

September 2009

Responding to sexual violence **Attrition in the New Zealand criminal justice system**



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CRIME AND JUSTICE RESEARCH CENTRE

Te Puni Rangahau Taihara, Ture



Commissioned by
the Ministry of Women's Affairs

Responding to sexual violence:
Attrition in the New Zealand
criminal justice system

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Disclaimer

This report was commissioned by the Ministry of Women's Affairs. The views, opinions and conclusions expressed in the report are intended to inform and stimulate wider debate. They do not represent government policy.

Published in September 2009
by the Ministry of Women's Affairs | Minitatanga Mō Ngā Wāhine
PO Box 10 049, Wellington, New Zealand

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Email: mwa@mwa.govt.nz
Website: www.mwa.govt.nz

ISBN 978-0-478252-48-4

This document is available on the Ministry of Women's Affairs website:
www.mwa.govt.nz/news-and-pubs/publications

Contents

List of boxes	iv
List of tables	v
List of figures.....	v
Acknowledgements.....	vi
Executive summary.....	vii
1 Introduction	1
1.1 Project overview	1
1.2 Scope and objectives of the attrition study	1
1.3 Rationale for the attrition study	2
1.4 Key issues identified by previous research.....	2
1.5 Legislation and policy in New Zealand	4
1.6 Structure of this report	7
2 Methodology	9
2.1 Terminology	9
2.2 Scope	10
2.3 Data source and extraction	10
2.4 A caution on comparisons with official statistics	11
2.5 Data limitations.....	11
2.6 Data analysis.....	12
2.7 Comparisons with other research	14
3 Profiles of victims, offenders and incidents	15
3.1 Victim profile.....	15
3.2 Offender profile	22
3.3 Crime profile.....	24
3.4 Summary of victim, offender and case characteristics	30
4 Attrition rates during the police investigation	33
4.1 Definitions	33
4.2 Overview of attrition rates during the investigation	34
4.3 Prosecution rate	35
4.4 Investigation outcome by offence	35
4.5 Victim characteristics by investigation outcome	37
4.6 Investigation outcome by police district	39
4.7 Suspect identified, but no charges laid	40

4.8	No suspect identified.....	41
4.9	'No offence' and 'false complaints'	42
4.10	Victim withdrawal	49
4.11	Attrition before recording.....	52
4.12	Summary of attrition during the police investigation	52
5	Attrition rates through the court process.....	55
5.1	Definitions	55
5.2	Overview of attrition rates during the court process	56
5.3	Conviction rates	58
5.4	Cases not convicted.....	62
5.5	Victim characteristics by prosecution outcome.....	63
5.6	Prosecution outcome by police district	65
5.7	Summary of attrition during the court process	66
6	Factors influencing outcomes.....	69
6.1	Overview	69
6.2	Approach.....	69
6.3	Factors tested	70
6.4	'False complaints'	71
6.5	No offence disclosed.....	74
6.6	Suspect identification rate.....	75
6.7	Suspect prosecution rate	76
6.8	Conviction rate	78
6.9	Summary of factors influencing attrition.....	80
6.10	Conclusion	83
	Appendix A: Sexual offences included in this study.....	85
	Appendix B: Literature reviewed	87
	References	91

List of boxes

Box 1: Definitions: study scope and methods.....	9
Box 2: Definitions: victim and offender characteristics	15
Box 3: Definitions: investigation outcome categories	33
Box 4: Definitions: prosecution outcome categories.....	55

List of tables

Table 1: Victim-offender relationship, where known, by age of victim (%)	19
Table 2: Ethnicity of offender, by victim's ethnicity	23
Table 3: Force, threats and injury	27
Table 4: Alcohol and/or drug use and uncertainty of violation.....	28
Table 5: Investigation outcome by offence, for case-based and offence-based data	36
Table 6: Victim characteristics by investigation outcome (%)	38
Table 7: Investigation outcome by police district (%)	40
Table 8: Prosecution outcome by type of offence, for case-based and offence-based data (%)	61
Table 9: Victim characteristics by prosecution outcome (%)	64
Table 10: Prosecution outcome by police district (%).....	66
Table 11: Predictors of the probability of a case being documented as a false complaint.....	73
Table 12: Predictors of the probability a 'no offence' classification	74
Table 13: Predictors of the probability that a suspect was identified, of cases identified as offences	76
Table 14: Predictors of the probability that a suspect was prosecuted	77
Table 15: Predictors of the probability of conviction for cases in which and offender was prosecuted	79
Table 16: Summary of conviction and prosecution rates for key factors.....	82
Table 17: Samples and scope of focus studies	89

List of figures

Figure 1: Attrition rates for cases recorded as sexual violation	viii
Figure 2: Age distribution of victims.....	16
Figure 3: Victim-offender relationship (where known)	18
Figure 4: Age distribution of offenders and victims.....	23
Figure 5: Time of the day the incident occurred	26
Figure 6: Attrition of cases through the police investigation stage	34
Figure 7: Summary of investigation outcomes	53
Figure 8: Attrition of sexual violation (SV) cases through the court process	57
Figure 9: Summary of prosecution outcomes.....	67
Figure 10: Diagram of attrition points that formed the basis of models	70

Acknowledgements

My thanks to the dedicated team of police investigators who spent many weeks extracting the data for this project. Thanks also to the project teams from the Ministry of Women's Affairs, the New Zealand Police, and the Crime and Justice Research Centre at Victoria University of Wellington for project organisation, guidance, support and comments on the report. Finally, I would like to acknowledge and thank Professor Elizabeth Stanko, Metropolitan Police Service, London, for offering peer reviewer comments on the report in its final stages.

Executive summary

Aim and scope

The aim of this study was to assess attrition in relation to adult sexual violation cases – that is, what proportion and type of cases drop out at each stage of the criminal justice process. Understanding the rate of attrition and reasons for attrition at each stage of the process is a critical first step towards improving policy and practice such that attrition is minimised and outcomes for victims and society are improved.

The study was based on 1,955 police files coded as sexual violation of an adult victim and included all such offences recorded by the New Zealand Police from 1 July 2005 to 31 December 2007. All cases initially recorded as sexual violation were included, even if subsequent investigation determined that no offence had occurred. The research data set was a summarised extract of police data, so lacked the full extent and depth of information recorded in the original file. While key outcome variables were well recorded, many of the descriptive variables had significant missing data.

An adult was defined as a person aged 16 years or older at the time of the offence. The bulk of cases involved rape (68 percent) or unlawful sexual connection (22 percent), but the sample also included attempted sexual violation (7 percent) and selected offences relating to sexual violation or exploitation (3 percent).

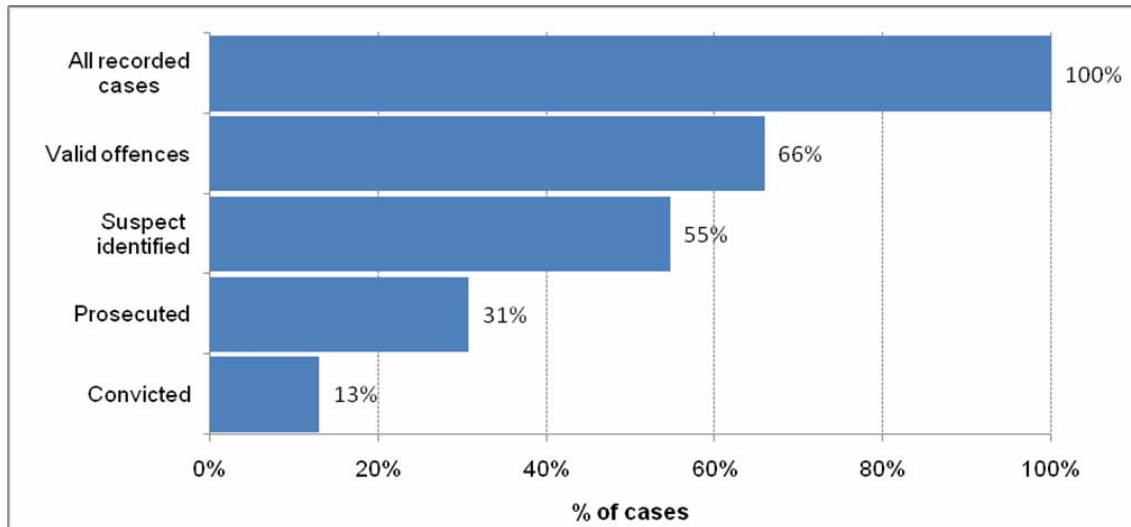
The study estimated attrition within the criminal justice system only. Survey data indicate that around nine in ten sexual violation offences are not reported to the police. In addition, some offences reported as sexual violation may not be recorded as such.

Attrition rates for cases recorded as sexual violation

The overall attrition rate is shown in Figure 1. Just over a third of cases were classified as ‘no offence’ (including 8 percent classified as ‘false complaints’), 11 percent did not proceed due to the lack of an identified suspect, 24 percent of cases had an identified suspect but no charges were laid, and in 18 percent of cases an offender was prosecuted but not convicted for sexual violation.

Therefore, the conviction rate for sexual violation was 13 percent based on all recorded cases (or 20 percent if ‘no offence’ cases were excluded from the base). However, some cases resulted in a conviction for a related offence, giving a conviction rate of 14 percent if all convictions for any sex offence were included or 16 percent including convictions for any offence. For individual sexual violation offences (as distinct from cases, which may include multiple offences) the conviction rate was 17 percent.

Figure 1: Attrition rates for cases recorded as sexual violation



Of cases in which an offender was prosecuted, 42 percent resulted in a conviction, 27 percent resulted in an acquittal, 14 percent were discharged by the judge and 17 percent were withdrawn by the prosecution.

The prosecution rate (percentage of cases with charges laid) was 31 percent based on all recorded cases or 46 percent if 'no offence' cases were excluded from the base. The prosecution rate for cases involving multiple offences was much higher than for single-offence cases and thus the prosecution rate based on recorded *offences* (49 percent) was higher than the prosecution rate for cases (31 percent).¹

Cases in which a known suspect was not charged tended to involve either victim withdrawal or insufficient and/or conflicting evidence. The most common factors in cases with no identified suspect were that the victim withdrew from the process, there was insufficient evidence to identify a suspect who was a stranger to the victim, or the victim had limited recall due to intoxication.

'False complaints' were defined as cases in which the complainant was charged or warned for making a false complaint. In 'false complaint' cases for which further information was noted in the summary data set, the two most common file notes were that the complainant had admitted the allegation was false and that the evidence did not support the complaint. The victim had an intellectual disability or a psychiatric condition or had made previous allegations in around a third of cases.

The 'no offence' category accounted for 34 percent of recorded cases (including the 8 percent designated 'false complaints'), which was lower than the 45 percent 'no offence' rate found in a 1981 New Zealand study (Stace, 1983). However, the inappropriate use of this category still seems to be an issue, as some of the cases classified as 'no offence' appeared to be offences. Based on the limited information

¹ The primary unit of measurement within this report is the *case*, which may be a single offence or a group of related sexual violation offences committed by one or more offenders against a single victim and documented in a single police case file. Where appropriate, some analysis is also presented for individual *offences*.

available in the current data, the actual 'no offence' rate may be between about one in five cases and one in four cases.

At least one in five cases did not proceed due to victim withdrawal. That is, the investigating officer recorded that the victim did not want to proceed with the investigation or was uncooperative or could not be contacted. Withdrawn cases were more likely than other cases to involve an offender who was an ex-partner or boyfriend. The police files noted a variety of reasons for a victim not wanting to proceed, including that the victim wanted the offender warned or trespassed but not prosecuted; someone else reported the incident or the victim was pressured to report; the victim had limited recall of the incident; the victim wanted to report the incident or seek advice but take no further action; or the victim did not feel able to proceed, was not ready to proceed or felt threatened.

Comparisons with overseas research were complicated by differences between studies in scope, definitions and justice processes. Attrition rates not only differ by case type, but may vary between areas within a single study. However, the current New Zealand attrition rates were generally around the average of a range of other overseas studies and the major predictors of attrition were generally similar.

The overall conviction and prosecution rates appear to have decreased relative to an earlier New Zealand study (Stace, 1983). The type of cases has also changed markedly, with proportionally fewer cases involving young victims and stranger rapes than in the early 1980s.

Factors influencing attrition

A few key factors were the major predictors of outcomes, with the predictors varying between stages of the investigation and prosecution.

Offence type and number

Rape cases had higher attrition rates at almost every stage of the justice process, compared with other offences. The 18 percent of cases that involved more than one offence were much more likely to proceed through all stages and result in a conviction than cases involving a single offence.

Victim-offender relationship

The majority of offenders were previously known to the victim, with stranger assaults accounting for just 16 percent of cases and offenders just met (within the last 24 hours) accounting for a further 15 percent of cases.² A third of cases involved victims and offenders with intimate relationships (family, current partners or

2 These figures may be underestimated by several percentage points as victim-offender relationship was more often missing for cases in outcome categories with a high proportion of offenders who were strangers or had just met.

ex-partners) and 37 percent of cases involved other known offenders (such as friends, acquaintances, people known through work and caregivers).

The victim-offender relationship was a significant factor predicting attrition at almost all stages of the process, although the analysis was complicated by missing relationship data for many cases.

- Attacks by a stranger were more often associated with ‘false complaints’ and ‘no offence’ cases and had a high attrition rate due to their association with unidentified suspects. However, if prosecuted, stranger attacks were much more likely to result in a conviction, giving these cases a relatively high overall conviction rate.
- Other non-intimate offenders had a relatively high attrition rate at most stages, so a low overall conviction rate.
- Current partners and boyfriends had a high prosecution rate but a very low conviction rate for sexual violation (although half of those prosecuted were convicted of other violent offences).
- Offenders who were family members had high prosecution and conviction rates relative to other offenders.

Victim age

A third of victims were aged 16 to 19 years and over half were aged under 25 years. By comparison, just 13 percent of offenders were aged under 20 years and 28 percent were aged under 25 years. Victims aged 16 to 19 years had a higher rate of ‘false complaints’ (for stranger attacks), but their cases also had a higher rate of conviction if the offender was prosecuted.

Other victim and offender factors

The 37 percent of offenders with previous sex or violence convictions were much more likely to be prosecuted and convicted than other offenders.

A substantial minority of victims had some type of disability – psychiatric (7 percent), intellectual (6 percent) or physical (one percent). Victims with a psychiatric condition or an intellectual disability had a higher rate of ‘false complaints’ than other victims. However, prosecutions were more likely to result in a conviction in cases where the victim had an intellectual disability.

The 9 percent of victims who had made previous allegations of sexual victimisation had a higher rate of ‘false complaints’ and their cases had a low rate of prosecution.

Cases were more likely to be classified as ‘no offence’ if the victim was uncertain whether violation had occurred. The victim was uncertain in about one in seven cases, and this factor was strongly linked to alcohol or other drug use.

Suspects were less likely to be prosecuted if the victim had one or more of the following attributes: refused a medical, had a psychiatric condition, had made previous sexual allegations, was intoxicated, or did not report promptly.

A combination of several aggravating or negative factors in the case had more impact than single factors alone.

Incident factors

Cases involving force, threats or injury (at least 41 percent of cases) were less likely to be classified as 'no offence' and the offender was more likely to be prosecuted and convicted, especially if the injuries were serious.

Suspect identification was more likely when there was witness or forensic evidence, but less likely if the victim refused a medical examination.

Factors not influencing attrition

No significant differences in outcomes were found between police districts once other factors had been taken into account in the modelling, with one exception – the Auckland City Police District had a lower rate of 'no offence' cases.

The following factors were not predictors of any outcome:

- victim gender, ethnicity and origin (New Zealand born, overseas born), victim criminal history, and victim a sex-worker
- offender gender, age, ethnicity and origin (New Zealand born, overseas born)
- incident timing (day, time of day and year).

1 Introduction

1.1 Project overview

As part of its work to improve women's well-being, the Ministry of Women's Affairs is leading a research project on effective interventions for adult victims/survivors of sexual violence. The project has four interrelated work streams, comprising:

- a study of pathways from crisis to recovery, targeting individuals who have experienced sexual violence as adults and focusing on their experiences with a variety of support sources (Kingi and Jordan, 2009)
- an environmental scan of agencies and key informants that respond to victims/survivors, focusing on systemic, organisational and other contextual factors that influence systems and agency responses (Mossman et al. 2009b)
- this retrospective analysis of attrition of sexual violation incidents recorded by the New Zealand Police (the attrition study)
- a literature review of good practice in service delivery (Mossman et al., 2009a).

The findings from these work streams will contribute to the Government's considerations for policy and practice responses for victim/survivors of adult sexual violence. The Ministry of Women's Affairs is leading the research in partnership with the Ministry of Justice and New Zealand Police.

1.2 Scope and objectives of the attrition study

This report presents the results of the retrospective study of attrition of cases recorded as sexual violation. The main aim was to assess what proportion and type of cases dropped out at each stage of the criminal justice process (the attrition rate), from recording of the offence by police to final disposition or outcome.

The focus of this project is on sexual violation against adult victims. For the purposes of the project, an adult was defined as a person aged 16 years or older at the time of the offence. This research examined sexual violation (rape and unlawful sexual connection), attempted sexual violation and selected offences relating to sexual violation or exploitation (see Appendix A). The most serious offences (rape and unlawful sexual connection) made up 90 percent of the sample.

The study was based on all sexual violation offences against adults recorded by the New Zealand Police from 1 July 2005 to 31 December 2007, a sample of 1,955 cases (2,888 offences). It provides the first detailed analysis of a large sample that tracks what happens to cases between recording and conviction in New Zealand.

The specific objectives of this project were to identify:

- conviction rates, both nationally and for the 12 New Zealand Police districts
- rates of attrition at successive stages of the criminal justice process

- factors that are associated with or predict outcomes
- a profile of the characteristics of victims/survivors, offenders, offences and cases.

1.3 Rationale for the attrition study

Sexual violation is one of the most serious of all offences, with devastating effects for victims and a significant impact on the quality of their lives generally. Not only is the offence traumatic, but the process of seeking justice can be a harrowing experience for many victims, both in terms of the police investigation and the court process. Many examples of this from a New Zealand perspective are provided by Jordan (1998, 2001a, 2001b, 2004a, 2004b) and earlier studies (Lee, 1983; Stace, 1983; Young, 1983).

Sexual violation affects many New Zealand women, some men, and their families. Over a thousand offences a year were recorded by the police over the study period among an adult female population of 1.7 million.

Moreover, this number reflects only a small proportion of actual levels of sexual violence against adults, as an estimated nine in ten sexual offences are not reported to police, according to the *New Zealand Crime and Safety Survey 2006* (Mayhew and Reilly, 2007). The reporting rate for sexual offences was the lowest of the 12 offences cited in Mayhew and Reilly (2007). As a comparison, an estimated 36 percent of assaults were reported to the police.

International research and previous research in New Zealand have highlighted high attrition rates for sexual violation offences. Attrition occurs at all stages of the criminal justice process, but particularly during the investigation phase before prosecution. A meta-analysis of 75 studies (Daly and Bouhours, 2008) found that a third of recorded cases result in charges being laid and around one in nine cases results in a conviction.

Attrition can occur for a wide variety of reasons; for example, it is not always possible to identify a suspect, there may be insufficient evidence to proceed or poor prospects of conviction, the victim may withdraw from the process, or the investigation may show that the incident was not an offence.

Understanding the rate of attrition and reasons for attrition at each stage of the process is a critical first step towards improving policy and practice so that attrition is minimised and outcomes for victims and society are improved.

1.4 Key issues identified by previous research

Various aspects of attrition in sexual violation cases have been analysed in a large number of studies. The literature review undertaken as part of the present report focused on both New Zealand studies and the most recent studies undertaken in the two jurisdictions most similar to New Zealand – England and Australia. In addition,

wider international comparisons were available from a meta-analysis of 75 studies from five English-speaking countries (Daly and Bouhours, 2008).³ An overview of the samples and scope of these studies is in Appendix B. Full citations for these and other studies referred to are at the end of the report.

Specific comparisons between the present project and other research are made within the results section of this report. This section summarises some of the key issues noted by many researchers.

A major focus of attrition studies is the low conviction rate for sexual violation cases, in combination with high attrition at all stages of the process. The relatively high rate of ‘no-crimes’ cases⁴ has been a particular focus of some studies, as this rate, combined with confusion between the ‘no-crime’ and ‘false complaint’ categories, has contributed to the perception held by some people that many or most rapes are false allegations.

The high attrition rate for rape cases reflects the difficulty in many cases of achieving proof beyond reasonable doubt. As rape generally occurs in the absence of witnesses and most often involves an offender known to the victim rather than a stranger, proving non-consent or even determining that an offence has occurred can be a major obstacle. As Lievore (2004: 4) notes, non-consent is critical: ‘the prosecution must prove beyond reasonable doubt that the accused knew that the victim was not consenting or was reckless as to consent’.

While clearly it is essential to have sufficient evidence of offending in order to prosecute, these issues inevitably lead to a focus on the victim that research suggests can be excessive (Kelly et al., 2005). Thus, it is argued that too much attention may be given to the characteristics, behaviour and perceived credibility of the victim, rather than the actions of the offender, resulting in revictimisation, victim withdrawal and inappropriate attrition of cases through no-criming.

Research suggests that this scrutiny of the victim can be influenced by the unrealistic stereotypes and myths held about rape and rape victims. While many agree that the influence of such stereotypes has moderated following extensive reforms of law and practice over the last 30 years, it is also clear from many studies that stereotypes still persist to an unacceptable degree, as noted in Kelly et al. (2005: 2):

‘real rapes’ continue to be understood as those committed by strangers, involving weapons and documented injury. The failure of criminal justice systems to address stereotypes means that the processes involved in responding to reported rapes – from early investigation through to courtroom advocacy – can serve to reinforce, rather than challenge, narrow

3 At the time of writing, this was a draft report. Permission to cite this unpublished research has kindly been granted by the authors. The report is available from Daly’s web page.

4 ‘No-crimes’ offences are those in which the incident does not meet the legal definition of a crime or for which there is clear evidence that no crime occurred, including false complaints. However, this category may also be used inappropriately for cases where there is insufficient evidence or the victim withdraws.

understandings of the crime of rape, who it happens to and who perpetrates it. The attrition process itself reflects, and reproduces, these patterns.

The effect of this stereotyping can influence all aspects of attrition and all involved parties, from the offender's belief as to what constitutes rape, to the families and friends who discourage the victim from proceeding, to the jury⁵ and even the victim.⁶ The main research focus in this area has been on the effect of the policies, attitudes, beliefs and behaviour of the police and, to a lesser extent, prosecutors and the Courts. All detailed studies provided examples of poor practices, leading to early withdrawal of victims or insufficient follow-up of evidence (for example, Kelly and Regan, 2001; Kelly et al., 2005; HMIC and HMCPSI, 2002, 2007).

These studies also found significant variation in attrition rates and outcomes between areas or police forces, which could only be partly explained by differences between areas in case and population profiles. The high rate of no-criming in some areas was of particular concern. Variation in outcomes between areas may reflect the diverse approaches used by different forces, and thus provides useful insights into how attrition rates can be reduced by improving investigation procedures, evidence collection and victim services.

Many researchers were also concerned about the downward trends in conviction and detection rates in some countries, especially in England and Wales. Others noted that positive changes affecting the reporting and official recording of offences explain a significant proportion of this negative trend (Feist et al., 2007; HMIC and HMCPSI, 2002, 2007).

