

Q&A - Attrition and progression: Reported sexual violence victimisations in the criminal justice system

What did this analysis show?

This analysis shows that there is considerable attrition of reported sexual violence in the New Zealand criminal justice system and that it can take a long time to progress through the system. This means that a large proportion of people reporting sexual violence crime to Police do not have their cases brought to court.

Over the four years of the data analysed, 31% of victimisations reported to Police resulted in court action for the perpetrator by early 2019, 11% resulted in a conviction and 6% had a prison sentence imposed.

However, there was a 21% increase in the number of victimisations reported to Police in the period 2014/15-2017/18. There was a 34% increase in the number of investigations resulting in court action. There was also a substantial decrease (from 17% to 2%) in the proportion of victimisations deemed to not be a crime. This shows some of the progress achieved by Police because of their comprehensive change programme following the Commission of Inquiry into Police Conduct. However, a large proportion of victimisations continue to remain unresolved and there is a need for continued improvements right across the criminal justice system, to ensure appropriate responses to sexual violence.

The analysis also shows that there are differences in progression for children and young people, adults reporting historic childhood offences, different offence types, Māori, and different perpetrator relationship types.

- **Child or young person victimisations** – around half of all victimisations were reported when the victim was a child or young person (aged 17 years and under). These took longer to progress from reporting to charge outcome.
- **Historic childhood victimisations** – more likely to result in court action but also more likely to still be active in court and awaiting sentencing. Overall these took the longest time from reporting to charge outcome.
- **Adult victimisations** – less likely to result in court action, but once in court were more likely to have a not guilty outcome. When convicted these were less likely to receive a prison sentence.
- **Offence types** – were associated with the age of the victim, with the majority of children and young people experiencing indecent assault while the majority of adults experienced sexual violation (including rape and unlawful sexual connection). Victimisations for sexual violation (the most serious offence type, including rape and unlawful sexual connection) were less likely to result in court action and less likely to be convicted. Once in court, indecent assault was more likely to be convicted, but less likely to receive a prison sentence. Sexual violation victimisations took longer to progress from reporting to charge outcome.
- **Māori victims** – court action was similar for Māori and non-Māori victims, but once in court, victimisations for Māori were more likely to have a conviction and a prison sentence.
- **Relationship types** – the relationship between the perpetrator and victim was analysed for victimisations that resulted in court or non-court action. The perpetrator was usually known to the victim (74%). Compared to strangers, intimate partner victimisations in court were less likely to be convicted; but when convicted they were more likely to receive a prison sentence.

What is attrition and progression?

Attrition is the proportion of reported sexual violence victimisations that do not progress through the criminal justice system to a conviction. This report shows the proportion that progress to court and subsequently to a conviction is low, meaning victims may feel they do not get justice. By early 2019, 11% of reported victimisations resulted in a perpetrator being convicted; no perpetrator was convicted for 89%.

Why is this analysis important?

This analysis provides up-to-date evidence for the numbers of cases that are not proceeding to court or to conviction. A large-scale analysis of this type has not previously been undertaken in New Zealand and we have been reliant on a study of adult rape files published by the Ministry for Women in 2009.

This new analysis examined all reported sexual violence victimisations reported to Police since this data became available in mid-2014 (rather than a subset of specific files) and included victimisations for both adults and children.

This analysis will be updated annually, enabling the performance of the criminal justice system to be monitored.

What did the analysis involve?

Police victim and perpetrator data was linked with court data to track the progression of sexual violence victimisations reported to Police through the criminal justice system. Three decision points were analysed: the outcome of the Police investigation, outcome in court and the sentence imposed.

What was included?

The analysis included 23,739 sexual violence victimisations reported to Police in the four years between July 2014 and June 2018. These victimisations were linked to perpetrator and court information to determine how they progressed through the system, by early 2019.

What are the limitations?

The analysis was restricted by the level of information included in the Police and Justice datasets. The analysis did not:

- have access to the contextual information available in case files; this would have provided valuable information for investigations where Police could not act against a perpetrator,
- consider how distinctive characteristics interact with each other and whether some have a greater influence on progression than others, and
- include other related characteristics such as those for the perpetrator.

Additionally, due to the length of time it can take for the Police investigation and court process, in early 2019 a large proportion of victimisations still had a Police investigation that was continuing or were awaiting a charge outcome in court (especially in the most recent year). Some types of victimisations, such as historic childhood victimisations, took longer to progress than others.

What are the implications and next steps?

The analysis provides an up-to-date view of attrition for reported sexual violence victimisations in the criminal justice system. While more victimisations are now reported to Police, for many no action can be taken against a perpetrator. This can occur for a range of reasons.

Several new initiatives are underway to improve the experience for sexual violence victims in the criminal justice system, including the expansion of essential specialist services and improving the justice response to reduce the risk of further trauma to victims participating in the process. The

impact on the number of victimisations reported to Police and the progression to court and conviction of perpetrators can now be monitored.

