence and the action taken (arrest or non-arrest). It does not show whether a brief was prepared or a prosecution authorised, but the arrest rate can be used as a rough guide to the brief-preparation rate.\(^7\)

The main limitation of the IBR index, for present purposes, is that it is not representative of the full range of sexual assault reports received by the police. While all complaints are supposed to be recorded on the index, in practice most reported indecent assaults are not included. Thus 85 per cent of the cases involving children which were recorded by the IBR involved actual or attempted sexual penetration, compared to only 35 per cent of the cases in our sample of reports. Because of this unrepresentativeness, data from this index is used here only for comparing prosecution rates in sexual assault cases involving children and adults.

*Sample characteristics: a summary*

Table 1 gives data on victim, offender and offence characteristics for the reports and briefs samples. In summary form, what it shows is that:

- males were alleged to be the offenders in virtually all of the cases which came to the attention of the police and females were the complainants some 75 per cent of the time;\(^8\)
- many of the victims were very young, with over 50 per cent of those in the reports sample being aged eight years or less at the time of the investigation;
- the great majority of alleged assailants were known to the complainant prior to the day of the assault and a substantial proportion were close family members;
- around one-third of the reports alleged actual or attempted sexual penetration and over 50 per cent of cases in the briefs sample involved multiple assaults.\(^9\)

These findings may be compared with Goldman and Goldman's (1988) survey of some 1000 Victorian tertiary students and Goddard's analysis of 104 cases of suspected child sexual abuse processed by the Royal Children's Hospital in Melbourne (Goddard 1988). Although the results of these two studies diverge from the present one in some respects - largely because of the different data sources and definitions employed - all three show roughly similar patterns in their data.

It will also be observed from Table 1 that there are some differences between the two samples, most notably in respect to the variables of 'complainant's age' and 'relationship with alleged offender'. This is due primarily to the fact that there is a correlation between these variables and the willingness of suspects to make admissions, the latter in turn being the major determinant of the decision to prepare a brief.
The Screening of Reports

As stated at the beginning of the discussion, there is a widespread perception within the police force and the community at large that offenders in child sexual assault cases are rarely prosecuted. The data presented here indicates that this is an excessively gloomy picture. Although it has not been possible to measure the prosecution rate with precision, our evidence suggests a rate of 1 in 2.5 recorded reports, not 1 in 10. Given that over 90 per cent of offenders prosecuted in 1986 were subsequently convicted, the overall 'success' rate was only slightly less than the prosecution rate. This does not of course mean that the obstacles to prosecution identified earlier are illusory, but it does suggest that the magnitude of their effect has been exaggerated.

Table 2 shows how these estimates were obtained. Given that it was not possible to track the one set of reports through the system, we were forced to use a less straightforward - and less satisfactory - estimation technique. This involved first calculating a brief-preparation rate for the reports data (based on those 150 reports where the disposition was known) and an authorisation rate from the briefs data. The overall prosecution rate was then obtained by multiplying these two ratios together.

As can be seen from Table 2, briefs were prepared for seventy-nine reports, or 52 per cent of the reports for which the outcome was known. Of the ninety-seven CIB and CEU briefs analysed, prosecution was authorised in 76 per cent of cases and convictions were obtained in 68 per cent of cases. This gives an overall prosecution rate of 40 per cent of recorded reports, and an overall conviction rate of 36 per cent.

Table 2 also presents the results of a smaller, pilot study of cases processed by the CEU in 1986. This study covered all recorded reports of sexual assault on children received by the CEU in that year. As can be seen, the overall prosecution rate for the CEU in 1986 was virtually identical to that obtained by the above calculations. Given that only thirty-two CEU cases were examined, and that the CEU may not necessarily be typical in either its practices or the types of reports which it processes, considerable caution should be exercised in interpreting this finding. Nonetheless, it is encouraging that the two sets of estimates should be so close.
Table 1

