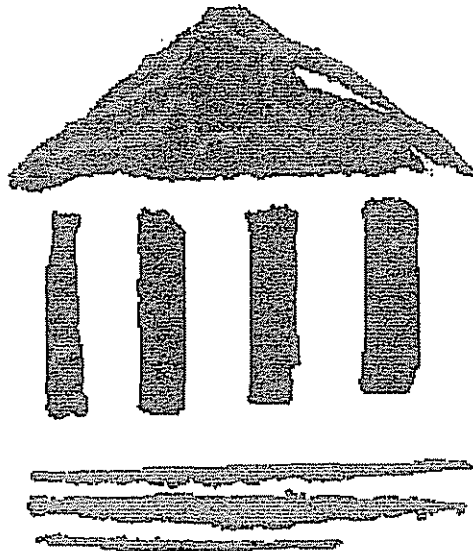


**ACCUSED, THEIR CHARGES AND BAIL DECISIONS
IN THREE SOUTH AFRICAN MAGISTRATES
COURTS**

**- BASELINE INFORMATION PRIOR TO THE
IMPLEMENTATION OF PRE-TRIAL SERVICES**

BJA Report No. 2



**B U R E A U o f
J U S T I C E
A S S I S T A N C E**

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editor: Michelle India Baird

The Bureau of Justice Assistance is a joint project of the Ministry of Justice and the Vera Institute of Justice



FOREWORD

In 1997, a number of government departments were concerned about the country's bail system. The Minister of Justice, Dullah Omar, asked the Bureau of Justice Assistance, a joint project of the Ministry of Justice and the Vera Institute of Justice, to design and implement a practical project to deal with the issue of bail as its first project last year. At the same time, public pressure to make it more difficult for dangerous offenders to be granted bail was growing and was fuelled by some high-profile cases. Because courts do not keep detailed statistics about bail decisions, there was a need to begin tracking these decisions to hold the justice system accountable and ensure mistakes in bail decisions do not happen. As well, there was a need to keep witnesses and victims better informed about bail decisions.

Equally important, there was a need to address the impact of poor bail decisions on our already over-crowded prisons. The solutions needed to be long-term, structural and sustainable. Tightening of bail legislation only addresses half of the problem – it does not ensure that persons accused of petty offenses who are not a risk are not detained unnecessarily. The Department of Justice needs to ensure that bail decisions do not contribute to this problem. Bail is the entry point of the justice system – solutions developed to speed up and improve bail decisions are likely to have a positive impact on the entire judicial process.

Over the last year, justice and police officials and community structures have worked hand-in-hand with the Bureau of Justice Assistance to identify obstacles in the bail system, devise a system to make it work, and set up offices in the cells of three courts to test the solution. Pre-trial Services is a national system to administer bail and serve witnesses, but it derives its solutions from the day-to-day practices of the officials who must use the system.

Together, we are now measuring the impact of Pre-trial Services on bail decisions, witness and accused appearance rates, and the profile of the awaiting trial population. The Bureau of Justice Assistance has collected "baseline data" about bail decisions, accused appearance rates, at our three pilot sites: Mitchells Plain court, Johannesburg central Magistrates Court, and Durban Magistrates court. The profiles of the awaiting

trial populations in Pollsmoor, Johannesburg and Westville prisons were also collected. This was the first-ever, scientific survey of bail decisions in the country.

The results of this study and the lessons learned in the subsequent design and implementation of the first three pilot Pre-trial Services offices demonstrate the need for a national bail administration system. This study is helping demystify the question of bail, and to a lesser degree, the operation of South Africa's criminal justice system. As this report shows, increased use of supervisable bail conditions, granting of affordable bail amounts and verification of information about accused persons can improve both the fairness and effectiveness of the administration of justice. Pre-trial Services has shown good early results. The Bureau of Justice Assistance is still solving some operational problems and routinising the collection of data at each site. We plan to report on its impact later this year. Pre-trial Services is a local solution to a problem of national concern – in less than one year, three offices have been opened and an extraordinary level of collaboration has developed among justice, police, correctional services, and community structures. If the easy successes can be sustained, it is likely that Pre-trial Services will become integral to South Africa's justice system in the years ahead.

Michelle India Baird
Director, Bureau of Justice Assistance
16 September 1998

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EXECUTIVE SUMMARY

Aim of study:

This study was undertaken to provide a baseline for evaluating Pre-trial Services currently in the demonstration stage in three courts. This study was conducted in the criminal magistrates courts of Durban, Johannesburg and Mitchells Plain. It was based on first appearances in all criminal matters other than traffic cases. The samples included both regional and district court matters, after hour and normal hour matters, accused persons both in custody and not in custody and both juveniles and adults. In total, 7 188 people from the three courts were included in the study.

Key findings of this report include:

1. In the combined sample of accused from the three courts, 50% of accused are 25 years or younger, 88% are male and less than 50% are employed.
2. The vast majority of accused persons (96%) are arrested before their appearance in court.
3. Police warning and police bail is used far less than legally permitted and hence approximately 80 – 90% of accused are in custody at first appearance.
4. Most accused in all three courts (65 – 80%) are charged with non-violent crimes. Property related crimes predominate in Durban and Johannesburg.
5. Theft is the most frequent main charge in all three courts, although it does not apply to the majority of accused.
6. Between 50 and 80% of accused in all three courts are either released on warning or granted bail at first appearance.
7. The minority of accused who can afford a lawyer at their first appearances have more chance of being granted bail and less chance of being denied bail than unrepresented accused.
8. None of the three courts appeared to be significantly more lenient in their after hour bail decisions.
9. Bail amounts in Johannesburg are significantly higher than Durban and Mitchells Plain.
10. Less than half of the people in Johannesburg and Mitchells Plain and 76% of accused in Durban were able to pay their bail at court. Those who could not pay were sent to await trial in prison.

11. Fewer than 0.5% of accused released on warning or bail in all three courts were ordered to comply with special conditions, such as reporting to a police station.
12. Most accused who are released on warning or bail return to court. In Johannesburg and Mitchells Plain, 93% of accused who are not in custody appear in court when expected.
13. The results strongly indicate that some courts are generally stricter than others are in their bail decisions. In fact, an accused's bail decision and bail amount is more dependent on the court making the decision than on the charge against them or their employment status or income. The precedents within each court with regard to bail decisions may have more impact on court decisions than on the individual circumstances of the accused person.

INTRODUCTION

Crime is perceived by many to be the biggest challenge to civil order and democracy in South Africa. It is therefore understandable that the release on bail of a person accused of murder, rape, car hijacking or another violent crime often evokes widespread public outrage. One well-publicised example is the case of Dan Mabote. According to the prosecutor, Mabote was "accidentally" released on bail in December 1996 while facing a charge of raping a seven-year-old girl, Mamokgethi Malebane. He was later convicted of abducting and murdering the girl, while out on bail, to prevent her from testifying against him.

Mabote's case helped to fuel public perception that the bail law was inadequate¹ which led to controversial amendments to the law². The South African Human Rights Commission and human rights advocates contended that the restriction on bail for certain crimes, contained in the amended law, may undermine accused persons' constitutional right to be presumed innocent. Others felt that a tightening of the bail law was both appropriate and necessary. However, the debate around this legislation was largely either academic in nature or based on emotive arguments. Few statistics on actual bail decisions could be used in the debate because statistics on bail decisions have, up to now, been unreliable and speculative. Although there have been other reports on bail³, they were based on anecdotal observations of a few cases rather than a quantitative study of a large, representative sample of cases.

This report is the second in a series about Pre-trial Services.⁴ This research is the first known scientific study of bail decisions in South Africa and will be used to measure the impact of Pre-trial Services. With the general scarcity of reliable statistics regarding South African courts, information contained in this report may assist policy makers,

¹ Schönteich, M., disputed that the 1995 bail law was inadequate and blamed problems such as the Mabote case on improper implementation of the law. His views were published in "The story of a good law, its bad application, and the ugly results. A policy briefing and analysis of the South African bail law (Act 75 of 1995), and its inadequate application due to an inefficient criminal justice system." *Spotlight*. Number 1/97, July 1997. SA Institute of Race Relations.

² The Criminal Procedure Second Amendment Act No. 85 of 1997. The changes brought about by the law are discussed in more detail below.

³ For example, refer to the National Crime Prevention Strategy (NCPS) report entitled *the Administration of Bail Legislation: A Preliminary Investigation* prepared by the "Bail Administration" Task Team for the NCPS.

⁴ In November 1997, the BJA released a report on bail decisions in Mitchells Plain court. The Mitchells Plain report is consolidated here with similar information from Durban and Johannesburg, allowing a comparison of the three sites.

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parliamentarians, court managers and civil society understand the operation of the criminal justice system.

Bail law

Bail is a device used to balance two competing principles in criminal justice: (1) The interests of society in ensuring that accused persons stand trial while the community is kept safe from dangerous suspects; and (2) the right of the accused to be presumed innocent until proved guilty. Important court decisions set out some key legal principles regarding bail. One such decision states that “[a]n accused person cannot be kept in detention as a form of anticipatory punishment”.⁵ Case law also states that a bail amount “must not be so high as to be beyond the resources of the accused, but not so low as to make its possible forfeiture a prospect which the accused can contemplate with easy resignation”.⁶ Most of South African bail law is set out in legislation, which is, in turn, subject to various provisions of the Constitution.

1995 bail law

The 1995 bail legislation, which brought about significant change to bail law⁷, is applicable to the cases in this report. The court deciding the question of bail must balance the interests of justice⁸ against the rights of the accused⁹. The Criminal Procedure Act¹⁰ provides detailed lists of 33 factors¹¹ that should be taken into account by the court in trying to achieve this balance.

In weighing up the interests of justice, the court must consider:

1. the propensity of the accused to endanger the safety of the public or any particular persons or commit a serious (Schedule 1) offence;¹²

⁵ Mahomed AJ (as he then was) in *S v Acheson* 1991 (2) SA 805 (NM) at 822. Justice Mahomed’s judgment then spelt out numerous factors which should be taken into account in deciding bail. Those factors formed the basis of the 1995 bail law, set out below.

⁶ *S v Acheson* 1991 (2) SA 805 (NM) at 823. See also *S v Budlender and Another* 1973 (1) SA 264 (C) at 269 F and *S v Ho* 1979 (3) SA 734 (W) at 739 D-E and other authorities cited therein.

⁷ Act 75 of 1995 changed the law to bring it into line with the 1993 Interim Constitution which provided for the right of an accused person to be “released on bail unless the court finds that it is in the interests of justice that he or she be detained”. This 1995 amendment came into effect in September 1995.

⁸ Sub-sections 60(4) - (8)

⁹ Sub-section 60(9)

¹⁰ Act No. 51 of 1977. Appendix XX sets out section 60 of this Act and the relevant schedules. Note that this version of the Act includes the 1997 amendments, as indicated, which came into effect after the data in this report were collected.

¹¹ This is not a closed list and the court may take into account “any other factor which in the opinion of the court should be taken into account”. The 1997 bail law adds an additional five specific factors.

¹² taking into account the accused’s previous criminal record; degree of violence implicit in the charge against the accused; threats of violence by the accused; disposition to violence; etc.

2. the likelihood that the accused will not stand trial;¹³
3. the likelihood that the accused will intimidate witnesses or conceal or destroy evidence;¹⁴ and
4. the likelihood that the accused will undermine the objectives or the proper functioning of the criminal justice system.¹⁵

In weighing up the rights of the accused the court must consider:

1. the period which the accused has been in custody;
2. the probable period of detention until trial;
3. the reason for the delay in the finalisation of trial;
4. any financial loss the accused may suffer owing to his or her detention;
5. any impediment to the preparation of the accused's defence which may be brought about by the detention of the accused; and
6. the state of health of the accused

Where a person is accused of committing certain serious violent crimes, defined by schedule 5 of the Act (appendix A), then they must prove to court that the interests of justice do not require their detention in custody. Schedule 5 offences include murder involving the use of a dangerous weapon, rape, robbery with aggravating circumstances and robbery of a motor vehicle. An accused also bears this onus if he or she is out on bail for a Schedule 1 offence and is then charged with committing another Schedule 1 offence.

1997 bail law

A 1997 amendment now makes it more difficult for people charged with serious crimes to get bail. Among the changes is that persons alleged to have committed certain categories of murder, rape and robbery will now be denied bail unless they can prove

¹³ taking into account the accused's emotional, family, community ties; employment; assets held by the accused; the accused's means to travel; the extent to which the accused can afford to forfeit the amount of bail which may be set; the seriousness of the charge; the strength of the state's case; the punishment which is likely to be imposed in the event of a conviction

¹⁴ taking into account whether witnesses have made statements; the extent to which the investigation is completed; the relationship of the accused to the witnesses; the effectiveness and enforceability of bail conditions prohibiting communication between the accused and witnesses; and the ease with which evidence can be concealed or destroyed

¹⁵ taking into account whether the accused has supplied false information during arrest or bail proceedings; whether the accused is in custody on another charge or on parole; and any previous failure by the accused to comply with bail conditions

that there are "exceptional circumstances". Extracts from the legislation, including the 1997 amendments which came into effect in August 1998, are in Appendix A.

As the data presented in this report were collected before the 1997 amendment became operational, this study should provide a useful benchmark to measure the effects of the 1997 amendment.

What is Pre-trial Services?

This study was undertaken to provide a baseline for evaluating PTS currently in the demonstration stage in three courts. PTS provides the court with a report for all adult accused in custody, containing verified information about the accused's community ties, employment, previous convictions, and other information needed for a bail decision. This information enables the court to make more appropriate bail decisions which should mean that high-risk, dangerous and repeat-offenders are detained while awaiting trial. More appropriate bail decisions should also mean that low-risk, petty, first time accused are released from custody. In order to facilitate this release, the PTS project attempts to strengthen supervision of bail conditions as a viable alternative to money-based bail.

The BJA expects that this will change the profile of the awaiting trial prison population, reducing the proportion of people held in prison because they cannot afford to pay their bail. A move away from money-based bail towards release on warning with reporting conditions would also reduce the economic injustice of incarcerating poor people, who should be released, but cannot afford to pay bail.

PTS is operating in Mitchells Plain (since August 1997), Johannesburg (since November 1998) and Durban (since May 1998). It will be extended to a further two sites under the auspices of the BJA and the Department of Justice (DOJ).

Measurement of PTS impact

In order to demonstrate the effectiveness and measure the impact of the project a number of key indicators are monitored. As a basis for comparison, baseline data were collected in each court before the PTS offices became operational. The impact data will

later be compared with these baseline data. The eventual decision by government on how far to extend PTS to other courts in the country will be based upon the measured impact of the demonstrations. This demonstration project approach also facilitates the recording of the actual costs of the new system rather than an estimated projection. This will enable the Department of Justice to weigh up the real financial costs against the measured benefits to the administration of justice.

Study sites

South African criminal courts are divided into High Courts and Magistrates Courts. Magistrates Courts hear more than 90 percent of all criminal cases and are, in turn, split into Regional and District courts. The more serious cases are reserved for the Regional courts which have wider sentencing powers than District courts. District courts may hear all cases except treason, murder and rape. All criminal cases can be tried in the Regional Magistrates Courts, except treason which can only be tried in the High Court.¹⁶ In larger, urban districts the District Court may decentralise into branch courts located in different parts of the city.

For this study, one court was selected from each of the three largest cities in South Africa. In Durban and Johannesburg the central courts were selected while in Cape Town the court servicing the nearby residential area of Mitchells Plain and surrounding townships was chosen. A brief description of each of the study sites follows.

Durban

Durban is Africa's busiest port city, set on the east coast of South Africa and has a population of 3.2 million. The Durban magisterial district is bound on the east by the Indian Ocean and the towns of Pinetown to the west, Amanzimtoti to the south and La Lucia to the north.

The court system in Durban is far more centralised than other South African cities and has fewer branch courts than Johannesburg, for example. There is only one branch court in Wentworth and one in Amanzimtoti, both within the district of Durban. Neither

¹⁶ Section 89, Magistrates Court Act No. 32 of 1944.

of these courts have regional courts. Thus all regional court cases in the district are sent to the central court. All after-hours bail applications from the entire district, including Wentworth and Amanzimtoti, are heard in the Durban court.¹⁷ Durban also hears regional cases from one court outside the district of Durban, Chatsworth. A small number of specialised cases, including child abuse matters, from other surrounding districts are also sent to Durban court. Durban has 16 regional and 15 district criminal magistrates courts.

Johannesburg

Johannesburg is the economic capital of South Africa. The study was conducted on cases from Johannesburg's central magistrates court. This court generally only hears cases emanating from central Johannesburg.¹⁸ This area covers 29.4 km² and comprises 80% Central Business District (CBD), 15% residential and 5% industrial land. In 1993, the residential population was an estimated 110 000 which increased to 2 million during work hours.¹⁹

The district of Johannesburg has one central and six branch courts.²⁰ Compared to Durban court which is highly decentralised, cases are divided up between the central court and the branch courts based on: the place where the crime is allegedly committed; whether the case is for a regional or a district court; the age of the accused; whether the appearance is after hours; and whether the accused was arrested by a centrally located special police unit.²¹ The Johannesburg central magistrates court complex has 14 regional and 9 district criminal Magistrates Courts.

¹⁷ Sansom, Ray (Durban Senior Public prosecutor: Legal / administrative management, Durban Magistrates Court) 1998-08-05. Personal communication.

¹⁸ This area is defined as the jurisdiction of the Johannesburg central police station.

¹⁹ Terblanche, Const (Communications officer, SAPS). 1998-05-04. Personal communication.

²⁰ The branch courts all fall within the Johannesburg magisterial district but the district is subdivided, according to police station jurisdictions, as follows: (1) **Hillbrow court** covers the residential area of Hillbrow and all the areas north up to Randburg. (2) **Jeppe court** jurisdiction extends east up to Bedford View. (3) **Booysens court** extends south up to Baragwanath. (4) **Brixton court's** jurisdiction includes Mayfair (5) **Newlands** and (6) **Soweto courts** cover each of those residential areas.

²¹ van Wyk, Arno (Johannesburg Senior Public Prosecutor, Johannesburg Magistrates Court). 1998-04-30. Personal communication. The Johannesburg central magistrates court deals with the following cases: (1) All regional and district court matters in the Johannesburg central area, comprising mainly the CBD; (2) Regional court matters from Brixton, Newlands and Booysens, as these three branch courts do not have regional courts themselves; (3) All juvenile cases from the magisterial district including all branch courts except Soweto and Hillbrow; (4) All after hours cases in the entire magisterial district including all branch courts; and (5) All cases assigned to the special police units based at the Johannesburg Central police station. These special units are SANAB (SA Narcotics Bureau), fraud branch, child protection unit, syndicate crimes unit, commercial crime unit, robbery reaction, and gold and diamond unit. All persons arrested for committing one of these crimes appear in the Johannesburg central court even when the offence was allegedly committed within the jurisdiction of one of the branch courts. An exception to this is Soweto which has its own compliment of all special police units except Commercial crime unit (which account for very few cases).

Mitchells Plain

The Mitchells Plain court serves a population of approximately one million people in a mainly residential area of 45 km², approximately 25 km south-east of Cape Town. The court is in an area known as the Cape Flats, notorious for gang activity. As a consequence of apartheid Group Areas laws, this area is divided into the mainly Coloured residential area of Mitchells Plain and the African townships of Guguletu, Nyanga, Cross Roads, Khayalitsha and Phillipi. This is largely a working class community with a high unemployment rate and large informal settlements.

The court deals with all cases in the magisterial area of Mitchells Plain and does not hear cases from other areas. Unlike Durban and Johannesburg, Mitchells Plain does not have any branch courts. The Mitchells Plain court has 2 regional and 9 district criminal Magistrates courts.