1.5 Legislation and policy in New Zealand

1.5.1 Legislation in New Zealand

In the early 1980s, concern about an increase in the volume of reported rapes in New Zealand, changes in attitudes to women, and law reform overseas all contributed to the commissioning of a major review of sexual violation in New Zealand (Young, 1983). Following this review, in 1985, significant amendments regarding sexual offences were made to the Crimes Act 1961, Evidence Act 2006 and Summary Proceedings Act 1957:

- sexual violation was made gender neutral⁷ and redefined to include unlawful sexual connection⁸ and rape within marriage

5 For example, a recent Australian study concluded: 'juror judgements in rape trials are influenced more by the attitudes, beliefs and biases about rape which jurors bring with them into the courtroom than by the objective facts presented, and that stereotypical beliefs about rape and victims of it still exist within the community' (Taylor, 2007: 1).

6 British Crime Survey data show that only 43% of adult women subject to an incident legally defined as rape actually thought of it as rape (Walby and Allen, 2004, as cited in Kelly et al., 2005).

7 A few remaining issues of gender neutrality were dealt with by Crimes Amendment Act (No. 2) 2005.

- the conditions under which consent is assumed not to occur were extended (these conditions are now: if there is force or threats or fear of these; if the person is asleep or unconscious or affected by drugs or alcohol; if the person is affected by an intellectual, mental, or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity; if he or she allows the act because he or she is mistaken about its nature and quality; or if the person is mistaken as to the identity of the offender)
- changes to court and trial procedures to make giving evidence less traumatic for victims and limiting the publication of incident details
- removal of the requirement for the judge to warn of the dangers of convicting based on the victim's uncorroborated evidence and clarification of the relevance of other evidence (such as the reasons a victim might not report an offence immediately).

The Victims of Offences Act 1987 was enacted in July 1987 to make better provision for the treatment of victims of criminal offences. This Act was later replaced by the Victims' Rights Act 2002.

The Evidence Amendment Act 1977 (and later the Evidence Act 2006) provides a partial 'rape shield', as evidence of sexual experience between the complainant and any person other than the accused is not allowed without the prior agreement of the judge. However, evidence of sexual history between the complainant and accused may be raised in Court in New Zealand, unlike in many other countries (Ministry of Justice, 2008).

Legal and process reform in relation to sexual assault is again under the spotlight, with the announcement in 2007 of a taskforce to examine the effectiveness of criminal justice system responses to sexual offending against adults (Taskforce for Action on Sexual Violence), including a discussion document inviting submissions on possible changes to legislation (Ministry of Justice, 2008).

1.5.2 Police policy in New Zealand

New Zealand Police policy and practice in relation to investigations of sexual offending have changed over the last quarter of a century. The report of the Commission of Inquiry into Police Conduct (Bazley, 2007: 78) noted:

I was generally impressed at the way in which the police had steadily improved policies relating to the investigation of adult sexual assault during the period of interest to my inquiry. At the beginning of the period, policies in force reflected some very distorted views of the credibility of victims of alleged sexual assault, and the general approach to interviewing victims was rightly perceived as likely to be in itself a re-victimisation. The shift towards practices that recognise the impact of recent trauma, encourage a good working relationship with

8 Sexual connection is defined as (a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of (i) a part of the body of another person; or (ii) an object held or manipulated by another person; or (b) connection between the mouth or tongue of one person and a part of another person's genitalia or anus.

professional support agencies, and restore to the victim a sense of empowerment are all to be commended.

The police policy in place during the period relevant to the current data was the Adult Sexual Assault Investigation (ASAI) Policy. This policy was phased in from 1998, alongside a revision of the *Manual of Best Practice*. An overview of the ASAI Policy and past policy is provided in the Commission of Inquiry into Police Conduct report (Bazley, 2007: 78–82).

The ASAI Policy sets out the principles, commitments, procedures and training required. It requires all front-line and watch-house staff to be trained in taking initial sexual assault complaint action and dealing with victims. It further states that victims are to be offered support and medical services at an early stage. The complaint should be transferred to a trained investigator as soon as possible (within two days) for a formal interview and statement-taking.

Specialist training should incorporate not only training in sexual assault investigation but also

an awareness of the needs of adult sexual assault victims, an understanding of the roles and responsibilities of specialist agencies working with sexual assault victims, and knowledge of the relevant laws and practices relating to adult sexual assault investigations. (Bazley, 2007: 74)

However, the implementation of the 1998 ASAI Policy has taken time. For example, the new training course was not implemented until 2003, five years after the ASAI Policy was introduced. Not all officers who deal with sexual assault have since received this specialist training and the executive summary of the Commission of Inquiry into Police Conduct report (Bazley, 2007: 6) notes significant implementation issues:

- *There are some discrepancies between the Manual of Best Practice as it relates to sexual offending and the Adult Sexual Assault Investigation Policy. These result in an unnecessarily unwieldy and fragmented approach.*
- *The Adult Sexual Assault Investigation Policy does not appear to have been adequately supported by training and the provision of appropriate facilities. Police described the policy as ‘aspirational’. This has both inhibited and prevented the mandatory aspects of the policy and its requirements concerning the competence of investigators from being adequately implemented.*
- *There are few nationally mandated training packages; the extent and content of most staff training is decided at the police district level. Consistency in the delivery of police services requires a more coordinated and strategic view of training requirements and priorities.*

Recent research in New Zealand suggests that there are still significant problems with entrenched attitudes within the police force (Jordan, 1998, 2001a, 2001b, 2004a, 2004b). The research indicated that rape complainants ‘must still battle to gain credibility in the eyes of some police investigative officers’, despite changes to

police policy on the investigation of sexual assault (Jordan, 2004a: 29). False complaints were still considered to be common by many officers, and myths about rape and about the victim's expected reaction to rape still persisted.

New Zealand Police has commissioned initiatives and projects to implement and build on all of the recommendations made by the Commission of Inquiry in 2007. New Zealand Police recognises that the benefits of the suite of initiatives under way are unlikely to be captured by this research, as they are still in the process of being developed and implemented across police districts.

Other important work under way by New Zealand Police includes:

- revising the ASAI Policy in conjunction with sector partners Te Ohaakii a Hine – National Network Ending Sexual Violence Together and Doctors for Sexual Abuse Care
- building the capacity of the comprehensive adult sexual assault training programme to cater for more police staff attendees
- implementing the Investigative Interviewing Project, which has the potential to improve rape complainants' experiences of police interviewing.

1.6 Structure of this report

The structure of this report is as follows:

- chapter 2 describes the sample, data extraction and analysis methods
- chapter 3 presents a profile of the characteristics of victims, offenders, offences and cases
- chapter 4 examines attrition rates during the police investigation phase, including prosecution rates, 'no offence' rates, and the reasons why cases do not proceed
- chapter 5 looks at attrition during the court process, including rates of conviction, acquittal, discharge and withdrawal
- chapter 6 assesses the factors associated with attrition at each stage of the process using multivariate analysis.

2 Methodology

Box 1: Definitions: study scope and methods

Case	The unit of measure in all analyses, unless otherwise stated, is the case, which may be a single offence or a group of related offences (at least one of which has been coded as sexual violation) against a victim documented in a single police file.
Offender	Alleged offender, suspect or defendant.
Sexual connection	The 1985 amendment to the Crimes Act 1961 defined sexual connection as (a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of (i) a part of the body of another person; or (ii) an object held or manipulated by another person; or (b) connection between the mouth or tongue of one person and a part of another person's genitalia or anus.
Sexual violation	The study used a broad definition of sexual violation, including sexual violation as it is defined under section 128 of the Crimes Act 1961 after the 1985 amendment (rape and unlawful sexual connection), attempted sexual violation (section 129) and other offences involving sexual violation (incest, inducing sexual connection, and sexual exploitation of a person with significant impairment), as listed in Appendix A.
Victim	Person recorded as the victim of sexual violation, including those in cases subsequently deemed 'no offence' or 'false allegation' (although the term 'complainant' was also used for these cases). All victims were aged 16 or over at the time of the offence.

2.1 Terminology

Throughout this report, the terms 'victim' and 'offender' are used, irrespective of the outcome of the case. These terms are not intended to imply that all recorded sexual violations have been substantiated, as this is not so. Alternative terms may be used where more appropriate to the circumstances or stage of the process, including 'complainant' instead of 'victim' for 'false complaints' and 'suspect' or 'defendant' for the 'alleged offender'.

The term 'victim' was used as this is the common terminology for analysis of criminal justice data. The use of this terminology is not intended to negate terms, such as 'survivor', which are used in other sectors.

2.2 Scope

This study was based on all offences coded as sexual violation against an adult victim (aged 16 or over) recorded by New Zealand Police in the National Intelligence Application (NIA) database from 1 July 2005 to 31 December 2007. The sample includes offences committed earlier than this period, but not reported at the time of the incident. This period was selected to avoid the potential effects of the changeover to the NIA system just before July 2005, while still leaving a sufficient period for a robust sample size and an adequate follow-up.

The study used a broad definition of sexual violation, including sexual violation as it is defined under section 128 of the Crimes Act 1961 (rape and unlawful sexual connection), attempted sexual violation (section 129) and other offences involving sexual violation (incest, inducing sexual connection, and sexual exploitation of a person with significant impairment), as listed in Appendix A. The most serious offences (rape and unlawful sexual connection) made up 90 percent of the cases, while attempted violation and other offences accounted for 7 percent and 3 percent respectively.

The final sample, after removal of out-of-scope cases, comprised 2,888 sexual violation offences, involving 2,029 offenders from 1,955 cases (police files). The sample includes all offences recorded as sexual violation, even if subsequent investigation determined that no offence had occurred.

2.3 Data source and extraction

When a crime is reported to the police, the Offence Report information is recorded electronically, using a preformatted screen in NIA. A unique file number is allocated to each report and this is retained forever. Information may be added to the file over the course of the investigation and prosecution, including a summary of facts, witness statements, forensic results, and conviction and sentencing details.

The electronic files do not always contain as much detail as the paper files on some aspects of the investigation, such as witness statements. However, the NIA database has several advantages: it provides a single point of data collection for the full range of required information that may be held across several paper files; it has more information on prosecution outcomes; and it can be used to access other relevant information, such as the criminal history of the alleged offender and information about the victim's previous contacts with the police.

Data were extracted during July to September 2008, giving a minimum six-month period between the offence being recorded and the data being extracted. Six percent of cases were still before the Courts when the data were extracted and a further 10 percent of case files remained open with no charges yet laid.

For privacy and security reasons, the data for this study were extracted by a team of six experienced former police investigators. Only these team members had access to the data. The team was provided with specific training for this data extraction to ensure consistency and accuracy, as well as access to counselling, due to the nature of the project. The data extraction was co-ordinated and audited by a former

police investigator with considerable experience in the investigation of sexual offending.

No personally identifying information was included in the data set supplied to researchers. The original file numbers and offender identities were replaced with unique numbers to preserve the anonymity of subjects. Alleged offenders in cases that were documented as 'false complaints' were assigned a '000' number and no further offender details were collected in such cases.

Project staff from the Ministry of Women's Affairs and New Zealand Police worked together to define the variables to be collected and the coding schedule. Variables were selected to provide a broad range of information about the offence, offender, victim, investigation, prosecution and outcomes. Where possible, factors found to be associated with attrition rates and outcomes in international research were included in the schedule. Further details of the variables collected and their definitions are provided alongside results in chapters 3 to 6.

Information was not collected on other offences committed at the same time (e.g. indecent assault, assault, kidnapping or burglary). However, convictions for other offences that related to the same incident were routinely noted in the 'comment' field of the database, as all offenders were checked with respect to charge history and criminal history.

2.4 A caution on comparisons with official statistics

Caution should be observed when comparing figures produced by this study with New Zealand Police official statistics for recorded offences and apprehensions, as the statistical units and counting rules used in official statistics differ from those used in this study. Definitions and counting rules applicable to official statistics are published along with these statistics on the New Zealand Police and Statistics New Zealand internet sites. In particular, 'no offence' outcomes are excluded from official statistics, but are included in this study.

New Zealand Police is implementing its Statistics Strategic Plan 2006–2010, which is enhancing the quality and scope of information recorded and reported by police. For example, on 1 July 2008 the National Recording Standard was implemented, and New Zealand Police is developing a plan for reporting statistical information about victims and offenders, based on this new National Recording Standard. These initiatives are consistent with recommendations made by the Crime and Criminal Justice Statistics Domain Plan, which was not yet published by Statistics New Zealand at the time of the writing of this report.

2.5 Data limitations

The accuracy of this analysis can only be as good as the accuracy, extent, depth and objectivity of information recorded in NIA and extracted for this research. Almost all variables had at least some missing data (i.e. the information was not recorded in the file either because the information was unknown or because the data had not been transcribed from the paper file to NIA).

The key information used in this analysis was recorded for most cases, including core information about the incident (offence type, location, incident and reporting dates), the victim and case progress (arrests, court process, outcome and sentence). Offender information was recorded where this was known, excluding 'false complaint' cases.

Variables relating to the physical circumstances of the case (whether alcohol was a factor, the victim was injured, force was used, or there was evidence linking the offender and victim) were included as specific coded variables, but the relevant data were often missing from the file notes. This type of information was more often missing from offences coded 'no offence' or 'false complaint', but still frequently missing from other types of case. Where the data were missing, it is not possible to say whether this means the factor was absent from the incident or was present but not recorded.

Interpretative information (such as the reasons for the case not proceeding) was recorded only in text or comment fields and was subject to at least four layers of filtering:

- 1 the version of events in statements made by the victim, offender and witnesses
- 2 the accuracy and extent of recording of these statements and the perception of the veracity of participants by investigating officers
- 3 the summarisation of file notes by the data extraction team
- 4 the extraction and interpretation of information from these summarised notes by the researcher.

Therefore, some of the contextual analysis is derived from very summarised and incomplete information, which can provide only an indication of the circumstances of these often complex cases from a limited perspective. This issue is reiterated at various points within the presentation of results and, where possible, research from other perspectives is used to provide additional context.

2.6 Data analysis

2.6.1 Unit of measurement

The primary unit of measurement within this report, unless otherwise stated, is the case, which may be a single offence or a group of related sexual violation offences committed by one or more offenders against a single victim and documented in a single police case file. The main exception to the use of cases as the unit of measure was the analysis of offender characteristics (section 3.2). Where appropriate, some analysis is also presented for individual offences.

Thus, three data sets were developed for the analysis: the offence, offender and case data. All in-scope offences were included in the offence data. The offender data contained a single line of data for each offender, based on the offence that

resulted in the most serious outcome or (if outcomes were the same) the most serious offence.⁹ The case data contained a single line of data for each case file, based again on the most serious outcome. The 1,955 cases in the sample comprised 2,888 offences and 2,029 offenders.

2.6.2 Statistical testing and modelling

The statistical significance of differences between groups was tested using chi-squared tests, with the significance level set at 95 percent.

One objective of this report was to assess which factors were associated with or predicted the likelihood of conviction and other outcomes. A multivariate modelling technique, bivariate logistic regression, was used to identify the major predictors of the probability of each outcome (such as being convicted) from a range of possible factors within a single analysis. Only finalised cases were included in these models.

The attrition points or outcomes were all coded as binary variables (e.g. convicted or not convicted). All variables collected in the data set supplied by the police were also converted to binary or ordinal codes. For example, age was converted into several discrete groups (e.g. whether the victim was aged under 20 or not), because the relationship between age and attrition rates was not linear.

Missing information was a major problem, especially for attrition points with asymmetry in missing variables. For example, 'false complaint' cases rarely had data relating to the offender and circumstances of the case (such as scene, time, evidence or injury). Such variables could not be included in the models for these attrition points. Even in outcome categories with better data recording, many individual cases had some missing data for some factors. Factors with a significant proportion of missing data were checked before inclusion in the final model, to ensure it was the presence of the factor that was relevant rather than the missing cases.

The best-fit model was identified using all the relevant data and testing the full set of possible predictors. Usually, this produced a model with a few strong predictors and many weaker predictors. Given the modest sample size and the wide variety of factors tested, over-specification was a potential problem. That is, it is quite likely that some of the weaker predictors were representing just a few cases and may not be found consistently in other data sets. To test the consistency of prediction, the models were checked on random subsets of the data.

The best-fit model was selected based on a combination of explanatory power (Nagelkerke's pseudo- R^2), predictive success, minimising the number of variables, and goodness of fit (Hosmer-Lemeshow statistic). Thus, predictors were not included if they added little to the explanatory power of the model or if they were not consistent predictors.

9 Outcomes, in order of seriousness, were: conviction, conviction on another offence, quashed conviction, acquittal, discharge, withdrawn, no charges laid. The order of offence seriousness was: rape, unlawful sexual connection, attempts, other offences.

2.7 Comparisons with other research

Where possible, the results of this study were compared with previous New Zealand research and recent studies from similar overseas jurisdictions. However, studies vary greatly in scope and definitions, as discussed in Appendix B, such that comparisons must be made with caution.

3 Profiles of victims, offenders and incidents

Box 2: Definitions: victim and offender characteristics

Age	Age at the date the offence occurred. All victims were aged 16 or over at the time of the offence.
Case	The unit of measure in all analyses, unless otherwise stated, is the case, which may be a single offence or a group of related offences (at least one of which has been coded as sexual violation) against a victim documented in a single police file.
Criminal history	Previous convictions or proved charges in New Zealand, excluding convictions for traffic offences.
Disability	Psychiatric, intellectual or other recorded disability, as determined by a doctor or other relevant specialist.
Ethnicity	As recorded in the police data.
False complaint	The alleged victim was charged with or warned in relation to making a false complaint.
Offender	Alleged offender, suspect or defendant.
Victim	Person recorded as the victim of sexual violation, including those in cases subsequently deemed 'no offence' or 'false allegation' (although the term 'complainant' was also used for these cases). All victims were aged 16 or over at the time of the offence.

Note on the presentation of results: Some variables had a significant proportion of missing data. Therefore, the following sections indicate the extent of missing data before presenting the results. Results are shown as a percentage of all cases, excluding missing data.

3.1 Victim profile

The following profile¹⁰ refers to all 1,955 victims, including those cases where the alleged victim was subsequently determined to have made a 'false complaint'. The differences between victims at various stages of the investigation and prosecution are examined in sections 4.5 and 5.5.

10 The low rate at which sexual violation incidents are reported to the police and any variation in reporting rates between different demographic or other groups of victims means that this profile may not be representative of all victims of sexual violation.

All cases related to a single victim. However, in one percent of cases the file notes indicated that the offender was also charged with or had committed offences against other victims.

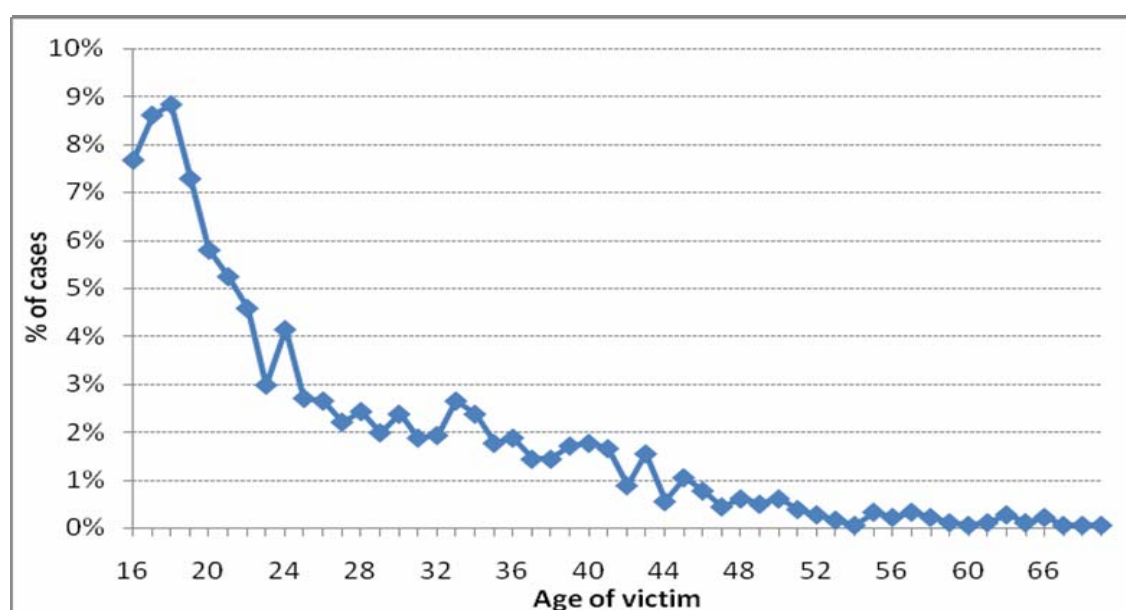
3.1.1 Demographic and employment characteristics of victims

Gender was recorded for 99.5 percent of victims. The vast majority of victims were female, with males making up just 5 percent of the sample.

All victims in this study were aged 16 or over. Age was recorded for 93 percent of victims. Victims of sexual violation were most often young (Figure 2), as has been found in overseas studies. Of the victims for whom age was recorded, a third were aged under 20 years. The average age was 27 years and the median age was 23 years.

Victims aged in their 20s made up a further third of the sample. The remaining victims were spread across the age range, with 19 percent in their 30s, 10 percent in their 40s and 4 percent aged 50 or over.

Figure 2: Age distribution of victims



The only other similar study from New Zealand – from a quarter of a century ago – found a higher proportion of young victims and fewer middle-aged victims than in the current study. The earlier study found 45 percent of adult victims were aged 17 to 20 years and 16 percent were aged 31 to 50 years (Stace, 1983) compared with 35 percent and 28 percent respectively in the current sample, after adjustment for age and offence differences.¹¹

¹¹ The earlier study examined rape and attempted rape only and 26% of victims were aged 16 or under. The comparison with the current study takes these differences into account.

This difference in age profile is likely to reflect the changing composition of recorded rape cases, with proportionally fewer cases in 1981 involving people in intimate relationships than now (see section 3.1.2). For example, the median age of victims in the current study was 21 years for rapes by a stranger or acquaintance compared with 31 years for rapes by a current or ex-partner.

Ethnicity was recorded for 88 percent of victims. Of those with ethnicity recorded, 61 percent were European, 27 percent were Māori, 6 percent were Pacific peoples, 5 percent were Indian/Asian and less than one percent were from other ethnic groups. These results were similar to the 1983 profile. The proportion of Māori victims was about twice the proportion of Māori in the adult New Zealand population, while the proportion of Asian/other victims was about half that of the population.

Employment status was recorded for less than half the victims. Of these, 45 percent were employed.

At least 48 victims (2.5 percent) were sex-workers, based on the limited information in the 'comments' field of the database. Most, but not all, of the offenders in these cases were clients.