Description of Sample Populations

<table>
<thead>
<tr>
<th>Description of Sample Populations</th>
<th>Briefs Sample (n=97)</th>
<th>Reports Sample (n=195)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sex of Complainant (%)</td>
<td>Female: 74</td>
<td>Male: 26</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Age of Complainant 5 and under</td>
<td>14</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td>24</td>
<td>21</td>
</tr>
<tr>
<td>9-11</td>
<td>29</td>
<td>25</td>
</tr>
<tr>
<td>12-13</td>
<td>33</td>
<td>24</td>
</tr>
<tr>
<td>3. Most Serious Offence Alleged</td>
<td>Sexual Penetration 30</td>
<td>36</td>
</tr>
<tr>
<td>(Including attempts and incest)</td>
<td>Indecent Assault 65</td>
<td>63</td>
</tr>
<tr>
<td>Act of Gross Indecency 5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Frequency of Occurrence</td>
<td>Once: 45</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>2-5 times: 43</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>6+ times: 12</td>
<td>n/a</td>
</tr>
<tr>
<td>5. Relationship Between</td>
<td>Family member 28</td>
<td>39</td>
</tr>
<tr>
<td>Complainant and Suspect</td>
<td>Caring Role (child-minder, youth group leader, etc.) 16</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Otherwise known (family friends, neighbours etc.) 40</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td>Unknown prior to day of offence 16</td>
<td>12</td>
</tr>
<tr>
<td>6. Gender of Suspect</td>
<td>No females</td>
<td>1 female</td>
</tr>
<tr>
<td>7. Age of Suspect</td>
<td>Average: 36</td>
<td>n/a</td>
</tr>
<tr>
<td></td>
<td>Range: 12-87</td>
<td>n/a</td>
</tr>
<tr>
<td>8. Family Member Details (n=27)</td>
<td>Natural Parent 17</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>Step-Parent De Facto43</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>Grandparent 14</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>Uncle 26</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Brother --</td>
<td>10</td>
</tr>
</tbody>
</table>
In presenting these findings, two notes of caution should be added. First, it is possible that the estimated prosecution rates for the CIB and CPS have been inflated by sampling error that is if another set of reports and briefs had been randomly selected, a different picture might have been obtained. Both the briefs and reports samples are of a relatively small size, and the statistical confidence intervals for any estimates are consequently quite wide. Thus, there is a 5 per cent chance that another random sample of reports could have produced a brief-preparation rate as low as 45 per cent, and that a different sample of briefs could have shown an authorisation rate as low as 68 per cent. On the other hand, there is only a 1 in 400 chance that differently drawn samples of reports and briefs together would have produced an overall prosecution rate as low as 30.5 per cent. Moreover, there is an equal probability that another sample would have produced a rate as high as 49.5 per cent.

Second, there is no doubt that a proportion of the reports received by the police never got on to the books. This could have occurred because of an oversight, a decision that the matter was not worth investigating, or perhaps because of a deliberate effort to enhance the perceived efficacy of an individual officer or a section of the force. If such informal screening-out has taken place on a large scale, it would follow that the actual prosecution rate could be significantly lower than the figure cited here.

By its nature, the extent of informal screening is extremely difficult to gauge. Suffice to say that the CEU and the CPS squads which were visited kept very thorough records of their activities and it seems unlikely that more than a few of the reports received were not formally accounted for. It is not possible to be so confident about the CIB, which shows an unusually high brief-preparation rate, but the CIB members we spoke to insisted that the available files gave a reasonably accurate indication of the total number of matters dealt with by their offices. While such assurances should not necessarily be taken at face value, the openness with which other problems in this area were discussed gave us no reason to believe a deliberately distorted picture was being presented.

Even allowing that some informal screening-out took place, it would have had to occur on a massive scale for this to explain away the discrepancy between our findings and the oft-quoted figure of a 1 in 10 prosecution rate. To obtain a rate as low as 10 per cent it would be necessary to show that 75 per cent of the reports received by the police were never recorded. To get a rate as low as 20 per cent it would have to be shown that one-half of all reports suffered this fate. For the reasons just stated, it is very much doubted that informal screening of this magnitude has occurred.