METHODOLOGY

This study is based on first appearances in all criminal matters other than traffic cases. It was conducted in the criminal magistrates courts of Durban, Johannesburg and Mitchells Plain, the sites of the first three PTS demonstration projects. The samples were based on all persons who had a first appearance in each court over a defined period which ranged from eight to nine weeks. The samples included both regional and district court matters, after hours and normal hour matters, accused persons both in custody and not in custody and both juveniles and adults. In total, 7 188 people from the three courts were included in the study.

Data samples

The Durban sample of 3 147 accused persons was collected over two weeks in November and December 1997 and six weeks in January and February 1998. The period over December and early January was excluded because of the atypical profile of cases and the altered functioning of the court during the holiday season.

The Johannesburg sample of 1 718 accused people was collected from 18 August to 10 October 1997. In Johannesburg, one after hours case comprising 282 accused persons was excluded from the sample. It was anomalous because of the very large number of accused persons. Inclusion of the case would have resulted in substantial skewing of the data particularly for after hour cases where only 442 other persons were recorded. The case was therefore omitted from all analysis.²²

Information about 2 323 accused persons who appeared for the first time in Mitchell's Plain Magistrates court was collected over nine weeks commencing 19 May 1997.

A data collection audit was done in each court and the relatively small undercount of cases was adjusted, where necessary. More detailed notes on the data sampling and collection audits are contained in Appendix B.

²² The case was recorded on 25 August 1997. The same attributes were recorded for each of the accused: the charge was trespassing, the appearances were after hours, all were in custody at first appearance, unrepresented and the bail decision was postponed to an unrecorded date. Age and sex of the accused were not recorded. The case numbers for the accused were 5/4697/97 to 5/4704/97.

In all three courts samples were taken of PTS interviews shortly after the start of the project in each court. The interview forms provided data on the employment status and income of the accused. The information supplied by the accused was, as far as possible, verified by the PTS staff with the employer or other references supplied by the accused. The randomly selected samples comprised 250 accused in Durban, 553 in Johannesburg and 935 in Mitchells Plain.

Indicators measured

A range of indicators, designed to measure the impact of PTS, were recorded and are analysed in this report. They include:²³

- bail decision;
- bail amount;
- use by the court of special bail conditions; and
- failure to appear rate.

Data collected about each accused person and which were used to interpret the above indicators are:

- age;
- gender;
- main charge and number of counts;
- the court which made the bail decision;
- legal representation;
- income;
- detention status;²⁴
- employment status;
- income; and
- ability to pay bail.

²³ The prison population profile is also used as an indicator and these results are contained in a separate report.

²⁴ This is the status of the accused *before* their first court appearance. If the accused is not in custody then they have either been released on police bail or warning or they have been summonsed.

Bail decisions are reported under the four categories of (1) released on warning,²⁵ (2) bail granted,²⁶ (3) bail denied²⁷ and (4) other. "Other" comprises cases where:

- (1) the bail decision was postponed for a formal bail application;
- (2) the case was transferred to another court for a decision;
- (3) a warrant of arrest was issued because the accused failed to appear;
- (4) the case was finalised by conviction and sentencing;
- (5) the case was finalised by withdrawal of all charges; or
- (6) the case was finalised by being struck off the roll.

Data collection

The data were collected by court officials assigned full-time to the project under the direct supervision of legally-qualified project planners and the Director of Research from the BJA. Information was obtained from the original court charge sheets and court books and then recorded on data sheets like the one in Appendix C. Audits were done at each stage of the research process to ensure reliability of the results.²⁸

The data reported here are from the "first appearance" of the accused person in each new case.²⁹ The data were recorded for individual accused persons rather than per case. While court records are normally based on cases, a number of accused persons may appear in the same case. However, the circumstances of each accused may differ and hence the bail decision of the court in respect of different accused people in a single case often varies. Only main charges are reported. Some accused persons had

²⁵ Released on warning includes

- (1) juvenile accused who were released into their parents custody;
- (2) accused who were released by the court without having to pay bail (warning); and
- (3) accused who had previously been granted bail by the police (police bail) and where this bail is then extended by the court.

All accused persons in this category of decisions are immediately released from custody.

²⁶ *Bail granted* means that the court has decided to make the release of the accused conditional upon the payment of money. Note that the accused is not necessarily released from custody when bail is granted. Often the accused cannot afford to pay bail immediately or at all. In such cases, the accused is taken to prison until their bail is paid or the case is finalised.

²⁷ *Bail denied* means that the accused is remanded in custody until the case is finalised and any subsequent prison sentence is served or until the bail decision is changed by court. The accused can bring a new bail application before the same Magistrates Court which denied bail if circumstances change or they can appeal the denial of bail to the High Court.

²⁸ These included checks to measure undercounting of data, accuracy of recording on data sheets by court personnel and accuracy of data capture into the computer. A lengthy and thorough auditing process was essential due to different conventions used by courts in recording information and the large number of staff involved in data collection. As far as possible, inconsistencies in the data were identified and rectified.

²⁹ It is of course likely that some of these people will have appeared previously in other matters. Despite this, the appearance is still regarded as a first appearance.

more than one charge against them. In such cases, the most serious charge was considered the main charge.³⁰

These data are not the same as arrest data. They exclude cases where the Senior Public Prosecutor decided not to prosecute (*nolle prosequi*). Such cases were not recorded as a first appearance and are hence missing from these statistics. This happens, for example, when there is insufficient evidence to proceed or where a prosecution would not be in the public interest.

Not every type of data could be recorded for every accused person. For example, for some people the main charge was not recorded although other information such as the bail decision was recorded. Thus the total number of accused persons for which data was recorded differs between the various data types and is invariably less than the sample size for that court. The report therefore states, in every figure and table, the total number of accused persons for which data of that type was recorded.

Statistics

The median is used often in this report. This is the middle value of a data set and is better than the mean (average) to describe statistically skewed data. For example, few very high bail amounts would have disproportionately affected the average bail and hence the mean would not have been a fair reflection of the most common bail amounts. Analysis of variance (ANOVA) and ad hoc comparisons of means were performed. These were done on the software package Statistica version 5.0.

Crime classification

The charges were categorised according to criminology classification methods used internationally³¹ and is compatible with the reporting format used by the South African

³⁰ This methodology inevitably emphasises more serious charges at the expense of less serious charges. However, this effect is expected to be relatively minimal because a very low number of people had more than one count against them at first appearance.

³¹ Bureau of Justice Statistics, March 1996. *Compendium of Federal Justice Statistics, 1992*. US Department of Justice, Office of Justice Programs. NCJ-160089. Available on line 1998-04-15: [<http://www.ojp.usdoj.gov.bjs>]; Povey, Prime, Taylor. 7 April 1998. *Notifiable Offences England and Wales, 1997*. Available on line 1998-04-15: [<http://www.homeoffice.gov.uk/rsd/sb798/pdf>]

Police Service (SAPS).³² Each charge was placed into one of the following five crime categories:

- violent;
- property;
- drug related;
- firearm related; and
- public order

The number of accused persons with a charge in each category was expressed as a percentage of the total number of accused persons for each court. Some charges potentially fit into more than one category, for example robbery is both violent and property related. However, only one category was chosen for each charge and this selection, where possible, was based on international practice (robbery is accordingly classified as a violent crime). Specific classification used for each charge is given in Table A1.

Specific offences

Some crimes are contained in statutes passed by Parliament but most crimes that people are charged with in magistrates courts are South African common law offences. South African common law was inherited from Roman Dutch law and this is "unwritten" law. Crimes such as murder, rape, robbery, assault and theft are not contained in a criminal code as they are in America and continental Europe. Instead, such crimes are defined in a rich body of court decisions which evolved, over centuries of jurisprudential history, into a coherent system of legal principles. As with all legal systems, the South African common law sometimes defines crimes differently to popular understandings of the terms and this should be recalled when reading this report.³³ Definitions of the most frequent crimes are set out in Appendix D.

³² Crime Information Management Centre, SAPS. 1997-11-28, *The Incidence of Crime January to September 1997*.

³³ For example, the definition of "robbery" is sufficiently broad to outlaw the modern scourge of car hijacking and for this reason there is no separate crime of "car hijacking". Likewise, "shoplifting" is just another way of stealing and legally this falls under the crime of "theft". Popular definitions are sometimes broader than the legal definition. For example, most people may describe burning somebody's motor vehicle as "arson". However, the law reserves this crime for houses and other immovable property. (Instead, burning a car could be the crime of "malicious damage to property".)

RESULTS AND DISCUSSION

Profile of accused persons

A typical accused person in South African Magistrates courts is young, male, unemployed, or if employed earns little, and has no legal representation at their first appearance in court. The age, gender, employment level, income and legal representation of accused persons in the three study sites are discussed in more detail below.

Age

Most accused were teenagers or young adults. More than 50% of accused at all three study sites were 25 years old or less. On average, 25% were younger than 20 years old with some as young as ten. Durban was the most youthful of the three courts with 32% of accused younger than 20 years old, compared with 20% in Johannesburg and 15% in Mitchells Plain. The graph (Figure E1) depicting the ages in Durban peaks dramatically at 18 years of age whilst Johannesburg and Mitchells Plain show a greater spread in the ages of accused between 16 and 30 years of age with a more gradual decline in numbers of accused as age increases. The age pattern of female accused persons is generally less obvious, possibly as a result of the smaller sample size available in the study. Appendix E sets out the age and gender profiles for all three courts.

Gender

As expected, a significant majority of accused persons were male. In the combined total for all three courts, 88% of accused persons were male and 12% were female. There was little difference between the three sites regarding gender composition (the proportion of males ranged from 87 to 90%).

Income

Across all three courts, relatively few accused persons claimed to be employed and the median incomes of those who were employed placed them towards the lower end of the socio-economic spectrum.³⁴ The employment level ranged from 39% to 53% in the three courts. This is lower than compared with the national employment rate of 78% for males.³⁵ The median incomes of the employed accused persons ranged from R1200 to just over R1500 per month (see Table 4, page 47).

Legal representation

The majority of accused persons in Durban and Johannesburg³⁶ did not have any legal representation at first appearance. Only 14% of people in Durban and 35% in Johannesburg were represented by lawyers at their first appearance before court (see Table 1). All of these lawyers in Durban and 98.8% in Johannesburg were private attorneys rather than counsel provided by the state, such as Legal Aid or Public Defender attorneys. Accused who are unable to afford their own lawyer are usually informed for the first time by the magistrate at their first appearance of their right to apply for legal representation at state expense. This is also generally their first practical opportunity to make application for such legal assistance. As most accused persons are unable to afford their own lawyers, most accused persons are unrepresented at first appearance. The general lack of representation at first appearances is significant because this is when the crucial bail decision is generally made. See below for the influence of legal representation on the bail decision.

³⁴ The employment level and incomes of accused people were obtained from a sample of PTS interviews, conducted by bail officers, in the three courts. Each accused was asked if they worked and if so details of their work and their incomes were recorded. The PTS office then phoned the employer to verify this information for the First Appearance Report which was provided to court. Although these data were obtained after the PTS project began, there is unlikely to be a significant difference in the employment and income profile of accused persons before and after the PTS projects began in each court.

³⁵ According to the 1995 October household survey (statistical release P0317) published in *Statistics in brief RSA*. 1997. Central Statistics. Table 10.2. The male employment rate was used in light of the gender profile of accused persons.

³⁶ Unfortunately no reliable legal representation data for Mitchells Plain were available. However, data recorded for Durban and Johannesburg is consistent with observations made at Mitchells Plain court.

Table 1 Legal representation in the Durban and Johannesburg Magistrates courts at first appearance.

	Durban	Johannesburg
n	2402	1604
Represented (%)	14	35.4
Unrepresented (%)	86	64.6
Total (%)	100	100

Volume of accused persons

Numbers of accused persons

The total number of persons appearing in the Johannesburg Magistrates Court seems relatively low. An average of only 256 persons per week had first appearances during the eight-week study (See Table 2). By comparison, Mitchells Plain Magistrates Court, with fewer courts, staff and resources had an average of 271 new accused persons per week. The relatively high average number of 448 accused first appearances per week in Durban is consistent with the more centralised nature of Durban court. See table 2.

Table 2 Average number of first appearances per week. This is expressed as both the number of accused persons and the number of cases per week for Durban, Johannesburg and Mitchells Plain courts. These data are adjusted for sample undercount. The ratio of number of accused persons to number of cases is also given.

Court	Average number of first appearances per week		accused cases
	accused persons	cases	
Durban	448 ^a	344 ^a	1.3
Johannesburg	256 ^b	194 ^b	1.32
Mitchells Plain	271 ^c	208 ^c	1.3

Notes:

^a Adjusted for 12.3% undercount (multiplied by factor of 1.14).

^b Adjusted for 15.9% undercount (multiplied by factor of 1.19).

^c Adjusted for 5% undercount (multiplied by factor of 1.05).

Johannesburg does have a large number of branch courts which deal with many of the first appearances in the magisterial district. However, this does not fully account for the lower than expected number of criminal cases in the city. The central court deals with all matters in the central business district of a large city which is notorious for a high crime rate. In addition, the court deals with all juveniles in the district and regional court matters (more serious cases) from a number of the branch courts. All cases assigned to specialised policing units are also prosecuted in the central court even if the arrest occurs within the area covered by one of the branch courts.³⁷

³⁷ See note x.

Ratio of accused persons to cases

Most cases in all three courts have a single accused person. In both Durban and Johannesburg, 80% of cases have a single accused while in Mitchells Plain the proportion is a very similar 82%. The ratio of accused persons to cases in the three courts is constant at 1.3 (see Table 2). This knowledge may be helpful to researchers and administrators needing to convert from statistics expressed in number of cases to number of accused persons, or vice versa.

Number of counts at first appearance

The overwhelming majority of accused people have only one count against them at first appearance. A single count was recorded for 92% of accused persons in Durban and 97% in Johannesburg³⁸ at first appearance.³⁹ It is important to remember the distinction between charges and counts⁴⁰ and that these data reflect the latter. The total number of counts was not measured in Mitchells Plain. The statistical significance of this is that there will be very little difference between the main charge data reported in this report and the profile of all charges in court (including secondary charges).

Detention status at first appearance

The Criminal Procedure Act lays down four methods of securing the attendance of an accused in court for the purpose of standing trial: (1) arrest, (2) summons, (3) written notice and (4) indictment.⁴¹ After arrest, an accused may either be held in custody until their first appearance in court or, under certain circumstances may be released by the police before their first court appearance. The police have the power to release people, arrested for certain scheduled offences⁴², either on police warning or police bail. As an alternative to arrest, the prosecutor may issue a summons to an accused and require them to appear in court. A written notice can be issued by a peace officer but only for

³⁸ This was calculated for those accused where a total number of counts was recorded in the court book. In Johannesburg, the total number of counts was recorded for 1694 accused while no record was found for 24 accused persons.

³⁹ It is possible that the state may add charges and / or counts against an accused after first appearance and before he or she is asked to plea at the commencement of the trial. Thus the proportion of accused persons actually tried with only one count is likely to be lower than the statistic for first appearance.

⁴⁰ The charge refers to a type of crime (for example theft, fraud, murder, etc.), while the number of counts refers to the number of times the particular crime was allegedly committed. For example a mass murderer, who commits no other crime, will be charged with one charge (murder) and a number of counts. A person who rapes and murders a woman will have two charges, each with one count and thus a total of two counts. Where somebody appears with alternative charges (for example "dealing in dagga, alternatively possession of dagga") then this is regarded as one count.

⁴¹ Section 38 of Act 51 of 1977.

⁴² Part II or III of Schedule 2 of Act 51 of 1977. See Table XX for alist of charges that are eligible and ineligible for police bail or police warning.

minor offences that will incur a limited fine. An indictment is only used in matters before the High Court and is therefore not relevant to the Magistrates Court cases in this study.

The detention status of each accused at their first appearance is a measure of the method used to secure the attendance of the accused at court. The results for Durban and Johannesburg are set out in Figure 1.⁴³

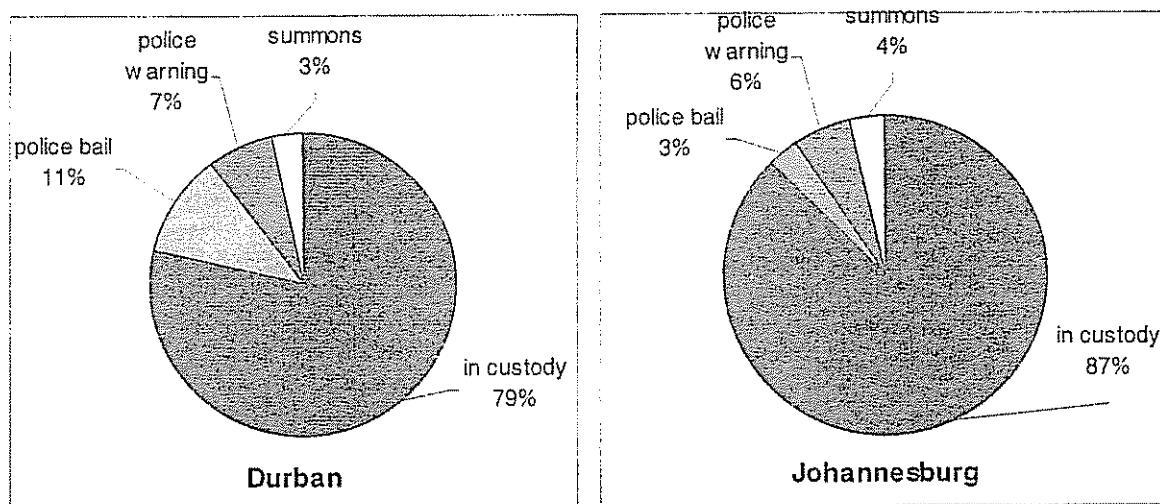


Figure 1 Detention status at first appearance in Durban and Johannesburg courts. The number of accused in each category is expressed as a percentage of all accused whose detention status was recorded. Durban n=2717; Johannesburg n=1633.

The vast majority of accused persons are arrested before their first appearance in court. Only 3 to 4% of accused persons in Durban and Johannesburg were summonsed to court and no use of written notices was recorded.⁴⁴ Most people were brought to court in custody as the police seldom released people on police bail or police warning after arrest. In Durban, 79% and in Johannesburg 87% of accused persons were in custody at the time of their first appearance in court. See Figure 1.

Police warning and police bail is used far less than legally permitted. The police were allowed to release 32 to 36% of accused before their appearance in the three courts.

⁴³ Unfortunately, these data were not collected for Mitchells Plain court.

⁴⁴ The non-use of written notices is not surprising given that the more serious nature of the charges in this study would preclude its use. Such notices are primarily used for minor traffic offences which were excluded from this study.

(This calculation is based on the nature of the charge and is set out at the foot of Table F1.) However, only 18% of accused in Durban and 9% in Johannesburg were released on police bail or police warning (see Figure 1).

Criminal charges

Crime categories

Durban and Johannesburg courts are dominated by property related charges and have twice as many, as a proportion of their totals, than Mitchells Plain court. By contrast, Mitchells Plain court generally has a greater proportion of violent, drug-related and firearm-related charges than the other two courts. The occurrence of public order related charges is not significantly different between the three courts. Every criminal charge is divided into one of these five categories (See Table F1). Figure 2 compares these categories of crimes for the three courts.