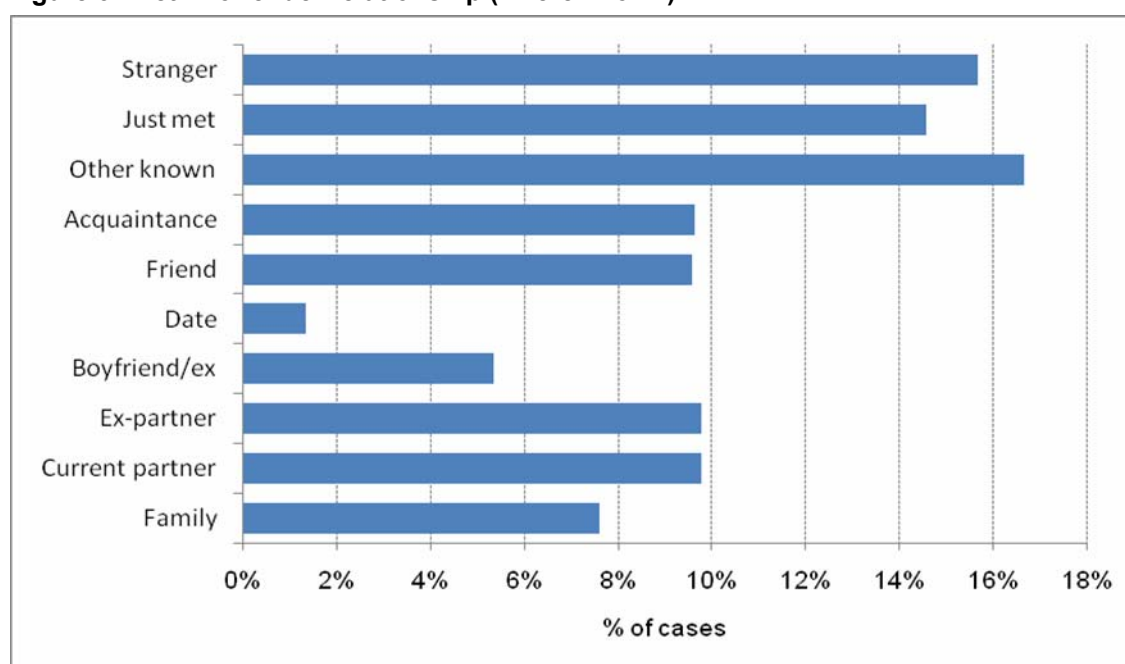
3.1.2 Relationship between victim and offender

The relationship between the victim and offender was recorded for 73 percent of cases.

Sexual violation by a stranger accounted for 16 percent of cases in which the relationship was recorded, and in a further 15 percent of cases the victim had just met the offender (within the last 24 hours) (**Figure 3**). These figures are likely to be underestimated by several percentage points, because the victim-offender relationship information was more often missing for cases in outcome categories with a high proportion of offenders who were strangers or had just met.

Nonetheless, it is clear that the majority of offenders were previously known to the victim, either intimately (33 percent of cases with a recorded relationship) or otherwise (37 percent). Intimate relationships included current partners (10 percent), ex-partners (10 percent), boyfriends or ex-boyfriends (5 percent), and family/whānau (8 percent). Other known offenders included friends (10 percent), acquaintances (10 percent) and dates (one percent), with the remaining 17 percent in an 'other known' category. The 'other known' category covered a wide variety of relationships, such as people known through work, sports clubs, church or education, as well as relationships such as flatmates and caregivers.

Figure 3: Victim-offender relationship (where known)



The low proportion of rapes in which offenders were strangers has also been found in overseas studies, in contrast to the perception of the 'traditional' rape scenario. For example, in England, Feist et al. (2007) found that the offender was more often an acquaintance (27 percent), partner or ex-partner (22 percent), or relative or parental figure (15 percent) than a stranger (14 percent). Australian research shows similar results, with strangers accounting for 16 to 24 percent of offences, acquaintances or friends 35 percent, current or ex-partners 19 to 26 percent, and family 8 to 15 percent (OWP, 2006; Lievore, 2004).

The only other study from New Zealand (Stace, 1983) comprised 220 victims of all ages, and included rape and attempted rape only, so was not exactly comparable to the present study. Nevertheless, there was a clear difference between the overall results for the two studies. In particular, the current study had about twice the proportion of offences committed by someone in an intimate relationship and half as many stranger rapes (after adjustment for offence differences between the studies).¹²

The inclusion of under 16-year-olds in the earlier study will have influenced these results to some extent, as teenagers are more likely to be raped by strangers and less likely to be raped by partners (although more likely to be raped by family). However, even for 16–19-year-olds in the current study, the proportion of stranger attacks was only 22 percent (Table 1), less than the 35 percent for all ages in the earlier study.

¹² Stace (1983) reported that the offender was a stranger in 35% of cases, an acquaintance or a person known by sight in 24%, a friend in 14%, a 'pick-up' (victim offered a lift or hitchhiking) in 10%, and of unknown relationship in 4% of cases. Only 13% were in or had been in intimate relationships – 6% relatives and 7% former lovers. Before the 1985 legislative changes, husbands could not be charged with rape and de facto relationships were much less common than now.

The changing composition of relationships within recorded violation cases is likely to reflect significant social changes as well as legislative changes in the mid-1980s that redefined sexual violation offences, the conditions of consent, the requirement for evidence corroboration and court procedures (section 1.5). The total number of recorded sex offences (of all types) doubled in the decade following the 1985 legislative changes, presumably due, at least in part, to an increased rate of reporting (Triggs, 1997).

Similar results have been reported in England, where the proportion of recorded rapes committed by a stranger decreased from 30 percent in 1985 to 12 percent in 1997 (Harris and Grace, 1999).

In the current study, the relationship between the victim and offender varied by age, as shown in Table 1.

As noted above, the proportion of stranger attacks may be underestimated by a few percentage points, because a substantial proportion of relationship data was missing (27 percent overall), especially within the younger age group (31 percent missing data).

Table 1: Victim-offender relationship, where known, by age of victim (%)

Relationship between victim and offender	Age group of victim (years)						Total
	16–19	20–24	25–29	30–39	40–59	60+	
Sample size	337	304	161	278	174	15	1,421
	<i>Offender relationship as a percentage of each victim age group (where known) (%)</i>						
Family/whānau	11	8	4	4	4	13	8
Current/ex-partner	4	16	28	32	35	13	20
Boyfriend/girlfriend, date	5	9	4	7	7	0	7
Friend	10	10	9	9	10	13	10
Acquaintance	17	9	8	7	9	0	10
Just met (within 24 hours)	18	21	16	9	6	0	15
Other known	14	13	17	21	18	40	17
Stranger	22	15	15	12	10	20	16
Total	100	100	100	100	100	100	100

Victim ethnicity was not strongly associated with victim-offender relationships. The significant differences were that offenders in cases with Māori victims were more likely to be current partners or family and less likely to be boyfriends or friends, compared with offenders against European victims.

For the 63 male victims where the offender relationship was recorded in the current study, 25 percent were acquaintances or friends, 17 percent were strangers, 11 percent had just met, 3 percent were family, there was one case each of partner, ex-boyfriend and date, and the remaining 38 percent were in the 'other known' category.

3.1.3 Mental health and disability status of victims

Disability status was recorded for 93 percent of victims. Of these, 15 percent were recorded as having some type of disability as determined by a doctor or other relevant specialist. Most of this group had either a psychiatric condition (47 percent) or an intellectual impairment (44 percent), with the rest having a physical disability (8 percent) or another unspecified disability (one percent). The median age of victims with a disability (31 years) was higher than for other victims (26 years).

The inclusion in this study of offences involving sexual exploitation of a person with a significant impairment increased the overall disability proportion, but only slightly. If the 24 victims of these offences were excluded from the total, the disability proportion of other victims was still 13 percent.

The relatively high proportion of victims with a psychiatric or an intellectual condition has been noted in overseas studies as well. For example, in England, Feist et al. (2007) found 17 percent of victims were classified as vulnerable – 57 percent with a mental disorder, 35 percent with significant impairment of intelligence, 6 percent with a physical disability and 2 percent unknown. In Victoria, Australia, a quarter of victims were identified as having a disability – of this group, 59 percent had a psychiatric disability and 22 percent had an intellectual disability (OWP, 2006).

In cases where the victims had a disability and the offender details were recorded, the offender was less likely to be a partner, an ex-partner, a boyfriend or a date (19 percent for victims with a disability compared with 28 percent for other victims), a stranger (10 percent compared with 17 percent) or someone who had just been met within the last day (7 percent compared with 15 percent). Conversely, offenders against victims with a disability were much more likely to be in the 'other known' category (35 percent compared with 15 percent for other victims).

Of the 64 cases in which the offender was in the 'other known' category and the victim had a disability, around a third had no file information that indicated the offender's relationship to the victim and the majority of these appeared to be unsubstantiated offences (i.e. the victim agreed sex was consensual or there was no supporting evidence that an offence occurred). Where information was recorded, the two most common relationships were that the victim and offender were both patients in care (18 cases, or 10 percent of cases involving a victim with a disability) or the offender was a caregiver (12 cases, or 7 percent of cases involving a victim with a disability).

3.1.4 Previous allegations of violent victimisation by victims

Data on previous contacts with the justice system were available for 98 percent of victims. Many victims had had some previous contact with the justice system (as a victim/complainant).

Seven percent of victims had applied for a protection order and 2 percent were the respondent on a protection order, not necessarily in relation to the offender.

Previous allegations of violent victimisation had been made by 43 percent of victims (not necessarily against the same offender). The majority of these incidents related to domestic violence (71 percent), with 21 percent relating to sexual violence and 7 percent to other types of violence.

Prior allegations of domestic violence were more likely in cases where the victim and offender were ex-partners (73 percent) or current partners (62 percent) and less likely in cases where they were friends, acquaintances or dates (35 percent) or strangers (29 percent), but there was little difference between these groups in the prior rate of sexual allegations.

There was no information on whether the prior allegations had been proven. However, 77 percent of the offenders in these current or ex-partner relationships had a previous criminal history compared with 43 percent in current or ex-partner relationships where the victim had made no previous allegations.

Fifty-eight percent of victims with a psychiatric condition and 46 percent of victims with an intellectual impairment had made previous allegations of violent victimisation, and these two groups accounted for 29 percent of victims who had made previous sexual assault allegations.

Research on victimisation shows that risk is very skewed for most crime types, such that some people are victimised repeatedly (Mayhew and Reilly, 2007). International research confirms that this is also true for sexual offences, such that women with a history of being sexually assaulted are at higher risk of future sexual victimisation than women who have never been sexually assaulted (Davis et al., 2006).

3.1.5 Criminal history of victims

Criminal history information was available for 98 percent of victims. Just over a fifth of victims (22 percent) had a prior criminal history, excluding traffic convictions. Most victims with a prior history only had conviction(s) for non-violent offences (66 percent), but 33 percent had previous violent convictions and six victims (one percent, five of whom were males) had a conviction for a sex offence.

Victims who had made previous allegations of violent victimisation were more likely to have criminal convictions (36 percent) than victims who had made no prior allegations (12 percent).

3.2 Offender profile

The 1,955 cases in the study involved 2,029 alleged offenders. The vast majority of cases (94 percent) involved a single offender and most of the rest involved two offenders. Only 2 percent of cases involved three or more offenders, with a maximum of seven offenders.

In the earlier study (Stace, 1983), cases with multiple offenders made up a larger percentage of cases (22 percent), with a notably high proportion of gang rapes by multiple offenders (15 percent of cases). In the current study, gang affiliation was not specifically recorded, but the file notes included a reference to the offender being a gang member in 3 percent of cases. Most of these cases had a single offender; only seven cases had multiple offenders and a reference to gang affiliations.

The following profile refers to all alleged offenders about whom some information was recorded ($n = 1,432$), including those cases where the alleged offender was not charged or convicted. Not all information could be collected for all offenders: the proportion who had the relevant data recorded is indicated for each variable in the following sections.

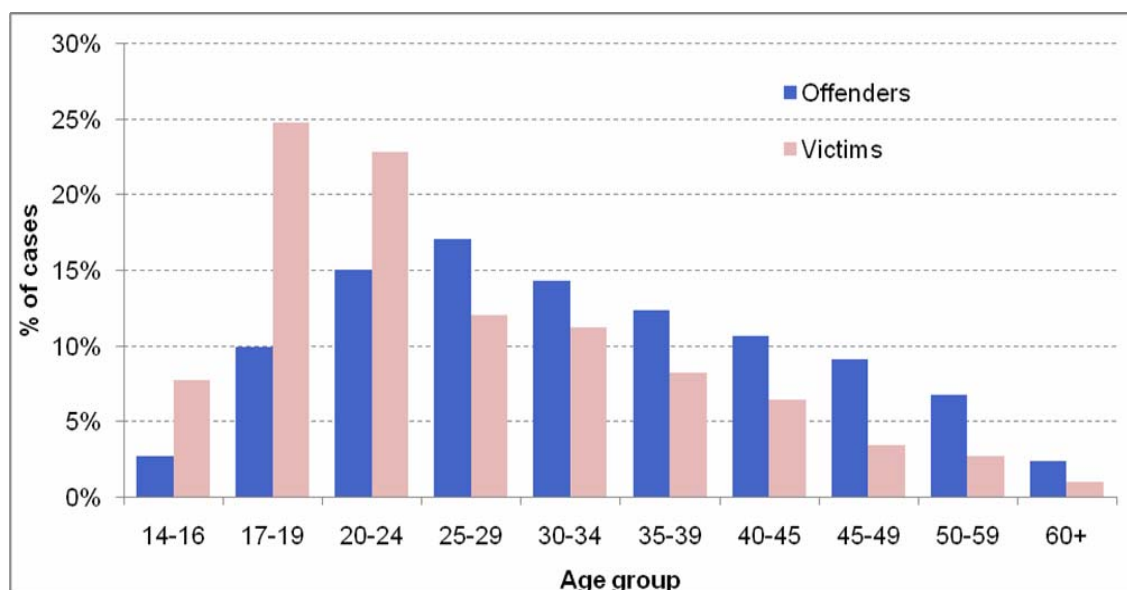
The analysis excludes the 8 percent of alleged offenders ($n = 157$) who were the subject of a documented 'false complaint' (i.e. where the alleged victim was charged or warned for making a false complaint), because alleged offender details were not collected in these cases. Information was not available for a further 440 offenders whose identity was unknown.

3.2.1 Demographic characteristics of offenders

Gender was recorded for 99.9 percent of the 1,432 known offenders in the sample, age was recorded for 98 percent and ethnicity was recorded for 94 percent.

Male offenders accounted for 99 percent of the known offenders. Only 11 offenders were females. Male offenders accounted for over 99 percent of offenders in cases involving female victims and 97 percent of offenders in cases involving male victims.

The distribution of offenders' ages was spread more evenly than were victims' ages (Figure 4), with 13 percent of offenders aged under 20 years, 32 percent in their 20s, 27 percent in their 30s, 20 percent in their 40s and 9 percent aged 50 years or over. Three percent of offenders were aged under 17 years. The median age of offenders was 31 years compared with 23 years for victims.

Figure 4: Age distribution of offenders and victims

Note: All victims were aged 16 years or over.

Of those offenders with ethnicity recorded, 49 percent were European, 30 percent were Māori, 12 percent were Pacific peoples, 6 percent were Indian/Asian and 3 percent were from other ethnic groups. Thus, Māori and Pacific peoples were over-represented among offenders relative to their proportions in the total population.

The ethnic group of the offender matched that of the victim in just under two-thirds of cases (Table 2).

Table 2: Ethnicity of offender, by victim's ethnicity

Offender ethnicity	Victim ethnicity				Total
	Māori	Pacific	European	Other	
Sample size	329	75	713	83	1,200
	<i>Offender ethnicity as a percentage of each victim ethnic group (where both recorded) (%)</i>				
Māori	57	15	22	13	30
Pacific	16	64	6	2	12
European	24	12	66	23	48
Other	3	9	6	61	9
Total	100	100	100	100	100

Matching ethnicity was particularly likely if the victim and offender were family (79 percent matched) or current or ex-partners (72 percent), but also occurred for two-thirds of boyfriends or dates, acquaintances and friends. Offenders who were strangers were the least likely to have a matching ethnicity to the victim (33 percent), while half of the 'just met' and 'other known' categories had matched ethnicity.

Employment status was recorded for 69 percent of offenders. Of these, 68 percent were employed.

3.2.2 Disability status of offenders

Disability status was recorded for 98 percent of offenders. Five percent of offenders were recorded as having some type of disability, of whom 62 percent had a psychiatric condition, 20 percent had a physical disability and 18 percent an intellectual impairment. Fourteen of the 16 cases in which the offender had an intellectual disability involved a victim with an intellectual disability. Almost half the cases in which the offender had a psychiatric disability involved a victim with a psychiatric or intellectual disability.

3.2.3 Criminal history of offenders

Criminal history status (excluding traffic convictions) was recorded for all but four offenders. Forty percent of offenders had no prior convictions, 23 percent had only non-violent prior convictions, 26 percent had prior convictions for violence but no prior sex offences, and 11 percent had a previous conviction for a sex offence.

Of the 155 offenders with a previous conviction for a sex offence, 25 percent had previous convictions for sexual violence only, 15 percent had previous convictions for other sex offences only, 43 percent had a history of sexual offences and other types of violence, and 17 percent had a history of sex offences and non-violent offences.

Sixteen percent of offenders had been the respondent on a protection order, not necessarily in relation to the victim, while seven offenders (half a percent) had been a protection order applicant.

3.3 Crime profile

This section examines the number and type of offences, the location and timing of the offending, and the circumstances of the offending for cases recorded as sexual violation. The following profile refers to all recorded cases, including those cases where the incident was subsequently recorded as a 'false complaint' or other 'no offence' outcome.

3.3.1 Number and type of offences

The 1,955 cases included a total of 2,888 sexual violation offences. Most cases involved one offence (82 percent), two offences (9 percent) or three offences (4 percent). Eight cases involved more than ten offences; one case involved 117 offences. Most of the multiple-offence cases involved a single offender, but 17 percent involved more than one offender.

Rape accounted for 56 percent of all offences or 68 percent of cases (based on the most serious offence in the case). Unlawful sexual connection accounted for 33 percent of offences and 22 percent of cases, attempted violation accounted for 8 percent of offences and 7 percent of cases, and other offences accounted for 3 percent of offences and cases. 'Other offences' included 24 cases of sexual exploitation of a significantly impaired person, 17 cases of inducing sexual connection, 9 cases of incest and 13 other offences.

3.3.2 Reporting

Ninety percent of cases had information on the offence date and reporting date. However, both these dates were recorded in months and years, rather than as specific dates. Therefore, it was not possible to identify how many hours or days had passed before the offence was reported to the police. The data did not identify which offences were reported by the victim and which were reported by someone else.

Based on the available data, 85 percent of incidents were recorded in the same month as the offence took place. Five percent were recorded in the following month (which could be a delay of anything from one day to 60 days). A further 5 percent of cases were recorded within six months and 5 percent after more than six months.

In the earlier New Zealand study (Stace, 1983), half the incidents were recorded by the police within one hour and 83 percent within 24 hours. The offence was reported by the victim in 52 percent of cases, by a relative or friend in 27 percent of cases and by a neighbour, stranger or other person in 21 percent of cases.

The time taken to report the incident is critical for forensic evidence. In London, around two-thirds of 677 incidents were reported within the critical time-frame (MPS, 2005). In Victoria, Australia, almost half of the incidents were reported within 24 hours (OWP, 2006). Several studies noted that incidents with a substantial lapse of time before reporting more often involved victims and offenders in intimate or close relationships (Feist et al., 2007; MPS, 2005; Lea et al., 2003).

3.3.3 Scene, location, day and time

Of the 89 percent of cases with scene recorded, two-thirds of incidents occurred in a dwelling (any dwelling, including the offender's or victim's home). A further 22 percent occurred in a public place and one percent each in an educational institution, a hospital, a prison or licensed premises.

Just over half the incidents in the earlier New Zealand study occurred in the victim's or offender's home (Stace, 1983).

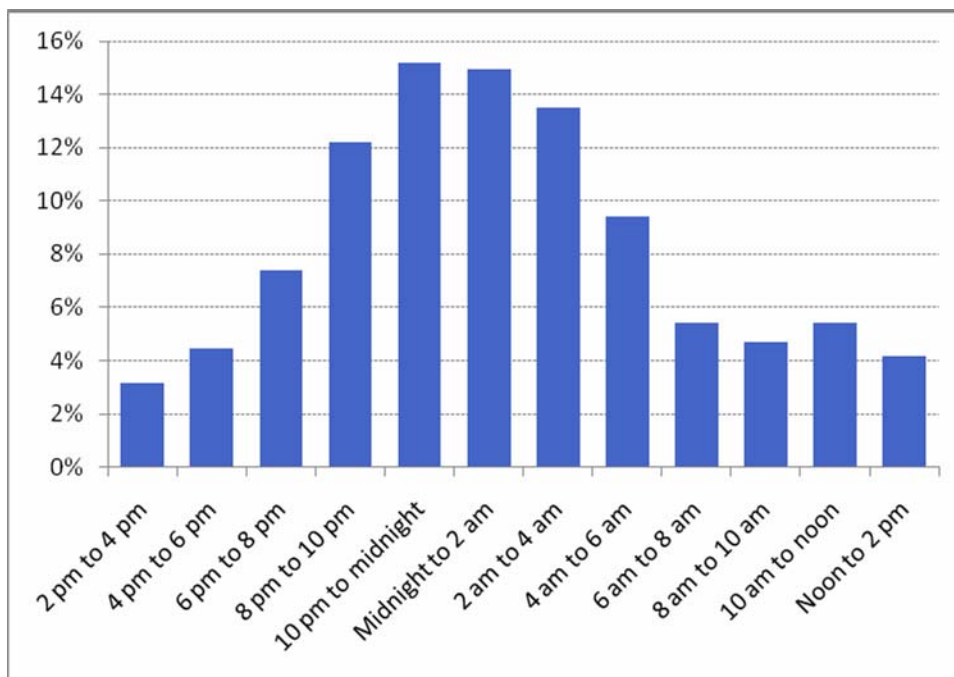
Recent overseas studies also found a high proportion of offences occurring in a dwelling, as a consequence of the high proportion of offences committed by an offender known to the victim. For example, a study of several areas in England found that two-thirds of rapes occurred in either the offender's or victim's home or joint home (Feist et al., 2007).

The distribution by police district was:

- Auckland City 11 percent
- Bay of Plenty 7 percent
- Canterbury 15 percent
- Central 7 percent
- Counties Manukau 13 percent
- Eastern 6 percent
- Northland 3 percent
- Southern 8 percent
- Tasman 5 percent
- Waikato 8 percent
- Waitemata 6 percent
- Wellington 12 percent.

The most common days of occurrence were Sunday (24 percent) and Saturday (21 percent), followed by Friday (16 percent), Thursday (11 percent), Monday (10 percent), Wednesday (9 percent) and Tuesday (9 percent). Incidents most often occurred in the evening or early hours of the morning (Figure 5). Day was recorded for 80 percent of cases and offence time for 68 percent of cases.

Figure 5: Time of the day the incident occurred



3.3.4 Force, threats and injury

The interpretation of these results was complicated by the lack of relevant information in many file notes. For example, if no information was recorded about injuries, it was not possible to know whether it meant there was no injury or that the relevant information was missing from the file.

Table 3 shows a breakdown of the results, including cases with missing data for each factor, but excluding cases where the factor was recorded as not applicable (mainly 'false complaints').

Given that the factor was likely to be present in at least some cases where the data were missing, but assuming the recording of such information is more common in cases where the circumstance was present, the true rate of occurrence for each factor probably lies somewhere between the two '% yes' estimates in Table 3.

For example, the offender made threats of violence against the victim in 9 percent of cases overall or in 16 percent of cases in which the relevant information was recorded. Two-thirds of threats were made to force submission at the time of the offence and a third were threats to deter disclosure or reporting, either at the time of the offence or after the offence. In a small proportion of cases, threats of violence were made against family or friends of the victim at the time of the offence.

Table 3: Force, threats and injury

Circumstance present	Yes	No	No data	Total cases	% yes, of known	% yes, of total	% no data
Victim threatened	155	822	810	1,787	16	9	45
Family/friends threatened	24	913	851	1,788	3	1	48
Force used	508	466	812	1,786	52	28	45
Weapon	92	1,313	360	1,765	7	5	20
Victim injured	478	1,100	212	1,790	30	27	12

Notes: 'No data' means there was no information in the file notes about the relevant factor. Total cases exclude non-applicable. The column label '% yes, of known' is the percentage of cases where the factor was present, of cases in which relevant data were recorded.