In summary then, while it is quite conceivable that the estimate of the prosecution rate has been inflated by sampling error and the failure of the police to record all reports received, it seems that the 'true' rate is much higher than the figure of 1 in 10. It can only be assumed that members of the Victoria Police have taken a much more pessimistic view of their efficacy in this area because they have had first-hand knowledge of too few cases to be able to form an accurate overall picture, and understandably have tended to focus more on their failures than on their successes. Research by cognitive psychologists indicates that such inferential judgment errors may well be the norm rather than the exception (Nisbet & Ross 1980).
Table 2

Estimates of Screening Rates

A. Overall

(i) Brief Preparation Rate:
Number of Briefs = 79 = .52
Reports Received 150
Source: Reports Data

(ii) Brief Authorisation Rate:
Number of Authorised Briefs = 74 = .76
Total Briefs Prepared 97
Source: Briefs Data

(iii) Brief Conviction Rate:
Total Convictions Obtained = 68 = .70
Total Briefs Prepared 97
Source: Briefs Data

(iv) Overall Prosecution Rate:
Brief Preparation Rate x Authorisation Rate = .52 x .76 = .40

(v) Overall Conviction Rate:
Brief Preparation Rate x Brief Conviction Rate = .52 x .70 = .36

B. CEU

(i) Brief Preparation Rate:
Number of Briefs = 18 = .56
Reports Received 32

(ii) Brief Authorisation Rate:
Number of Authorised Briefs = 13 = .72
Total Briefs Prepared 18

(iii) Overall Prosecution Rate:
Brief Preparation Rate x Authorisation Rate = .58 x .72 = .41

Source: CEU files
Comparison with Adults

It is often assumed that the special evidentiary problems which arise in relation to child witnesses make the police more reluctant to prosecute where the victim of a sexual assault is a child rather than an adult. The evidence collected in this study indicates that this is not the case.

According to the IBR index of sexual assault victims, 62 per cent of reported sexual assaults on children led to arrests, compared to only 39 per cent of the cases involving adults (those aged eighteen or over). This can be taken as a rough indication of the relative frequency with which briefs were prepared. Data obtained from CIB files for 1986 also show that once a brief was prepared the likelihood of a prosecution being authorised was roughly the same, regardless of whether the complainant was a child or an adult. Thus an analysis of seventy-seven briefs relating to victims over the age of fourteen indicated that prosecution was authorised in fifty-seven cases. This gave a brief authorisation rate of 74 per cent, which was virtually identical to the rate reported in Table 2.

In part, the higher brief preparation rate in cases involving children can be put down to the fact that children are substantially less likely than adults to be sexually assaulted by a stranger. For 34 per cent of the adult complainants on the IBR index the alleged offender could not be located, whereas the alleged offender could not be found in only 14 per cent of the cases involving children. But even if cases with missing suspects are excluded from the analysis, the arrest rate is still higher, with arrests being made in 72 per cent of child cases compared to 58 per cent of the adult cases.

Another reason why the brief preparation rate is lower in cases involving adult victims is that consent - a problematic issue in many cases involving adults - is not an element in sexual offences against children. It is significant in this regard that 11 per cent of the adult cases on the IBR register were categorised as NOD (no offence disclosed) compared to only 2 per cent of reports relating to children.

The Decision Not to Prosecute

Even given that a substantial number of reports do make it to the prosecution stage, it is still the case that around 60 per cent do not. Moreover, this figure must be interpreted in the light of evidence that the police were able to locate the alleged offender in all but 7 per cent of cases. What, then, explains the failure of the police to proceed in the remaining cases?

As Table 3 shows, for a substantial number of reports the police were not satisfied that any offence had been committed - either because they doubted the veracity of the report, or did not regard the action complained of as a sexual assault. In another eight reports, the decision not to proceed was made by the victim or a parent, not by the police. No doubt several of these decisions were influenced by police assessments of the likelihood of a successful prosecution, but other considerations (for example pressure from other family members, a desire to 'put the matter behind the child') were sometimes also important. This leaves 43 per cent of reports in which the primary stated reason for not preparing a brief was that the evidence was insufficient to sustain a conviction.
Table 3