How much sexual violence is reported to Police?

In 2018, the New Zealand Crime and Victims Survey estimated approximately 87,000 New Zealand adults (aged 15 years or more) were the victim of around 193,000 incidents of sexual violence. Several New Zealand studies have also found that varying proportions of children and young people experience some form of sexual abuse as children.

However, it is estimated that less than 10% of adult sexual violence victimisations are reported to Police (according to the 2014 New Zealand Crime and Safety Survey). Information is lacking on how much sexual abuse experienced by children is reported to Police.

Has the number of reported victimisations changed over time?

Between 2014/2015 and 2017/2018 the number of reported victimisations increased 21%, due to more victims reporting and more victimisations recoded per occurrence. The largest increase was between 2016/2017 and 2017/2018.

Due to low reporting rates, it is not possible to determine whether the increased number of reported victimisations reflects an actual increase in the number of victimisations experienced by victims, or if it is solely an increase in reporting to Police. However, there were more victims reporting to Police, along with more individual victimisations being recorded by Police.

Why has there been no overall change in attrition, compared to previous research?

This analysis is not directly comparable to previous research as it has a different methodology, counted reported victimisations not cases or people, and included a wider range of victims and offences (this analysis included all reported sexual violence victimisations for adults and children over a four-year period, not just a sample of adult rape files).

However, the overall proportion of reported victimisations that resulted in court action and conviction was not dissimilar to previous research. This includes the 2009 Ministry for Women study of 2,000 adult files where a perpetrator was proceeded against for 31% of cases and convicted 13% of the time. (Triggs et al 2009)

Efforts to improve the system are just starting to take effect. The data will allow us to better monitor changes in attrition over time.

Why do reported victimisations not result in a perpetrator being charged?

There are several reasons a reported victimisation might not result in perpetrator being charged:

- non-court action was taken against a perpetrator (where the perpetrator received a formal or informal warning or was referred to the youth justice system if they are a young person)
- the investigation was continuing (a perpetrator may ultimately be charged)
- an investigation was undertaken but Police were unable to proceed against a perpetrator at that time.

There are several reasons an investigation may be completed but Police are unable to proceed against a perpetrator:

- No crime - Police can deem a reported victimisation to not be a crime if it is clear to them that the incident did not constitute an offence (for example, they considered the report to have no foundation after investigation, the person who reported admits to making a false report, or there is evidence to suggest they made a false report).
- Withdrawn by victim - a victim may choose not to proceed and withdraw their complaint. This can happen before or after the formal interview, but before court action or non-court action

begins. Other researchers have found that victims may withdraw from the process (or not make a formal complaint) for many reasons, including to avoid stress, their reluctance or ambivalence to proceed, having moved on or wanting to forget, and fear of the perpetrator (Jordan & Mossman, 2019).

Where Police are unable to act, this includes instances where:

- the perpetrator was not identified
- there was insufficient evidence to prosecute a perpetrator and provide a reasonable prospect of conviction
- it was deemed not in the public interest to proceed
- a perpetrator was identified but Police were unable to take action against them due to their death or mental incapacity, or
- a formal complaint wasn't made by the victim.

Unfortunately, the outcome of investigation categories in this analysis do not provide sufficient detail to determine the relative contributions of each of these to the overall 'unable to take action against a perpetrator' category, particularly where no formal complaint was made.

What is a 'no crime' outcome?

'No crime' outcomes are also known as 'no offence' or 'K3' investigation outcomes. They are included in the subgroup where an investigation was undertaken but Police were unable to proceed against a perpetrator. Police can deem a reported victimisation to not be a crime if it is clear to them that the incident did not constitute an offence (for example, they considered the report to have no foundation after investigation, the person who reported admits to making a false report, or there is evidence to suggest they made a false report).

Use of the 'no crime' outcome of investigation decreased significantly over the four years, from 17% of reported victimisations in 2014/2015 to 2% in 2017/2018. Other researchers had also seen a decrease prior to this, with the proportion of 'no crime' outcomes in adult rape files decreasing from 39% of files in 1997 to 15% in 2015 (Jordan & Mossman 2019).

Why have 'no crime' investigation outcomes decreased?

The Commission of Inquiry into Police Conduct, conducted between 2004 and 2007, resulted in recommendations for how Police deal with reports of adult sexual assault. As a result, Police initiated a comprehensive programme of operational and organisational changes. Around 2013, Police also changed their practice for closing 'no crime' files and samples of these files are now routinely reviewed to audit the appropriateness of the 'no crime' investigation outcomes.

These changes have been shown in research which reviewed adult rape files from 2015. The researchers found that the way Police appear to handle and investigate reports of sexual violence has improved (the rape and attempted rape files showed more evidence of comprehensive investigations than files from 1997) (Jordan & Mossman 2019).