Force was used against the victim in 28 to 52 percent of cases.

Cross-tabulation of the 'force' variable with the 'injury' variable suggested that a large proportion of the missing codes might relate to cases where force was used. If cases involving injury were assumed to involve a degree of force by the offender (and this may not always be so), then the estimate of cases involving force increased to 41 percent to 64 percent of cases, which is more in line with international findings.

Weapons were used in about one in 20 cases. A knife or cutting tool was the most common weapon used (45 percent of specified weapons), while firearms were mentioned in only four cases.

The victim sustained physical injury during the incident in 27 percent to 30 percent of cases. Where the scale of the injury was recorded, the injury was relatively minor in 61 percent of cases (e.g. superficial cuts, grazes and bruises), moderate in 21 percent of cases (e.g. extensive bruising and injuries requiring treatment by a doctor) and serious in 18 percent of cases (e.g. vaginal or anal bleeding, life-threatening injuries, broken bones and injuries requiring hospitalisation). Thirty-three cases were recorded as involving a hospital visit.

Recent studies in England and Australia found that while some degree of force was used in the majority of cases, a minority of victims were physically injured (e.g. a third of cases (Feist et al., 2007), 28 percent (OWP, 2006) and 52 percent (Lievore, 2004)). Lack of physical resistance has many causes: victims may be frozen with fear, afraid to risk injury by resisting or physically unable to resist (Lievore, 2004). Weapons were used in only a minority of rape incidents (e.g. 4 percent of cases (Feist et al., 2007) and 20 percent (Lievore, 2004)).

The previous New Zealand study (Stace, 1983) reported that two-thirds of incidents involved physical force and a fifth involved threats, but serious physical injury was infrequent.

3.3.5 Alcohol and other drugs

The use of alcohol or other drugs was not recorded for the majority of offenders and for almost half the victims (Table 4). The offender was recorded as having had alcohol or drugs (or being in an environment that suggested this, such as a bar) in 533 cases, which equates to 79 percent of incidents where this information was recorded or 30 percent of all cases. The alcohol and/or drug percentages were similar for the victim. The use of alcohol and/or drugs by both offender and victim was particularly likely in cases for which the offender was a friend or acquaintance or had 'just met'.

Table 4: Alcohol and/or drug use and uncertainty of violation

Circumstance present	Yes	No	No data	Total cases	% yes, of known	% yes, of total	% no data
Offender had alcohol/drugs	533	140	1,107	1,780	79	30	62
Victim had alcohol/drugs	762	250	938	1,950	75	39	48
Victim uncertain if violated	245	1,325	249	1,819	16	13	14

Notes: 'No data' means there was no information in the file notes about the relevant factor. Total cases exclude non-applicable. The column label '% yes, of known' means the percentage of cases where the factor was present, of cases in which relevant data were recorded.

The victim was uncertain if a sexual violation had occurred in 245 cases (13 percent of all cases). In most of these cases, the victim was recorded as having had alcohol or drugs.

Alcohol use and drug use were not recorded separately, nor was the degree of intoxication, if any, or drug type recorded. Thus, the extent of legal or illegal drug use was unknown.

The 'comment' field, based on file notes summarised by the data extraction team, indicated that the victim was intoxicated in at least 196 cases or 10 percent of all cases, while illegal drug use by the victim (mainly cannabis use) was noted in at least 54 cases (3 percent of cases). In 62 cases (3 percent), the file notes indicated that the victim thought she had been drugged or her drink had been spiked. Only four of the latter cases included an indication of supporting evidence in the file notes (such as toxicology results or offender admission) and over a third of these 62 cases were cleared as 'no offence'.

A strong association between alcohol and rape has been noted by many researchers in overseas studies, especially in relation to rapes by recent acquaintances. The victim or the suspect, or both, were under the influence of alcohol in around a third to half of cases in the English studies (Feist et al., 2007; HMIC and HMCPSP, 2007; Kelly et al., 2005). In Australia, the majority of victims had used alcohol and/or drugs around the time of the offence (OWP, 2006; Lievore, 2004). Kelly et al. (2005: 81) found that the presence of alcohol increased the level of injuries.

Alcohol consumption may negatively affect the chances of a successful prosecution due to the victim's diminished recall of events and negative stereotyping of the victim, although not all studies do find a relationship between alcohol use and conviction rates (Lievore, 2004). An intoxicated person cannot legally consent to sex.

Alcohol was much more often a factor in rapes than drugs were, but precise estimates are difficult to obtain because blood and urine samples are not always taken. Drug use, where it was documented, was most often voluntary use by the victim, rather than drugs administered without knowledge by the offender, and the use of 'date-rape' drugs was rare (Feist et al., 2007; HMIC and HMCPSP, 2007).

3.3.6 Evidence

All sexual violation offences reported to the police should be investigated and evidence collected as appropriate to the circumstances. This may include, for example, medical examination of the victim, witness accounts, closed-circuit television footage, scene identification and photographs, and collection of physical evidence such as DNA. The policy is for all victims to undergo a medical examination, except where there has been a delay in reporting or there was no penetration or in other circumstances where no physical evidence is expected. Medical examination is undertaken by accredited doctors from Doctors for Sexual Abuse Care or police medical officers.

Information on whether the victim had had a medical examination was recorded for only 35 percent of cases in the current study. For the 684 cases where this information was recorded, 56 percent had had a medical examination and 44 percent had not.

For the 306 cases where there was no examination, the reasons were split between the incident having occurred too long ago (27 percent), victim refusal (27 percent) and other unspecified reasons (46 percent).

Evidence was recorded in the summary database only if it related to a link between the victim and offender.

- DNA evidence linking the offender to the victim was noted in the file of 59 cases and lack of DNA evidence was noted in the file of 202 cases. The vast majority of cases (85 percent) had no information on whether such evidence was available.
- Other forensic evidence linking the offender to the victim was recorded in 114 cases.
- Information on whether there was any evidence from witnesses was recorded for 76 percent of cases. For these cases, 60 percent had witnesses and 40 percent did not.
- Only 13 cases were recorded as having surveillance evidence linking the offender to the victim, such as security camera footage.

There are many reasons why DNA evidence would not be collected or analysed, including a lack of DNA in cases where penetration and ejaculation did not occur or the victim bathed or showered, or the offence was not reported promptly. In other cases, intercourse was not in dispute (i.e. the main issue was consent).

3.4 Summary of victim, offender and case characteristics

The victims/complainants in cases recorded as sexual violation had the following characteristics:

- 95 percent were women
- they were mainly young (a third were aged 16 to 19 years and over half were aged under 25 years), but not as young on average as victims in the 1981 New Zealand study (Stace, 1983)
- they over-represented Māori and under-represented Asian and other ethnic groups relative to their proportions in the total population
- a substantial minority had some type of disability – psychiatric (7 percent), intellectual (6 percent) or physical (one percent)
- 43 percent had made previous allegations of violent victimisation (not necessarily against the same offender) relating to domestic violence (71 percent), sexual violence (21 percent) or other types of violence (7 percent)
- 22 percent had a prior criminal history (excluding traffic convictions), although the majority of these had only non-violent convictions.

The majority of offenders were previously known to the victim, with stranger assaults accounting for just 16 percent of cases and offenders just met (within the last

24 hours) accounting for a further 15 percent of cases.¹³ A third of cases involved victims and offenders with intimate relationships (family, current partners or ex-partners) and 37 percent of cases involved other known offenders (such as friends, boyfriends, acquaintances, people known through work and caregivers). The 1981 New Zealand study involved a higher proportion of stranger attacks (Stace, 1983).

The alleged offenders in cases recorded as sexual violation had the following characteristics (based on cases for which offender information was known):

- 99 percent were men
- they were more evenly spread by age than were victims, with a median offender age of 31 years compared with 23 years for victims
- they over-represented Māori and Pacific ethnic groups relative to their proportions in the total population
- a small proportion had some type of disability – psychiatric (3 percent), intellectual (one percent) or physical (one percent)
- 60 percent had a prior criminal history (excluding traffic convictions), including 23 percent with non-violent prior convictions, 26 percent with prior convictions for violence but no prior sex offences, and 11 percent with a previous conviction for a sex offence.

The circumstances of the offending were as follows:

- two-thirds of incidents occurred in a dwelling, 22 percent in a public place, and one percent each in an educational institution, a hospital, a prison or licensed premises
- almost half the offending occurred during a weekend, and most incidents occurred in the evening or early hours of the morning
- around half the incidents involved some force or threat
- about 30 percent of victims were physically injured, with around 12 percent suffering moderate or severe injuries
- the use of alcohol or drugs by the victim or offender was not consistently recorded, but was a feature of a substantial proportion of incidents
- the victim was uncertain whether a sexual violation had occurred in 13 percent of all cases, and in most of these cases the victim was recorded as having had alcohol or drugs
- just over half of victims had a medical examination, in cases for which the medical examination status was known

13 These figures may be underestimated by several percentage points because the victim-offender relationship was more often missing for cases in outcome categories with a high proportion of offenders who were strangers or had just met.

3 Profiles of victims, offenders and incidents

- the availability of forensic and other evidence was not consistently recorded, but evidence linking the offender to the victim (other than witness statements) was recorded for only a minority of cases.

4 Attrition rates during the police investigation

The focus of this chapter is the attrition rate as cases progress through the police investigation. Attrition rates through the court system, including conviction rates, are covered in chapter 5, while chapter 6 presents the results of a multivariate analysis of the factors influencing attrition throughout the process.

Chapter 4 begins with a note of definitions (section 4.1) and a summary of attrition rates at the police investigation stage for both cases (section 4.2) and offences (section 4.3). It is important that the summary results are not read in isolation. In particular, there are several ways of calculating prosecution rates, a wide variety of case types within the broad outcome categories, and some cases that may be misclassified (sections 4.3, 4.4, and 4.7 to 4.10). The victim characteristics of each outcome category are examined in section 4.5, and attrition rates by police district are in section 4.6. The final section summarises key results.

As will be seen, most of the attrition within the criminal justice process occurred during the investigation phase – with charges laid in only three out of ten recorded cases. Where data were available, attrition points in this phase are examined in more detail, especially cases classed as ‘no offence’ and where the victim withdrew.

4.1 Definitions

The unit of measure is the case, which may be a single offence or a group of related offences (at least one of which was coded as sexual violation) against a victim documented in a single police file. For cases that relate to more than one offence, the outcome selected to represent the case is the one with the most serious outcome (i.e. the outcome that proceeds the furthest towards prosecution). Box 3 defines the outcome categories for the police investigation stage.

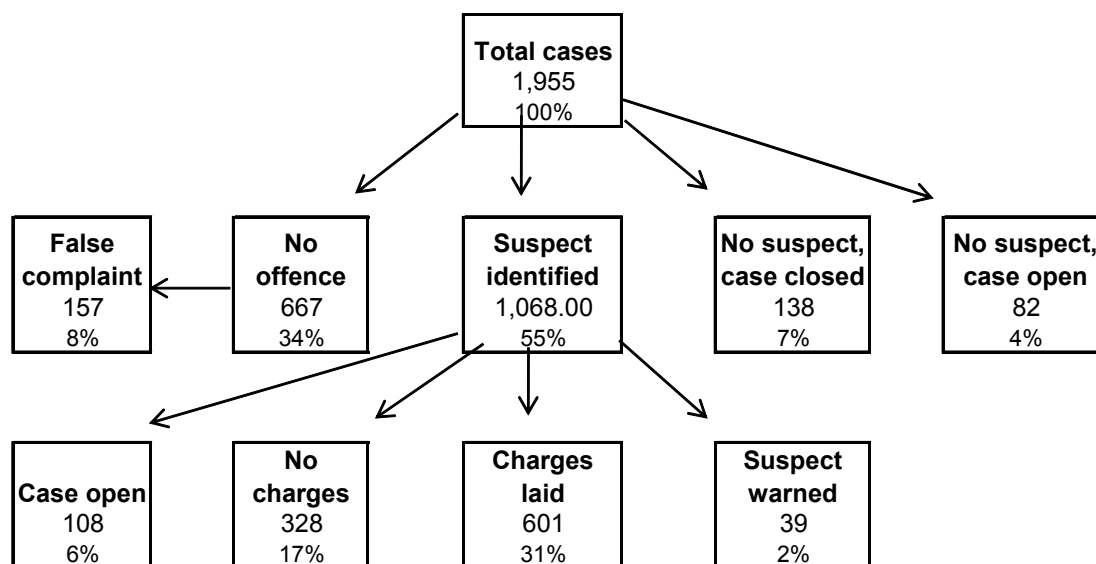
Box 3: Definitions: investigation outcome categories

Charges laid (prosecuted)	Charges laid against at least one alleged offender (i.e. the offender was prosecuted).
Warned	Offender given an official warning.
Suspect identified, no charges laid	Suspect identified but not charged (e.g. if the suspect could not be located or there were insufficient grounds to charge or the victim chose not to proceed).
No suspect	Identity of the offender(s) unknown.
‘No offence’	Incident established as a ‘false complaint’ or cleared by the police as ‘no offence disclosed’.
‘False complaint’	Alleged victim charged with or warned in relation to making a false complaint.

4.2 Overview of attrition rates during the investigation

Figure 6 summarises the stages of attrition during the investigation process for the 1,955 cases recorded as sexual violation in this study, based on the outcomes recorded in the police NIA database.

Figure 6: Attrition of cases through the police investigation stage



Notes: All percentages are of total recorded cases. Eight cases that had charges laid, but were subsequently found to be 'false complaints', were included in both the relevant categories in this flow diagram, but were treated as 'false complaints' for the rest of this chapter. The charges-laid group includes six cases where the offender was charged with a related offence and one case dealt with by Family Group Conference.

In summary, the overall case-based prosecution rate (the percentage of all cases in which charges were laid) was 31 percent. However, this overall rate is not the only way to estimate the prosecution rate, as highlighted in the following two sections. For example, almost half of all sexual violation *offences* resulted in a prosecution compared with less than a third of cases.

Thus, the majority of cases did not result in charges being laid against the alleged offender, as has been found in international research. For example, a meta-analysis of 75 studies found that an average of 35 percent of cases resulted in a prosecution (Daly and Bouhours, 2008). Prosecution rates may be even lower in Australia. In New South Wales (Fitzgerald, 2006) and Victoria (OWP, 2006) charges were laid in 15 percent of cases. The latter study had a high rate of non-finalised cases (21 percent).

One of the main reasons for attrition studies is to examine what happens to the cases that do not result in a prosecution, because official statistics often code these cases into very broad categories such as 'undetected' or 'not cleared'. As pointed out in HMIC and HMCPsi (2007: 10), 'undetected' is not a helpful classification because 'the suspect was either known or identified following investigation in 80 per cent of cases classified as undetected', a consequence of the low rate of rape by a stranger.

The findings of the current study in relation to cases that did not result in a prosecution were that:

- one in four cases did not result in charges being laid despite a suspect being identified (as discussed in section 4.7)
- one in nine cases did not proceed because no suspect was identified, with around two-thirds of these case files being closed (section 4.8)
- one in three cases was classified as 'no offence', including 8 percent documented as 'false complaints' (section 4.9).

Victim withdrawal was not included in the data set as a specific category, but further analysis suggested that in at least one in five cases the victim withdrew from the investigation process. These cases were mainly included within the 'no offence', 'no suspect/file closed' and 'suspect/file closed' categories, as discussed in section 4.10.

4.3 Prosecution rate

As shown in Figure 7, at least one offender was charged in 31 percent of all recorded cases.

The earlier New Zealand study (Stace, 1983) reported a prosecution rate of 33 percent for adult victims of rape or attempted rape, which was higher than the estimated rate of 26 percent for rape or attempted rape in the current study.

However, the current estimate of the overall case-based prosecution rate may be a slight underestimate, as some offenders may yet be apprehended and charged. In sections 4.7 and 4.8, it is estimated that as many as 124 case files that are open and active could result in charges being laid (although, after a lapse of six months or more, the actual impact is likely to be less). Excluding all these cases results in a case-based prosecution rate of 33 percent.

Official statistics in many countries (including New Zealand) exclude cases classified as 'no crime' or 'no offence'. Therefore, prosecution rates calculated using official statistics indicate the likelihood of charges being laid in sexual violation cases that are identified by the police as valid offences. The prosecution rate in the current study was 46 percent, if all 'no offence' cases were excluded.¹⁴

4.4 Investigation outcome by offence

As noted in section 4.3, 31 percent of cases resulted in at least one charge being laid (the case-based prosecution rate). Rape cases had a lower prosecution rate (26 percent) than cases involving other offences (43 percent to 35 percent) (as

14 However, the validity of this estimate depends on the accuracy with which cases are assigned to the 'no offence' category. The true 'no offence' rate is likely to be lower than the official rate – perhaps closer to one in four or five cases rather than one in three (section 4.7), which would lead to an adjusted prosecution rate of around 40 percent.

shown in the shaded column of Table 5). Rape cases also had higher rates of ‘false complaints’ and other ‘no offence outcomes’.

The prosecution rate for individual sexual violation *offences* was considerably higher than the case-based rate, with almost half of all offences resulting in charges being laid. Again, the prosecution rate was lower and the ‘false complaint’ and ‘no offence’ rates were higher for rape compared with rates for other offences.

Table 5: Investigation outcome by offence, for case-based and offence-based data

Offence	Sample size	False complaint	Other ‘no offence’	No suspect	Suspect/ no charges	Charges laid	Total
<i>Case-based data: outcome as a percentage of total cases (%)</i>							
Total	1,955	8	26	11	24	31	100
Rape	1,334	10	28	12	25	26	100
USC	420	4	23	10	23	40	100
Attempt	138	4	22	12	20	43	100
Other	63	6	19	8	32	35	100
<i>Offence-based data: outcome as a percentage of total offences (%)</i>							
Total	2,888	6	19	8	18	49	100
Rape	1,614	8	24	11	22	35	100
USC	940	2	11	5	12	69	100
Attempt	234	5	14	8	12	61	100
Other	100	4	13	5	21	57	100

Notes: In the case-based analysis, the case is represented by the offence with the most serious outcome. In the offence-based analysis, all offences are represented, including multiple offences within a single case. USC = unlawful sexual connection. ‘Other’ offences include incest, inducing sexual connection and sexual exploitation of an impaired person.

The reason the offence-based prosecution rate (49 percent) was so much higher than the case-based rate (31 percent) was that cases involving multiple offences were much more likely to result in charges being laid for all offences in the case. Thus, for cases involving just one sexual violation offence, the prosecution rate was 20 percent. This increased to 71 percent for cases with two offences (which count as one case prosecuted but two offences prosecuted). The prosecution rate was 83 percent for cases involving three to five offences, and 98 percent for cases involving six or more offences.

Multivariate analysis (chapter 6) confirmed that the number and type of offences were among the most significant predictor variables for all types of outcome.

4.5 Victim characteristics by investigation outcome

Table 6 profiles the characteristics of victims associated with each investigation outcome category. Categories were grouped where sample sizes were small.

The relationship between the victim and offender showed substantial variation among the investigation outcome categories. As would be expected, cases with no suspect identified mostly involved strangers or people who had just met (within the previous 24 hours). In other such cases, either the victim generally would not name the offender or knew him only a little, or there was limited file information.

‘False complaint’ and ‘no offence’ cases had fairly similar profiles, with a low proportion of alleged offenders from intimate relationships. However, ‘false complaints’ were more likely to involve strangers than were ‘no offence’ cases.

Cases with a known or charged suspect had a more even distribution across the relationship types, with a lower proportion of stranger and just-met relationships than the other outcome categories and a greater proportion of intimate relationships. Strangers made up a higher proportion of cases in which the suspect was charged compared with cases where there was an identified suspect but the case was closed. The opposite was true for friends and acquaintances.

Complainants in ‘false complaint’ cases were significantly more likely to be aged 16 to 19 years than in other cases, whereas victims were less likely to be young in closed cases where there was a suspect but no charges laid.

Victims in ‘no offence’ cases were less likely to be Māori, as were victims in closed cases where there was a suspect but no charges laid, compared with all other ethnic groups combined.¹⁵ In contrast, Māori victims were over-represented in cases that resulted in a charge, as well as in cases that remained open with no suspect.

Cases recorded as ‘false complaints’ were more likely than other cases to involve a victim with a disability (mainly intellectual or psychiatric) or a victim who had made previous allegations of violent victimisation. The ‘no offence’ category also had a high proportion of victims with a disability, whereas the ‘no suspect’ categories had a low proportion.

In England, Kelly et al. (2005) also found over-representation within the ‘false complaints’ category of victims who were young, had mental health issues, had made previous allegations, and did not know the offender well.

The victim categories are not independent of each other. For example, fewer young people are in partner relationships. Therefore, in order to examine which of these and other factors are the best predictors of outcome, a multivariate modelling technique was used (chapter 6). The results largely confirmed the findings noted above, although there were no significant differences between ethnic groups once other factors were taken into account.

15 The sample sizes of Pacific and Asian and other ethnic groups were too small to analyse separately.

Table 6: Victim characteristics by investigation outcome (%)

Victim characteristics	False complaint	Other no-offence	No suspect/closed	No suspect/open	Suspect / closed	Suspect / open	Charged
Sample size	157	510	138	82	325	108	596
Relationship with offender	<i>Victim group (excluding unknown) as a percentage of each outcome (%)</i>						
Family/whānau	5	5	0	0	8	13	11
Current partner	5	6	0	0	13	7	15
Ex-partner	6	8	0	0	15	12	12
Boyfriend/ex/date	11	8	1	2	7	4	6
Friend/acquaintance	18	26	6	5	26	18	15
Other known	17	18	6	7	17	22	17
Just met	12	17	36	21	9	14	12
Stranger	27	13	51	65	4	9	12
Total	100	100	100	100	100	100	100
Age group (years)							
16–19	47	33	38	30	25	30	33
20–24	18	23	22	26	25	23	22
25–29	12	10	12	15	12	11	14
30–39	14	20	18	15	25	25	17
40+	10	15	10	14	12	12	14
Total	100	100	100	100	100	100	100
Ethnicity							
Māori	29	23	29	40	22	30	32
All other groups	71	77	71	60	78	70	68
Disability							
Absent	72	81	93	95	85	87	90
Present	28	19	7	5	15	13	10
Prior allegations							
No	48	59	66	61	55	61	57
Yes	52	41	34	39	45	39	43

Note: The 'false complaint' group (and to a lesser extent the 'other no offence' group) had a substantial proportion of missing data, especially for the victim-offender relationship (47 percent missing).

4.6 Investigation outcome by police district

Investigation outcomes are shown for each police district in Table 7. The significant differences relative to the average for other districts were:

- Auckland City had a lower rate of 'no offence' outcomes and a higher proportion of other outcomes that did not result in a charge, but no difference in the prosecution rate
- Canterbury had a higher rate of 'false complaints' and other 'no offence' outcomes and a lower prosecution rate
- Counties Manukau had a lower rate of 'no offence' outcomes
- Southern had a higher rate of 'no offence' outcomes and a lower prosecution rate and 'no suspect' rate
- Tasman had proportionally fewer cases with no suspect and more with a suspect where no charges were laid
- Waikato had more cases with no suspect
- Waitemata had a lower rate of 'false complaints' and other 'no offence' outcomes and a higher prosecution rate.

However, these differences were not significant when the effect of other factors was taken into account using multivariate modelling (chapter 6), with one exception – Auckland City had a significantly lower 'no offence' rate even after differences in case type between districts were taken into account.