Justifications for Not Preparing Briefs

<table>
<thead>
<tr>
<th>Primary Explanation Offered</th>
<th>Number of Reports</th>
<th>Percentage of Reports in which cited as Main Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(n)</td>
<td>(%)</td>
</tr>
<tr>
<td>No Offence disclosed</td>
<td>15</td>
<td>34</td>
</tr>
<tr>
<td>Complaint withdrawn</td>
<td>8</td>
<td>18</td>
</tr>
<tr>
<td>Effects on child/family</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Evidentiary problems</td>
<td>19</td>
<td>43</td>
</tr>
<tr>
<td>Total Cases</td>
<td>44</td>
<td></td>
</tr>
</tbody>
</table>

Source: Reports Data

Note: This table excludes eleven reports where no offender could be located and another fifteen in which it was not possible to identify from the file why no brief was prepared.

Insofar as reports were screened out on evidentiary grounds, what were the major perceived weaknesses in the case against the accused? This question is best answered by looking at the characteristics of those cases which were eventually prosecuted.

As Table 4 shows, it is clear that the key factor is the availability of admissions by the suspect. In 68 per cent of the briefs examined an admission was made to one or more charges, and 97 per cent of these briefs were subsequently authorised for prosecution. By contrast, in those cases where no admissions were recorded, only 32 per cent of the briefs were authorised. Thus not only was an admission a sufficient grounds for initiating a prosecution, it was close to being a necessary condition.

Table 4

Admissions and the Decision to Authorise

<table>
<thead>
<tr>
<th></th>
<th>Number of Briefs (n)</th>
<th>Number Authorised (n)</th>
<th>Authorisation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admissions Made</td>
<td>66</td>
<td>64</td>
<td>.97</td>
</tr>
<tr>
<td>No Admissions</td>
<td>31</td>
<td>10</td>
<td>.32</td>
</tr>
<tr>
<td>Total Briefs</td>
<td>97</td>
<td>74</td>
<td>.76</td>
</tr>
</tbody>
</table>

Source: Briefs Data
For any offence, it can be assumed that the police would be more likely to prosecute where they have obtained an admission (all other things being equal). But there are two aspects of child sexual assault cases which arguably have made the role of the admission particularly crucial.

First, and most importantly, the corroborative evidence which the law requires is frequently not available in cases involving children. Hence the police perceive, correctly, that without an admission the prospects of obtaining a conviction are much diminished. As Table 5 shows, a relatively small proportion of assaults in the briefs sample were directly witnessed, and then sometimes only by other young children. Other corroborative testimony (that is from witnesses to the circumstances of the assault rather than to the assault itself) was available for only 15 per cent of briefs, and some of this was assessed as unreliable. Medical evidence corroborative of the assault (but not of the assailant's identity), was reported in only 6 per cent of the briefs. What is more, insofar as other forms of corroborative evidence were available, this was mostly in cases where an admission had also been obtained. Thus of the thirty-one briefs examined in which there were no admissions, other evidence was available in only six instances, compared to 42 per cent of the briefs containing admissions.

Table 5

<table>
<thead>
<tr>
<th>Number of cases</th>
<th>Witnesses Available</th>
<th>Other Corroborative Testimony</th>
<th>Medical Evidence</th>
<th>No Other Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>(n)</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Admissions Made*</td>
<td>66</td>
<td>24</td>
<td>16</td>
<td>9</td>
</tr>
<tr>
<td>No Admissions</td>
<td>31</td>
<td>6</td>
<td>13</td>
<td>0</td>
</tr>
<tr>
<td>Total Briefs</td>
<td>97</td>
<td>19</td>
<td>15</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: Briefs Data

* This row adds to more than 100 per cent because some briefs contained more than one type of evidence.

A second feature of cases involving children which serves to make admissions so important is the fact that admissions generally lead to guilty pleas and, conversely, denials generally result in trials. This is of particular significance in relation to children, because of police concerns that a child victim may have trouble giving convincing evidence in the threatening and alien environment of a courtroom. Some police we spoke to were also concerned that the child should not have to undergo the additional trauma of a courtroom appearance if it was at all possible to avoid it.