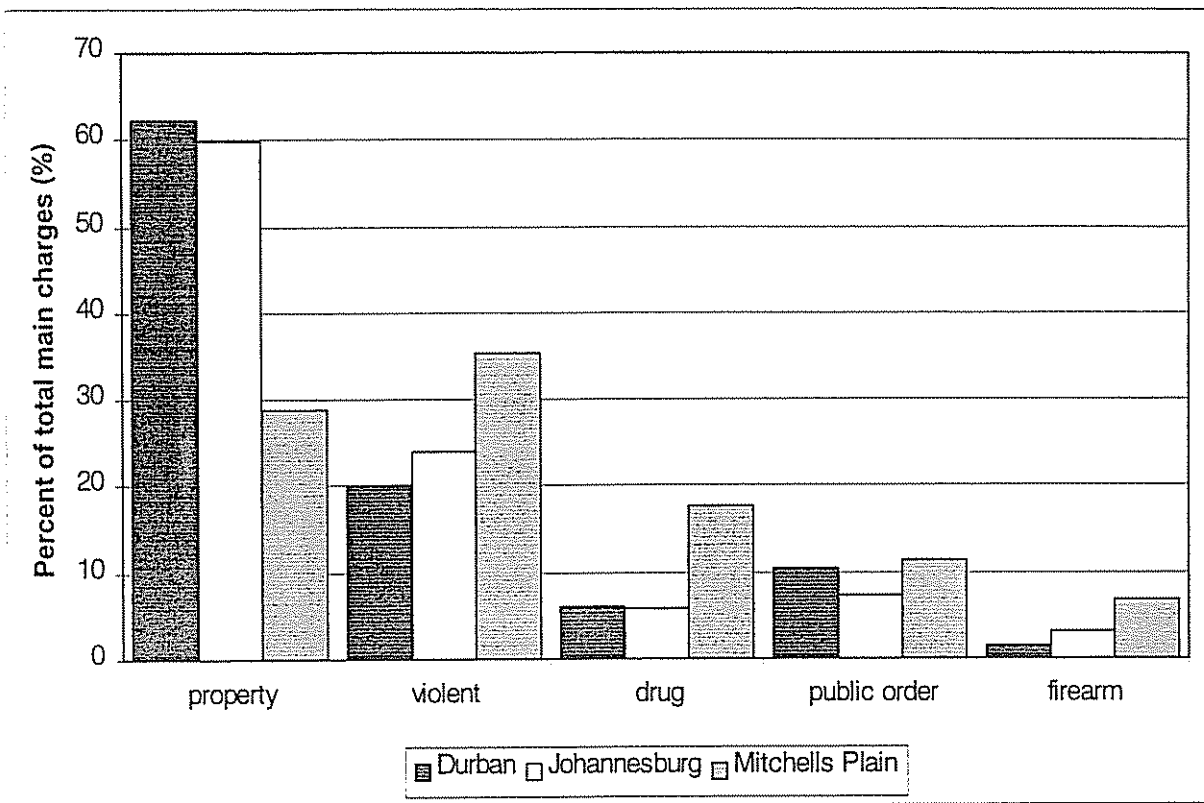


Figure 2 Classification of all accused persons by type of charge in Durban, Johannesburg and Mitchells Plain Magistrates courts. Crime categories of violent, property-related, drug-related, firearm-related and public order are used and expressed as a percentage of the total recorded charges for each court. Actual numbers and detailed classification of each charge is contained in Table F1. Durban n=2982; Johannesburg n=1696; and Mitchells Plain n=2282.

Durban and Johannesburg courts have more property related crime than any other category while Mitchells Plain court has less property related crime than violent crime. Non-violent crimes against property account for 62% of Durban court and 60% of Johannesburg court main charges, compared with only 29% in Mitchells Plain Magistrates court. Crimes falling under this category include theft, housebreaking with intent, fraud, forgery, and possession of goods suspected to be stolen⁴⁵ but excludes robbery. Of these offences theft is by far the most frequent.

⁴⁵ For a full list of property related charges see Table A1 and see the methodology for more information on the classification method.

A possible explanation for the preponderance of property crimes in Durban and Johannesburg court is that the areas served by these courts are more economically active than Mitchells Plain. They are both busy commercial cities whereas Mitchells Plain is mainly residential. Mitchells Plain has a lower socio-economic status than the other two jurisdictions and this may mean that there are fewer targets for property crime in Mitchells Plain, relative to Durban and Johannesburg.

Violent crime is the largest category of crime in Mitchells Plain court but the second largest category of crime in the Durban and Johannesburg courts. In Mitchells Plain, 35% of accused people are charged for violent crimes but in Durban and Johannesburg courts these types of offences account for only 20% and 24% of all charges respectively (see Figure 3 and Table F1). Higher levels of violent crime in Mitchells Plain may be associated with gang activity, for which the area is notorious. However, it is not possible to draw this conclusion from the recorded charges because in law there is no separate "gang-related" crime. For example, if a gang member is accused of murder then they will be charged with the same crime (murder) that a non-gang member would be charged with, if so accused.

Mitchells Plain court deals with significantly more non-violent firearm related offences than Durban and Johannesburg. Mitchells Plain has five times the proportion of firearm related crimes (7%) than Durban and twice the number of Johannesburg. A high level of firearm related crime in Mitchells Plain is consistent with relatively higher levels of violence and the presence of gang activity. Note that the category of "firearm" only includes non-violent crimes such as negligent loss of a firearm, pointing a firearm, possession of an unlicensed firearm or ammunition. It excludes violent offences, such as murder, rape and robbery, which involve firearms.⁴⁶ These are instead listed under the violent crime category. Hence the total proportion of firearm related crimes is higher than that reported here.

Mitchells Plain has three times the proportion of drug related crimes than both Durban and Johannesburg. In Mitchells Plain 18% of all main charges were drug related compared with 6% in the other two courts (see Figure 2 and Table F1).

⁴⁶ See Table A1 for the classification of each charge.

Combined top ten charges for all courts

Each court has a small number of charges that comprises the vast majority of all main charges that appear in each court. More than 80% of all persons who have their first appearances in the three courts are charged with the same ten offences within each court.

There is also significant similarity in the lists of top ten charges among the courts. Theft tops the list in all three courts and six charges are common to the list of top ten main charges in all three courts. The six common crimes are theft, robbery (including armed robbery), housebreaking with intent to commit an offence, murder, assault (including assault GBH) and rape (see Table G1). Based upon the list of most frequent charges in each of the individual courts, a combined listing was compiled to allow for comparison among courts. It also groups crime types such as firearm and drug related offences. This combined list is used for analysis in the rest of this report. See Figure 3.

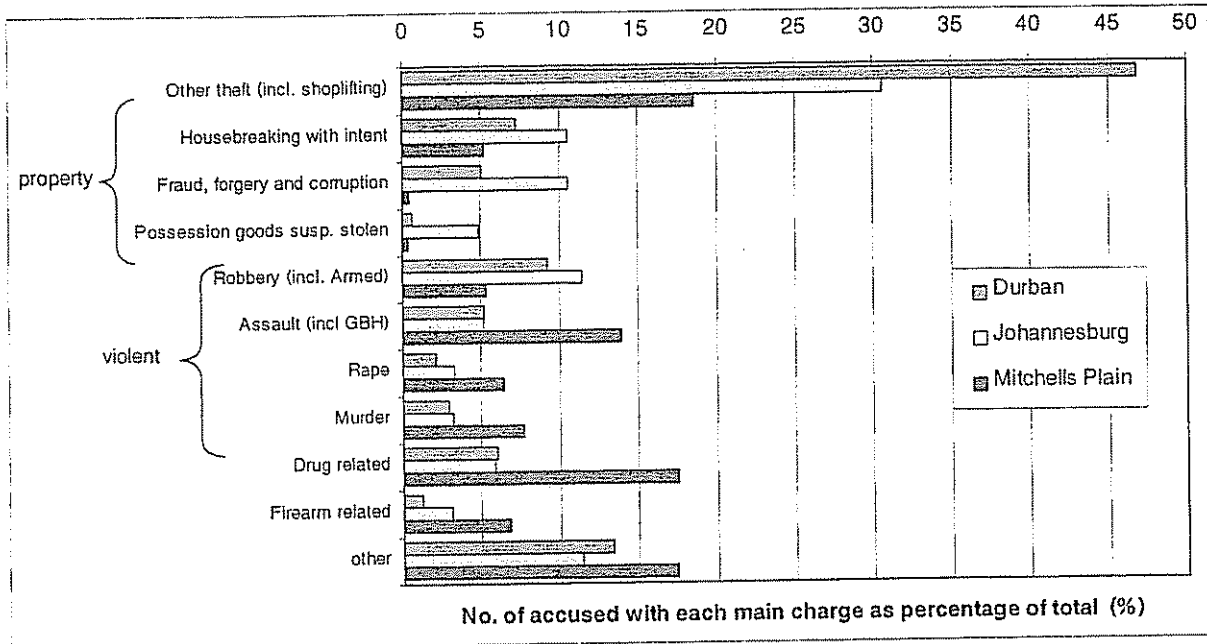


Figure 3

Combined top ten main charges in Durban, Johannesburg and Mitchells Plain Magistrates courts. These are expressed as a percentage of the total number of accused persons for each court where the charge is known. These main charges include, where appropriate, attempts. The charges are grouped in the categories of violent, property-related, drug-related, and firearm-related crimes. Drug⁴⁷ and firearm⁴⁸ related charges and all other⁴⁹ charges were grouped together. A list of all main charges, their classification and the actual numbers are detailed in Table F1. Durban n=2982; Johannesburg n=1696; and Mitchells Plain n=2282.

Theft occurs more often than any other main charge, although it does not occur more than all other charges combined (See Figure 3 and Table F1). It is particularly dominant in Durban where it accounts for 47% of all cases before the court. The theft component of all charges in Johannesburg is also high, at 31%. In Mitchells Plain, it is 19%. Part of the high figure in Durban may be explained by the prevalence of "syndicate shoplifters"⁵⁰, although no data were available to support this.

⁴⁷ Dealing in prohibited substance, dealing in dagga, possession of dagga, possession of mandrax, possession of prohibited substance, dealing in cocaine, dealing in mandrax, possession of cocaine, dealing in Ecstasy and dealing in LSD

⁴⁸ Negligent loss of firearm, possession of ammunition, dealing in unlicensed firearms, firing firearm in municipal area, possession of unlicensed firearm and pointing a firearm at someone.

⁴⁹ Dealing in counterfeit money, trespassing (one case excluded for statistical reasons), unknown statutory reference, defeating the ends of justice, desertion, intimidation, dealing in uncut diamond, driving without a valid licence, possession of housebreaking implements, gambling, sodomy, public indecency, unauthorised borrowing, dealing in liquor, lending motor vehicle to unlicensed driver, maintenance - failure to pay, receiving stolen property, negligent driving, theft of and out of a motor vehicle, drunk driving, malicious damage to property, crimen injuria, escaping from lawful custody, culpable homicide and indecent assault.

⁵⁰ According to prosecutors, these criminals are well organised and steal repeatedly from shops on behalf of the "syndicate".

Robbery is the most common violent crime and second highest of all charges in both Durban (9%) and Johannesburg (11%). Robbery includes car hijacking but of the 195 people accused of robbery in Johannesburg, only 28 (14%) of these involved allegations of car hijacking. Murder and rape (including attempts) accounted for 3% or less each in Durban and Johannesburg. However, in Mitchells Plain murder (8%) and rape (7%) are more frequent than robbery (5%), the fourth highest crime in that court.

There is a high frequency of assault and assault GBH cases in Mitchells Plain. At 14%, this is the third highest main charge in this court and this proportion is almost three times more than that of the other two courts. Assault is the primary contributor to the Mitchells Plain court's large category of violent crime.

The relatively high level of drug related charges in Mitchells Plain was noted above. However, further analysis of this category reveals that most drug charges in Mitchells Plain were for the possession of dagga. Durban also had mostly dagga possession charges while this was not the case in Johannesburg. In Durban, 118 (65%) of the 181 drug-related charges were for dagga possession and in Mitchells Plain 237 (59%) of the 401 drug-related were for this offence. By contrast, only 10 (10%) of people in Johannesburg's 99 drug-related cases were accused of possessing dagga. If possession of dagga were excluded from the drugs category then Mitchells Plain would have 7%, Johannesburg 5% and Durban 2% drug-related charges. Note that the low number of appearances for possession of dagga in Johannesburg (Table F1) may be the result of police focus on crimes with a higher priority in the area. It may also reflect a form of *de facto* "diversion" away from prosecution of this crime by police and / or prosecutors in Johannesburg, although there is no other evidence of this.

Relationship between charges in court and incidence of crime

These court statistics do not necessarily represent the actual distribution of crime in these cities as there are many steps between the commission of an offence and the prosecution of the case in court. For example, rape is notoriously under-reported throughout South Africa. A low level of rape cases in court therefore does not necessarily mean that there is low prevalence of rape in society. Comparisons of crime rates between courts based on these data is also problematic because in a particular

area certain types of crime may be under-reported. Police may be more effective in investigating crime and apprehending suspects in other areas (a case can only come before the court once somebody has been arrested or summonsed). This may be further influenced by the existence of special police units in certain jurisdictions which focus on high priority crimes.

It was not possible to compare the court data to the published police statistics. The reason for this include the fact that the police and the courts operate in different geographic jurisdictions. This is particularly complex in Johannesburg where crimes reported to one police station may be referred to different courts, depending on the nature of the offence, the age of the accused and the time of day that the case goes to court for a bail application.

Bail decisions

Overall bail decisions

The bail decisions for all charges in Durban, Johannesburg and Mitchells Plain courts are set out in Figure 4.

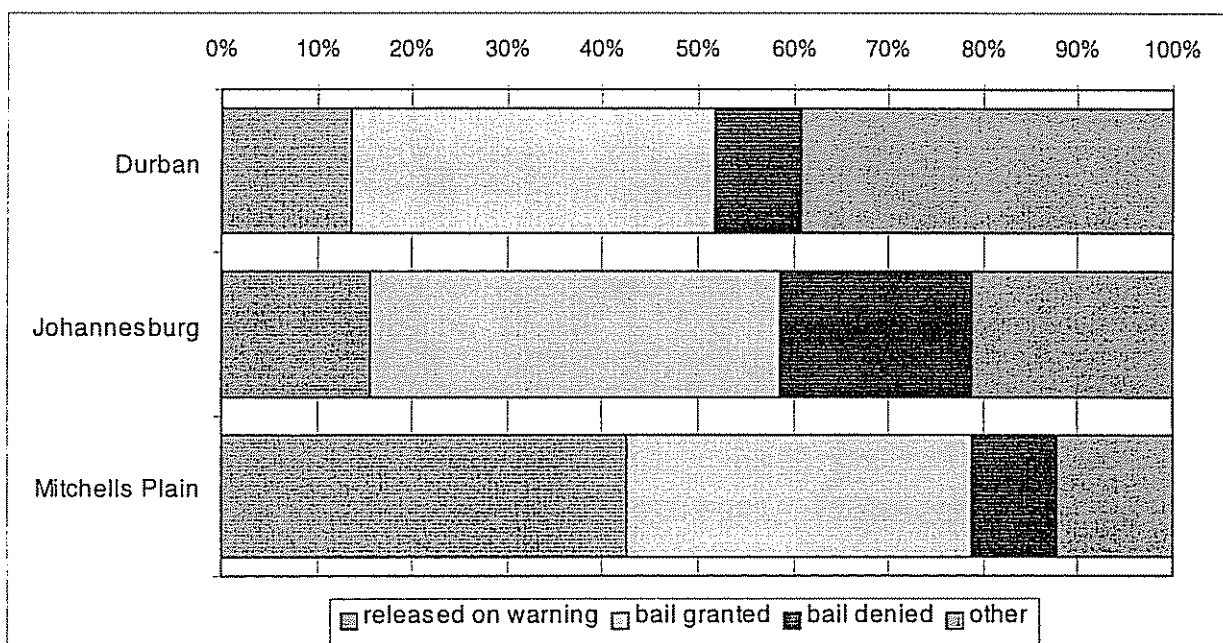


Figure 4 Bail decisions at first appearance for all charges. Each category is expressed as a percentage of all recorded decisions for Durban, Johannesburg and Mitchells Plain courts. Durban n = 2556; Johannesburg n = 1688; and Mitchells Plain n = 2220.

Released on warning or granted bail

Most people are either released on warning or granted bail at first appearance. The combined warning and bail granted decisions ranged from 52% of all decisions at first appearance for Durban court through 58% for Johannesburg court to 79% for Mitchells Plain court (Figure 4 and Table H1). A relatively low number of people are released on warning in Durban and Johannesburg compared with Mitchells Plain. Bail is granted in a fairly similar range of 36 to 43 % in the three courts. Note that many people who have been granted bail cannot afford to pay the amount set by the court and are therefore not released from custody.

Bail denied

Johannesburg has a relatively high proportion of bail denied compared with the other two courts. Johannesburg has more than double the bail denial rate (21 %) than Durban and Mitchells Plain (each 9%) (see Figure 4 and Table H1). The “bail denied” decisions in Mitchells Plain court includes postponed bail decisions where the person is remanded in custody pending the outcome of a formal bail application at the following appearance. Thus some of the cases where bail was “denied” in Mitchells Plain at first appearance may later be granted bail or be released on warning when the actual bail decision is made.

“Other” decisions

Durban had a very large number of decisions at first appearance grouped in the “other” category. In Durban 39% of decisions are grouped as “other” compared with 21% in Johannesburg and 12% in Mitchells Plain. These “other” decisions comprise postponed bail decisions, cases transferred to another court, warrant issued for failure to appear and finalised cases.

In serious cases the bail decision is postponed for a “formal bail application”. Bail may also be postponed for up to seven days where the court has insufficient information to make a decision or requires information supplied by the accused to be verified or where an unrepresented accused is waiting for a lawyer. A substantial number of bail decisions in Durban (19%) and Johannesburg (14%) were postponed. When prosecutors in Durban were asked to comment on this observation, they pointed to the

fact that the bail law requires magistrates to postpone bail decisions where they do not have sufficient information to make a decision. Since these data were recorded, the new PTS office began providing the courts with reports containing verified information about the accused person. It is expected that these PTS reports should help to reduce the number of cases postponed for this reason in Durban. Practically no postponed bail decisions were recorded in Mitchells Plain as these were recorded as "bail denied" by the court (see discussion above).

Durban has a significantly higher number of cases transferred to another court at first appearance than the other two courts. The rate for Durban is 8% compared with 1% in Mitchells Plain and 0% in Johannesburg. The reason for this is that, unlike the other two courts, a first appearance can occur in any of Durban's 31 courts. Often the work load of a particular court does not permit it to hear all the first appearances before it and the surplus then have to be transferred to another court. On the other hand, Johannesburg and Mitchells Plain both have "channelisation" courts that specialise in pre-trial remands and bail applications. Durban plans to introduce a similar system, called "reception courts".

The number of warrants issued for failure to appear at each of the courts is relatively low (see the discussion on failure to appear rate below).

Cases finalised at first appearance

Few cases are finalised at first appearance in South African courts. The rates for the three courts surveyed range from 7 to 10 %. Most of these are finalised only in a technical sense in that charges are temporarily withdrawn or the case is scrapped from the roll. In such cases, the accused person may be re-charged. Actual convictions and sentencing of people at first appearance is less than 2% in all three courts. This is contrasted with a finalisation (through sentencing) rate in New York City (NYC) of 60%. Like South Africa, most people in NYC are charged with less serious offences. In NYC, these accused people usually plead guilty in exchange for community service or an agreed lighter sentence.⁵¹

⁵¹Personal communication with Special Narcotics Prosecutor, New York. December 1997

Two important differences between the USA and South Africa should be taken into account when making this comparison. First, unlike the USA, South Africa does not have a plea bargaining system. In South Africa there are ethical and legal obstacles to plea bargaining and numerous issues would need to be considered before such a system was introduced. These include the fact that accused people are typically unrepresented in South Africa at first appearance (in Durban 86% of accused were unrepresented at first appearance - see Table 1, page 22).

The second important difference relating to case finalisation at first appearance is that in South Africa, criminal records are seldom available at first appearance. In NYC, the court will not hear the case unless there is a "rap sheet" for the accused. In NYC this is obtained electronically within hours of arrest whereas, until recently, it has taken six to eight weeks to manually obtain previous record information (recorded on a SAP 69 form) in South Africa. However, the BJA and DOJ, in conjunction with the South African Police Service (SAPS), have successfully introduced an electronic link to the Pre-trial Services office in the Mitchells Plain court and this will be extended to other PTS offices. The link provides this information within three hours of arrest and is expected to dramatically improve the quality of bail decisions. It may also allow more cases to be finalised at first appearance.