Table 7: Investigation outcome by police district (%)

Police district	Sample size	'False complaint'	Other 'no offence'	No suspect	Suspect / no charges	Charges laid	Total
<i>Case-based data: outcome as a percentage of total cases (%)</i>							
Total	1,955	8	26	11	24	31	100
Auckland City	208	6	11	19	30	34	100
Bay of Plenty	135	6	28	9	20	37	100
Canterbury	301	12	34	9	21	25	100
Central	144	9	28	8	19	37	100
Counties Manukau	248	10	21	14	25	31	100
Eastern	110	8	30	7	21	34	100
Northland	51	6	29	12	24	29	100
Southern	159	9	42	6	25	18	100
Tasman	96	7	25	4	38	26	100
Waikato	156	6	26	19	24	24	100
Waitemata	117	3	15	8	30	45	100
Wellington	230	7	27	13	20	32	100

4.7 Suspect identified, but no charges laid

In 472 cases, or 24 percent of all cases, a suspect was identified but no charges were laid.

- **Offender warned** (39 cases or 2 percent of all cases).¹⁶ In almost half of these cases the warning reflected the victim's wishes, either that she wanted the offender warned or trespassed rather than prosecuted (nine cases) or that she did not wish to proceed with the case (eight cases). A further 12 cases were not proceeded with due to insufficient or conflicting evidence or consent issues, and the other cases had no clear reason specified.
- **Suspect identified but no charges laid and file still open** (108 cases or 5 percent of all cases). In up to 92 cases charges might yet be laid, because the case was still being investigated (39 cases) or the offender had not yet been located (ten cases) or the investigation status was unknown (43 cases). Charges appeared to be unlikely in the remaining cases, due to lack of victim

¹⁶ The file notes of several 'no offence' cases also indicated the offender was warned, but these have not been included because it is not clear whether an official warning was made.

recall (three cases), insufficient evidence (seven cases) and the victim not wanting to proceed (six cases).

- **Suspect identified but no charges laid and file closed** (328 cases or 17 percent of all cases). The reasons for the closure of these files were not clear for 95 of these cases, with the remaining 233 cases reflecting a variety of reasons.
 - *Victim withdrawal* (117 cases). The victim indicated that she did not want to proceed or would not co-operate with the investigation (see section 4.10).
 - *Insufficient or conflicting evidence* (112 cases). In at least 17 of these cases the veracity of the complainant was questioned, in 11 cases the victim had little recall of the incident, and in ten cases the victim's significant mental impairment was an issue. In the remaining 73 cases, there were issues of consent (at least 22 cases) or conflicting evidence or insufficient evidence to proceed.
 - *Other reasons*. The offender was not charged due to youth (two cases) or mental condition (one case), or the victim committed suicide (one case).

The validity of comparisons with overseas studies was limited by the use of different outcome categories, including the separation of victim withdrawal from other outcomes. In England, the withdrawal rate varied between about one in three and one in ten of all incidents and cases with insufficient evidence to proceed accounted for about a quarter to a third of all outcomes (Feist et al., 2007; HMIC and HMCPSP, 2007; MPS, 2005; Kelly et al., 2005). The most detailed Australian study, in Victoria, (OWP, 2006) found that 85 percent of cases did not proceed, including 21 percent that were still ongoing, 15 percent that had been withdrawn and 46 percent that resulted in 'no further police action'.

4.8 No suspect identified

In 220 cases, or 11 percent of all cases, no suspect was identified. Almost two-thirds of these case files had been closed.

- **No suspect identified and file still open** (82 cases or 4 percent of all cases). The status of these cases was unknown for 15 cases, while another 19 cases were noted as still being investigated. Thus, charges might yet be laid in some of these 34 cases. Charges appeared to be unlikely in the remaining cases, due to lack of an identified suspect (38 cases), insufficient evidence that an offence occurred (five cases) and the victim withdrawing (five cases).
- **No suspect identified and file closed** (132 cases or 7 percent of all cases).
 - In 19 of these closed cases there appeared to be issues with *conflicting or inconsistent evidence*. The file notes indicate that seven of these cases were possible 'false complaints' and all had their validity questioned.
 - In 45 of the closed cases, the *victim did not wish to proceed*. Almost all these cases involved an offender who was a stranger or someone just met or an unknown relationship.

- In 14 cases, the reason appeared to be that there was *insufficient evidence* to identify a suspect because the victim had limited recall about the incident, mostly due to a high level of intoxication.
- For the remaining 60 closed cases, *the reason the case had been closed was unclear*. However, where there was any information recorded, it appeared there was insufficient evidence to identify a suspect. Where the offender's relationship to the victim was known for these cases, almost all were recorded as strangers, with a few just-met relationships.

As noted above, the validity of comparisons with other studies was limited by the use of different outcome categories. In the earlier New Zealand study (Stace, 1983), 14 of 220 cases (6 percent) were considered to be genuine complaints with no suspect identified. Studies from England have found a 'no suspect' rate of about one in ten cases. Kelly et al. (2005) noted several cases where further investigation of case detail suggested this may not always have been the appropriate outcome (i.e. there appeared to be sufficient evidence to identify the offender but that information was not acted on).

4.9 'No offence' and 'false complaints'

4.9.1 Overview

The volume of cases that are classified 'no offence' (i.e. 'no offence disclosed' in New Zealand or 'no crime' in England) has been the subject of a great deal of interest and research. The relatively high rate of cases classified as 'no offence' combined with confusion between the 'no offence' and 'false complaint' categories have contributed to the perception held by some people that many or most rapes are false allegations.

In the 1980s the 'no offence' category in England (Harris and Grace, 1999) and New Zealand (Stace, 1983) accounted for almost half the total recorded cases. However, this was not due to a very high rate of valid 'false complaints', but rather was due to the use of the 'no offence' category as a 'dust-bin category for the disposition of offences that do not fit in anywhere else' (Stace, 1983: 5), including cases with insufficient evidence to proceed and cases of victim withdrawal.

Since then, police policy has aimed to restrict the use of the category to legitimate 'no offence' cases, which has resulted in a very significant drop in the 'no offence' rate in England, as discussed in the international comparisons section, below.

The 'no offence' category is appropriate for cases in which there is clear evidence that no sexual violation occurred and is made up of:

- **false allegations or false complaints:** incidents reported by the alleged victim that are fabricated
- **offences recorded as a possible sexual violation that were not offences:** for example, someone else reported what they perceived as an offence or the complainant was unsure whether violation had occurred

- **offences not meeting the legal definition of sexual violation:** for example, the reported incident was initially coded as a sexual violation, but after investigation was determined to be another offence (e.g. assault or abduction), the potential victim removed herself before any offence occurred or the complainant lacked an understanding of the offence due to intellectual disability
- **offences recorded in error.**

The 'no offence' category is not appropriate in circumstances where prosecution did not proceed because the victim withdrew, there was insufficient evidence, or no suspect was found.

The rate of 'no offence' categorising is also important because these cases are not recorded in official statistics, which can influence official estimates of prevalence and trends.

4.9.2 Results of this study

In the current study, just over a third of cases were classified by the police as 'no offence', including 8 percent of cases where the victim was charged or warned for making a false complaint and 4 percent of cases where the victim was suspected of making a false complaint.¹⁷

Without seeing the full file details and talking to the victims and investigating officers, it is not possible to determine how many cases were inappropriately labelled as 'no offence' or 'false complaint'. However, an attempt has been made to categorise cases based on what appeared to be considered the relevant circumstances for each case from the notes in the 'comment' fields.

4.9.3 'False complaints', as charged or warned

The definition of a 'false complaint' in this study was that the alleged victim was officially sanctioned (i.e. charged or officially warned) for making a false complaint.

There were 157 such cases, or 8 percent of all cases. These could be further split based on what appeared to be considered the relevant circumstances.

- The victim admitted that the complaint was false (60 cases).
- The evidence did not support the complaint (35 cases), including cases where the incident could not have happened as stated (e.g. the offender did not exist), or there were discrepancies with witness, medical, scene or other evidence, or significant inconsistencies in the victim's statement.
- Someone else made the complaint (nine cases) and the victim said it was not an offence or refused to co-operate with the police. Therefore, while these cases may be a 'no offence' or a false accusation to a third party, they are not false complaints to the police.

17 A further 46 cases (2 percent of all cases) were recorded as suspected false complaints but were not classified as 'no offence'.

- The victim had a history of making allegations (ten cases), although this might not be the primary reason the current complaint was considered false (i.e. presumably the evidence did not support the complaint). In six of these cases, the file notes indicated the victim had an intellectual or a psychiatric condition.
- The victim had an intellectual or a psychiatric condition, with no other circumstances noted (11 cases). In total, victims had a disability in 42 of the 'false complaint' cases, but some of these are listed under other categories, such as 'victim admission'.
- The reason for the case being documented as a 'false complaint' was unclear for the remaining 32 cases.

The perceived motives for making a 'false complaint' were generally not recorded in the database. Where there was an indication of motive in the file notes, the two most common perceived reasons were that the complaint was made to cover up consensual sex (18 cases) or the complainant wanted to get back at the offender or was jealous of, or upset with, the offender (19 cases).

The criterion of being warned or charged for a false complaint is a strict definition of the false complaint category, because it excludes cases that the police suspected to be false complaints. Therefore, it could be argued that the true false complaint rate could be somewhat higher than the estimated 8 percent. On the other hand, research based on victim interviews indicates that even some cases in which the alleged victim was warned or charged may be, in fact, real offences (Jordan, 2004a).

4.9.4 Suspected false complaints

A further 86 cases (4 percent of all cases) were officially classified as 'no offence' and the file information indicated that they were suspected false complaints, but they did not result in the victim being officially warned or charged.

- In nine cases, the complainant admitted the report was false or that sex was consensual.
- In 22 cases, the victim withdrew from the investigation. In half these cases the file information noted significant discrepancies in the complainant's account or evidence not supporting the complaint. The remaining cases were retracted (four cases), the complainant refused to co-operate (three cases), someone else had reported (two cases) or the victim's credibility was considered an issue due to mental health issues or repeated allegations (three cases).
- In the remaining 55 cases, the investigation concluded that no offence was committed. In 17 cases, no evidence was found that the alleged incident had occurred; in 12 cases, investigations indicated sex was consensual; in 16 cases, the evidence did not appear to support the complainant's account; in three cases, the complainant had mental health issues; in four cases, the complainant was uncooperative (e.g. would not provide specific details or have a medical); and in three cases, the reason was unclear.

4.9.5 Other cases classified as 'no offence'

Other than officially sanctioned false complaints and suspected false complaints, there were 424 cases (22 percent of all cases) that the police classified as 'no offence'. While these cases cannot be classified with any degree of certainty given the data limitations, they appeared to fit into the following groups.

- In 121 cases, the validity of the complaint could not be established because *the complainant was unwilling or unable to co-operate* (e.g. would not or could not provide details of the incident, or refused a medical examination or could not be contacted) or withdrew from the investigation.
 - In 43 cases, the alleged victim was uncooperative.¹⁸ In 21 of these cases, someone else reported the offence¹⁹ or the victim felt pressured to report.
 - In a further 13 cases, the victim withdrew and there was limited other information in the file notes.
 - In 65 cases, the complainant had limited or no recall of the incident and was uncertain whether an offence had occurred. This category includes eight cases where the victim took illegal drugs, five cases where the victim was on prescribed medication, 23 cases where the victim was intoxicated and seven where the victim thought she had been drugged or her drink spiked. Given that consent cannot be granted by a person under these circumstances, it is likely that at least some of these complainants were the victim of an offence.
- In 48 cases, intercourse occurred but the circumstances *suggested lack of consent* as it is legally defined (as outlined in section 1.5).
 - In 23 cases, the file notes indicate that sex was initially consensual, but at some stage the victim wanted to stop. These are offences, as the law recognises that consent does not extend to circumstances where the victim 'allows the act because he or she is mistaken about its nature and quality'. These included cases where the sex became too rough, a condom was not used or broke, or the activities went beyond what was agreed or acceptable (e.g. the victim did not want anal sex).
 - In 25 cases, intercourse occurred and consent could not have been obtained due to the victim being intoxicated (ten cases), asleep when the assault started (12 cases), on medication (one case), too scared to say no (one case) or mistaken on identity (one case).
- In 84 cases, there appears to have been *an offence committed*, or at least no indication that the validity of the claim was doubted and no reason stated why the incident was classified as 'no offence'.

18 'Uncooperative' is intended as a neutral term. While some victims may be deliberately obstructive, many others may have been too traumatised to face an investigation or fearful of the consequences.

19 The database did not specify who reported the offence in all cases, but this information was sometimes included in the comments field if it was considered relevant.

- In 56 cases, the victim did not wish to proceed with the investigation. For the 44 cases where the relationship was recorded, all but four involved offenders known to the victim, including 14 partners or ex-partners. Five of the alleged offenders were recorded as having gang associations.
- In the other 28 cases, it appeared that the main issue was that consent was disputed or the evidence was insufficient to establish a case, with no clear indication that the police doubted the complainant.
- In 110 cases, the 'no offence' classification appeared appropriate.
 - In 42 cases, sex was found to be consensual, mostly based on the complainant's admission.
 - In 16 cases, the complainant had limited intellectual capacity, but was either considered capable of consent (although in at least two cases the ability to consent appeared borderline) or no offence occurred.
 - In 11 cases, it appeared that someone else had reported an incident but no offence had occurred.
 - In 26 cases, the evidence did not support the complainant or there were significant inconsistencies in her account.
 - In four cases, the complainant had made several other unsubstantiated allegations.
 - In 11 cases, no offence occurred because the victim removed herself from a situation before an offence was committed (three cases), or the complainant suffered from delusions (two cases) or the incident did not constitute an offence (six cases).
- In the remaining 61 cases, there was insufficient file information to attempt a classification.

In summary, 667 cases, or 34 percent of all cases, were classified as 'no offence', including 157 officially sanctioned 'false complaints', 86 suspected 'false complaints' and 110 cases where the 'no offence' category appeared to be appropriate. Thus, approximately 18 percent of all cases appeared to be appropriately classified as 'no offence' based on the available file notes.

A further 132 cases (7 percent of all cases) appeared to be offences and thus misclassified as 'no offence'. This group made up 20 percent of 'no offence' cases, a similar proportion to that considered by Jordan (2004a) to be probably genuine complaints in her study of 164 'no offence' cases.

The validity of the remaining 9 percent of cases that were classified 'no offence' could not be judged from the available data, but it is not unreasonable to suppose that some of the cases classified as 'victim withdrew', 'no recall' or 'unknown status' were actually offences. Thus, the actual 'no offence' rate may be between about one in five cases and one in four cases.

Moreover, it is possible that some of the cases that appeared to be legitimate 'false complaints' or 'no offence' as judged by the investigation, could in reality be

offences. In particular, previous research based on victim interviews indicates that sexual violation victims may respond to the trauma of the offence and intensive questioning in ways that harm their case from a police perspective:

- victim self-doubt or denial may be perceived as evidence that no offence occurred
- withdrawn or aggressive responses to trauma may seem uncooperative
- exhaustion, fear, shock or distrust of the police can lead to early withdrawal
- a desire to conceal aspects of the incident (such as excessive drinking or drug-taking) may lead to inconsistencies in the evidence
- victims may feel that persistent questioning indicates disbelief, leading to withdrawal or even retraction.

Jordan (2004b) provided examples of such cases in New Zealand.

4.9.6 Comparison with other New Zealand studies

The proportion of cases officially classified as 'no offence' in the current study (34 percent) was substantially lower than the 45 percent recorded by the earlier New Zealand study (Stace, 1983). The earlier study also noted that the 'no offence' category included some complaints withdrawn by the victim and some in which there was insufficient evidence to proceed. After examining the 220 files in the sample, the researchers concluded that 15 percent showed substantial evidence of an unfounded complaint, while 21 percent were possibly unfounded but with insufficient evidence to be sure (usually because consent was disputed and there was minimal corroborating evidence) and 15 percent were withdrawn by the victim – results not dissimilar to the present study.

Almost half the unfounded complaints (i.e. no offence had occurred) in the earlier study were due to someone else reporting the incident, when the 'victim' said no rape had occurred. Other reasons for unfounded complaints were to cover up consensual sex to avoid a parent's or other person's negative reaction (seven of 26 cases) and due to psychiatric illness (three cases).

The earlier New Zealand study concluded that it would be useful to have a wider range of resolution categories to limit the misuse of the 'no offence' category. Some overseas jurisdictions, for example, have categories for victim withdrawal or insufficient evidence to proceed.

More recent research in New Zealand included a study of 164 police files where the outcome had been coded 'no offence' (Jordan, 2004a). Of these cases:

- 21 percent (34 cases) were considered to be genuine offences, but did not proceed because the suspect was not found (five cases), the victim withdrew the complaint (13 cases), no charge was laid (nine cases) or the prosecution was not completed (13 cases)
- 38 percent were possibly genuine but lacking sufficient evidence or with some discrepancies in evidence

- 33 percent were considered by the police to be 'false complaints'
- 8 percent were acknowledged by the victim as 'false' (although often the victim had not made the complaint in these cases).

Based on the information in police files, the police were more likely to have doubts about cases when the victim was intoxicated, reporting had been delayed, the victim had an intellectual impairment or psychiatric disturbance, the victim concealed aspects of her behaviour (such as excessive drinking), the victim had made a previous complaint of rape or the victim had a prior relationship with the offender. A combination of factors was more important than a single factor.

Alcohol was a feature of many 'no offence' cases in both Jordan's (2004a) sample and the current study. While excessive alcohol use by the victim can increase the likelihood of an incident being a 'no offence' (due to uncertainty about whether violation occurred), it can also influence perceptions of the victim's credibility. Jordan (2004a: 38) notes:

A drunk woman tends to be viewed as responsible for what happens to her, while a drunk man may be absolved of responsibility for what he does while 'under the influence'.

The issues of past allegations and mental health problems, which are over-represented in cases classified as 'false complaints' (section 4.9), are also vexed. Many victims had made past allegations of violent victimisation, but crime surveys and other research confirm that repeat victimisation is the reality for some women (Lievore, 2003; Davis et al., 2006). Even a history of several unsubstantiated allegations does not mean that the current allegation is false. Likewise, many victims had intellectual or psychiatric disorders, which may make them both more vulnerable to victimisation and potentially less likely to be believed.

4.9.7 Comparison with international studies

The 'no offence' category varied widely between studies in England, but tended to be lower than the officially classified rate in New Zealand, at around 15 percent to 25 percent of cases (Kelly et al., 2005; Feist et al., 2007). The rate of 'false complaints' was similar to New Zealand, at around 8 percent to 10 percent (Feist et al., 2007; HMIC and HMCPSI, 2007; Kelly et al., 2005; MPS, 2005).

Recent studies in England that have investigated 'no offence' incidents (and false complaints) have found that these categories still often include misclassified incidents, such as cases where there is insufficient evidence to proceed, an unverified suspicion that the complaint may be false, or where the victim has withdrawn a genuine complaint. For example, Feist et al. (2007) found that 15 percent of incidents were recorded as no-crime, but that 3 percent were incorrectly recorded, giving an actual no-crime rate of 12 percent. The HMIC and HMCPSI (2007) review included an attrition study of 752 cases, of which 24 percent were no-crimes, which dropped to 15 percent after adjustment for those incorrectly recorded.

Variation in 'no offence' rates between and within studies in England reflects some variation in case type, but also substantial differences in practice between areas (Feist et al., 2007; HMIC and HMCPSP, 2007; MPS, 2005). There have also been very significant changes over time, with a marked decrease in no-crime rates since the 1980s due to stricter reporting standards (Feist et al., 2007; Harris and Grace, 1999).

In Victoria, Australia, the minimum false report rate was 2 percent, corresponding to the percentage of cases where the alleged victim was charged with making a false complaint or warned that she would be charged (OWP, 2006). However, in a further 8 percent of cases the police were confident or reasonably confident that the report was false. Seven of 17 documented false reports involved a victim with a disability or mental health issue and ten of the 17 were known to the police from previous allegations or previous convictions.

4.10 Victim withdrawal

4.10.1 Results of the current study

'Victim withdrawal' is not an official police investigation outcome category and was not a variable explicitly included in the data collection.²⁰ However, the file notes indicated this was a common event, in at least one in five cases (385 cases). Victim withdrawal is also of considerable interest with regard to the attrition of cases, so it is examined in more detail in this section.

'Victim withdrawal' was defined as those cases where the file notes indicated that the victim either did not want to proceed or did not co-operate with the investigation.

From the file notes, the victim appeared to be uncooperative in 30 percent of these cases – 49 percent of 'no offence' cases and 15 percent of other cases. This group includes victims who could not be contacted, refused to give incident details or refused to make a formal complaint after the initial report.

The remaining 70 percent of cases were withdrawn or not proceeded with at the victim's request. Reasons for withdrawing in these cases were unknown for almost half the cases. For the other 139 cases, the summarised file notes give an indication of what the police perceived to be the reason the victim did not want to proceed:

- the victim did not want the offender charged or wanted the offender warned or trespassed (37 cases)
- someone else reported the incident or the victim felt pressured to report (22 cases)

20 Of the 385 cases where the victim was identified as withdrawing, almost half were classified as 'no offence', 37% had a known suspect but did not result in charges, 10% had no identified suspect and 5% were prosecuted and subsequently withdrawn. In contrast, all 30 cases in which the victim withdrew were classed as 'no offence' in the earlier New Zealand study (Stace, 1983).

- the victim had limited recall of the incident and was uncertain whether violation had occurred (18 cases)
- the victim wanted to report the offence but take no further action (17 cases)
- the victim retracted the allegation (ten cases)
- the victim was not yet ready to proceed (six cases), felt afraid or threatened (six cases), couldn't face the process (six cases), was seeking help or advice (three cases), forgave the offender (three cases), was concerned about family reaction (four cases), was concerned about her career (one case), or wanted to move on (one case); or the family resolved the matter (three cases).

Based on the available information it was not possible to know whether the investigation process played a role in the victim's decision to withdraw (i.e. withdrawal or refusal to co-operate may be due to the victim feeling as if she is not believed or that the case was unlikely to proceed on the available evidence).

The age and ethnic profiles of victims who withdrew were not significantly different from those of other victims. However, there were significant differences in the victim's relationship with the offender (where this was known). The offender was a stranger in only 9 percent of cases where the victims withdrew compared with 17 percent of other cases. Conversely, the offender was more likely to be an ex-partner (13 percent compared with 9 percent) or a boyfriend (6 percent compared with 3 percent) where the victims withdrew, compared with other cases.

Compared with other victims, victims who withdrew were less likely to have a disability (10 percent compared with 16 percent) and more likely to have a criminal record (26 percent compared with 21 percent). Victims who withdrew did not differ significantly in their history of previous allegations of violent victimisation.

4.10.2 Comparisons with other research

In the previous New Zealand study (Stace, 1983) the rate of victim withdrawal was 14 percent, which is lower than the minimum estimate of 20 percent withdrawn in the present study. However, this may partly reflect differences between the samples (such as different profiles by age, offence and victim-offender relationship). Over half the withdrawn cases in the earlier study were reported by a person other than the victim. The victim's reason for withdrawing, where known or implied, included reluctance to go through the investigation or trial process, a negative response from police (disbelief or being told of the low chances of conviction), concern about other people's reactions, and fear of retribution.

In England, the withdrawal rate varied between about one in three and one in ten cases (Feist et al., 2007; HMIC and HMCPSP, 2007; MPS, 2005; Kelly et al., 2005; Lea et al., 2003). The extent of victim withdrawal varied widely between studies and between areas or police forces within studies. As in New Zealand, the vast majority of victim withdrawal took place during the investigation rather than after charges had been laid.

Estimates of the withdrawal rate varied depending on what was counted as a withdrawal – that is, an explicit withdrawal (the victim asks that the investigation be

stopped) or an implicit withdrawal (the victim refuses to assist with inquiries or cannot be contacted). Inability to maintain contact with the victim may not be uncommon, in some areas at least. For example, police had difficulties contacting the victim in 37 percent of 677 cases in London (MPS, 2005).