Although the police placed much stress on the availability of admissions, it should be noted that there were ten cases in which they nonetheless initiated prosecutions without this form of evidence being available. Surprisingly, these were not cases in which other strong evidence was present. In fact, in only two cases was any type of corroboration available,
and then only in the form of witnesses to the circumstances of the assault, rather than to the assault itself.

In some of these cases the decision to proceed appears to have been based on the hope that the defendant might ‘crack’ at a later stage and enter a plea of guilty. Another apparent consideration was the age of the victim. As Table 6 shows, in the ten cases where a brief was authorised in the absence of an admission, the average age of the victim was 10.4 years. In contrast, for those reports which did not even make it to the brief preparation stage the average age was only 7.2 years.

Table 6

Age and Outcome

<table>
<thead>
<tr>
<th>Status of Brief</th>
<th>Average Age</th>
<th>Median Age</th>
<th>Number of cases</th>
<th>Source</th>
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</thead>
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<td>Brief Authorised, No Admissions</td>
<td>10.4</td>
<td>11</td>
<td>10</td>
<td>Data</td>
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<td>Brief Authorised, Admissions</td>
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<td>64</td>
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<tr>
<td>Unauthorised Briefs</td>
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<td>8</td>
<td>23</td>
<td>Briefs Data</td>
</tr>
<tr>
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<td>7.2</td>
<td>7</td>
<td>68</td>
<td>Reports Data</td>
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</tbody>
</table>

Because of the very small number of cases in some of these categories, the differences shown in this table are not statistically significant. Nonetheless, the data displays a clear pattern and the observed relationship is consistent with the proposition that the older the child, the greater the probability that they will be deemed capable of giving sworn evidence.

Overall, the data presented here supports the view that existing evidentiary and procedural rules do act as a deterrent to prosecution. This is seen most clearly in the heavy reliance on admissions and, to a lesser extent, in the apparent sensitivity of the police to the age of the victim. It does not follow of course that all of the cases screened out on evidentiary grounds would have gone ahead had the rules been different. For example, for a number of reports the main problem was not a lack of corroboration so much as doubts about the truthfulness of the complainant’s account. Likewise, for some very young children the obstacle was less one of their inability to give sworn evidence than of their capacity to give any kind of testimony at all. But for a significant number of cases which were not prosecuted, it does seem fair to say that the decision might have been different, had the police not felt it so necessary to obtain corroborating evidence, and if they had been more confident of the ability of the child to give evidence in a courtroom situation.
Conclusion

This study has shown that, at least as far as Victoria is concerned, the rate at which reported offenders are prosecuted for sexual assaults on children is significantly higher than many people believe. This can be attributed largely to the fact that admissions are obtained more frequently than is often assumed. At the same time, it has been shown that existing evidentiary rules do act as a significant deterrent to prosecution in those cases in which no admission was forthcoming.

It is not within the province of this paper to state a case either for or against removing the corroboration requirement or altering the rules governing the conduct of trials. These difficult issues of policy embrace questions about the reliability of children vs. adults, the relative merits of different approaches to examining child witnesses, and so on, which have not been touched on in this discussion. However, in concluding the following points should be made:

First, although significant obstacles to prosecution have been shown to exist, reform of the law relating to child witnesses will not necessarily result in an immediate and significant increase in the overall prosecution rate. In part this is because it will take time for these changes to filter through to affect the established perceptions and practices of investigating officers. More generally, as has been seen, there are a range of other considerations which enter, directly or indirectly, into the decision to prosecute. Thus, even if the corroboration requirement was removed, there would still be a number of cases in which the police would not be satisfied that an offence had in fact been committed, or where the complaint was later withdrawn for reasons unrelated to the strength of the evidence.

Second, it is conceivable that changes to the law in this area may induce more suspects to make admissions. At present, if the child victim is very young and no corroboration is available it is most unlikely that a suspect who has denied an allegation will be prosecuted. Once suspects become aware that they can be convicted on the basis of the child's testimony alone, some may see it as in their interests to 'cut their losses', make an admission, and have the matter dealt with as a guilty plea. It is unlikely, however, that this effect on suspect behaviour would assume major proportions, particularly in the short term.