Bail decision by charge

The bail decisions for each of the combined top ten charges in Durban, Johannesburg and Mitchells Plain courts are provided in Figure 5. Also refer to Appendix H.

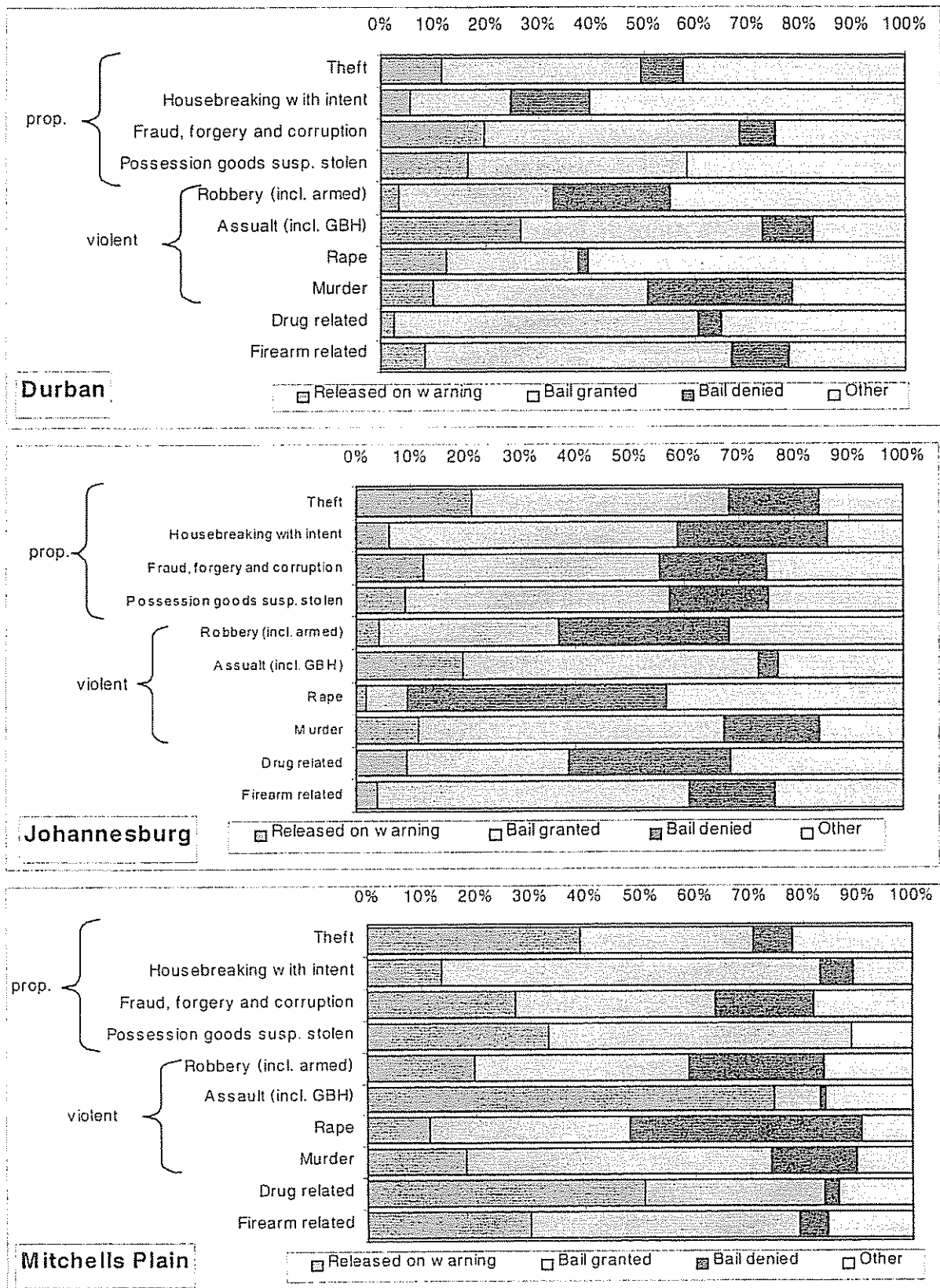


Figure 5 Bail decisions at first appearance by charge for Durban, Johannesburg and Mitchells Plain courts. Bail decisions are given for the overall top 10 charges and expressed as a percentage of recorded decisions for each charge. Property related (prop.) and violent crimes are grouped. Actual numbers are given in Tables H2 (a) - (c).

Bail decisions do not follow any detectable trend based on the crime classifications of “property” and “violent” in any of the three courts. Thus the fact that an alleged crime is a violent crime does not *per se* make the denial of bail more likely than if the charge is a property related offence. Similarly an accused is not less likely to be granted bail or released on warning for violent rather than property related crimes. For example, in all three courts, a greater proportion of people are released on warning for assault (including assault GBH) than all non-violent property related crimes. Hence other factors must influence the courts to a greater extent than the mere fact that a crime is violent or non-violent in nature.

Few people charged with theft were denied bail in each of the three courts, although as with other charges a large number of these cases were in the “other” category for Durban court. Mitchells Plain released 39% of people accused of theft on warning, this was much higher than the 12% in Durban and the 21% in Johannesburg. Most cases of theft are regarded as petty crimes and include many cases of shoplifting. This would account for the frequent use of warning in Johannesburg and Mitchells Plain. In Durban, however, shoplifting is regarded more seriously due to the prevalence of “syndicate shoplifters”. This may explain Durban court’s relative reluctance to release theft cases on warning.

Fewer people accused with ‘housebreaking with intent’ were released on warning across all three courts, although there was a tendency to grant bail rather than deny it, Johannesburg court denied bail in 27% of cases for this crime category, whilst Durban only denied bail in 15% of cases and Mitchells Plain in 6%.

People accused of fraud, forgery and corruption were also more likely to have bail granted than denied, although Johannesburg court denied bail in more cases (20%) than Durban (7%). Mitchells Plain also denied bail in a fairly high percentage of these cases (18%) whilst also granting warnings in 27% of cases.

No people accused of ‘possessing goods suspected to be stolen’ were denied bail in Durban and Mitchells Plain. In Mitchells Plain, 33% of accused were released on warning while in Durban warnings numbered 17%. Johannesburg warned 9% of

accused and granted bail to 48% whilst denying bail to 18% of accused. In general, Johannesburg appeared to be least likely to grant bail and most likely to deny bail for property related crimes.

For the violent crimes, Mitchells Plain released people on warning in more cases than the other two courts did. This was particularly noticeable for the crime of 'assault', including 'assault with intent to commit grievous bodily harm' (GBH), where 75% of the accused were released on warning. By contrast, 27% in Durban and only 20% in Johannesburg were released on warning for this charge. Bail was denied in very few cases for this crime across all three courts.

For robbery (including armed robbery), very few people were released on warning and a fairly high percentage of people were denied bail (22% in Durban; 31% in Johannesburg; and 25% in Mitchells Plain). Note that robbery includes car hijacking.

Bail was denied for rape more often than for any other charge. This was the highest category of bail denied for Mitchells Plain (43%) and Johannesburg (47%). Although bail denial was very low in Durban, over 60% of cases fell into the "other" category. Most of these cases were postponed for a formal bail application where bail would most likely be denied. In Johannesburg very few people accused of rape were released on warning (2%), whilst in Mitchells Plain fewer people were released on warning for rape than for any other charge in that court. In Durban, 13% of accused charged with rape were released on warning.

Although bail was denied in a number of cases, people accused of murder were generally released on warning or granted bail in all three courts (51% in Durban; 67% Johannesburg; and 74% in Mitchells Plain).

Drug related charges showed very different decisions by the three courts. In Mitchells Plain 51% of people accused in this category were released on warning and a further 33% were granted bail. This was probably because 59% of charges in this category were for the possession of dagga and therefore not considered too serious. In Durban, only 3% of people were released on warning but 58% were granted bail. The low use

of warning in Durban is despite the large proportion (65%) of possession of dagga charges among the drug related offences. In Johannesburg, where 90% of the charges related to stronger drugs, only 10% were released on warning and 30% were granted bail. Bail was denied in 30% of the cases.

Firearm related crimes tended to have bail granted, although bail was denied in a few instances in all three courts. As with many of the other charges, more people were released on warning from Mitchells Plain than from the other courts.

Bail decision and legal representation

Does having a lawyer affect the bail decision of the court? The relationship between the bail decisions at first appearance and representation of the accused is depicted in Figure 6. Also refer to Appendix I.

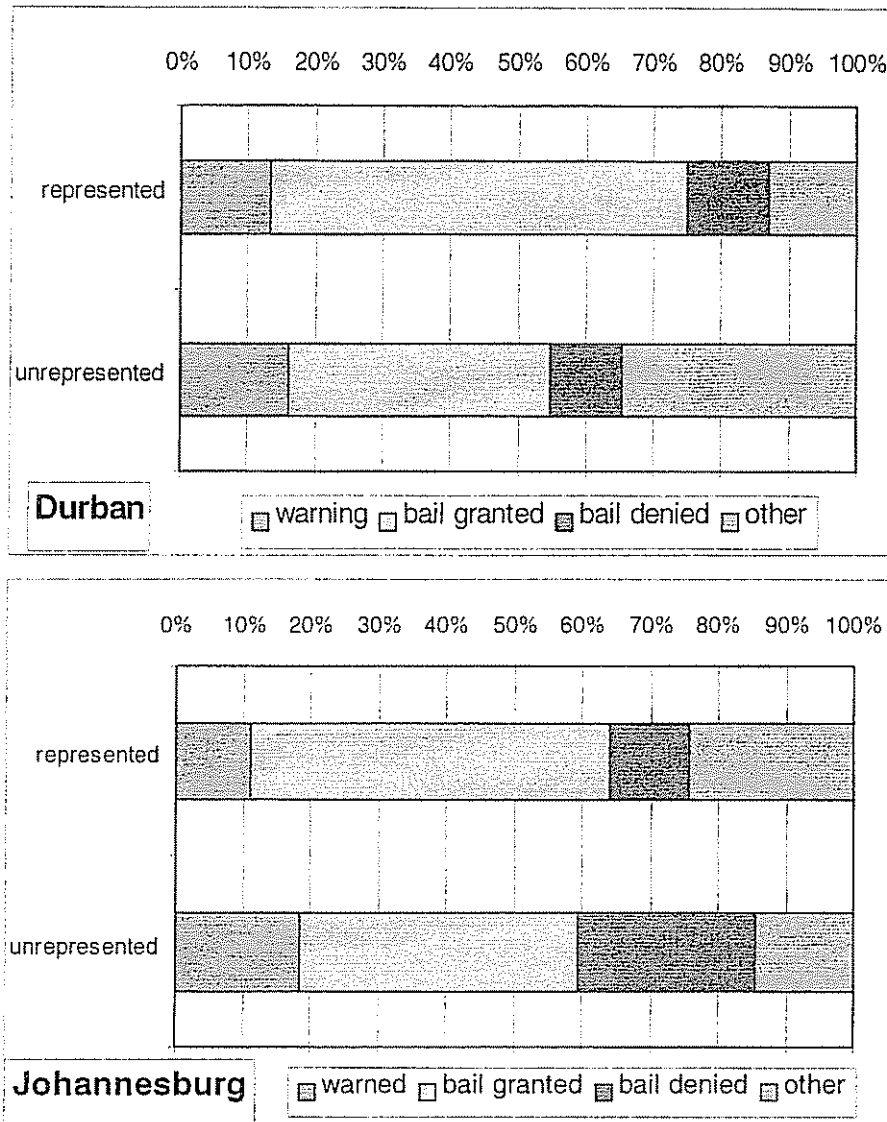


Figure 6 Bail decisions according to legal representation in Durban and Johannesburg Magistrates Court. Actual numbers are in Table 11. Durban represented n=316, unrepresented n=1702; and Johannesburg represented n=547, unrepresented n=1034

Represented accused have a greater chance of being granted bail. In Durban,⁵² 62% of represented accused were granted bail compared with 39% of unrepresented accused. Similarly, in Johannesburg, a greater proportion of represented accused (53%) were granted bail than unrepresented accused (41%) (see Figure 6). Part of the explanation for this is that a criminal attorney is generally much more able to argue the bail application than an accused person who does not know the law. However, other attributes of represented accused, may also have directly increased the likelihood of bail being granted by the court. For example, represented accused probably have a higher

⁵² Reliable representation data were not available for Mitchells Plain court.

rate of employment and more assets than unrepresented accused. (These are the things which enable them to afford their lawyers.) These attributes themselves may also have increased the chance of represented accused being granted bail.

Represented accused have less chance of being released on warning at first appearance. Thirteen percent of represented accused were released on warning in Durban compared with 16% of unrepresented accused. Represented accused in Johannesburg (11%) were also less likely to be released on warning than unrepresented accused (19%) (Figure 6). An accused who can afford to pay for a private attorney at their first appearance is unlikely to convince the court that they should be released on warning because they cannot afford to pay bail. This may explain why represented accused were less likely to be released on warning than unrepresented accused.

There was no significant difference in the denial of bail at first appearance between represented and unrepresented accused in Durban but represented accused in Johannesburg were far less likely to be denied bail than unrepresented accused. In Johannesburg, only 12% of represented accused were denied bail compared with 26% of unrepresented accused (see Figure 6). As with the decisions to grant bail, discussed above, this could either be as a result of the collective skill of the lawyers or due to some other attributes typical of represented accused.

Significantly fewer of Durban's represented accused had "other" decisions than unrepresented accused, while this was the opposite in Johannesburg. In Durban, 13% of represented accused had "other" decisions compared with 35% of unrepresented accused. In Johannesburg, 25% of represented accused had "other" decisions compared with 15% of unrepresented accused (Figure 6). Most of the "other" decisions were postponements of the bail decision or transfer of the case to another court. These patterns are consistent with the bail decisions made after hours in the two courts. See below for discussion on the link between after hour bail decisions and legal representation.

Bail decisions after hours

Before the 1997 bail law, accused were entitled to bring bail applications after ordinary court hours.⁵³ However, this right was removed by the 1997 amendment. One reason for the removal of this provision was that in some cases, investigating officers and prosecutors were unable to adequately prepare grounds for opposing bail immediately after arrest. It was therefore thought that dangerous accused were more likely to be mistakenly released on bail after hours. This section of the report examines how often bail applications were made after hours and compares bail decisions in these cases to those during ordinary court hours.

Frequency of after hour bail applications

The frequency of after hours bail applications in the three courts is set out in Table 3.

Table 3 First appearances after hours and during ordinary court hours. Numbers of accused persons are expressed as a percentage of recorded data for each court. Durban n=3033; Johannesburg n=1718; Mitchells Plain n=2253

	Durban	Johannesburg	Mitchells Plain
Percentage of accused after hours (%)	13.3	26.8	16.1
Percentage of accused during ordinary court hours (%)	86.7	73.3	83.9
total (%)	100	100	100

A significant proportion of all bail applications in all three courts used to take place after hours. In Johannesburg, 27% of all first appearances were after hours but this figure is distorted by the fact that all after hours bail applications from the entire district, including Soweto, were heard at the central court. However, first appearances during ordinary court hours are divided between the central court and its six branch courts. The "ordinary court hours" statistic in Table 3 thus represents only those first appearances in the central court and not those in the branch courts. Hence, the true proportion of after hours appearance in Johannesburg was probably closer to those for Mitchells Plain (16%) and Durban (13%) (Table 3).

⁵³ "Ordinary court hours" are defined in section 50(2) of Act 51 of 1977 to be from 09:00 until 16:00 on week days, excluding public holidays. The term "after hours", in this report, refers to any time outside ordinary court hours.

Legal representation after hours

Most people who had first appearance after hours were represented while only a small number of accused appearing for the first time during ordinary court hours had lawyers. In Durban, 56% of accused appearing after hours were legally represented, while only 6% of accused who had their first appearance during ordinary court hours were represented. In Johannesburg, 88% of accused applying for bail after hours were represented compared to 15% of accused appearing during ordinary court hours. The reason for the disproportionate representation of accused who had their first appearance after hours was not because people appearing after hours had special access to legal representation. Rather, it was probably because represented accused made greater use of, or had greater access to, after hours bail than unrepresented accused. Possible explanations for this include:

- 1) accused persons who can afford private lawyers tend to be more aware and assertive of their legal rights, including their (erstwhile) right to apply for after hours bail;
- 2) attorneys would have advised their clients of their right to apply for after hours bail and would have made the application on behalf of the accused; and
- 3) lawyers were in a better position to make the practical arrangements for the after hours hearings, on behalf of their clients, than unrepresented accused persons in police custody.

Bail decisions after hours

The bail decisions after hours and during ordinary court hours (normal hours) in the three courts are set out in Figure 7. Also refer to Tabel J1.

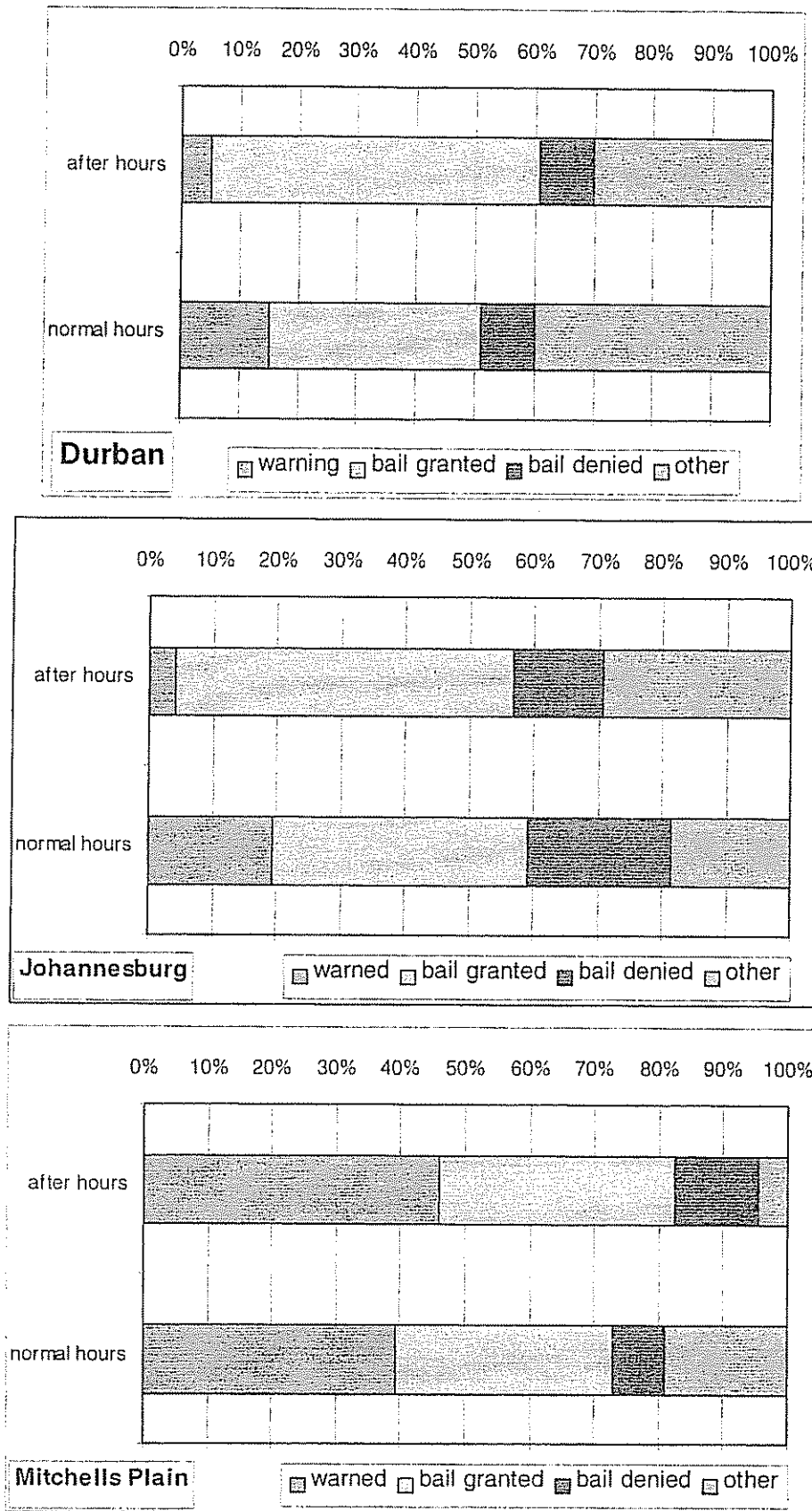


Figure 7 Bail decisions after hours and during ordinary court hours (normal hours). Data are expressed as percentages of the total number of accused

persons whose bail decision and court number were known. Actual figures are given in Table J1.⁵⁴

Within each court, bail decisions made after hours were generally similar to decisions made during ordinary court hours. Although there were some differences between ordinary and after hour decisions, there were more marked differences between the three courts.