The reasons for withdrawal also varied between studies, with studies based on victim interviews providing a different perspective from those relying on police files. The English studies cited above noted a variety of factors influencing a victim's willingness to proceed:

- their experience with the investigating team, including the support and belief of the investigating officers, discussions around the likelihood of a conviction, and the availability of appropriate forensic services
- personal factors, such as fear of the offender, reconciliation with the offender, feelings of shame or wanting to move on, and family support (or lack of it)
- who initially reported the offence – for example, where family, friends or health workers reported against the wishes of the victim²¹
- what the victim wanted to achieve – for example, to have the offender warned but not prosecuted or to clarify whether an offence took place in incidents in which recall was affected by drugs or alcohol.

Feist et al. (2007) found the two most commonly cited reasons were 'not wishing to go through the investigative or court process' and 'wanting to move on', followed by impact on the victim, friends or family, impact on the offender, and pressure from others to withdraw. Factors associated with withdrawal included quick reporting of the offence, victims who were uninjured, victims assaulted by partners or ex-partners, and police force area. Feist et al. (2007) also noted that police forces with high withdrawal rates also tended to have low conviction rates.

In Victoria, Australia, 15 percent of cases were found to be withdrawn after inspection of case narratives, but around twice as many were recorded as 'complaint withdrawn' on the police database (OWP, 2006). The other cases should have been coded 'no further police action'. Earlier studies in Victoria found that the withdrawal rate had increased from 14 percent in 1994/95 to 31 percent in 2002/03 (VLRC, 2003, as cited in OWP, 2006), based on the police data.

Cases involving current or former partners were more likely to be withdrawn (OWP, 2006). Other cases more likely to be withdrawn included cases involving female victims and older victims, cases without a medical examination, and cases in which the suspect was a known sexual offender.

21 Feist et al. (2007) found someone other than the victim reported the incident in 39% of their sample. Most often these were friends or neighbours, parents or relatives, partners, or medical or social service providers.

4.11 Attrition before recording

This study, as for most attrition studies, was based on attrition of offences recorded by the police. However, it is worth reiterating that this ignores a significant point of attrition – whether the sexual violation offence is reported to (and recorded by) the police.

Based on various surveys across several countries, Daly and Bouhours (2008) calculated that an average of 14 percent of sexual violation incidents were reported, a rate not dissimilar to the estimated one in ten cases from the New Zealand Crime and Safety Survey 2006 (Mayhew and Reilly, 2007). In Australia, the reporting rate was estimated as 15 percent by the Women's Safety Australia survey (ABS, 1996).

Reporting rates vary across surveys and estimation critically depends on how survey questions are asked, because victims' perceptions of whether an incident meets the technical definition of rape may vary. Daly and Bouhours (2008) note that victimisation surveys in the United States and England and Wales show that more 'non-traditional' rapes (rape by an offender known to the victim) are now being reported to the police than in the past.

4.12 Summary of attrition during the police investigation

4.12.1 Prosecution rate

The prosecution rate was:

- 31 percent based on all recorded cases (i.e. charges were laid in 31 percent of cases)
- 49 percent based on all recorded offences (i.e. charges were laid for 49 percent of offences)
- 46 percent based on all cases classified as valid offences (excluding 'no offence')
- lower for rape than for unlawful sexual connection, attempted violation and other offences
- slightly lower than the rate from the earlier 1981 New Zealand study (Stace, 1983).

4.12.2 Other outcomes

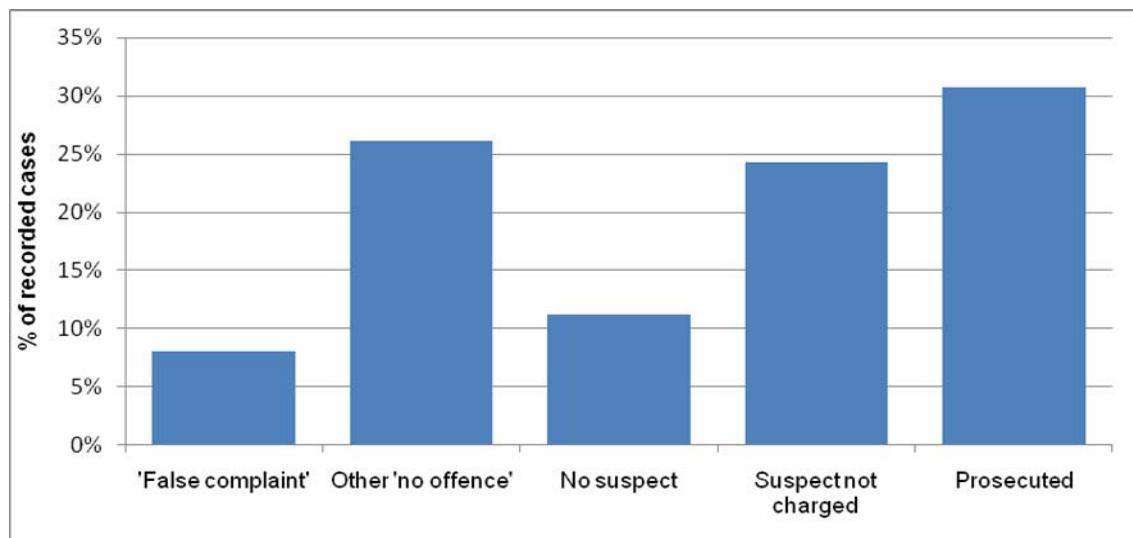
Other outcomes of the police investigation stage accounted for 69 percent of outcomes for recorded cases (Figure 7), including 'false complaints' (8 percent), other 'no offence' (26 percent), no suspect identified (11 percent), and suspect identified but not charged (24 percent).

The two most common factors in cases with a known suspect that did not result in a prosecution were that the victim withdrew from the process or that there was insufficient or conflicting evidence. These cases were more likely to involve an

offender who was a friend or an acquaintance compared with cases in which charges were laid.

The most common factors in cases with no identified suspect were that the victim withdrew from the process, there was insufficient evidence to identify a suspect who was a stranger to the victim, or the victim had limited recall due to intoxication.

Figure 7: Summary of investigation outcomes



4.12.3 'False complaints' and 'no offence' outcomes

'False complaints' were defined as cases in which the complainant was charged or warned for making a false complaint.²² In about half the 'false complaint' cases for which further information was recorded, the file notes indicated that the complainant admitted the allegation was false. The remaining cases were identified as false based on evidence, lack of evidence, discrepancies and inconsistencies in the accounts given by the victim or other parties, or perceived victim credibility. 'False complaints' were more likely than other cases to be associated with offenders who were strangers and complainants who were teenagers or who had made previous allegations of violent victimisation or who had a psychiatric or an intellectual disability.

The 'no offence' category accounted for 34 percent of recorded cases (including the 8 percent designated 'false complaints'), which was lower than the 45 percent 'no offence' rate from the 1981 New Zealand study (Stace, 1983). Research in England has also documented a decrease in 'no offence' cases, as police policy has directed this category be used only for valid 'no offences'. However, recent research in England has still identified inappropriate use of the category for cases involving insufficient evidence or victim withdrawal.

Of 424 cases in the current New Zealand study that were documented as 'no offence' (excluding 'false complaints' and suspected 'false complaints'):

²² A further 6 percent of cases were noted as suspected false complaints.

- 132 cases (31 percent) appeared to be misclassified and were offences in that they involved intercourse but under circumstances that suggested lack of consent (48 cases) or the recorded file notes gave no indication that the validity of the claim was doubted (84 cases)
- 121 cases (29 percent) could not be established as either an offence or 'no offence' because the victim had limited recall of the incident (65 cases), withdrew (13 cases) or was uncooperative (43 cases)
- 110 cases (26 percent) appeared to be correctly classified as 'no offence', in that sex was consensual or no legal offence occurred
- 61 cases (14 percent) had insufficient information to attempt a classification.

Thus, overuse of the 'no offence' category still appears to be an issue in New Zealand. Based on the limited information available in the current data, the actual 'no offence' rate may be between about one in five cases and one in four cases.

Moreover, it is possible that some of the cases that appeared to be legitimate 'false complaints' or 'no offence' as judged by the investigation could in reality be offences. In particular, previous research based on victim interviews indicates that sexual violation victims may respond to the trauma of the offence and intensive questioning in ways that harm their case from a police perspective.

4.12.4 Victim withdrawal

At least one in five cases did not proceed due to victim withdrawal. That is, the investigating officer recorded that the victim did not want to proceed with the investigation, was uncooperative or could not be contacted. Withdrawn cases were more likely than other cases to involve an offender who was an ex-partner or a boyfriend. The most common reasons for not wanting to proceed, as recorded in the file notes, were:

- the victim wanted the offender warned or trespassed but not prosecuted
- someone else reported the incident or the victim was pressured to report
- the victim had limited recall of the incident
- the victim wanted to report the incident or seek advice but take no further action
- the victim did not feel able to proceed, was not ready to proceed or felt threatened
- the victim retracted the allegation.

5 Attrition rates through the court process

The focus of this chapter is the attrition rate as cases progress through the court process. Outcome definitions are presented in section 5.1 and a summary of the attrition pathway is presented in section 5.2. It is important that the overall results are not read in isolation from the broader context. In particular, there are several ways of calculating conviction rates and a variety of factors that influence conviction rates, as outlined in sections 5.3 to 5.6. Chapter 6 presents the results of a multivariate analysis of the factors influencing the attrition process.

5.1 Definitions

The unit of measure is the case, which may be a single offence or a group of related offences (at least one of which has been coded as sexual violation) against a victim documented in a single police file. For cases that relate to more than one offence, the outcome selected to represent the case is the one with the most serious outcome. Box 4 defines the outcome categories used in the analysis.

Box 4: Definitions: prosecution outcome categories

Conviction	Any sexual violation offence in the case resulted in a conviction, because the offender pled guilty or was found guilty.
Conviction for a related offence	If none of the sexual violation offences resulted in a conviction, but an associated offence within the case was convicted, then the outcome was counted as a conviction for a related offence.
Conviction quashed	Conviction for sexual violation overturned on appeal.
Family Group Conference	The case went to a Family Group Conference (for offenders under the age of 17) and did not result in a court conviction.
Acquittal	The case went to trial and the offender was found not guilty.
Discharged/withdrawn	The charges were withdrawn by the prosecution (including those cases not proceeded with on indictment) or discharged by the judge ('section 347 discharge').
Other outcome	Stay of proceedings or defendant unfit to plead.
Not finalised	Charges had been laid for sexual violation but were yet to be finalised at the date of data extraction.
Other charges laid	No charges had been laid for sexual violation, but charges had been laid (without a conviction) for related offences.
Not prosecuted	No charges had been laid at the time the data were extracted.

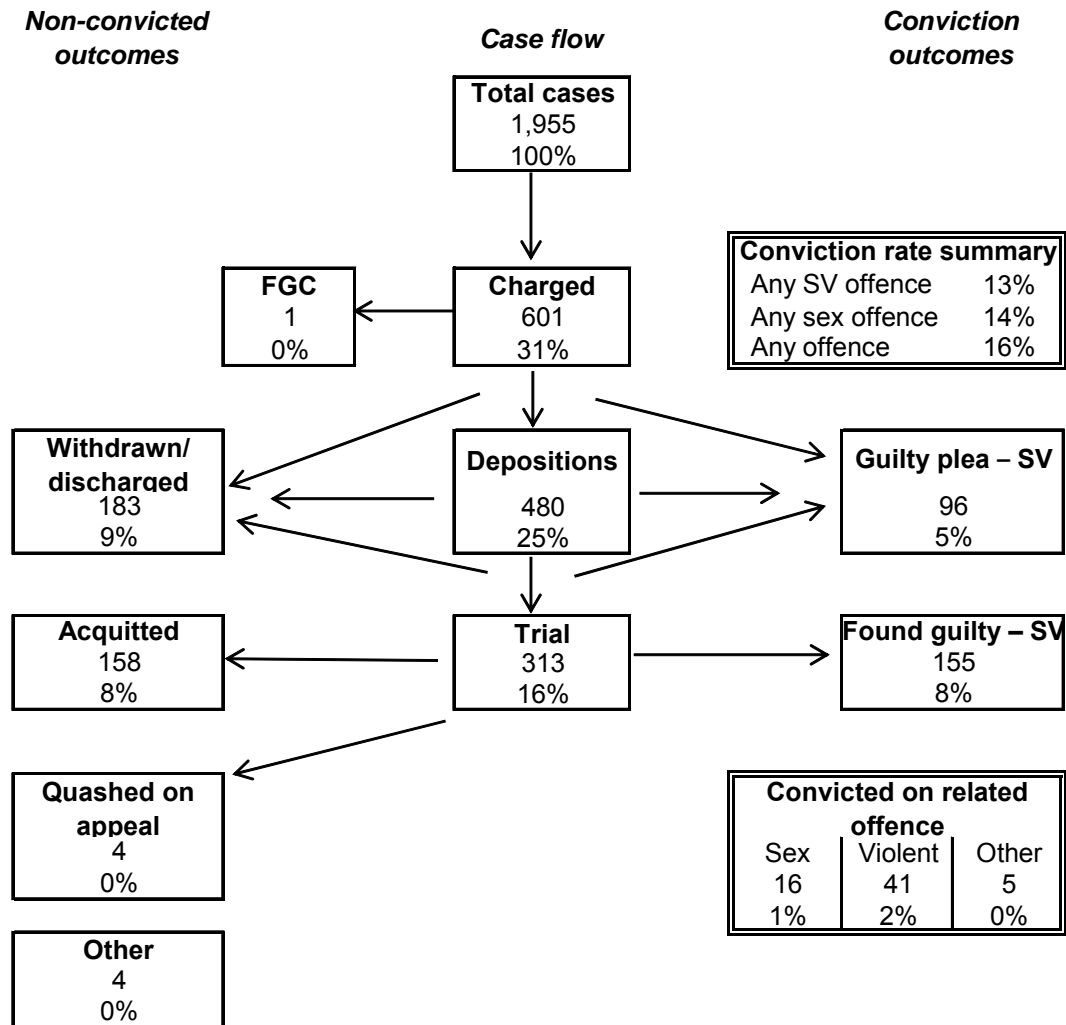
Case flow refers to the series of events that progress a case to a resolution. The case can be discontinued at any stage by the prosecution, judge or defendant (by pleading guilty). Otherwise, the case will progress through the following stages (usually with several other hearings as well):

- charges laid by the police
- depositions hearing (a preliminary hearing to determine if there is a case to answer)
- committal – following depositions, the case is committed for trial and an indictment is laid by the Crown prosecutor
- trial (and sometimes retrial or appeals).

5.2 Overview of attrition rates during the court process

Figure 8 summarises the stages of attrition from recorded cases to disposition (outcome), focusing on attrition through the court process. The stage of the process, or case flow, is shown in the centre column. The outer columns summarise court outcomes. Detailed analysis of attrition at the police investigation stage is provided in chapter 4.

Figure 8: Attrition of sexual violation (SV) cases through the court process



Notes: All percentages are calculated as a percentage of total recorded cases. These results are estimates, because they include a correction for cases not yet finalised (see text). All boxes with single-line borders show the case flow and outcomes for the sexual violation offence with the most serious outcome in the case. Boxes with double-line borders show additional outcomes for other non-violation charges in the case. FGC = Family Group conference.

5.2.1 Correction for non-finalised cases

At the time of the data extraction (a minimum of six months after the offence was recorded by the police), 121 prosecutions were yet to be finalised. These cases could not be left out of the outcome calculation without biasing the overall results, as most of the cases in progress were awaiting trial and hence were more likely than the average case to be either acquitted or convicted at trial, and less likely to be withdrawn or discharged or resolved by an early guilty plea. Therefore, these cases were assigned an outcome based on the probability of outcomes for finalised court

cases, correcting for the stage of the court process they had reached and the type of case.²³

5.2.2 Summary of case flow and outcomes

In summary, of the 1,955 cases in the study just under a third resulted in charges being laid (Figure 8). One youth offender was dealt with outside the formal court system at a Family Group Conference; otherwise, all charges were dealt with by the court system. Of the 600 cases dealt with by the Courts, 80 percent progressed at least as far as a depositions hearing and just over half went to trial.

Of the 600 cases in which an offender was prosecuted (i.e. charges were laid) the following outcomes occurred.

- In an estimated 42 percent of prosecutions (13 percent of all cases) at least one sexual violation charge within the case resulted in a *conviction*. A further 3 percent of cases resulted in a conviction for a related charge, bringing the total conviction rate to 16 percent. Four cases were successfully appealed (with more appeals yet to be heard). Further information on conviction rates is provided in section 5.3.
- In 26 percent of prosecutions (8 percent of all cases), the alleged offender was *acquitted* at trial. Half of cases that went to trial resulted in an acquittal, which is on a par with international studies (Daly and Bouhours, 2008).
- The case was *withdrawn or discharged* in 31 percent of prosecutions (9 percent of all cases). Non-conviction outcomes are discussed in more detail in section 5.4.
- Four cases resulted in *other outcomes* – three offenders were found unfit to stand trial and a fourth committed suicide, resulting in a stay of proceedings.

5.3 Conviction rates

5.3.1 Conviction rate based on cases

In an estimated 42 percent of prosecutions (13 percent of all cases), at least one sexual violation charge within the case resulted in a conviction. For cases that resulted in a conviction, the offender pled guilty pre-trial in 38 percent of cases and was found guilty at trial (or pled during the trial) in 62 percent of cases. Just over half of the guilty pleas were entered before depositions.

Four cases that were successfully appealed have been excluded from these convictions. However, the conviction is under appeal in several other cases (at least 12) and these have been included as convictions.

23 The conviction rate model (section 6.8) was used to assess the impact of case type on likely conviction rate. Non-finalised cases had a slightly lower predicted conviction rate compared with finalised cases.

In addition, 62 cases, or 10 percent of prosecutions, resulted in a conviction on related charges of sexual offending (16 cases), violent offending (41 cases) or other offences (five cases). Thus, over half of all prosecutions (16 percent of all cases) resulted in a conviction. The overall conviction rate for any sex offences was 14 percent.

The additional convictions for sexual offences were all for indecent assault, except for two 'assault with intent to commit rape'. The violent offence convictions were mainly for 'male assaults female' (26 cases), aggravated assault (seven cases) or other types of assault (six cases), sometimes in conjunction with other offences (threats, kidnapping and breach of a protection order), while the other offences were drugs (three cases) and dishonesty (two cases).

In at least ten cases, the file notes indicated that the convictions for a related sex offence were due to a charge substitution (i.e. the original charge was reduced to a lesser charge).

5.3.2 Comparisons with the earlier New Zealand study

In the 1981 New Zealand study, the conviction rate was 17 percent overall (or around 15 percent for adults), based on 220 cases of rape and attempted rape (Stace, 1983). In the current study the conviction rate for rape and attempted rape was lower (10 percent).

Stace (1983) reported that, of the prosecuted defendants:

- 47 percent were convicted on the rape or attempted rape charge (of whom 24 percent entered an guilty plea at or before depositions, 6 percent pled guilty at trial and 17 percent were found guilty)
- 17 percent were convicted on another charge
- 34 percent were not convicted (including 21 percent acquitted at trial)
- 2 percent were found unfit to plead.

5.3.3 Comparisons with international studies

Comparisons between studies were complicated by differences in the type of cases sampled and the definitions used. The conviction rate was usually defined as the percentage of incidents recorded by the police that result in a conviction. However, studies vary in their definition of 'conviction' and 'recorded offence'. A conviction may include only a conviction for the violation offence, or a conviction for a lesser sexual offence or another offence. Official statistics of recorded crime usually exclude incidents classified as 'no offence', whereas most attrition studies include these in the base for assessing conviction rates.

Daly and Bouhours' (2008) meta-analysis of 75 studies from five countries recalculated conviction rates with all recorded incidents as the base and distinguished between conviction types, where possible. Across all studies:

- the average overall conviction rate (including convictions for any sex offence) was 15 percent
- the conviction rate for the violation offence was 9 percent
- young victims had a higher overall conviction rate (18 percent) than adults (12 percent)
- the all-age overall conviction rate was 13 percent in the United States and Australia, 15 percent in England and Wales, 17 percent in Scotland and 21 percent in Canada
- the overall conviction rate decreased between 1970 and 1989 and between 1990 and 2007, from an average of 18 percent in the earlier period to 13 percent for the later period.²⁴

The most comparable figure to the present study was for adult victims, studies from 1990, and convictions for any sex offence within the sexual violation case, for which the average conviction rate was 11 percent (Daly and Bouhours, 2008).

The equivalent New Zealand rate appears to be comparable with or a little higher than this average, at 14 percent. However, some of the overseas studies in the meta-analysis were based on rape cases, which have a lower average conviction rate than other violation offences.

5.3.4 Conviction rate based on offences

The conviction rate estimates above were based on the total 1,955 cases recorded by the police (in which cases with multiple offences are represented by the offence with the most serious outcome). The rate can also be calculated based on all 2,888 individual offences recorded by the police (in which each offence is counted separately).

The case-based conviction rate for sexual violation of 13 percent was lower than the offence-based conviction rate of 17 percent (Table 8, conviction rates in shaded columns). That is, of all individual sexual violation offences recorded, 17 percent resulted in a conviction. This higher conviction rate was due to the higher prosecution rate for individual offences than for cases. As explained in section 4.3, the reason the offence-based prosecution rate (49 percent) was so much higher than the case-based prosecution rate (31 percent) was that cases involving multiple offences were very much more likely to result in charges being laid.

However, taken as a percentage of prosecutions, the case-based conviction rate (42 percent) was higher than the offence-based conviction rate (35 percent). That is,

24 The decline in conviction rates has been particularly marked in England and Wales (from 24 percent to 10 percent). One probable contributing factor is the increase in the reporting of rapes by acquaintances and intimates, as these cases are more difficult to convict (Harris and Grace, 1999). However, conviction rates based on official figures have also been very significantly affected by changes in recording of offences, as strict guidelines have been put in place to reduce 'no-criming' (Feist et al., 2007; HMIC and HMCPSI, 2007). Thus, the reduction in the 'no-crime' rate increased the number of reported offences in the official statistics, while having no effect on the number of convictions.

the probability of a conviction for any sexual violation offence within a prosecuted case was 42 percent, while individual offences had a 35 percent probability of conviction, once charges had been laid.

Table 8: Prosecution outcome by type of offence, for case-based and offence-based data (%)

Offence	N	Convict ²	Acquit ²	Other ²	Total charged	Convict ²	Acquit ²	Other ²	Total
<i>Case-based¹</i>		<i>Percentage of total recorded cases (%)</i>				<i>Percentage of prosecuted cases (%)</i>			
Total	1,955	13	8	9	30	42	27	31	100
Rape	1,334	10	9	7	26	37	34	29	100
USC ³	420	19	8	13	40	47	19	34	100
Attempt	138	20	5	17	43	49	13	37	100
Other ⁴	63	21	3	11	35	60	9	30	100
<i>Offence-based⁵</i>		<i>Percentage of total recorded offences (%)</i>				<i>Percentage of prosecuted offence (%)</i>			
Total	2,888	17	14	18	49	35	29	36	100
Rape	1,614	11	12	12	35	30	35	35	100
USC ³	940	24	20	25	69	35	28	37	100
Attempt	234	24	12	25	61	40	21	39	100
Other ⁴	100	31	6	20	57	55	10	35	100

Notes

- 1 In the case-based analysis, the case is represented by the offence with the most serious outcome.
- 2 Outcomes: Convicted for sexual violation; acquitted includes quashed; 'other' includes discharged, withdrawn and other outcomes of the prosecution process.
- 3 USC = unlawful sexual connection.
- 4 'Other' offences include incest, inducing sexual connection and sexual exploitation of an impaired person.
- 5 In the offence-based analysis, all offences are represented, including multiple offences within a single case.