Third, irrespective of whether the number of admissions increases, removal of some of the existing obstacles ought to increase the willingness of the police to initiate prosecutions in the absence of admissions. This should lead to a higher prosecution rate and might reduce the temptation for investigating officers to use inappropriate techniques to obtain confessions. However, if more prosecutions are undertaken in cases where no admission has been forthcoming, the number of contested cases will increase and more children will be required to testify at trials. Insofar as this is considered an undesirable side effect, there will be a heightened need for diversion programs capable of providing a defendant with a relatively attractive alternative to a trial.

Finally, it is possible that reform of the existing law may eventually prove to matter more for its impact on the reporting rate than on the actual prosecution rate. Although there is in reality already a fairly good chance that an offender who is reported to the police will be prosecuted, there is a widespread public perception - fuelled by the media and workers in the field - that the police are unable to act in the vast majority of cases. This belief must act as a significant deterrent to the reporting of suspected child sexual assaults to the police. A well publicised removal of what are seen (rightly or wrongly) as major obstacles to prosecution may therefore serve a useful educative function vis-à-vis the community as a whole, quite apart from the effect which such changes may have on the actual decision-making processes of the police themselves.
Endnotes

1. The study was restricted to children under the age of fourteen at the time the reported assault was investigated, as this is the age at which the special requirements of s.23(2) of the Victorian Evidence Act become relevant. A sexual assault was defined as any act involving actual or attempted penetration, indecent assault, or gross indecency.

2. In practice, the screening process is not so neatly compartmentalised as this simple account suggests. For example, the decision to prepare a brief and the decision to prosecute may be taken more or less simultaneously. Nonetheless, it is useful for analytical and descriptive purposes to separate the decision-making process into discrete stages.

3. In practice, the CPS appears to be reluctant to invoke these procedures. According to the CPS casebooks which were examined, in only two out of 126 reports did the police obtain a care and protection order, with intervention orders being sought in another two instances.

4. It is not possible to determine how many reports of child sexual assault are processed by the CIB in any given year, but it is clear that they make up only a tiny proportion (probably less than one in 300) of all matters handled.

5. Most reports and briefs analysed involved only one offender, but in one case dealt with by the CEU a thirteen-year-old girl made allegations of sexual penetration against fourteen males of varying ages. Cases where there was one offender and multiple victims were reasonably common, particularly where the assaults occurred in a family situation.

6. Victoria Police statistics do not break down reported crimes according to the age of the victim, except for the two age-specific offences of sexual penetration of a child under ten and sexual penetration of a child aged ten to sixteen. Moreover, the figures quoted for these offences relate to the number of acts reported, not the number of victims. As many child victims are subject to multiple sexual assaults, these figures cannot be used to provide even a rough approximation of the number of victims who become known to the police.

7. For IBR purposes, the term arrest 'refers to an apprehension of an offender, when it is proposed to proceed against that person by way of a charge, summons or caution' (Victoria Police Manual, s.4.33). We have been assured that it is standard police practice for a brief to be prepared in such circumstances.

8. The one alleged female offender was an 'alcoholic de facto grandmother' who had indecently assaulted her thirteen-year-old grandson. The CPS referred this case to the CIB for further investigation. No result was shown in the casebook.

9. In one brief prepared by the CIB, the thirteen-year-old victim alleged that she had been indecently assaulted by her stepfather on more than seventy separate occasions over a five-year period.

10. For example, in one instance it was concluded that the actions of a babysitter, who had 'inadvertently' touched the breasts of a twelve-year-old girl whilst engaging in a 'friendly wrestling match', were not sexual in nature.

11. In three cases the admission was to a lesser offence only. For the remaining sixty-six cases an admission was made to at least one count of the most serious offence alleged.

12. For example, in one case involving an indecent assault by an 87-year-old man on a four-year-old girl, the only witness was the girl's brother, aged around six. The offender strenuously denied the allegation and no prosecution was initiated. In another case which did not proceed, the only supporting evidence was the testimony of a nine-year-old friend of the victim.

13. For example, in one case in which three members of the family provided corroborative evidence against their de facto father, it was concluded that the complaint was a fabrication.
References