In Durban, accused were equally likely to be denied bail after hours and during ordinary court hours (9%). Similar numbers of accused appearing during ordinary hours and after hours were released on warning and granted bail. The combined percentage of accused released on warning and granted bail after hours in Durban is 61% compared to 51% during ordinary court hours. The higher number of accused granted bail after hours should be seen in light of the fact that a disproportionate number of accused appearing after hours were legally represented. Legally represented accused persons in Durban were significantly more likely to be granted bail than unrepresented accused (refer to Figure 6, page 40).

A lower proportion of accused were denied bail after hours in Johannesburg compared with accused appearing during ordinary court hours. After hours, 14% were denied bail while 23% were denied bail during ordinary court hours. This result is consistent with the high level of legal representation after hours and lower rate of denial of bail to represented accused in Johannesburg (refer to Figure 7). Slightly fewer accused in Johannesburg were, in combination, released on warning and granted bail after hours. After hours, 57% of accused were either released on warning or granted bail while 59% of accused appearing during ordinary court hours were released on warning or granted bail.

In Mitchells Plain, accused were more likely to be denied bail at an after hours first appearance hearing. After hours, 13% were denied bail compared with 8% of those accused appearing during ordinary court hours. Similar numbers of accused appearing during ordinary hours and after hours were released on warning and granted bail. The

⁵⁴ Durban after hours n=388, normal hours n=2080; Johannesburg after hours n=437, normal hours n=1251; and Mitchells Plain after hours n=363, normal hours n=1890.

combined percentage of accused released on warning and granted bail after hours in Mitchells Plain is 82% compared to 73% during ordinary court hours.

None of the three courts appeared to be significantly more lenient in their after hour bail decisions. This was despite the high proportion of legally represented accused and the associated advantage that this appears to have for accused.

Bail amounts

First, this section examines the overall bail amounts in relation to accused persons income in the three different courts. These are discussed in relation to the incomes of the accused and their ability to pay the bail amount set by the court. Second, the bail amount set for the top ten main charges within each court are reported.

Bail amount per court

The mean bail amount and the range of 75% of values for the three courts are set out in Figure 8. Also refer to Appendix K.

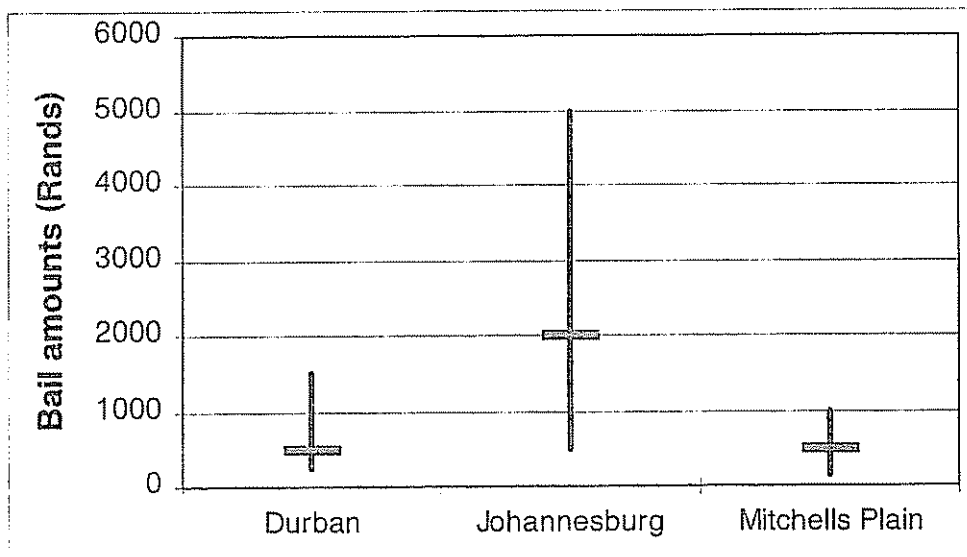


Figure 8 Median bail amount and 75% range for Durban, Johannesburg and Mitchells Plain Courts. The horizontal bar (—) indicates the median bail amount and the vertical bar (|) represents the range within which 75% of all bail amounts fall. Actual numbers are set out in Table K1. Durban n=960; Johannesburg n=779; and Mitchells Plain n=782.

Bail amounts in Johannesburg are significantly higher than Durban and Mitchells Plain. The median bail amount at Johannesburg Magistrates court (R2 000) is four times higher than at Durban and Mitchells Plain (each R500). Johannesburg is also more

likely than the other two courts to grant very high bail amounts. The range of 75% of bail decisions extends from R500 to R5000 whereas the upper limit of this 75% range is R1500 in Durban and only R1000 in Mitchells Plain. See Figure 8 and Table K1.

The law requires that the bail amount must be affordable for the accused person. Does Johannesburg Magistrates Court grant higher bail amounts because accused in Johannesburg earn more and can afford to pay higher bail amounts? To answer this question, the employment level and income of the accused population in the different courts and the relationship between the income and the bail granted to individual accused persons were measured.

Income of accused in each court

The employment levels and the median incomes of employed accused people are quite similar across the three courts. The employment level was lowest in Mitchells Plain (39%), but Durban (46%) and Johannesburg (53%) were not dramatically higher. The median income of employed accused persons was lowest in Durban (R1200 pm) but only 8% higher in Mitchells Plain (R1300 pm) and 26% higher in Johannesburg (R1517 pm). See Table 4.

Table 4 Employment level and median monthly income of accused people in each court. Durban n=250, Johannesburg n=553, and Mitchells Plain n=935.

	Durban	Johannesburg	Mitchells Plain
Percent employed (%)	46	53.3	39
Median income of employed people (Rands per month)	1200	1517	1300

While accused people in Johannesburg did have slightly higher employment rates and median incomes, these differences do not fully explain median bail amounts that were 400% greater than those found in Durban and Mitchells Plain courts. It would, therefore, appear that the Johannesburg magistrates court generally orders very high bail amounts without considering the overall employment level or income of the accused population who appear before it.

Bail amounts are not set (or should not be set) for an entire population of accused persons in a court. Rather, a bail amount is set for each accused person. The following section thus examines the relationship between the income of individual accused persons and the bail amounts awarded to them.

Bail amounts related to accused income

There appears to be no relationship whatsoever between the income of an accused person and the bail amount set for them. The income of each accused who was granted bail was plotted against their bail amount. The resultant graphs for Durban and Johannesburg showed an entirely random scatter (see Figure 9). Unfortunately, similar data for Mitchells Plain court were not available.

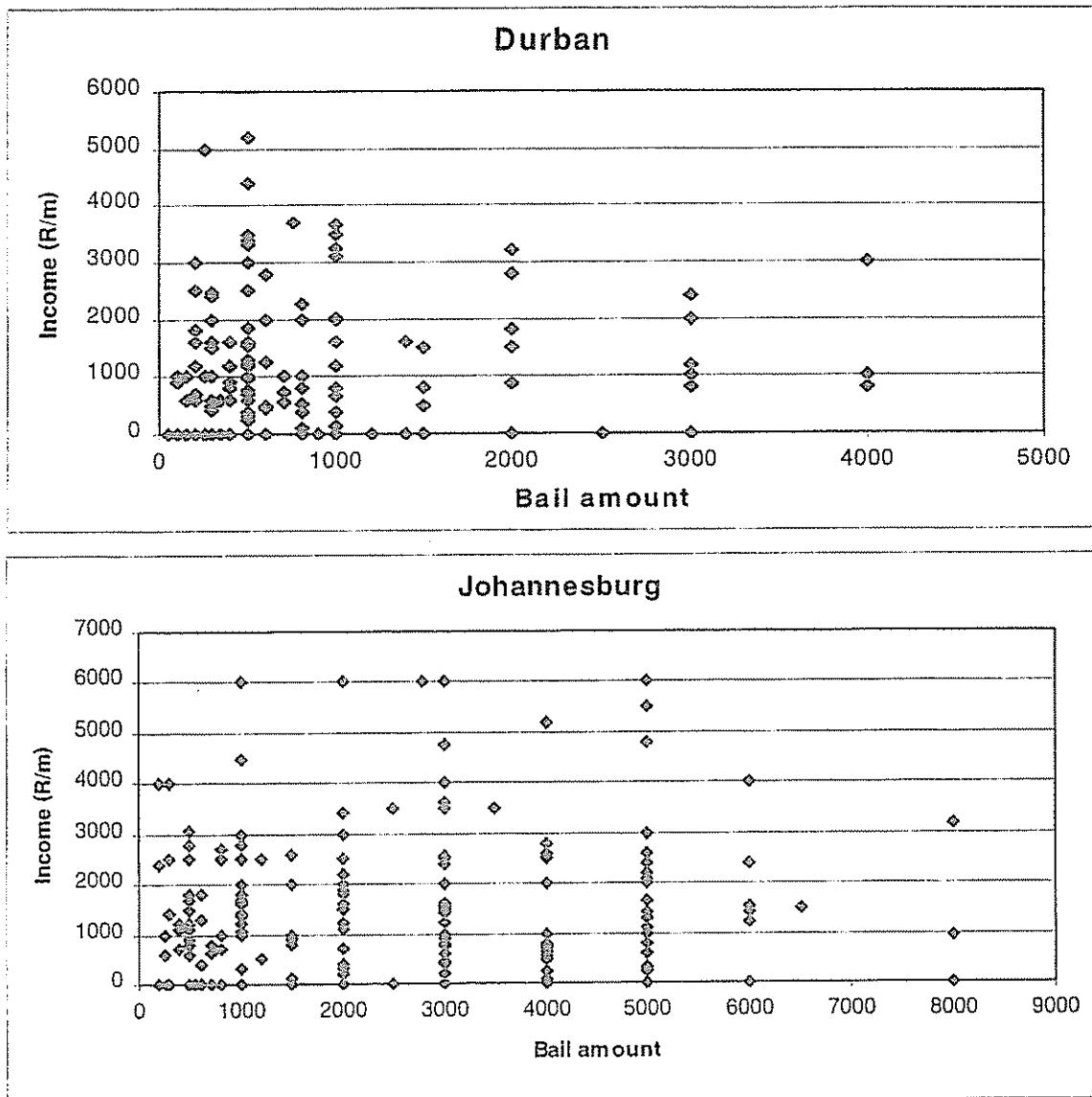


Figure 9 Relationship between income of accused persons and bail amounts. Each point represents one accused person who was granted bail and their position on the graph is a function of their income and their bail amount. Durban n=244 ; Johannesburg n=320.

This lack of correlation between the income of accused persons and their bail amounts may explain why bail amounts in Johannesburg court are much higher than the other two courts, despite the accused population in Johannesburg having only marginally higher employment and income levels. There appears to be an attitude among at least one magistrate in Johannesburg that high bail amounts will deter people from committing crime.⁵⁵ A similar notion is expressed in other courts where the “prevalence” of a certain crime in the area is used as a basis for setting higher bail amounts. This

⁵⁵ In an interview with the author, one magistrate stated that high bail amounts “will make somebody think twice” before committing a petty crime such as shoplifting. This, he said, was particularly the case if the accused person knew that they would have to spend time in prison awaiting trial because they could not afford to pay the bail amount.

may reflect confusion between a fine and bail. Bail seems to be used as anticipatory punishment of people who are not yet convicted rather than a mechanism of ensuring that they return to court for their trial. Some magistrates scoff at the suggestion that affordability should be taken into consideration when setting the bail amount.⁵⁶

The law is quite clear that the ability of the accused to pay is a factor that must be taken into account in setting the bail amount. In the Cape Supreme Court decision of *S v Budlender and Another*⁵⁷, the court held that in fixing the amount of bail, the court must consider the seriousness of the charge, the nature of the offence and the financial standing of the accused. The court further stated that the bail amount "must be within the reach of the accused." South Africa's current Chief Justice, Ismail Mahomed, wrote the landmark judgement on bail in the case of *S v Acheson*⁵⁸ on behalf of the Namibian High Court. The guidelines set out in this case subsequently provided the basis for many substantive provisions in the 1995 bail law. On the issue of *quantum* of bail, Mahomed held that the amount "must not be so high as to be beyond the resources of the accused ..."

Ability to pay bail

Given the fact that bail amounts were in no way correlated with the economic position of the accused, this study examined the number of people who could afford to pay their bail. The results are shown in Figure 10 (Refer also to Appendix L). Note that bail "paid" only includes accused persons who paid bail at court on the same day as their bail decision. People who could not pay immediately and were sent to prison were recorded as "not paid", even though some of them may have later raised the bail money.

⁵⁶ For example, the author, sitting in open court, heard an accused person complaining that he could not afford the bail amount requested by the prosecutor. Despite this plea, the magistrate set the bail requested by the state and dismissed the accused person's protest by asking him rhetorically, "Do you expect me to set bail to suit you?"

⁵⁷ 1973 (1) SA 264 (C) at 267 A-B and 269 F

⁵⁸ 1991 (2) SA 805 (NM) at 823

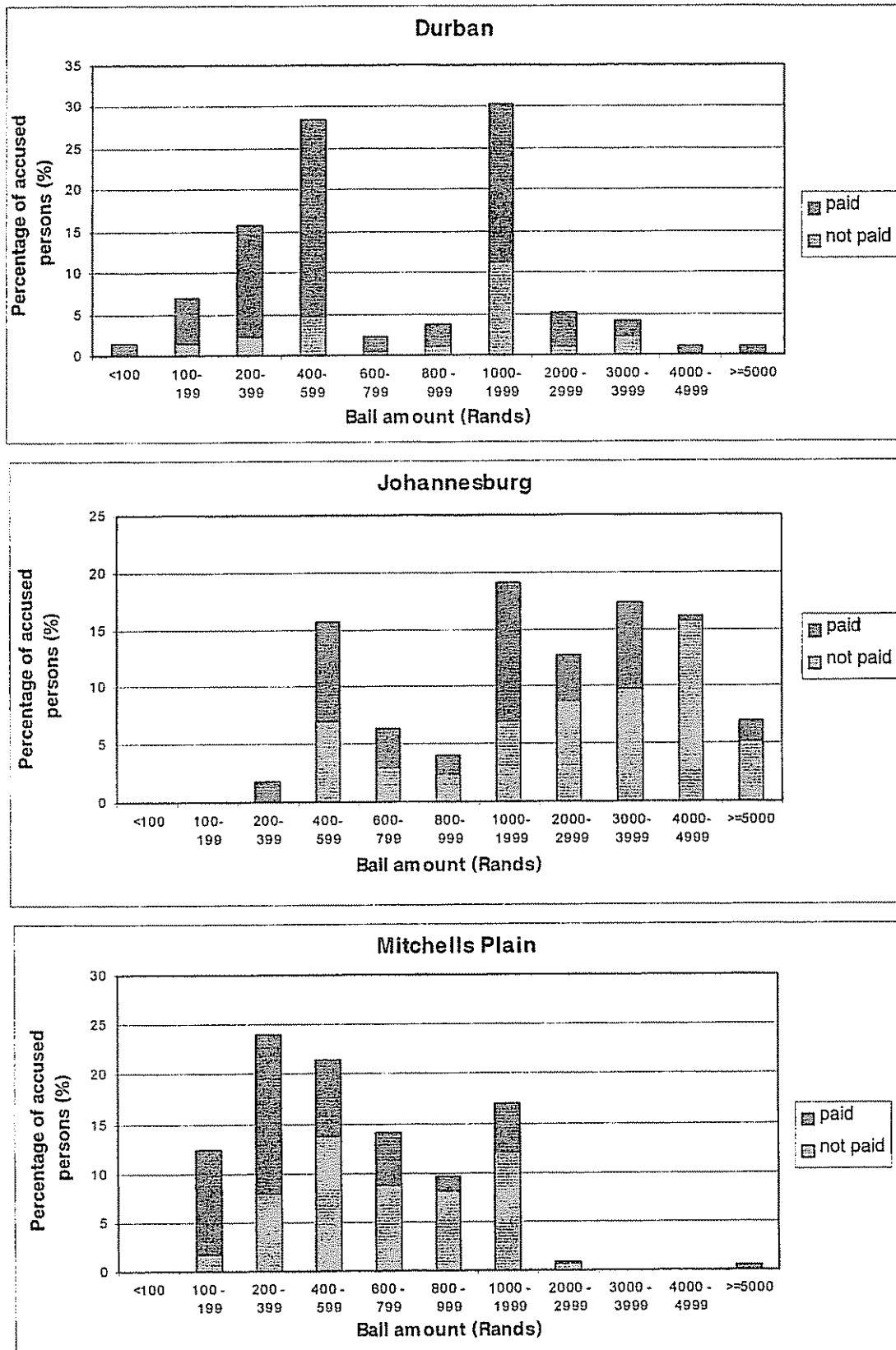


Figure 10 Bail amounts and the proportion of accused persons who paid bail on the day that bail was granted. Actual data are in Table L1. These are only the bail decisions made at first appearance. Durban n=185; Johannesburg n=175; and Mitchells Plain n=562.

The lack of correlation between affordability and bail amounts set by the Johannesburg court is reflected in the low level of bail payment. Only 45% of all accused could afford their bail in Johannesburg. As expected, the ability of accused persons to pay bail is dependant on the bail amount, with higher bail amounts affordable to a smaller proportion of people. In Johannesburg, a minority (25%) could pay bail amounts of R2000 or more but most (64%) could pay less than this amount. Despite few accused persons being able to afford bail amounts of R2000 or more, 53% were ordered to pay these amounts. See Figure 10.

Like Johannesburg, few accused could afford their bail in Mitchells Plain. This was despite Mitchells Plain having much lower bail amounts than Johannesburg. Only 47% of accused people in Mitchells Plain could afford their bail. The bail amount which the majority of accused persons could afford in Mitchells Plain was less than R400, lower than in Johannesburg. In Mitchells Plain, 32% of accused people could afford bail of R400 or more compared with 74% who could afford amounts less than R400 (Figure 10).

By contrast with Johannesburg and Mitchells Plain, most accused persons in Durban were able to afford their bail. Across all bail amounts, 76% of accused persons could pay bail rather than be sent to prison. There was no clear bail amount where only a minority could pay (Figure 10).

The ability of most accused people in Durban to pay their bail seems surprising, given the lack of correlation between accused incomes and their bail amounts demonstrated in Figure 9 (page 49). However, unlike Johannesburg, few accused were granted bail of R2000 or more. Perhaps with bail amounts less than R2000, accused persons are somehow able to find the money for bail despite the amount not matching their salary. The sample of accused persons with bail of R2000 or more is too small (15 people) to draw any conclusions about the ability of accused persons in Durban to pay such bail amounts. The results from Johannesburg show that when bail amounts are not correlated with the accused's income (Figure 9) then bail amounts more than R2000 are unaffordable for most accused (Figure 10). A lower affordability "cut-off" amount in

Mitchells Plain of R400 may be attributed to the lower employment level of accused persons in this court (Table 4).

Bail amounts per charge

The amount of bail granted for different offences for the three courts is given in Figure 11 (refer also refer to Appendix K).