Rape offences had a lower conviction rate and a lower prosecution rate than other offences (Table 8). Rape offences had the highest acquittal rate as a percentage of prosecutions. 'Other' offences (inducing sexual connection, incest and sexual exploitation of a person with significant impairment) had the highest conviction rates and lowest acquittal rates.

5.3.5 Sentences imposed

Most convicted offenders received a prison sentence – either preventive detention (7 percent) or a standard prison sentence (88 percent – with an average imposed length of 5.7 years). A few offenders received home detention (4 percent) or supervision (1 percent).

5.4 Cases not convicted

5.4.1 Results of this study

The 349 cases in which an offender was prosecuted but not convicted accounted for 18 percent of all sexual violation outcomes or 58 percent of prosecution outcomes. These cases fall into four outcome categories:

- **withdrawn:** the police prosecutor may withdraw the charges at any stage up to committal, when the case is passed to the Crown prosecutor, who may also withdraw the charges ('not proceeded with on indictment')
- **discharged/dismissed:** the judge has the discretion to discharge the defendant at any point of the court process
- **acquittal:** a jury finds the defendant 'not guilty' at trial
- **other outcomes:** in this study four cases resulted in other outcomes (three offenders were found unfit to stand trial and a fourth committed suicide, resulting in a stay of proceedings).

It was not possible to identify the exact outcome for every case, but based on the available data on prosecutions an estimated²⁵

- 17 percent of cases were withdrawn
- 14 percent were discharged
- 26 percent were acquitted
- one percent resulted in 'other' outcomes (in addition to the 42 percent convicted).

The stage of the process reached was generally, although not always, recorded. Based on this information, the judge discharged or dismissed the case at trial in 39 percent of cases and pre-trial in 61 percent of cases where there was a discharge. The reasons for these discharges were not recorded.

An estimated 56 percent of withdrawn cases were withdrawn before depositions, 22 percent at depositions and 22 percent after depositions. The reasons for the charges being withdrawn were not stated for two-thirds of withdrawn cases. Where reasons were given, these related to:

- victim issues (17 cases): in three cases the victim admitted lying or retracted her statement, five refused to give evidence or would not sign the depositions, two were reluctant to proceed, one victim disappeared, one victim went overseas, and the rest did not want to proceed
- pleas/charge changes (ten cases) – seven defendants pled guilty to another charge in the case and three had the violation charge reduced to a lesser charge

25 These estimates include an adjustment for court cases not yet finalised.

- other reasons: new contrary evidence (three cases), case withdrawn by the Youth Court and resolved at a Family Group Conference (one case), case withdrawn following the suicide of the defendant (one case).

5.4.2 International comparisons

International comparisons were complicated by differences in the prosecution process between countries (and between states within countries). In many jurisdictions, police pass the file to the prosecuting agency at an earlier stage than in New Zealand, and some jurisdictions have no committal hearing. Therefore, the prosecution agency may have a greater role in attrition via its decision on whether there is sufficient evidence to go to trial.

Averaged across all relevant studies, Daly and Bouhours (2008) found that a third of cases in which charges were laid did not proceed past the prosecutor to Court, and over half of those that did proceed did not result in a conviction for a sexual violation offence. Thus, over two-thirds of prosecutions did not result in a conviction.

In England, estimates of attrition at the prosecutor stage vary from 2 percent to 18 percent of cases (Harris and Grace 1999; Kelly and Regan, 2001; Kelly et al., 2005; Feist et al., 2007). Feist et al. (2007) found that cases that the Crown Prosecution Service did not proceed with were more likely to involve partners or ex-partners, adult victims, and victims who reported the crime themselves, and less likely to involve cases where a medical history was taken or the offender was linked to other offences.

Across five Australian states (Lievore, 2004), over a third of cases referred to the Director of Public Prosecutions (DPP) were withdrawn, either due to insufficient prospects of conviction (55 percent) or because the victim did not wish to proceed (45 percent). Most cases were discontinued before indictment. Cases were more likely to proceed where the victim was injured or the assault was severe, where the victim expressed non-consent and where there was additional evidence linking the defendant to the assault.

5.5 Victim characteristics by prosecution outcome

Table 9 profiles the characteristics of victims associated with each prosecution outcome category for sexual violation cases.

The relationship between the victim and offender showed substantial variation among the prosecution outcome categories. In cases that resulted in a conviction for a sexual violation offence, the defendant was more likely to be family or a stranger and less likely to be a current partner or a boyfriend, an ex-boyfriend, or a date than for other outcomes. Current partners were over-represented in the cases that were discharged or withdrawn, while strangers and family made up only a small proportion of this group.

Table 9: Victim characteristics by prosecution outcome (%)

Factor	Convicted ¹	Acquitted ¹	Discharged/ withdrawn/other ¹
Sample size	251	162	187
Relationship with offender	<i>Victim group (excluding unknown) as a percentage of each outcome (%)</i>		
Total	100	100	100
Family/whānau	15	8	6
Current partner	9	14	28
Ex-partner	11	10	15
Boyfriend/ex/ date	3	7	8
Friend/ acquaintance	16	16	12
Other known	17	20	15
Just met	10	14	13
Stranger	19	11	4
Age group (years)			
16–19	40	32	24
20–24	21	22	22
25–29	10	16	18
30–39	14	16	21
40+	14	14	15
Ethnicity			
Māori	33	32	31
All other groups	67	68	69
Disability			
Absent	87	92	92
Present	13	8	8
Prior allegations			
No	68	63	49
Yes	32	37	51

Note

- 1 Outcomes: Convicted for sexual violation; acquitted includes quashed; 'other' includes discharged, withdrawn and other outcomes of the prosecution process.

The direction of these effects showed some critical differences from the investigation outcome results (Table 6). In particular, current partners were more likely to be prosecuted, but, if prosecuted, were less likely to be convicted. Conversely, strangers were less likely to be prosecuted (reflecting the lower likelihood of suspect identification), but, if prosecuted, were more likely to be convicted. Offenders who were family members had high rates of both prosecution and conviction.²⁶

Victims in cases that resulted in a conviction for sexual violation were significantly more likely to be aged 16 to 19 years than in other cases, whereas victims were less likely to be young in discharged or withdrawn cases. Victims aged 25 to 29 years were under-represented in convictions. There were no significant differences between outcome profiles by ethnicity.²⁷

Cases resulting in a conviction were more likely than other cases to involve a victim with a disability (mainly intellectual or psychiatric), but less likely to involve a victim who had made previous allegations of violent victimisation. The prosecution rate was also lower for victims who had made previous allegations, giving this group a low overall conviction rate. In contrast, the prosecution rate was lower in cases where the victim had a disability, but if prosecuted, these cases were more likely to result in a conviction.

The victim categories were not independent of each other. For example, fewer young people were in partner relationships than were victims in the middle age groups. Therefore, in order to examine which of these and other factors were the best predictors of outcome a multivariate modelling technique was used (chapter 6). The model results confirmed that young victims and offenders who were strangers (alone and in combination) were associated with an increased conviction rate, while current partners and boyfriends had a lower conviction rate (but a high rate of associated convictions for assault). Victims with a disability also had a higher conviction rate.

5.6 Prosecution outcome by police district

Prosecution outcomes are shown for each police district in Table 10, as a percentage of cases in which an offender was prosecuted. Trials do not necessarily take place within the same police district, especially in the case of High Court trials.

The sample sizes were not large for many districts. The only statistically significant difference was that Tasman had a lower conviction rate than other areas, based on a small number of cases. When taken as a percentage of all recorded cases, the conviction rate was significantly higher in Bay of Plenty and lower in Tasman compared with other districts.

26 See Table 16, section 6.9, for a summary of conviction and prosecution rates for each group.

27 Māori compared with all other ethnic groups combined. The sample sizes of Pacific and Asian/Other ethnic groups were too small to analyse separately.

Table 10: Prosecution outcome by police district (%)

Police district	Sample size	Convicted ¹	Acquitted ¹	Discharged/ withdrawn/ other ¹	Total prosecuted
		<i>Outcome as a percentage of prosecuted cases (%)</i>			
Total	601	42	27	31	100
Auckland City	72	46	27	27	100
Bay of Plenty	51	52	30	18	100
Canterbury	78	41	25	34	100
Central	54	33	23	43	100
Counties Manukau	77	43	26	31	100
Eastern	36	47	27	26	100
Northland	15	42	27	31	100
Southern	28	49	23	28	100
Tasman	26	18	44	38	100
Waikato	38	46	28	26	100
Waitemata	52	36	26	38	100
Wellington	74	44	25	31	100

Note

- 1 Outcomes: Convicted for sexual violation; acquitted includes quashed; 'other' includes discharged, withdrawn and other outcomes of the prosecution process.

5.7 Summary of attrition during the court process

The conviction rate for sexual violation was estimated to be:

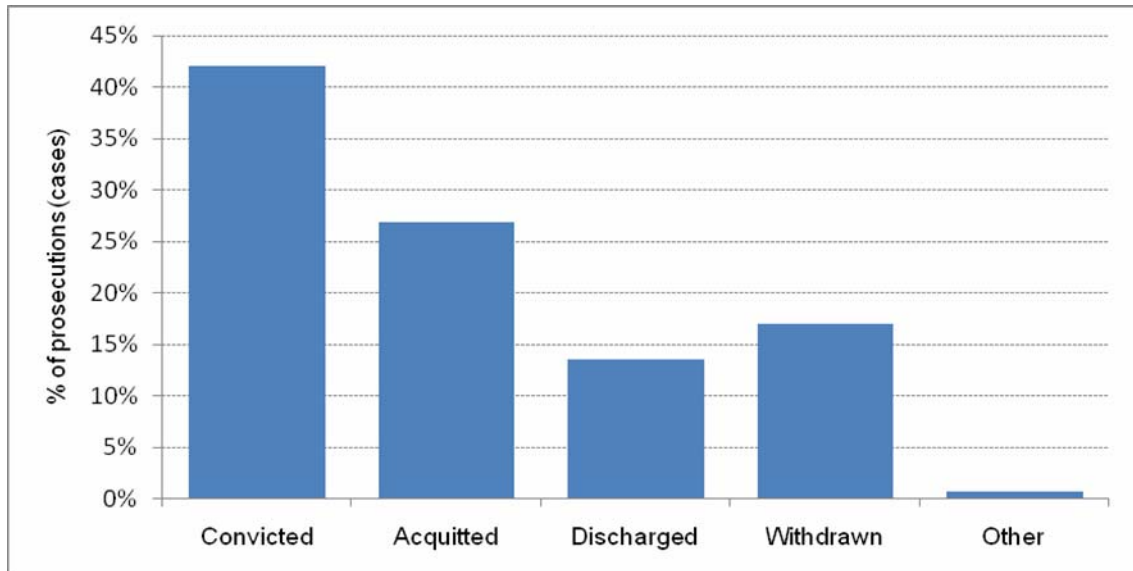
- 13 percent based on all recorded cases (or 14 percent if all convictions for any sex offence were included or 16 percent including convictions for any offence)
- 20 percent based on all cases recorded as valid offences (i.e. excluding 'no offence')
- 17 percent based on all recorded offences
- 42 percent based on cases in which an offender was prosecuted (i.e. cases in which charges are laid).

The conviction rate was:

- lower for rape than for unlawful sexual connection, attempted violation and other offences
- lower than in the 1981 New Zealand study (Stace, 1983).

Other outcomes accounted for 58 percent of outcomes for prosecutions (Figure 9), including acquitted at trial (27 percent), discharged by the judge (14 percent), withdrawn by the prosecution (17 percent) and other outcomes (less than one percent).

Figure 9: Summary of prosecution outcomes



Current partners were more likely to be prosecuted, but, if prosecuted, were less likely to be convicted. Conversely, strangers were less likely to be prosecuted, but, if prosecuted, were more likely to be convicted. Offenders who were family members had high rates of both prosecution and conviction.

Victims in cases that resulted in a conviction for sexual violation were more likely to be aged 16 to 19 years or to have a disability, but were less likely to have made previous allegations of violent victimisation.

6 Factors influencing outcomes

6.1 Overview

The aim of this analysis was to assess which factors were associated with or predicted the likelihood of conviction and other outcomes.

The analysis presented in previous chapters examined some associations between victim characteristics and outcomes, looking at each factor in isolation. However, victim characteristics are neither independent of each other nor independent of a range of other factors. For example, incidents of sexual violation in which the victim was aged under 20 years were also more likely to be committed by strangers. Therefore, the results presented in this chapter were based on a multivariate modelling technique (logistic regression), because this approach allows the major predictors to be identified from a range of possible factors within a single analysis.

A caution on the use of these results: These results should not be used as a template for judging cases. For example, a statistical model may indicate that ‘false complaints’ are more likely to be associated with victims having x, y or z characteristics. In practice, each case must be judged on its merits, and cases where any or all of these x, y or z characteristics are present should not be prejudged or treated differently.

Logistic regression modelling gives the clearest results in studies where there is a large sample, a clear dichotomy of outcomes, consistency within outcome categories and a limited range of directly causal factors, all of which are captured in the data collection. The present study falls into none of these categories, as the sample size is modest compared with the wide range of potential predictor variables, outcomes may be unclear, the cases within categories are diverse, and only a limited range of factors are captured within the data collection. Thus, the results are likely to give no more than a general indication of associations between the measured factors and outcomes.

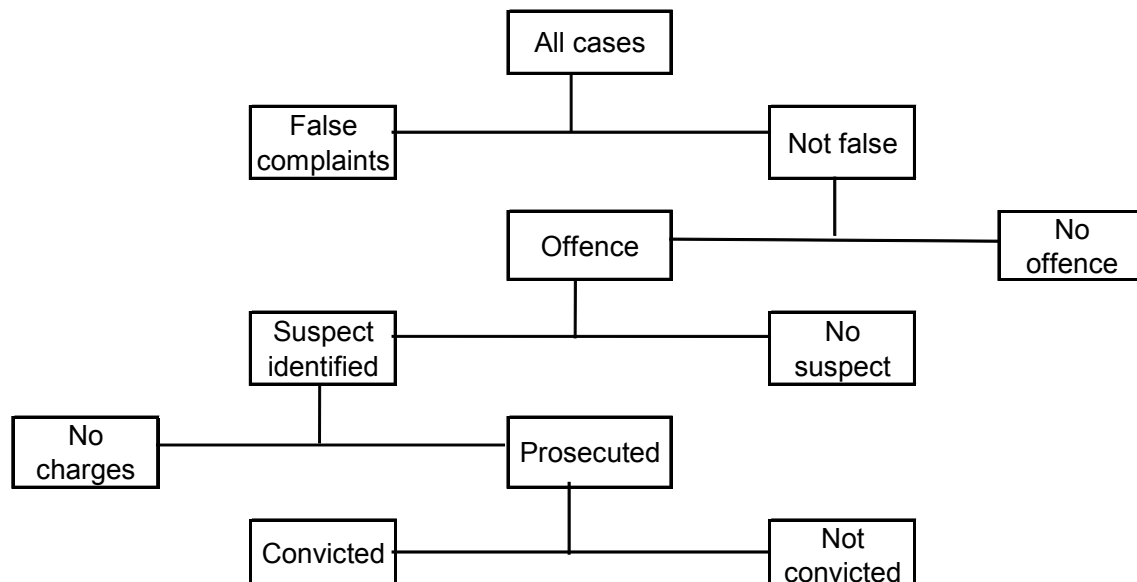
Furthermore, for some attrition points in this analysis, especially ‘false complaints’ and other ‘no offence’ outcomes, the range of available data was restricted to victim and offence factors, with very limited information on alleged offenders and incident-related factors. Thus, victim characteristics will necessarily be major predictors in these models, raising significant issues of bias and potentially exacerbating stereotypes by limiting the focus to victim characteristics.

6.2 Approach

Instead of constructing a single model of conviction rates based on all data, a staged approach was used, with five models assessing the relevant factors at various attrition points (Figure 10). This approach was used because it better reflects the reality of the process. That is, to achieve a conviction, the case must pass through a series of potential attrition points: is it a false complaint? Is it an

offence? Can a suspect be identified? Can charges be laid? Is the evidence strong enough to convict the defendant?

Figure 10: Diagram of attrition points that formed the basis of models



The staged approach also had the advantage of highlighting the differences between key factors found at different stages of the process. This was particularly important for factors that had varying effects at different points, such as the lower likelihood of suspect identification, but higher likelihood of conviction, for offenders who were strangers.

The staged approach was also useful for a more pragmatic reason, because data collection varied between stages. For example, no offender details were recorded for 'false complaints' or for many cases where the offender was not identified.

6.3 Factors tested

The factors tested as predictors included:

- offence – type and number of offences
- location/time – scene, time, day
- police district
- offender – gender, age, ethnicity and origin (New Zealand born, overseas born), criminal history, disability, alcohol and drug use
- victim – gender, age, ethnicity and origin (New Zealand born, overseas born), disability, criminal history, previous allegations, protection orders, alcohol and drug use, sex-worker
- circumstances – injury, force, threats, weapons, reporting time

- evidence – medical, witness, forensic, surveillance
- interaction terms – added as needed.

One of Jordan's (2004a) conclusions was that a combination of negative or positive factors, rather than any one factor in isolation, might 'tip the balance' for or against the complainant. To test this, two derived scale variables were tested in the models:

- likely aggravating factors in favour of the victim (multiple offences, multiple offenders, multiple victims, offender with any criminal history, offender with previous sex convictions, offender with previous violent convictions, any type of force, injury or threat to victim, scale of injury)
- perceived negative factors against the victim (use of alcohol and drugs, intoxication, victim has a criminal history, victim has made previous allegations, reported in following month or later, victim refused medical, victim a sex-worker).

These variables were rather crude, in that they represent a simple unweighted count of the available factors. For example, a case in which the victim sustained a minor injury and had none of the other factors would score 1, whereas a seriously injured victim attacked by two offenders with previous violent convictions would score at least 9.

6.4 'False complaints'

The first model assessed which factors best predicted which complaints would be classified as 'false complaints', compared with all other cases. 'False complaints' were defined as cases in which the victim was charged or warned for making a false complaint.

Only a very limited range of factors could be included in this model because most variables were not recorded in the database for the 'false complaint' group. Thus, alleged offender and incident characteristics had to be excluded from the model. The factors that were tested included offence type, number of offences, police district and victim characteristics.

Two key variables (victim age and victim-offender relationship) were missing from 34 percent and 47 percent of 'false complaint' cases respectively compared with 5 percent and 27 percent of other cases. Therefore, two models were tested: Model A, based on only those cases where age and relationship were recorded, and Model B, based on all cases and excluding these two factors (Table 11).

Both models were weak overall, with only 11 to 13 percent of the total variation explained and poor predictive ability. The models were similar in that the number and type of offences and previous allegations of sexual victimisation were all significant predictors in both models. The odds ratio shows the relative effect and the direction of the effect, with an odds ratio of greater than one meaning that the factor is positively associated with the outcome and vice versa. Thus, rape was more often, and unlawful sexual connection was less often, associated with 'false complaints'. Cases involving more than one sexual violation offence were much less

likely to be classified as 'false complaints'. Cases in which the complainant had made previous allegations of sexual victimisation were much more likely to be classified as 'false complaints'.

Where the two models differed was that age and relationship were significant predictors when the relevant variables were included and victim disability was significant when age and relationship were not included in the model. The factor most significantly associated with 'false complaints' was age and relationship combined, rather than any age or relationship factor separately. That is, complainants aged 16 to 19 years who alleged violation by a stranger were very much more likely to be in the 'false complaint' category than other complainants. In the absence of the age and relationship factors, disability (mainly psychiatric or intellectual) was significant.

Overseas studies have noted similar results. For example, Kelly et al. (2005) found that 'false complaints' were more common among young adults, complainants with mental health issues, those who had made previous allegations, and incidents in which the alleged offender was not well known to the victim.

However, while these groups were over-represented among 'false complaints' in this study as well, it is important to emphasise that none was a strong predictor of a 'false complaint'. For example, 80 percent of young victim/stranger cases and two-thirds of disability/previous allegation cases were not classified as 'false complaints' and these groups made up only a quarter and a tenth of 'false complaints' respectively. It may be that factors other than those measured would be better predictors of 'false complaints', or simply that 'false complaints' are not easily predictable.

The models were also useful as an indication of what factors were not relevant. For example, once other factors were taken into account, the rate of 'false complaints' did not differ between police districts or by victim characteristics such as gender, ethnicity, and criminal history.

Table 11: Predictors of the probability of a case being documented as a false complaint

Predictor variable	Parameter estimate	Standard error	Wald chi-squared	Significance	Odds ratio
Model A: including age and relationship					
Young victim and stranger attack	1.81	0.35	26.80	0.000	6.14
Multiple offences	-1.59	0.61	6.90	0.009	0.20
Victim made previous sexual allegations	0.97	0.37	6.89	0.009	2.64
Unlawful sexual connection	-1.25	0.48	6.75	0.009	0.29
Model B: excluding age and relationship					
Multiple offences	-1.62	0.42	14.49	0.000	0.20
Rape	0.92	0.23	16.58	0.000	2.52
Complainant has disability	0.86	0.21	16.64	0.000	2.36
Victim made previous sexual allegations	0.89	0.24	14.36	0.000	2.44

Model specifications:

Dependent variable: cases in which the complainant was charged or warned for making a 'false complaint' (coded 1), all other cases (coded 0).

Excludes cases not yet finalised. Model with age/relationship also excludes cases with missing data for victim age or victim-offender relationship.

An odds ratio of greater than one means the factor is positively associated with the outcome and vice versa.

Model A: N = 1,074, constant = -2.9, Nagelkerke R^2 = 0.13.

Model B: N = 1,614, constant = -3.1, Nagelkerke R^2 = 0.11.

6.5 No offence disclosed

The second model assessed which factors best predicted that a case would be classified as 'no offence', excluding 'false complaints'. The analysis of 'no offence' cases in section 4.9 indicated that some of these cases might have been incorrectly classified. For the modelling, cases that were probably an offence were excluded from the 'no offence' group, while cases that were definitely, probably or possibly a 'no offence' were included in the 'no offence' group.

The 'no offence' category had a high proportion of missing data in relation to alleged offenders, so offender-related factors, other than offender-victim relationship, were excluded from the model. All other factors were included in the model but with indicator variables to test for missing data effects.

The resulting best-fit model explained a quarter of the total variation (Table 12), with five strongly significant predictors. Incidents involving any threat, force or injury had a low likelihood of being classified as 'no offence', whereas incidents in which the victim was uncertain as to whether violation had occurred were over-represented in the 'no offence' group. Cases that involved more than one offence were very unlikely to be classified 'no offence'. Auckland City Police District had a significantly lower rate of 'no offence' than other districts.

The final predictor was a combination of victim-offender relationship and incident location. Incidents that occurred in a place other than a dwelling (most commonly a public place) and in which the offender was not an intimate (partner, ex-partner or family) had a higher probability of being a 'no offence' than other cases.

Table 12: Predictors of the probability a 'no offence' classification

Predictor variable	Parameter estimate	Standard error	Wald chi-squared	Significance	Odds ratio
Incident involved force/threat/injury	-1.05	0.15	52.08	0.000	0.35
Multiple offences	-1.96	0.30	43.50	0.000	0.14
Non-intimate offender and not dwelling	0.83	0.13	38.16	0.000	2.30
Victim uncertain if violation	1.05	0.17	36.93	0.000	2.86
Auckland City Police District	-1.37	0.29	21.95	0.000	0.25

Model specifications:

Dependent variable: cases classified as 'no offence' (coded 1), all other cases (0).