How many victims withdrew their victimisation complaint and at what stage did this occur?

A specific outcome of investigation category for 'withdrawn by victim' was introduced by Police in early 2017. The proportion of reported victimisations with this outcome was 10% in 2017/2018.

The total proportion of victimisations 'withdrawn by victim' is underrepresented, as officers can only record one outcome for each investigation and in some cases the victim withdrawing their complaint may only be one out of a number of factors. It can't be determined from this data if the withdrawals happened before or after the formal interview, or later in the investigation.

What are the other outcomes in court when a perpetrator isn't convicted?

Only 11% of all reported victimisations resulted in a conviction by early 2019. The remaining victimisations that progressed to court resulted in the following outcomes:

- another type of proved outcome (where the perpetrator was found to be or pled guilty) – such as discharge without conviction or where the perpetrator was a young person, so the case was heard in the Youth Court.
- not proved – where the perpetrator was found not guilty (this does not mean that the crime did not occur, only that the evidence did not prove beyond reasonable doubt that the crime occurred) or the charge was dismissed, discharged or withdrawn (reasons for this include insufficient or new contradictory evidence, the victim no longer being willing to cooperate, the charge being replaced with another charge, or procedural reasons).
- another type of outcome in court – where the perpetrator was found unfit to stand trial or not guilty by reason of insanity, due to a current mental impairment or their mental state at the time of the offence.

There were also victimisations that progressed to court, but the charge was still active (not yet finalised) as at May 2019. This means that charges have been filed in court and a charge outcome had not been determined yet (as the court hearings had not been completed). The number that were still active in court was highest in the most recent year.

Why are people receiving sentences other than imprisonment for sexual offending?

At sentencing the judge needs to consider:

- the seriousness of the offence
- the impact it has had on the victim, and others
- the offender's personal, family, whānau, community and cultural background, as well as their age and health
- what sentences have been given for similar crimes
- reports about the offender (such as a pre-sentence report).

Imprisonment is usually imposed for sexual violence victimisations. But, imprisonment might not always be the most appropriate sentence, depending on the circumstances. In those situations, other types of sentence can be used (in order of seriousness):

- home detention (the most serious community sentence)
- other types of community sentence (community detention, intensive supervision, community work or supervision)
- other sentences such as monetary sentences (usually reparation to be paid to the victim), deferment (to come up for sentence if called upon) and being committed to a secure facility on conviction.

Why were there so many unknown ethnicities and relationship types?

The collection of information about a victim's ethnicity is not compulsory as it is not appropriate in some circumstances.

The collection of information about the relationship between the perpetrator and victim is also not compulsory. The relationship information could only be analysed when the Police investigation resulted in court or non-court action, as it is not included in the dataset if no action was taken.

Why do these numbers differ to the number of sexual assault victimisations on the Police website?

The number of reported sexual violence victimisations in this analysis differs from sexual assault and related offences figures published on the New Zealand Police website (policedata.nz). Those figures do not include victimisations with a 'no crime' outcome of investigation and only count a

single sexual violence victimisation within a criminal incident for each victim. The attrition analysis includes all reported sexual violence victimisations, including those with a 'no crime' outcome and where there was more than one victimisations related to a single occurrence.

Who was included in the analysis and is their privacy protected?

The analysis included the sexual violence victimisations of 19,147 unique victims reported to Police between July 2014 and June 2015. These were linked to perpetrator and court records. Each victim and perpetrator had a unique identifier. No name information was included in the Police victim or perpetrator datasets (although information on when the victimisation was reported, and victim age, gender and ethnicity was included).

How does this compare to previous research?

This analysis is not directly comparable to previous research as it has a different methodology, counted reported victimisations not cases or people, and included a wider range of victims and offences (this analysis included all reported sexual violence victimisations for adults and children over a four-year period, not just a sample of adult rape files).

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A large-scale analysis of this type has not previously been undertaken in New Zealand. This quantitative analysis linked victim and perpetrator data from Police with court data. It allowed us to examine all reported sexual violence victimisations reported to Police in the four years since the victim data became available in mid-2014. The analysis provides up-to-date evidence for the level of attrition through the justice system for all these victimisations. It was not limited to a sample of specific files and includes both adult and child victims. However, this analysis did not have access to the contextual information available in case files; this would have provided valuable information for investigations where Police could not act against a perpetrator.

How does this compare internationally?

This analysis is not directly comparable to international research. However, the overall results are similar to countries such as Australia and England and Wales, which also have low rates of reporting to police, prosecution and conviction.

How does this compare to family violence or other types of offences?

Similar analysis of the attrition and progression of family violence victimisations (or for other types of offences) has not been undertaken in New Zealand.

Similar analysis for family violence victimisations is more complicated than for sexual violence due to complexities in defining and identifying family violence in some data sources, and how the different data sources that would be required can be linked together. However, we intend to investigate how analysis for family violence could be undertaken.