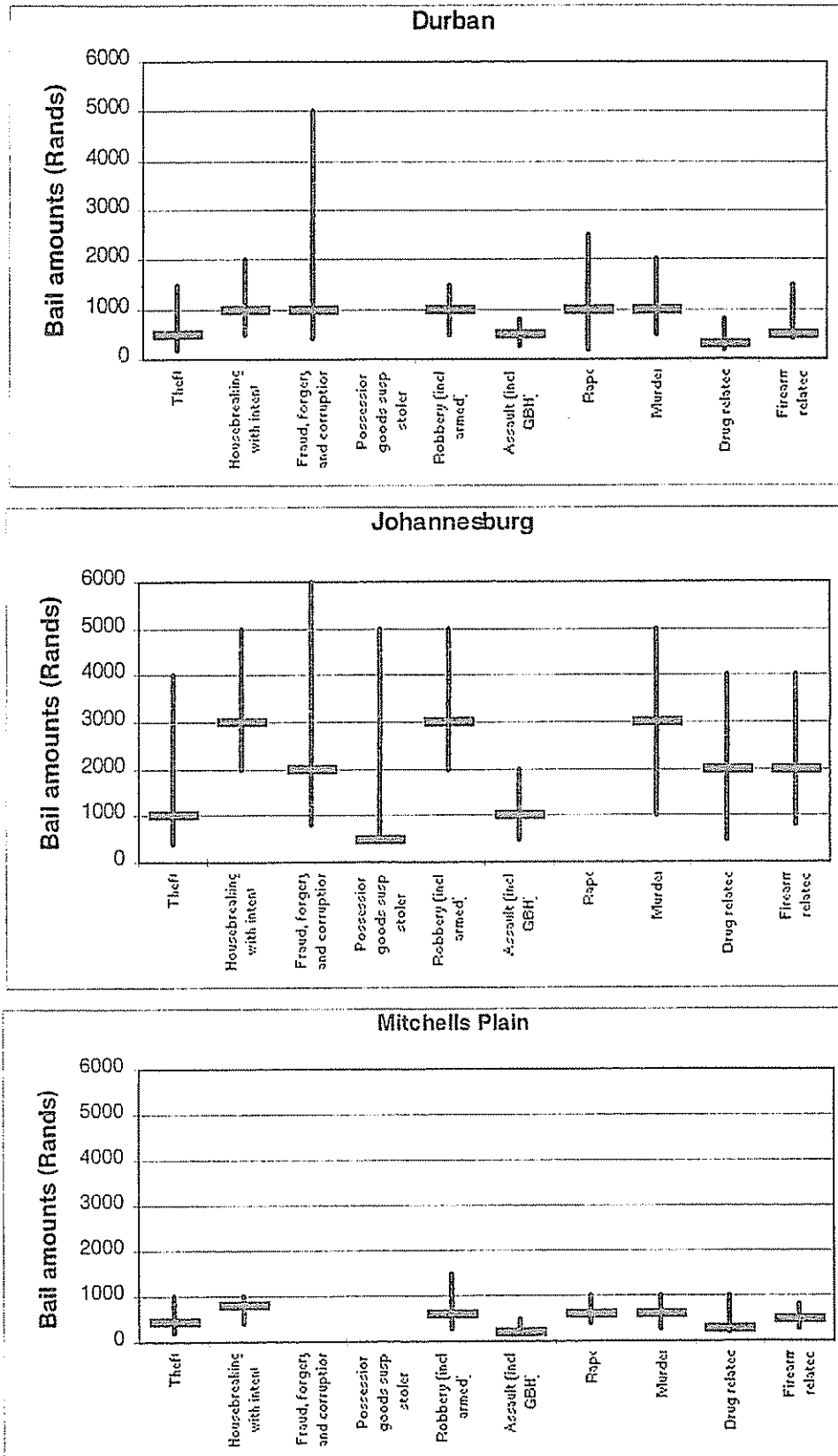


Figure 11 Median bail amount and 75% range for ten most frequent charges in Durban, Johannesburg and Mitchells Plain. The horizontal bar (—) indicates the median bail amount and the vertical bar (|) represents the range within which 75% of all bail amounts fall. Actual numbers are set out in Tables K2 (a) - (c).

In Durban and Mitchells Plain, bail granted for theft (medians of R500 and R450, respectively) was lower than that granted at Johannesburg court (R1000). The 75% range at Johannesburg court (R400 - R4000) was also much larger than for the other two courts. The amount of bail granted for theft is often related to the monetary value of what was allegedly stolen and thus there is usually a wide range in bail amounts for this charge.

Housebreaking with intent received higher bail amounts than theft. Again Johannesburg courts granted very high bail amounts (median R3000), three times higher than the other two courts. This was the highest median amount for all three courts and equalled only robbery and murder.

The highest median bail amount in Durban was for fraud, forgery and corruption (R1000) although there was a wide range of bail amounts awarded. The median in Johannesburg (R2000) was double that of Durban and also had a wide range of values. Although the median value in Johannesburg was high compared to Durban, other charges in Johannesburg had even higher medians than this particular crime. In Mitchells Plain there were fewer than 10 charges of this crime thus the data could not be interpreted in any meaningful way.

Bail amounts for the charge of possession of stolen goods are only shown for Johannesburg as fewer than 10 people were granted bail for this charge in Durban and Mitchells Plain. While the median value for this charge was the lowest out of all charges in Johannesburg (R1500), bail amounts were set in a wide range (R1500 up to R5000).

Robbery received relatively high median bail amounts in all three courts (R1000 in Durban; R3000 in Johannesburg and R600 in Mitchells Plain). This charge had the highest 75% range of all Mitchells Plain charges.

Assault (incl GBH) tended to have low median bail amounts in all three courts (R500 in Durban; R1000 in Johannesburg and R200 in Mitchells Plain). The 75% ranges were also small in all three courts.

Most people charged with rape were either denied bail or had their bail decision postponed (see Figure 11). Hence, fewer than 10 people charged with rape in Johannesburg were granted bail and thus this data is not presented. Of the people granted bail the median amount was R1000 in Durban and R600 in Mitchells Plain. The range of bail amounts was high in Durban compared to Mitchells Plain.

The median bail amounts granted to people accused of murder were some of the highest for all three courts (R1000 in Durban; R3000 in Johannesburg and R600 in Mitchells Plain). Johannesburg again granted much higher bail amounts than the other two courts and it also had the highest 75% range in bail amounts (R1000 to R5000) for this charge.

Drug related offences received lower bail amounts than crimes like rape, murder and housebreaking with intent in all three courts. As with all other charges, Johannesburg granted the highest bail amounts (median R2000) and also showed the widest 75% range in bail amounts (R500 - R4000). As the bail amount probably related to the nature of the drugs in question this range is understandable.

Firearm related crime received relatively high bail amounts in all courts, although they were not the highest bail amounts granted. The range of bail amounts was very low in Mitchells Plain (R300 - R800) but higher in Durban (R400 - R1500) and very high in Johannesburg (R800 - R4000).

Use of special conditions

Upon release of an accused, certain "automatic" conditions apply (such as the condition that the accused must return to court). In addition, a magistrate may impose "special" conditions of release, which are divided into two classes⁵⁹: the first is to ensure that the accused stands trial and therefore to make it difficult for them to abscond or flee (for example, the accused must hand in their passport or must report regularly to a police station). The second class of conditions are designed to prevent recurrence of or persistence in unlawfulness while awaiting trial (for example, a condition that the

⁵⁹ *S v Budlender and another* 1973 (1) SA 264 at 270 B - H.

accused may not communicate with state witnesses). The use of special conditions by the three courts is set out in Table 5.

Table 5 Use of special conditions by the Durban, Johannesburg and Mitchells Plain courts. These are expressed as a percentage of the number of accused persons who were released on warning or granted bail by the court.

	Durban	Johannesburg	Mitchells Plain
Special conditions ordered by court	2	3	5
Total released on warning or granted bail	1325	986	1747
Percent special conditions ordered by court (%)	0.15	0.3	0.29

Prior to the implementation of PTS, conditions were seldom used. In all three courts, special conditions were ordered in less than 0.3% of cases where accused were granted bail or released on warning (see Table 5).

Accused failure to appear rate

Overall accused failure to appear rate

Contrary to popular perception, few accused abscond while awaiting trial when they are out on bail or warning. Instead, most accused who are released from custody return to court for their next appearance. Only 7% of accused persons who were expected in Johannesburg and Mitchells Plain courts⁶⁰, and who were not in custody, failed to appear (Table 6). Accused are considered “not in custody” if they had previously been released on bail or warning and were on bail or warning immediately prior to their court appearance.⁶¹ This figure applies to all accused expected in court, both first appearances (new cases) and subsequent appearances (old cases).

⁶⁰ Similar data for Durban were not available.

⁶¹ This should not be confused with the decision of the court at the appearance. For example, an accused who was out on bail and is then sentenced to prison and taken into custody at their court appearance is counted as “not in custody” because such was their status *before* the hearing.

Table 6 Failure to appear (FTA) rate in Johannesburg and Mitchells Plain courts. FTA rate is calculated with warrants of arrest ordered for FTA as a percentage of accused not in custody.

Court	Total expected	Not in custody	Warrants of arrest ordered	FTA rate (%)
Johannesburg	9595	5787	400	6.91
Mitchells Plain	5090	4201	305	7.26

Some of these accused persons who failed to appear may have had a valid reason for their absence from court. The data presented here are based on the number of warrants **ordered** by the court. Often these warrants are held over for a certain period before issue to the police. This is done in order to give the accused person a chance to come to court and explain their failure to appear. If they have a valid excuse, such as a medical emergency, then the court would cancel the warrant.

Accused failure to appear at first appearance

As with the overall FTA rate, very few people fail to appear for their first appearances at court. Table 7 indicates that warrants of arrest for failure to appear were ordered for 4 to 8% of accused who were not in custody prior to their first appearance in court. Persons not in custody include those given bail by the police, warned to appear by the police or summoned to appear in court.

Table 7 Failure to appear for their first appearance in the Durban and Johannesburg courts. The number of warrants ordered by the court for the failure of the accused to appear in court for their first appearance are expressed as a percentage of the numbers of accused persons expected, excluding cases where actual appearance is unknown. These are broken down by detention status.

Detention status		Durban			Johannesburg		
		Total expected	Warrants issued	Percentage failure to appear (%)	Total Expected	Warrants issued	Percentage failure to appear (%)
Not in custody	Police warning	180	10	5.6	93	5	5.4
	Police bail	295	33	11.2	49	1	2
	Summons	92	3	3.3	57	1	1.8
Total		567	46	8.1	199	7	3.5

CONCLUSIONS

The following are the key conclusions reached in various sections of this report. These are tied together with some final comments.

Profile of accused

A typical accused person in South African Magistrates Courts is young, male, unemployed, or if employed, earns little. Probably as a result of this poor economic position, they are unlikely to have any legal representation at their first appearance in court. An insignificant number of people receive legal representation at state expense at the first appearance, although more accused do get representation if their case goes to trial.

Volume of accused

Johannesburg central Magistrates Court has fewer first appearances than Mitchells Plain and Durban court. This is partly because Johannesburg has six branch courts which divert most of the cases away from the central court. Durban court has two branch courts and Mitchells Plain has none. It is, however, still surprising that Johannesburg central Magistrates Court, which serves the city centre and handles specialised cases from most of the district, only has an average of 256 accused appearing for the first time per week, compared to Durban (448) and Mitchells Plain (271).

Detention status at first appearance

The vast majority of accused persons are arrested before their appearance in court. Only 3 to 4% of accused persons in Durban and Johannesburg were summonsed to court. Police warning and police bail is used far less than legally permitted and hence approximately 80 – 90% of accused are in custody at their first appearance.

Crime categories and charges

Most accused in all three courts are charged with non-violent crimes. Durban and Johannesburg courts have more non-violent, property related crimes than all other types of crime combined. Theft is the most frequent main charge in all three courts. The high

level of property related offences may be associated with the poor economic circumstances of the large numbers of unemployed accused. While most main charges in Mitchells Plain are non-violent, this court has the highest proportion of violent crimes out of the three courts.

Bail decisions

Most bail decisions (61% – 88%) are made at first appearance with a minority of decisions postponed to later appearances. However, a quarter of all cases in Durban are not decided at first appearances but rather postponed or transferred to another court. Between 50% and 80% of accused in all three courts are either released on warning or granted bail at first appearance. However, Mitchells Plain releases people on warning approximately three time more often than Durban and Johannesburg. Bail is denied twice as often in Johannesburg (21%) than Durban and Mitchells Plain (each 9%). These trends apply to the various charges within each court.

Within each court, charges are treated differently. For example, in all three courts rape is treated more strictly than any other charge. A person accused of rape is more likely to have bail denied or postponed for a formal bail application than any other charge. By contrast, somebody charged with assault (including assault GBH) is unlikely to be denied bail in any of the courts and has the most chance of being released on warning or granted bail.

Although there are differences in the way each court treats various charges, such differences are outweighed by the differences among the courts. Bail decisions therefore appear to be more dependent on the court making the decision than on the charge.

Legal Representation

The minority of accused who can afford a lawyer at their first appearances have more chance of being granted bail and less chance of being denied bail than unrepresented accused. It is possible that the decision of court is more directly influenced by employment, community ties, ownership of assets and other such attributes of represented accused than the arguments of their lawyers.

After hours bail

None of the three courts appeared to be significantly more lenient in their after hour bail decisions. This was despite the high proportion of legally represented accused and the associated advantage that this appears to have for accused. The differences in bail decisions among the three courts were greater than the difference between decisions made after hours and during ordinary hours within each court.

Bail amounts

Bail amounts in Johannesburg are significantly higher than Durban and Mitchells Plain. This is despite the income and employment levels of accused being quite similar across the three courts. In fact that there is no correlation between the income of an accused and the bail amount awarded by the court. Less than half of people in Johannesburg and Mitchells Plain were able to pay their bail at court and were sent to await trial in prison, although some may have paid later. In Durban, 76% of accused were able to pay bail. This may be because fewer high bail amounts were granted compared with Johannesburg. There appears to be little regard given to the ability of the accused to pay bail despite the requirement in law for the courts to do so. The award of an unfordable bail amount is tantamount to the denial of bail to accused where the interest of justice permits their release.

As with the bail decisions, there are some differences in the bail amounts for various charges within each court. However, most of these differences are statistically insignificant. The bail amounts therefore appear to be more dependent on the court making the decision than on the charge

Use of special conditions

Fewer than 0.5% of accused released on warning or bail in all three courts were ordered to comply with special conditions, such as reporting to a police station.

Failure to appear rate

Most accused who are released on warning or granted bail return to court. In Johannesburg and Mitchells Plain, 93% of accused who are not in custody appear in court when expected. The proportion of accused who deliberately abscond in order to

evade trial is likely to be less than 7% because many of the warrants ordered by the court for failure to appear are subsequently withdrawn because the accused has an explanation for their absence.

Final comments

The results contained in this report are a statistical summary of thousands of decisions made by individual magistrates about individual accused. In making their decisions, the courts had access to more information about the individual cases than is summarised here. In applying the law, the magistrates may have based some of their decisions on these other factors.

However, these results strongly indicate that some courts are generally stricter than others are in their bail decisions. In fact, an accused's bail decision and bail amount is more dependent on the court making the decision than on the charge against them or their employment status or income. The precedents within each court with regard to bail decisions may have more impact on the court decisions than the individual circumstances of the accused person.

Many accused are detained while awaiting trial because they cannot afford to pay the bail amount set by the courts. This contributes to costly prison overcrowding and often-unnecessary social upheaval for the accused person and their family. Pre-trial Services offers a better alternative to the money-based bail system with increased use of conditions and supervision of accused persons who are released. PTS also enables the courts to make better bail decisions by providing reports containing verified and relevant information about each accused person.

The data reported here provide some insight into the functioning of the Durban, Johannesburg central and Mitchells Plain magistrate's courts. This kind of information is important for informing court management, Department of Justice administration and policy formulation at all levels of government. This value will continue to grow as the BJA collects and analyses more information about how the South African courts operate.

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Ron Paschke

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About the Bureau of Justice Assistance

The Bureau of Justice Assistance (BJA) is a partnership between the South African Ministry of Justice and the New York based Vera Institute of Justice (<http://www.vera.org>). Michelle India Baird is the Director of the BJA. Ron Paschke is the Director of Research and Technology. Senior Project Planners are Lungisa Dyosi, Alethea Percival and Vanja Karth. Danny Michelle is a Project Planner and Virginia Francis is a Research Assistant.

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APPENDIXES

Appendix A: 1997 Bail law (section 60 of Act No 51 of 1977)

*Criminal Procedure Act, No. 51 of 1977*As amended by *Criminal Procedure Second Amendment Act 85 of 1997*

60

Bail application of accused in court

(1) (a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50 (6) and (7), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, unless the court finds that it is in the interests of justice that he or she be detained in custody.

(b) Subject to the provisions of section 50 (6) (b), if a court refers an accused to another court for trial or sentencing, the court referring the accused retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.

[Para. (b) substituted by s. 4 (a) of the Criminal Procedure Second Amendment Act 85 of 1997]

(c) If the question of the possible release of the accused on bail is not raised by the accused or the prosecutor, the court shall ascertain from the accused whether he or she wishes that question to be considered by the court.

(2) In bail proceedings the court-

(a) may postpone any such proceedings as contemplated in section 50 (6);

(b) may, in respect of matters that are not in dispute between the accused and the prosecutor, acquire in an informal manner the information that is needed for its decision or order regarding bail;

(c) may, in respect of matters that are in dispute between the accused and the prosecutor, require of the prosecutor or the accused, as the case may be, that evidence be adduced;

(d) shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (1) (a) and (b), require of the prosecutor to place on record the reasons for not opposing the bail application.

[Sub-s. (2) substituted by s. 4 (b) of the Criminal Procedure Second Amendment Act 85 of 1997]

(3) If the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the presiding officer shall order that such information or evidence be placed before the court.

(4) The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established:

(a) where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence; or

[Para. (a) substituted by s. 4 (c) of the Criminal Procedure Second Amendment Act 85 of 1997]

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system.

(e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.

[Para. (e) has been added by s. 4 (d) of the Criminal Procedure Second Amendment Act 85 of 1997]

(5) In considering whether the ground in subsection (4) (a) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the degree of violence towards others implicit in the charge against the accused;

(b) any threat of violence which the accused may have made to any person;

(c) any resentment the accused is alleged to harbour against any person;

(d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;

(e) any disposition of the accused to commit offences referred to in Schedule 1, as is evident from his or her past conduct;

(f) the prevalence of a particular type of offence;

(g) any evidence that the accused previously committed an offence referred to in Schedule 1 while released on bail; or

(h) any other factor which in the opinion of the court should be taken into account.

(6) In considering whether the ground in subsection (4) (b) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;

(b) the assets held by the accused and where such assets are situated;

(c) the means, and travel documents held by the accused, which may enable him or her to leave the country;

(d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;

(e) the question whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial;

(f) the nature and the gravity of the charge on which the accused is to be tried;

(g) the strength of the case against the accused and the incentive that he or she may in consequence have to attempt to evade his or her trial;

(h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;

(i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or

(j) any other factor which in the opinion of the court should be taken into account.

(7) In considering whether the ground in subsection (4) (c) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(b) whether the witnesses have already made statements and agreed to testify;

(c) whether the investigation against the accused has already been completed;

(d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

(e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

(f) whether the accused has access to evidentiary material which is to be presented at his or her trial;

(g) the ease with which evidentiary material could be concealed or destroyed; or

(h) any other factor which in the opinion of the court should be taken into account.

(8) In considering whether the ground in subsection (4) (d) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;

(b) whether the accused is in custody on another charge or whether the accused is on parole;

(c) any previous failure on the part of the accused to comply with bail conditions or any indication that he or she will not comply with any bail conditions; or

(d) any other factor which in the opinion of the court should be taken into account.