Excludes cases not yet finalised and 'false complaints'.

An odds ratio of greater than one means that the factor is positively associated with the outcome and vice versa.

N = 1,462, constant = -0.87, Nagelkerke R² = 0.24.

The interactions between relationship and location were complex. The results partly reflected the generally lower likelihood of a 'no offence' outcome where there was an intimate relationship compared with non-intimate relationships. In fact, the 'intimate relationship' variable was a significant but minor negative predictor in the model. But also, offences committed by non-intimates (especially strangers, 'other known' offenders and offenders with an unknown relationship to the victim) were less likely to be classified 'no offence' if the incident occurred in a dwelling than elsewhere. Conversely, offences committed by partners in a dwelling appeared more likely to be in the 'no offence' category, although this was based on a small number of non-dwelling cases and was not significant in the model.

There were also a number of minor predictors that explained a small amount of variation but were not consistently present in the various test models based on random subsamples of the data. The disability variable, either alone or in combination with previous sexual allegations, was fairly consistently present as a minor predictor, associated with higher 'no offence' rates.

6.6 Suspect identification rate

The third model assessed which factors best predicted that a suspect was identified, for cases that were classified as offences. Cases for which no suspect was identified had a high proportion of missing data in relation to alleged offenders, so offender-related factors were excluded from the model except for victim-offender relationship. All other factors were included in the model, with indicator variables to test for missing data effects.

The resulting best-fit model explained 40 percent of the total variation (Table 13). The three strongest effects were all related to victim-offender relationship. By far the strongest predictor was that the offender was a stranger or someone whom the victim had just met within 24 hours, which was associated with a lower rate of suspect identification. This effect was particularly strong if the offence was committed in a public place.

Cases for which no victim-offender relationship was recorded were also less likely to have a suspect identified. ('Offender-victim relationship' was missing for 35 percent of no-suspect cases and 21 percent of cases with a suspect.) Half of these missing-relationship cases were either withdrawn by the victim or suspected 'false complaints'.

Cases involving more than one offence were more likely to have an identified suspect, as were cases in which there was supporting evidence (witnesses, DNA or other forensic evidence, or surveillance footage). Cases in which the victim refused a medical examination were less likely to have an identified suspect, as were rape offences.

Table 13: Predictors of the probability that a suspect was identified, of cases identified as offences

Predictor variable	Parameter estimate	Standard error	Wald chi-squared	Significance	Odds ratio
Offender a stranger or just met	-2.50	0.29	75.56	0.000	0.08
Offender not intimate and in public place	-1.37	0.21	41.37	0.000	0.25
Missing relationship data	-1.76	0.28	40.17	0.000	0.17
Multiple offences	1.90	0.34	32.31	0.000	6.72
Refused medical	-1.52	0.39	15.07	0.000	0.22
Supporting evidence	0.63	0.18	11.73	0.001	1.88
Rape	-0.74	0.23	10.50	0.001	0.48

Model specifications:

Dependent variable: cases with suspect identified (coded 1), other cases (0).

Excludes cases not yet finalised, 'no offence' cases and 'false complaints'.

An odds ratio of greater than one means that the factor is positively associated with the outcome and vice versa.

N = 1,088, constant = 3.68, Nagelkerke R^2 = 0.40.

6.7 Suspect prosecution rate

The fourth model assessed which factors best predicted the probability of prosecution (i.e. whether charges would be laid), given an identified suspect. All factors, including offender-related data, were included in this model, with indicator variables to test for missing data effects.

The resulting best-fit model explained 41 percent of the total variation (Table 14). Cases involving more than one offence were much more likely to result in a prosecution than single-offence cases. However, within the multiple-offence group, cases involving multiple offenders were less likely to result in a prosecution than cases involving multiple offences by one offender. The multiple-offender group was quite small and contained a higher proportion of withdrawn cases and cases involving consent issues compared with the single-offender/multiple-offence cases.

Table 14: Predictors of the probability that a suspect was prosecuted

Predictor variable	Parameter estimate	Standard error	Wald chi-squared	Significance	Odds ratio
Multiple offences	2.40	0.25	90.50	0.000	11.03
Aggravating factor scale	0.35	0.06	36.43	0.000	1.42
Rape	-0.88	0.17	27.48	0.000	0.42
Multiple offenders	-2.15	0.45	22.49	0.000	0.12
Victim threatened	1.26	0.30	17.71	0.000	3.51
Negative victim factor scale	-0.33	0.08	17.35	0.000	0.72

Model specifications:

Dependent variable: cases with charges laid (coded 1), other cases (0).

Excludes cases not yet finalised, 'no suspect' cases, 'no offence' cases and 'false complaints'.

An odds ratio of greater than one means that the factor is positively associated with the outcome and vice versa.

N = 923, constant = -0.39, Nagelkerke R^2 = 0.41.

The 'aggravating factors' scale variable (described in section 6.3) was also a strong predictor of a case involving a prosecution. Cases with none of the aggravating factors (i.e. cases with just one victim, offender and offence, an offender with no criminal history and no force, injury or threat to the victim) had a suspect prosecution rate of 17 percent,²⁸ compared with rates of 44 percent, 63 percent and 84 percent respectively for cases with scores of 1–2, 3–4 or 5+ aggravating factors. Each of the components was important, with multiple offences and threats also being in the model in addition to the scale variable.

Conversely, the scale variable that attempted to measure the perceived negative attributes of the victim had an odds ratio under one, indicating that these factors significantly decreased the probability of prosecution. Cases in which the victim had none of the factors, had a suspect prosecution rate of 61 percent compared with rates of 49 percent and 35 percent respectively for cases with scores of 1–2 or 3+ negative factors. The following factors within the scale variable were all associated with lower prosecution rates: the victim refused a medical, had a psychiatric condition, had made previous sexual allegations, was intoxicated or did not report promptly. Two other victim factors were not associated with lower prosecution rates: victims who had a previous criminal history or who were sex-workers.

Rape had a lower suspect prosecution rate than other offences.

28 All percentages in this chapter are based on finalised cases, so may differ slightly from figures in chapter 5, which are adjusted for non-finalised cases.

Overseas studies have generally examined the probability of prosecution based on all cases. Nevertheless, the main findings are not dissimilar. In Victoria, Australia (OWP, 2006), charges were more likely to be laid in cases involving family members, young victims, male victims (based on a small sample), victims subject to multiple assaults or who were injured, and victims who had a medical examination. A strong relationship was found between charging and the offender's prior history of sexual offending.

In England, Feist et al. (2007) found that the predictors of getting a case to Court and getting a conviction were that the assault was linked to a sexual offence against another victim, the victim's medical history was obtained, the offender threatened the victim, forensic evidence was recovered, witnesses were present and the offence was reported promptly.

6.8 Conviction rate

The fifth model assessed which factors best predicted the probability of conviction for sexual violation, based on cases in which an offender was prosecuted. All factors, including offender-related data, were included in this model, with indicator variables to test for missing data effects.

The resulting best-fit model explained 23 percent of the total variation (Table 15). Cases in which charges were laid against a current partner (married or de facto) or boyfriend had a much lower probability of conviction for sexual violation than other cases. The conviction rate was higher if the offender was a stranger or the victim was aged under 20, and particularly high for a combination of these two factors.

Of cases that were not convicted, half were withdrawn for cases in which the offender was a current partner or boyfriend, whereas the majority of non-convicted offenders who were strangers were acquitted. However, of current partners who were prosecuted but not convicted for sexual violation, almost half were convicted for another violent offence, especially 'male assaults female'.²⁹

29 Of the few current partners or boyfriends who were convicted an even larger proportion (two-thirds) were also convicted on another non-violation charge. Overall, half of prosecutions involving current partners or boyfriends resulted in a conviction on another charge, a similar percentage to that for ex-partners or ex-boyfriends, but higher than the percentage for other offenders (21 percent).

Table 15: Predictors of the probability of conviction for cases in which the offender was prosecuted

Predictor variable	Parameter estimate	Standard error	Wald chi-squared	Significance	Odds ratio
Offender current partner/boyfriend	-1.75	0.38	21.33	0.000	0.17
Aggravating factor scale	0.24	0.07	13.62	0.000	1.27
Victim young and/or offender a stranger ¹	0.67	0.18	13.05	0.000	1.95
Rape	-0.72	0.21	11.79	0.001	0.49
Weapon used	1.17	0.40	8.76	0.003	3.23
Victim intellectually disabled	1.44	0.54	7.08	0.008	4.23

Notes

1 Set at 0 for neither factor, 1 for either factor alone, 2 if the offender was a stranger and the victim was aged under 20.

Model specifications:

Dependent variable: convicted for sexual violation (coded 1), other cases (0).

Excludes cases not yet finalised or not prosecuted.

An odds ratio of greater than one means that the factor is positively associated with the outcome and vice versa.

N = 465, constant = -0.86, Nagelkerke R^2 = 0.23.

The 'aggravating factors' scale variable (described in section 6.3) was also a strong predictor of a case being convicted. Cases with none of the aggravating factors (i.e. cases with just one victim, offender and offence, an offender with no criminal history and no force, injury or threat to the victim) had a conviction rate of 30 percent, as a percentage of finalised prosecutions, compared with rates of 39 percent, 44 percent and 74 percent respectively for cases with scores of 1–2, 3–5 and 6+ aggravating factors. All aspects of the 'aggravating factor' composite variable were important, as can be seen from the conviction rates for each individual factor in Table 16. Weapon use was also present independently in the model, increasing the probability of conviction.

Conversely, the scale variable that attempted to measure the perceived negative attributes of the victim (alcohol and drug use, criminal history, previous allegations etc.) was not significant in the conviction rate model.

Victims who had an intellectual disability also had a higher conviction rate. Rape had a lower conviction rate than other offences.

Of the police districts only Tasman District appeared in any model. This district was significant in the full-data model (associated with a reduced conviction rate). However, as the effect was minor and not consistent in test models based on

random subsamples, this variable was excluded from the best-fit model shown in the results table.

International studies have generally found similar results, although the key predictors vary somewhat depending on which outcomes are compared and which factors are included in the models. The factors most often associated with higher conviction rates in a range of international studies included cases involving violence or injury, suspects with a criminal history, offending by strangers, witness and forensic evidence, younger victims and victims of 'good character'.

For example, Daly and Bouhours (2008) analysed 33 studies of adult or mixed-age victims, which examined the associations between various outcomes and a range of factors. The most frequently examined factors were victim-offender relations, victim injury and victim age, and the majority of studies also examined physical evidence, use of force and victim character. Their results indicate that:

*In the **early period**, the factor evincing the most consistent effect on police and court decisions is the victim's 'good character' (89%). Next is the presence of injuries (67%) and the suspect's criminal history (58%). Close to half of observations show effects for stranger victim-offender relations (48%), use of force/weapon (47%), and witness or physical evidence (45%). ... In the **later period**, the picture changes significantly for two factors: the effect of victim's 'good character' has decreased significantly (38%) as has stranger victim-offender relations (25%). The witness or physical evidence, injuries, and weapons factors increase somewhat (by 5 to 9 percentage points). ... Across the **two time periods**, the suspect's having a criminal history has a positive effect on police proceeding and on court conviction. ... Of 43 observations, over four in ten (42%) show a positive relationship between younger aged victims and police proceeding or court conviction. [Emphasis added]*

6.9 Summary of factors influencing attrition

In summary, a few key factors were the major predictors of outcomes, with the predictors varying between stages of the investigation and prosecution. Table 16 provides a summary of conviction and prosecution rates for these key predictors.

The main findings were as follows.

- Cases involving more than one offence were much more likely to proceed through all stages, while rape cases were less likely to proceed at almost every stage.
- Victim-offender relationship was a significant factor at almost all stages, although the analysis was complicated by missing relationship data for many cases. The significant predictors were strangers (or strangers in combination with other non-intimates) and current partners or boyfriends.
 - Attacks by a stranger were more often associated with 'false complaints' and 'no offence' cases and had a high attrition rate due to their association with unidentified suspects. However, if prosecuted, stranger attacks were

much more likely to result in a conviction, giving these cases a relatively high overall conviction rate.

- Current partners and boyfriends had a high prosecution rate but a very low conviction rate for sexual violation (although many were convicted of other violent offences).
- Other non-intimate offenders had relatively high attrition rate at most stages and therefore a low overall conviction rate.
- Conversely, family members had high prosecution and conviction rates.
- Young victims had a higher rate of ‘false complaints’ (for stranger attacks), but also a higher rate of conviction for cases in which an offender was prosecuted.
- Cases involving force, threats or injury were less likely to be classified as ‘no offence’ and more likely to result in a prosecution and conviction, especially if the injuries were serious.
- Offenders with previous sex or violence convictions were much more likely to be prosecuted and convicted.
- Suspects were less likely to be prosecuted if the victim had one or more of the following attributes: refused a medical, had a psychiatric condition, had made previous sexual allegations, was intoxicated or did not report promptly.
- A combination of several aggravating or negative factors in the case had more impact than single factors alone.
- Victims with a psychiatric condition or intellectual disability had a higher rate of ‘false complaints’, as did victims who had made previous allegations of sexual victimisation. However, prosecutions were more likely to result in a conviction if the victims had an intellectual disability.
- Cases were more likely to be classed as ‘no offence’ if the victim was uncertain violation had occurred.
- Suspect identification was more likely when there was witness or forensic evidence, but less likely if the victim refused a medical examination.

No significant differences in outcomes were found between police districts, once other factors had been taken into account in the modelling, with one exception – Auckland City had a low rate of ‘no offence’ cases.

The following factors were not predictors of any outcome:

- victim gender, ethnicity and origin (New Zealand born, overseas born), victim criminal history, victim a sex-worker
- offender gender, age, ethnicity and origin (New Zealand, overseas born)
- incident timing (day, time of day, year).

Table 16: Summary of conviction and prosecution rates for key factors

Category	Type	Conviction rate (as % of prosecuted)	Conviction rate (as % of total recorded cases)	Prosecution rate (as % of total recorded cases)
Total		43	13	29
Offence type	Rape	36	9	24
	Unlawful sexual connection	49	20	41
	Attempt	53	22	42
	Other	63	23	36
Number of offences	One	38	7	19
	Multiple	48	37	77
Victim-offender relationship	Current partner/boyfriend	16	8	46
	Ex-partner/ex-boyfriend	37	13	36
	Family	68	30	45
	Friend, date, other known	43	12	27
	Just met	34	9	26
	Stranger	68	20	30
	No relationship recorded	47	12	26
Victim age (years)	16–19	52	16	31
	20–29	36	11	31
	30+	37	11	29
Victim mental health status	Psychiatric illness	33	4	11
	Intellectual disability	67	14	22
	None recorded	42	13	31
Previous allegations by victim	Previous sex	50	9	17
	Previous violence	32	11	33
	None recorded	49	14	29
Offender previous convictions	Previous sex	50	27	54
	Previous violent	45	24	53
	No convictions	35	11	32

Table 16: Continued

Category	Type	Conviction rate (as % of prosecuted)	Conviction rate (as % of total recorded cases)	Prosecution rate (as % of total recorded cases)
Force, threat or injury	Force/threat/injury	44	20	47
	None recorded	41	7	18
Injury scale	No injury recorded	40	9	23
	Minor injury/force used	38	16	43
	Moderate/severe injury	57	29	51
Supporting evidence	Yes (witness or forensic)	47	16	35
	None recorded	38	9	25

Notes: All rates are based on finalised cases, so figures may differ from those in chapters 4 and 5, which include non-finalised cases and have an adjustment for non-finalised court cases. Conviction rates are for sexual violation offences.

6.10 Conclusion

In summary, this study examined the attrition of sexual violation cases from recording of the offence by the police to final outcome. The study was based on all 1,955 cases recorded as sexual violation by the police over a 30-month period, making it the largest study in New Zealand and one of the larger studies undertaken anywhere. This study was also distinctive in that it was a nationally representative sample and in that it examined the factors associated with each stage of attrition.

Generally, the results appeared consistent with international studies, although valid comparisons were complicated by differences in definition, methodology and criminal justice processes.

The key results in relation to attrition were that:

- attrition rates were high – only 13% of cases resulted in a conviction for sexual violation
- the majority of attrition occurred during the investigation phase – charges were laid in just under a third of cases
- a third of cases were classified by the police as ‘no offence’ (including 8 percent where the complainant was charged or warned for making a false complaint), although at least some of these did appear to be offences based on the available information

- at least one in five cases did not proceed due to victim withdrawal
- attrition rates varied between cases, depending on factors such as the number and type of offences, the relationship between the victim and offender, the age and mental state of the victim, the criminal history of the offender and aggravating circumstances of the offending
- the effect of some factors, especially the victim-offender relationship, differed between stages of the justice process.

A significant limitation of the analysis was the lack of data on some potentially important variables and substantial levels of missing data for other key factors. All data were derived from a data set that summarised the available file information stored on the police NIA database, which meant the available information provided only a narrow perspective on the complex set of circumstances that make up each incident.

Appendix A: Sexual offences included in this study

The study used a broad definition of sexual violation, including sexual violation as it is defined under section 128 of the Crimes Act 1961 (rape and unlawful sexual connection), attempted sexual violation (section 129) and other offences involving sexual violation (incest, inducing sexual connection, and sexual exploitation of a person with significant impairment). The following police offence codes were included.

Offence code and offence description

2653	Male Rapes Female over 16
2654	Husband Rapes Wife
2657	Unlawful Sexual Connection Female over 16
2658	Unlawful Sexual Connection with Spouse
2663	Attempt to Rape – Female over 16
2664	Attempted to Rape – Spouse
2667	Attempted Unlawful Sexual Connection – Female over 16
2668	Attempted Unlawful Sexual Connection – Spouse
2669	Other Attempt Commit Sexual Violation offences
2695	Unlawful Sexual Connection Male over 16
2698	Attempted Unlawful Sexual Connection Male over 16
2699	Other Sexual Offences against Male Victim
2713	Parent Incest Child – over 16
2716	Brother Incest Sister – over 16
2719	Other Incest
2829	Other Unlawful Sexual Intercourse
2851	Sex Exploitation Significant Impairment
2852	Attempt Sex Exploitation Significant Impairment
2853	Does Indecent Act – Person Significant Impairment
2645	Induce Sexual Connection
2649	Other Inducing Sexual Connection Offences
2972	Induce/Compel to provide sex services

Appendix B: Literature reviewed

Research in New Zealand

The largest research project on rape in New Zealand (the Rape Study project) was undertaken in the early 1980s, as part of a programme to reform the laws relating to rape. The revised legislation was enacted in 1985, as outlined in section 1.5.

The Rape Study project included:

- a review of legislation and practice (Young, 1983)
- a survey of the experiences of 50 victims (Stone et al., 1983)
- a study of the processing of 220 cases by the police and interviews with 20 officers (Stace, 1983)
- a study of court processes and outcomes for 83 cases (Lee, 1983)
- a survey of judges and lawyers (Oxley, 1983).

A decade after the 1985 legislative changes, the Institute of Criminology began a follow-up research programme. This research generated published papers, books and a thesis on the subject of sexual violence against women, with a particular focus on the victim's experience of reporting to the police (Jordan, 1998, 2001a, 2001b, 2004a, 2004b).

International research

Various aspects of attrition in sexual violation cases have been studied in a large number of international studies. The most comprehensive comparison of attrition is provided by Daly and Bouhours' (2008) meta-analysis of 75 studies from five English-speaking countries.³⁰

The literature review undertaken for the present study combined key results from this meta-analysis with a more focused examination of recent studies from the two jurisdictions most similar to New Zealand – England and Australia. Full citations for these and other studies referred to are at the end of the report.

Some caution is needed in interpreting the results, given that the studies are based on a wide variety of locations, jurisdictions, sampling procedures and so on. All the reviewed studies were based on a sample of cases drawn from one or more specific locations; none was a nationally representative sample. Most used data from police databases, often supplemented by interviews with investigating officers and victims. The source of the data influences the breadth, depth, accuracy and perspectives of findings. For example, victim interviews give a different perspective to police records.

30 At the time of writing, this was a draft report. Permission to cite this unpublished research has kindly been granted by the authors. The report is available from Daly's web page (<http://www.griffith.edu.au/professional-page/professor-kathleen-daly/publications>).

Comparisons between studies are also significantly complicated by differences in scope between studies. In particular, the age range of victims varied between studies, as did the type of offence included (i.e. rape, all penetrative offences or all sexual offences). For many studies it was difficult to determine exactly which offences were included. In addition, some studies base attrition calculations on all recorded cases, while others exclude 'no-crime' offences.

Daly and Bouhours' (2008) meta-analysis adjusted rates to include 'no-crime' outcomes and used a definition of rape that included all sexual violation (rape and unlawful sexual connection) and attempted violation as defined in New Zealand: 'unwanted oral, anal, or vaginal penetration against consent through force, threat of force or when incapacitated'. However, studies within their sample varied in the offences included and, in particular, whether offences involving non-penile penetration and attempted violation were included.³¹

In Australia, sexual assault legislation varies between states (Lievore, 2004: Appendix B), but the offences defined are effectively equivalent to the New Zealand definitions. Lievore (2004) did not include attempted sexual assault, and this was probably also true for the Victorian study (OWP, 2006) as no mention was made of attempted rape.

The research based in England generally related to rape (with no mention of attempted rape being included), and hence was presumably restricted to penile penetration as defined under the Sexual Offences Act 2003 (HMIC and HMCPSP, 2007) and previous Acts.

Table 17 summarises the scope of the key comparison studies.

31 In the current New Zealand study, rape made up the majority of cases (68 percent) and unlawful sexual connection accounted for most of the rest (22 percent), while attempted violation and other offences accounted for just 7 percent and 3 percent of cases respectively.

Table 17: Samples and scope of focus studies

Reference	N	Location	Scope	Data
1 Daly and Bouhours (2008)	$\frac{1}{3}$ <200 $\frac{1}{3}$ 200–500 $\frac{1}{3}$ >500	Five common law countries	Rape, all ages	Meta-analysis of 75 studies from the United States (48% of studies), Australia (23%), Canada (13%), England and Wales (12%), and Scotland (4%). About half of these were undertaken since 1990. Sample sizes varied from fewer than a hundred to almost 30,000 cases.
2 Feist et al. (2007)	676	England	Rape, females, all ages	Random samples within eight non-randomly selected police forces with high or low detection rates for rape.
3 Fitzgerald (2006)	7,884	New South Wales, Australia	Sexual assault and indecent assault, all ages	Data on all recorded cases in 2004 from New Zealand Police and court databases. Adult sexual assault results provided within report.
4 HMIC and HMCPSP (2007)	752	England	Rape, all ages	Seven police forces; attrition study a small part of the overall study, which included file examination, interviews, policy review.
5 OWP (2006)	850	Victoria, Australia	Rape, all ages	Random sample from police database, 2000–2003.
6 Kelly et al. (2005)	3,527, some not reported	England	Rape, all ages	Prospective tracking and retrospective analysis of three Sexual Assault Referral Centres (SARC) and three comparison areas, using SARC and police data, plus interviews and report audits.
7 Lievore (2004)	141	Australia	Sexual assault, adult	Cases referred to prosecuting agency (Director of Public Prosecutions (DPP)), not reported offences. Data on outcomes from DPP database and interviews, samples from five states/territories (unweighted).
8 MPS (2005)	677	London	Rape, all ages	All rapes recorded on police database April–May 2005, plus in-depth examination of subsample.

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ISBN 978-0-478252-48-4

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