(8A) In considering whether the ground in subsection (4) (e) has been established, the court may, where applicable, take into account the following factors, namely-

(a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;

(b) whether the shock or outrage of the community might lead to public disorder if the accused is released;

(c) whether the safety of the accused might be jeopardized by his or her release;

(d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;

(e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system; or

(f) any other factor which in the opinion of the court should be taken into account.

[A sub-s. (8A) has been inserted by s. 4 (e) of the Criminal Procedure Second Amendment Act 85 of 1997]

(9) In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely-

(a) the period for which the accused has already been in custody since his or her arrest;

(b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;

(c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;

(d) any financial loss which the accused may suffer owing to his or her detention;

(e) any impediment to the preparation of the accused's defence or any delay in obtaining legal

representation which may be brought about by the detention of the accused;

(f) the state of health of the accused; or

(g) any other factor which in the opinion of the court should be taken into account.

(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice.

(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to-

(a) in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;

(b) in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.

(11A) (a) If the attorney-general intends charging any person with an offence referred to in Schedule 5 or 6 the attorney-general may, irrespective of what charge is noted on the charge sheet, at any time before such person pleads to the charge, issue a written confirmation to the effect that he or she intends to charge the accused with an offence referred to in Schedule 5 or 6.

(b) The written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court.

(c) Whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in Schedule 5 or 6, a written confirmation issued by an attorney-general under paragraph (a) shall, upon its mere production at such application or proceedings, be prima facie proof of the charge to be brought against that person.

(11B) (a) In bail proceedings the accused, or his or her legal adviser, is compelled to inform the court whether-

(i) the accused has previously been convicted of any offence; and

(ii) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges.

(b) Where the legal adviser of an accused on behalf of the accused submits the information contemplated in paragraph (a), whether in writing

or orally, the accused shall be required by the court to declare whether he or she confirms such information or not.

(c) The record of the bail proceedings, excluding the information in paragraph (a), shall form part of the record of the trial of the accused following upon such bail proceedings: Provided that if the accused elects to testify during the course of the bail proceedings the court must inform him or her of the fact that anything he or she says, may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings.

(d) An accused who wilfully-

(i) fails or refuses to comply with the provisions of paragraph (a); or

(ii) furnishes the court with false information required in terms of paragraph (a),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[Sub-s. (11) has been substituted by s. 1 (f) and sub-ss. (11A) and (11B) have been inserted by s. 4 (g) of the Criminal Procedure Second Amendment Act 85 of 1997]

(12) The court may make the release of an accused on bail subject to conditions which, in the court's opinion, are in the interests of justice.

(13) The court releasing an accused on bail in terms of this section, may order that the accused-

(a) deposit with the clerk of the court or the registrar of the court, as the case may be, or with a correctional official at the prison where the accused is in custody or with a police official at the place where the accused is in custody, the sum of money determined by the court in question; or

(b) shall furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that has been increased or reduced in terms of section 63 (1), in circumstances in which the amount would, had it been deposited, have been forfeited to the State.

(14) Notwithstanding any law to the contrary, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in or forms part of a police docket, including any information, record or document which is held by any police official charged with the investigation in question, unless the prosecutor otherwise directs: Provided that this subsection shall not be construed as denying an accused access to any information, record or document to which he or she may be entitled for purposes of his or her trial.

[Sub-s. (14) has been added by s. 4 (h) of the Criminal Procedure Second Amendment Act 85 of 1997]

[S. 60 amended by s. 2 of Act 56 of 1979 and by s. 2 of Act 64 of 1982 and substituted by s. 3 of Act 75 of 1995.]

Schedule 5

(Sections 58 and 60 (11) and (11A) and Schedule 6)

Schedule 6

Treason.	(Sections 50 (6), 58 and 60 (11) and (11A))
Murder.	Murder, when-
Attempted murder involving the infliction of grievous bodily harm.	(a) it was planned or premeditated;
Rape.	(b) the victim was-
Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), if it is alleged that-	(i) a law enforcement officer performing his or her functions as such, whether on duty or not, or a law enforcement officer who was killed by virtue of his or her holding such a position; or
(a) the value of the dependence-producing substance in question is more than R50 000,00; or	(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1;
(b) the value of the dependence-producing substance in question is more than R10 000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or	(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences:
(c) the offence was committed by any law enforcement officer.	(i) Rape; or
Any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament, or the possession of an automatic or semi-automatic firearm, explosives or armament.	(ii) robbery with aggravating circumstances; or
Any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act 75 of 1969), on account of being in possession of more than 1 000 rounds of ammunition intended for firing in an arm contemplated in section 39 (2) (a) (i) of that Act.	(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy.
Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft-	Rape-
(a) involving amounts of more than R500 000,00; or	(a) when committed-
(b) involving amounts of more than R100 000,00, if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or	(i) in circumstances where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice;
(c) if it is alleged that the offence was committed by any law enforcement officer-	(ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;
(i) involving amounts of more than R10 000,00; or	(iii) by a person who is charged with having committed two or more offences of rape; or
(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.	(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;
Indecent assault on a child under the age of 16 years.	(b) where the victim-
An offence referred to in Schedule 1-	(i) is a girl under the age of 16 years;
(a) and the accused has previously been convicted of an offence referred to in Schedule 1; or	(ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or
(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 1.	(iii) is a mentally ill woman as contemplated in section 1 of the Mental Health Act, 1973 (Act 18 of 1973);
	(c) involving the infliction of grievous bodily harm.

Robbery, involving-

Schedule 7

(a) the use by the accused or any co-perpetrators or participants of a firearm;

(Section 60 (6) (b))

(b) the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; or

Public violence.

Culpable homicide.

(c) the taking of a motor vehicle.

Bestiality.

Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.

Assault, involving the infliction of grievous bodily harm.

Arson.

An offence referred to in Schedule 5-

(a) and the accused has previously been convicted of an offence referred to in Schedule 5 or this Schedule; or

Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.

Malicious injury to property.

(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 5 or this Schedule.

Robbery, other than a robbery with aggravating circumstances, if the amount involved in the offence does not exceed R20 000,00.

Theft and any offence referred to in section 264 (1) (a), (b) and (c), if the amount involved in the offence exceeds R2 000,00 but does not exceed R20 000,00.

Any offence in terms of any law relating to the illicit possession of dependence-producing drugs.

Any offence relating to extortion, fraud, forgery or uttering if the amount of value involved in the offence does not exceed R20 000,00.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Appendix B: Notes on methodology

The following notes supplement the methodology section of this report. They provide more detail on the data samples used in the three sties.

Data samples

Durban data sample

The sample in Durban included all persons who had their first appearance over a total of eight weeks. This time was split between two weeks in November and December 1997 and six weeks in January and February 1998. The festive season in December and early January is generally associated with more alcohol related and social crime. Much of the court closes down as staff take their annual summer leave. This holiday period was therefore excluded because of the atypical profile of cases and the altered functioning of the court.

No after hours court data for the month of January 1998 was collected because the court book for this month could not be found. To compensate, data were collected over an extended period in the other months. The data collection dates for Durban are detailed in Table X. During these periods, data on 3 147 accused persons were collected.

A data collection audit revealed that data were collected in Durban for 89.0% of all court days during the study periods⁶². Data were not collected on the remaining days due to unavailability of court books. Data sheets were completed for 98.5% of accused persons who had their first appearance on the days when data were available⁶³. Data could not be collected for a small number of accused people because their charge sheets were not available to the researchers. There was therefore an estimated undercount in the Durban sample of 12.3%⁶⁴. The undercount was evenly spread across different courts and it is therefore not likely to significantly skew the sample. The relevance is restricted to the measurement of the volume of cases in Durban court and the estimate of the case volume was thus adjusted to compensate for the undercount.

Although Court 20 in Durban has criminal jurisdiction, this court was excluded from the study because of the civil nature of the cases (for example, tax evasion cases) heard in this court.

Johannesburg data sample

The Johannesburg sample consisted of all persons who had their first appearances from 18 August to 10 October 1997 in the Johannesburg central Magistrates Court. The sample comprised records on 1 718 accused people. (See Table X).

In Johannesburg, one after hours case comprising 282 accused persons was excluded from the sample. It was anomalous because of the very large number of accused persons. Inclusion of the case would have resulted in substantial skewing of the data particularly for after hour cases where only 442 other persons were recorded. The case was therefore omitted from all analysis⁶⁵.

⁶² There was a total of 1 213 court days during the study periods (court days during study periods multiplied by the number of courts included in the study). Of these, data were available for and collected for 1 069 days.

⁶³ A total of 2 974 data sheets were completed on the days when data were collected whereas the court books revealed that 3019 accused had their first appearances during the same period. Some juvenile cases were collected after the data collection audit was done, but it is unlikely that the thoroughness of the data collection was significantly different for these cases.

⁶⁴ This was calculated by multiplying the percentage of data sheets completed by the number of days for which data was collected (100% - (0.985 X 89.0%)).

⁶⁵ The case was recorded on 25 August 1997. The same attributes were recorded for each of the accused: the charge was trespassing, the appearances were after hours, all were in custody at first appearance, unrepresented and the bail decision was postponed to an unrecorded date. Age and sex of the accused were not recorded. The case numbers for the accused were 5/4697/97 to 5/4704/97.

A data collection audit was done in Johannesburg by comparing the cases collected in the sample against those recorded in the court book. An undercount in the Johannesburg sample of 15.9% was measured. Some charge sheets were unavailable to the data collectors where they had been kept by the magistrates and not returned to the clerks office in time. Such cases were evenly spread across the courts and are not expected to significantly affect the comparative analysis discussed in this report. The measure of case volume for the court has however been adjusted for the undercount.

Mitchells Plain data sample

Information about accused persons who appeared for the first time in Mitchells Plain Magistrates court was collected over nine weeks commencing 19 May 1997. In total, 2 323 accused persons appeared for the first time over this period. (See Table X).

An undercount in the Mitchells Plain sample of 5% is estimated and was due to unavailability of some court records. The measure of case volume was adjusted. This undercount is, however, not expected to significantly affect other results reported in this paper.

Table X Samples of first appearance data in Durban, Johannesburg and Mitchells Plain magistrates courts. The date ranges for when the sample cases were heard in court, the number of weeks covered by these periods and the number of first appearances included in these samples are indicated.

Court	study period(s)	total number of weeks	total number of accused persons
Durban (normal hours)	from 1997-11-24 to 1997-12-09; and from 1997-01-20 to 1997-02-27	8	3147
Durban (after hours)	from 1997-11-17 to 1997-12-24; and from 1998-02-10 to 1997-02-27	8	
Johannesburg (including after hours)	from 1997-08-18 to 1997-10-10	8	1 718
Mitchells Plain (including after hours)	from 1997-05-19 to 1997-07-17	9	2 323
TOTAL			7 188

Appendix C: Data collection form

The data was collected from the court books and charge sheets and recorded on this form.

Pretrial services
base line data
collection
Bail decisions
at first
appearance

Information to be filled only on page 1			
Court	name	Date of appearance	
	no	Magistrate	
	type	Prosecutor	

Page
of

Case no.	Surname of accused	age	sex	main charge	total no. of counts	date of arrest	detention status (in custody/ police bail/ warning/ summons)	warrant issued for failure to appear?	after hours application?	did state oppose bail?	Bail decision		representation (unrep/ pvtat/ LAB/ PD/ clinic)
											1 warning/ granted/ denied/ postponed/ other	2 amount of bail/ date postponed	

Appendix D: Definitions of the ten most frequent main charges

Unless otherwise stated the crimes listed below are common law offences. Definitions of the top ten main charges are given.

Source: Milton, J.R.L; 1982. *South African Criminal Law and Procedure*. Second edition, Juta and Co, Cape Town. Page numbers are as indicated.

Assault Assault consists in unlawfully and intentionally: (1) applying force to the person of another, or (2) inspiring a belief in that other that force is immediately to be applied to him (p467).

Assault with the intent to commit grievous bodily harm (GBH)

'Grievous bodily harm' implies that there must be an intent to do more than inflict the casual and comparatively insignificant and superficial injuries which ordinarily follow upon an assault. There must be proof to injure and to injure in a serious respect (p491).

Corruption The Prevention of Corruption Act 6 of 1958, Section 2 (a) penalises any person who, "being an agent, corruptly accepts or agrees to accept or attempts to obtain from any person, either for himself or for any other person, any gift or consideration as an inducement or reward for doing or omitting to do or for having done or omitted to do any act in relation to his principal's affairs or business, or for showing or refraining from showing favour or disfavour to any person in relation to his principal's affairs or business" (p233-4).

Forgery The crime of forgery consists in unlawfully making, with intent to defraud, a false document which causes actual prejudice or which is potentially prejudicial to another (p785).

Fraud Fraud consists in unlawfully making, with intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another (p755).

Housebreaking with intent

Housebreaking with intent to commit a crime consists in unlawfully breaking and entering premises with intent to commit that crime (p707).

Murder Murder consists in the unlawful and intentional killing of another person (p340).

Possession of goods suspected to be stolen

Section 36 of Act 62 of The General Law Amendment Act of 1955 states that "(a)ny person who is found in possession of any goods, other than stock or produce as defined in section 1 of the Stock Theft Act (57 of 1959)...in regard to which there is a reasonable suspicion that they have been stolen and is unable to give a satisfactory account of such possession, shall be guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of theft".

Rape Rape consists in intentional unlawful sexual intercourse with a woman without her consent (p435).

Robbery Robbery consists in the theft of property by intentionally using violence or threats of violence to induce submission to the taking of it from another (p680).

Theft Consists of an unlawful *contrectatio* with intent to steal of a thing capable of being stolen (602).

Appendix E: Age and gender profiles

Age and gender profiles for accused in the three courts are depicted in Figure E1.

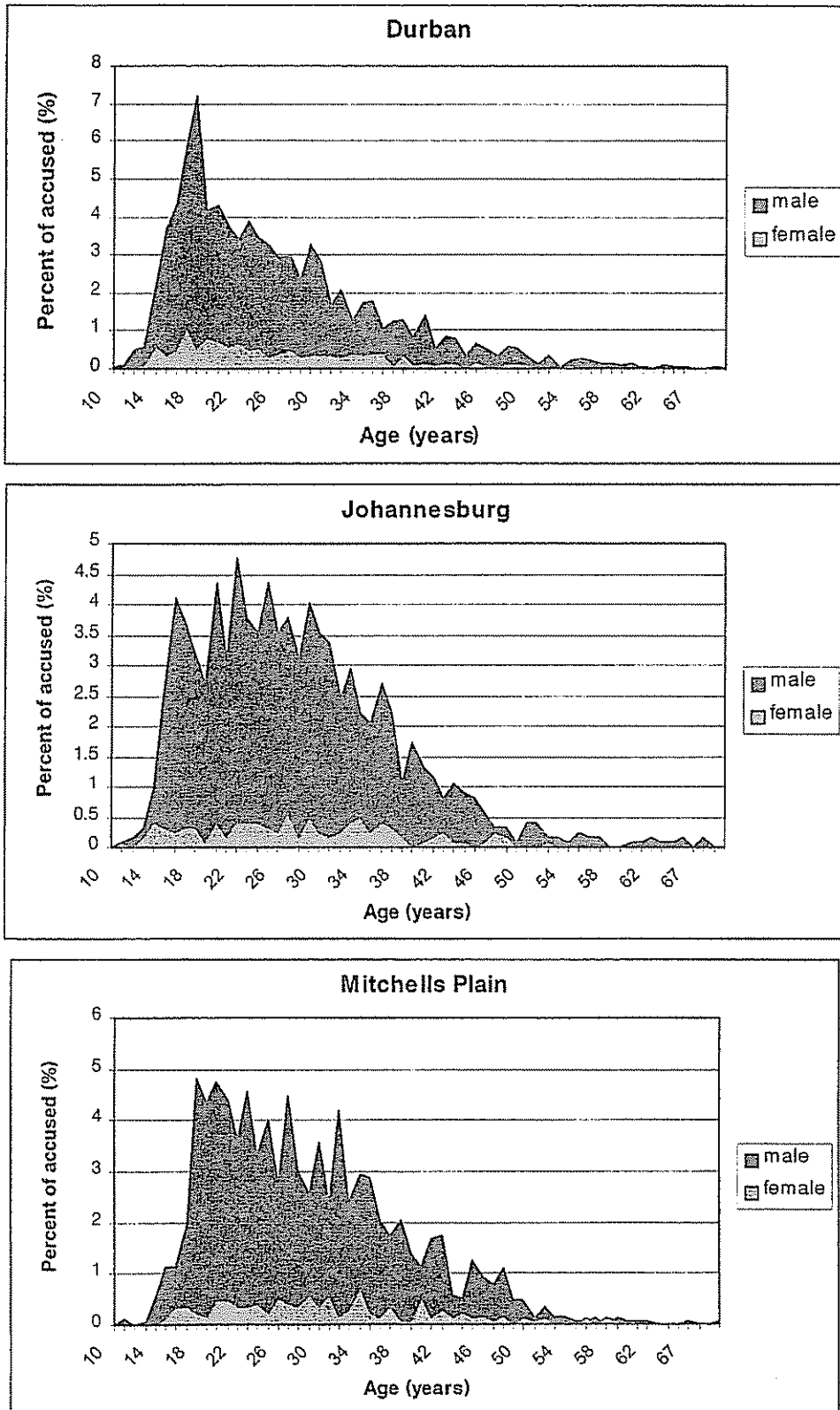


Figure E1 Age and gender profiles of accused appearing for the first time in Durban, Johannesburg and Mitchells Plain Magistrates Courts.

Appendix F: Main charges and police bail eligibility

Table F1 Number of persons accused of various main charges in the Durban, Johannesburg and Mitchells Plain Magistrates Courts. Unlike the data elsewhere in this document, attempts are listed separately in this table. The number of accused persons recorded during the study period and the percentage of recorded main charges are indicated for each court. "Violent", "property", "drug", "firearm" or "public order" classification of each charge is indicated. The subtotals for Johannesburg and Mitchells Plain Courts under each of these classifications are given at the end of the table. Charges where police bail is allowed are indicated with "✓", where police bail is not allowed are marked "✘" while uncertainty regarding eligibility is indicated with "?". The listed charges are as they were reported in the court records and this should be remembered when considering apparently anomalous data⁶⁶.

Charge	Durban		Johannesburg		Mitchells Plain		Violent	Property	Drug	Firearm	Public Order	Police bail allowed
	n	%	n	%	n	%						
Animal abuse	0	0	0	0.0	2	0.1					o	✓
Arson	0	0.0	0	0.0	5	0.2		o				✓
Arson - Attempted	0	0	0	0.0	1	0.0		o				✘
Assault	83	2.8	57	3.4	60	2.6	o					✓
Assault GBH	72	2.4	31	1.8	257	11.3	o					✘
Child abuse	0	0.0	0	0.0	3	0.1	o					✓
Child neglect	0	0.0	0	0.0	1	0.0	o					✓
Child theft	0	0.0	0	0.0	1	0.0	o					✘
Contempt of court	1	0.0	0	0.0	1	0.0					o	✓
Corruption	3	0.1	10	0.6	0	0.0					o	✓
Crimen Injuria	7	0.2	12	0.7	0	0.0					o	✓
Culpable homicide	3	0.1	6	0.4	12	0.5	o					✓
Dealing in cassettes	0	0.0	0	0.0	1	0.0		o				✓
Dealing in cocaine	0	0.0	8	0.5	0	0.0			o			✘
Dealing in counterfeit money	5	0.2	6	0.4	0	0.0		o				✘
Dealing in crack	0	0.0	0	0.0	1	0.0			o			✘
Dealing in dagga	14	0.5	12	0.7	12	0.5			o			✘
Dealing in Ecstasy	0	0.0	2	0.1	0	0.0			o			✘
Dealing in liquor	12	0.4	1	0.1	8	0.4		o				✓
Dealing in LSD	1	0	1	0.1	0	0.0			o			✘
Dealing in mandrax	2	0.1	8	0.5	8	0.4			o			✘
Dealing in marine produce	13	0.4									o	✓
Dealing in prohibited substance	5	0.2	31	1.8	24	1.1			o			✘
Dealing in uncut diamond	0	0.0	3	0.2	0	0		o				✘
Dealing in unlicensed firearms	0	0.0	1	0.1	0	0.0				o		✓
Defeating the ends of justice	1	0.0	4	0.2	4	0.2					o	✓
Desertion	0	0.0	4	0.2	0	0.0					o	✓
Drawing a firearm	2	0.1	0	0.0	14	0.6				o		✓
Drinking in a public place	1	0.0									o	✓
Driving without a valid license	1	0.0	3	0.2	4	0.2					o	✓

⁶⁶ For example, only three cases of "child abuse" are apparently reported for Mitchells Plain and none for Johannesburg. However, "child abuse" is not legally defined as a separate crime and is instead divided up into crimes such as assault, indecent assault, rape, etc. Most cases of "child abuse" would fall under one of those or other crimes. Thus the actual incidence is higher than it seems at first.

Charge	Durban		Johannesburg		Mitchells Plain		Violent	Property	Drug	Firearm	Public Order	Police bail allowed
	n	%	n	%	n	%						
Drunk driving	129	4.3	25	1.5	124	5.4					o	✓
Defeating the ends of justice	1	0.0	4	0.2	4	0.2					o	✓
Desertion	0	0.0	4	0.2	0	0.0					o	✓
Drawing a firearm	2	0.1	0	0.0	14	0.6				o		✓
Drinking in a public place	1	0.0									o	✓
Driving without a valid license	1	0.0	3	0.2	4	0.2					o	✓
Drunk driving	129	4.3	25	1.5	124	5.4					o	✓
Drunk in a public place	2	0.1	0	0.0	2	0.1					o	✓
Escaping before having been locked up	0	0.0	5	0.3	1	0.0					o	✓
Escaping from lawful custody	3	0.1	7	0.4	5	0.2					o	✓
Extortion	0	0.0	0	0.0	2	0.1					o	✓
Failure to pay wage	0	0.0	0	0.0	1	0.0					o	✓
Firing firearm in municipal area	1	0.0	3	0.2	4	0.2				o		✓
Forgery	2	0.1	12	0.7	0	0.0		o				?
Fraud	149	5.0	157	9.3	11	0.5		o				?
Gambling	4	0.1	2	0.1	1	0.0					o	✓
Handling a firearm while under the influence	0	0.0	0	0.0	1	0.0				o		✓
Housebreaking with intent	216	7.2	171	10.1	116	5.1		o				**
Housebreaking with intent - Attempted	1	0.0	8	0.5	3	0.1		o				**
Impersonating a police official	2	0.1	0	0.0	1	0.0	o				o	✓
Indecent assault	6	0.2	6	0.4	17	0.7						✓
Infringement of copyright	0	0.0	0	0.0	2	0.1		o				✓
Intimidation	5	0.2	4	0.2	5	0.2					o	**
Kidnapping	8	0.3	0	0.0	6	0.3	o					**
Lending motor vehicle to unlicensed driver	0	0.0	1	0.1	1	0					o	✓
Maintenance - failure to pay	0	0.0	1	0.1	4	0.2					o	✓
Malicious damage to property	46	1.5	19	1.1	49	2.1		o				✓
Murder	44	1.5	21	1.2	95	4.2	o					**
Murder - Attempted	44	1.5	34	2.0	82	3.6	o					**
Neglecting to store firearm in a safe place	2	0.1	0	0.0	3	0.1				o		✓
Negligent driving	45	1.5	35	2.1	49	2.1					o	✓
Negligent handling of a firearm	1	0.0	0	0.0	1	0.0				o		✓
Negligent loss of firearm	4	0.1	1	0.1	3	0.1				o		✓
Perjury	0	0.0	0	0.0	3	0.1					o	✓
Pointing a firearm at someone	9	0.3	11	0.6	7	0.3				o		✓
Possession of ammunition	6	0.2	1	0.1	2	0.1				o		✓
Possession of cocaine	11	0.4	8	0.5	0	0			o			**
Possession of dagga	118	4.0	10	0.6	237	10.4			o			**
Possession of dangerous weapon	3	0.1	0	0.0	5	0.2					o	✓
Possession of explosive material	0	0.0	0	0.0	1	0.0					o	✓
Possession of false bank notes	3	0.1									o	✓

Charge	Durban		Johannesburg		Mitchells Plain		Violent	Property	Drug	Firearm	Public Order	Police bail allowed
	n	%	n	%	n	%						
Possession of goods suspected to be stolen	18	0.6	83	4.9	9	0.4		o				✓
Possession of unworked metal	0	0.0	0	0.0	2	0.1		o				✘
Preventing police from carrying out their duties	7	0.2	0	0.0	2	0.1					o	✓
Public indecency	0	0.0	1	0.1	1	0.0					o	✓
Public nuisance	12	0.4									o	✓
Rape	63	2.1	54	3.2	132	5.8	o					✘
Rape - Attempted	1	0.0	2	0.1	16	0.7	o					✘
Receiving stolen property	0	0.0	1	0.1	0	0.0		o				✘
Resisting arrest	3	0.1	0	0.0	8	0.4					o	✓
Robbery	260	8.7	183	10.8	99	4.3	o					✘
Robbery - Attempted	5	0.2	4	0.2	10	0.4	o					✘
Robbery with aggravating circumstances	0	0.0	0	0.0	1	0	o					✘
Robbery, armed	11	0.4	8	0.5	11	0.5	o					✘
Robbery, armed - Attempted	0	0.0	0	0.0	1	0.0	o					✘
Sexual offences with children under age	0	0.0	0	0.0	2	0.1	o					✓
Sodomy	2	0.1	1	0.1	1	0.0					o	✓
Theft	1389	46.6	498	29.4	417	18.3		o				?
Theft - Attempted	6	0.2	22	1.3	8	0.4		o				?
Theft of a motor vehicle	7	0.2	21	1.2	16	0.7		o				✘
Theft of a motor vehicle - Attempted	0	0	3	0.2	1	0		o				✘
Theft out of motor vehicle	1	0.0	8	0.5	9	0.4		o				?
Trespassing	8	0.3	6	0.4	33	1.4					o	✓
Unauthorised borrowing	2	0.1	1	0.1	1	0		o				✓
TOTAL	2982	100.0	1696	100	2282	100						
Crime classifications	<i>Violent</i>	600	20.1	406	23.9	806	35.3	o				
	<i>Property</i>	1854	62.2	1014	59.8	806	28.9		o			
	<i>Drug</i>	181	6.1	99	5.8	401	17.6			o		
	<i>Firearm</i>	40	1.3	53	3.1	155	6.8				o	
	<i>Public Order</i>	307	10.3	124	7.3	261	11.4					o
TOTAL	2982	100	1696	100	2282	100						
Police bail allowed (charges marked "✓")	512	-	346	-	581	-						✓
Police bail not allowed (charges marked "✘")	923	-	653	-	1257	-						✘
Police bail eligibility known (charges marked "✘" + charges marked "✓")	1435	-	999	-	1838	-						✘ + ✓
Police bail eligibility unknown (charges marked "?") ^a	1547	-	697	-	444	-						?
TOTAL	2982	-	1696	-	2282	-						✘ + ✓ + ?
Police bail allowed as % of known police bail eligibility	-	35.7	-	34.6	-	31.6						✓ ÷ (✘ + ✓) X100

Note:
a Police bail cannot be granted for **theft, fraud, forgery or uttering** where the amount involved is more than R200. The court records, however, do not indicate the amount involved and thus it was not possible to assess police bail eligibility in these cases. The percentage eligibility for police bail was therefore calculated by excluding those charges marked "?".

Appendix G: Top ten main charges per court

Table G1 Top ten main charges per court for Durban, Johannesburg and Mitchells Plain courts. The prevalence of each charge is expressed as a percentage of all recorded charges. Attempts to commit the offence, where appropriate, are included. A list of all main charges and the actual numbers are detailed in Table A1. Durban n=2982; Johannesburg n=1696; and Mitchells Plain n=2282.

#	Durban		Johannesburg		Mitchells Plain	
	Charge	%	Charge	%	Charge	%
1	Theft	47	Theft	30.7	Theft	18.6
2	Robbery (incl. armed)	8.9	Robbery (incl. armed)	11.5	Assault (incl. GBH)	13.9
3	Housebreaking with intent	7.3	Housebreaking with intent	10.6	Possession of Dagga	10.4
4	Fraud	5	Fraud	9.3	Murder	7.8
5	Drunk driving	4.3	Possession of goods suspected to be stolen	4.9	Rape	6.5
6	Possession of dagga	4	Assault (incl. GBH)	5.2	Drunk Driving	5.4
7	Murder	3	Rape	3.3	Possession of unlicensed firearm	5.3
8	Assault (incl. GBH)	5.2	Murder	3.2	Housebreaking with intent	5.2
9	Rape	2.1	Possession of unlicensed firearm	2.1	Robbery (incl. armed)	5.3
10	Possession of implements (housebreaking, car, etc.)	1.7	Negligent driving	2.1	Malicious Damage to Property	2.1
	All other charges	12	All other charges	17.2	All other charges	19.6
	Total	100	Total	100	Total	100

Appendix H: Bail decisions

Table H1 Bail decisions by court. Data are given for Durban, Johannesburg and Mitchells Plain courts and expressed as a percentage of all recorded decisions. "Released on warning" and "Other" are both categories of a number of decisions. Durban n = 2556; Johannesburg n = 1688; and Mitchells Plain n = 2220.

		Durban		Johannesburg		Mitchells Plain		
Released on warning	Warned	6.5	13.6	12	14.8	36.4	42.5	
	Police bail	6.9		2.8		0		
	In parents custody	0.2		0		6.1		
Bail granted		38.3		43.4		36		
Bail denied		9		20.7		9		
Other	Postponed	19.2	39.1	13.9	21.2	0	12.2	
	Transferred to other court	7.6		0		1.2		
	Warrant issued	2.8		0.3		3.2		
	Finalised	Sentenced		2.3		0.2		0.4
		Charges withdrawn		3.9		0.2		5.3
		Struck off the roll		3.3		6.6		2.1
	TOTAL			100		100		100

Table H2 Bail decisions at first appearance by charge for Durban, Johannesburg and Mitchells Plain. Bail decisions are given for the overall top 10 charges and expressed as a percentage of recorded decisions for each charge.

(a) Durban

Charge		Released on warning	Bail granted	Bail denied	Other	Total (%)	Total no. of accused
Property	Theft	11.7	37.9	8.2	42.3	100	1395
	Housebreaking with intent	5.8	18.8	15.2	60.1	100	217
	Fraud, forgery and corruption	19.7	48.6	7	24.6	100	154
	Possession of goods suspected to be stolen	16.7	41.7	0	41.7	100	18
Violent	Robbery (including armed)	3.6	29.3	22.2	44.9	100	276
	Assault (including GBH)	26.5	46.2	9.8	17.4	100	155
	Rape	12.5	25	2.1	60.4	100	64
	Murder	10.1	40.5	27.8	21.5	100	88
Drug related		2.5	58.1	4.4	35	100	181
Firearm related		8.3	58.3	11.1	22.2	100	37

(b) Johannesburg

Charge		Released on warning	Bail granted	Bail denied	Other	Total	Total no. of accused
Property	Theft	21.2	46.9	16.5	15.4	100	520
	Housebreaking with intent	6.1	52.5	27.4	14	100	179
	Fraud, forgery and corruption	12.3	43	19.6	25.1	100	179
	Possession of goods suspected to be stolen	9.1	48.1	18.2	24.7	100	83
Violent	Robbery (including armed)	4.1	32.8	31.3	31.8	100	195
	Assault (including GBH)	19.5	54	3.4	23	100	88
	Rape	1.9	7.5	47.2	43.4	100	56
	Murder	11.5	55.8	17.3	15.4	100	55
Drug related		9.5	29.5	29.5	31.6	100	99
Firearm related		3.9	56.9	15.7	23.5	100	53

(c) Mitchells Plain

Charge		Released on warning	Bail granted	Bail denied	Other	Total	Total no. of accused
Property	Theft	39	31.7	7.3	22	100	425
	Housebreaking with intent	13.4	69.7	5.9	10.9	100	119
	Fraud, forgery and corruption	27.3	36.4	18.2	18.2	100	11
	Possession of goods suspected to be stolen	33.3	55.6	0	11.1	100	9
Violent	Robbery (including armed)	19.7	39.3	24.6	16.4	100	121
	Assault (including GBH)	74.8	8.3	1	16	100	317
	Rape	11.5	36.5	42.6	9.5	100	148
	Murder	18.1	55.9	15.8	10.2	100	177
Drug related		50.7	33.1	2.6	13.6	100	401
Firearm related		29.9	49.4	5.2	15.6	100	155

Appendix I: Legal representation and bail decisions

Table I1 Bail decisions for legally represented accused compared with the bail decisions for unrepresented accused. Data are given for Durban and Johannesburg.

(a) Durban

	warning (%)	bail granted (%)	bail denied (%)	other (%)	total (%)	total (n)
represented	13.3	61.7	12	13	100	316
unrepresented	16.2	38.7	10.3	34.8	100	1702
total	15.8	42.3	10.6	31.4	100	2018

(b) Johannesburg

	warning (%)	bail granted (%)	bail denied (%)	other (%)	total (%)	total (n)
represented	11.2	52.8	11.7	24.3	100	1034
unrepresented	18.5	41	25.9	14.6	100	547
total	15.9	45.1	21	18	100	1581

Appendix J: After hours bail and bail decisions

Table J Bail decisions after hours compared with bail decision made during normal court hours.

(a) Durban

	warning (%)	bail granted (%)	bail denied (%)	other (%)	total (%)	total (n)
after hours	4.9	55.7	9.3	30.3	100	388
normal hours	15.2	35.8	9	40	100	2080
total	13.6	38.9	9.1	38.4	100	2468

(b) Johannesburg

	warning (%)	bail granted (%)	bail denied (%)	other (%)	total (%)	total (n)
after hours	4.1	52.6	14	29.3	100	437
normal hours	19.4	39.6	22.5	18.5	100	1251
total	15.5	43	20.3	21.3	100	1688

(c) Mitchells Plain

	warning (%)	bail granted (%)	bail denied (%)	other (%)	total (%)	total (n)
after hours	46	36.4	12.9	4.7	100	363
normal hours	39.2	33.8	8	19	100	1890
total	40.3	34.2	8.8	16.7	100	2253

Appendix K: Bail amounts

Table K1 Bail amounts by court. Total number of accused persons granted bail for the amounts indicated for all charges in each court. **Bold** indicates the range of accused persons who comprise 75% of bail amounts. The values occupying the median position are also underlined.

Bail amount	Durban	Jonannesburg	Mitchells Plain
50	3		
100	20	2	79
150	10		1
200	83	11	95
250	14	2	5
300	121	26	122
350	7		
400	65	8	50
450	1	1	5
480			1
500	213	113	119
550	1		
600	31	16	97
700	15	12	3
750	6		3
800	53	29	71
900	2		
1000	154	113	111
1200	4	3	
1250	1		
1500	54	31	10
2000	40	67	6
2500	5	12	
3000	21	134	
3500	2	1	
4000	3	57	
5000	19	96	2
6000	2	5	
7000	2	4	
7500	1		
8000	2	6	2
10000	2	27	
15000	1	3	
20000	2		
Grand Total	960	779	782

Table K2 Bail amounts by charge for Durban, Johannesburg and Mitchells Plain courts. Total number of accused persons granted bail for the amounts indicated for all charges in each court. **Bold** indicates the range of accused persons who comprise 75% of bail amounts. The values occupying the median position are also underlined.

(a) Durban

	Theft	Housebreaking with intent	Fraud, forgery and corruption	Possession of goods suspected to be stolen	robbery incl armed	Assault incl gbh	Rape	Murder	drugs	firearm
50	2								1	
100	13					1			5	
150	8									
200	33		1			4	2		22	
250	5		1			3			4	
300	71	2	1	<u>3</u>		12			<u>15</u>	1
350	2			<u>2</u>		1				1
400	36	1	5			2			8	2
450	1									
500	84	3	10		9	<u>23</u>	1	8	13	7
550	1									
600	14	1	1			3			4	
700	7		1		3	2			1	
750	3				2	1				
800	25		3		5	3			8	1
900	2									
1000	52	<u>14</u>	<u>17</u>		<u>11</u>	3	<u>6</u>	<u>8</u>	5	3
1200	2		1							1
1250										1
1500	22	2	3		6	3		11	2	2
2000	17	2	3		5			2		1
2500					1		2	1	1	
3000	7	1	6		1				2	
3500	2									
4000			3							
5000	5		6		4			2	1	
6000			1				1			
7000	1									
7500										
8000	1		1							
10000	1									
15000					1					
20000			2							
Grand Total	417	26	66	5	48	61	12	32	92	20

(b) Johannesburg

	Theft	Housebreaking with intent	Fraud, forgery and corruption	Possession of goods suspected to be stolen	robbery incl armed	Assault incl gbh	Rape	Murder	drugs	firearm
100	2									
200	10									
250	1		1							
300	20		1	1		2			1	
400	8									
450	1									
500	64		3	4		12		1	5	2
600	13									
700	9					1				1
800	9		5	2		8				1
1000	27	10	20	12	3	14		3	5	3
1200	2									
1500	11	1	5	3	3	3			1	1
2000	11	10	14	2	8	4	1	4	4	6
2500	8		2					2		
3000	33	31	7	8	21	1	3	10	3	9
3500									1	
4000	14	13	3	3	6	3	2	3	4	2
5000	26	25	5	3	19		1	4	2	2
6000	1	2	2							
7000		2	1					1		
8000	1		2	1						
10000	5		4	3	4			1	1	
15000			2							
Grand Total	276	94	77	42	64	48	7	29	27	27

(c) Mitchells Plain

	theft	Housebreaking with intent to steal & theft	Fraud	Possession of Goods Suspected to be Stolen	robbery incl armed	assualt incl gbh	Rape	Murder	drugs	firearm
100	4	1		1		1			6	
150	1									
200	27	2		2		17		4	22	2
250	1								4	
300	23	4			8	1	2	10	40	21
400	9	4	2			3	8	3	9	8
450	3				2					
480									1	
500	14	8			11	4	5	28	13	20
600	12	8	1	2	6		24	22	5	10
700		1					1	1		
750							1			
800	20	21			6		2	11		7
1000	16	30	1		8		7	18	16	7
1500	1	2			4		1		2	
2000		2			3			1		
5000			1						1	
8000									2	
Grand Total	131	83	5	5	48	26	51	98	121	75

Appendix L: Bail paid

Table L1 Bail paid according to various ranges of bail amounts in Durban, Johannesburg and Mitchells Plain courts. Bail is considered "paid" only where it was paid at court on the same day that bail was granted.

(a) Durban

Bail amt	<100	100-199	200-399	400-599	600-799	800-999	1000-1999	2000-2999	3000-3999	4000-4999	>=5000	Total
not paid	0	3	5	10	1	2	24	2	5	0	0	52
paid	3	12	29	51	4	6	41	9	4	2	2	163
Total	3	15	34	61	5	8	65	11	9	2	2	215

(b) Johannesburg

Bail amt	<100	100-199	200-399	400-599	600-799	800-999	1000-1999	2000-2999	3000-3999	4000-4999	>=5000	Total
not paid	0	0	0	12	5	4	12	15	17	27	9	101
paid	0	0	3	15	6	3	21	7	13	1	3	72
Total	0	0	3	27	11	7	33	22	30	28	12	173

(c) Mitchells Plain

Bail amt	<100	100-199	200-399	400-599	600-799	800-999	1000-1999	2000-2999	3000-3999	4000-4999	>=5000	Total
not paid	0	11	51	89	57	53	78	5	0	0	1	345
paid	0	69	106	51	35	10	33	1	0	0	2	307
Total	0	80	157	140	92	63	111	6	0	0	3	652