

The updated and enhanced sentencing statistics on the Judicial Information Research System

By Mark Zaki¹

Sentencing statistics are one of many resources available on the Judicial Information Research System (“JIRS”) to assist courts with the sentencing exercise: see www.judcom.nsw.gov.au. Informed use of statistics by practitioners optimises the assistance that counsel may provide to a sentencing court.

The JIRS statistics now contain penalties relating to the new community-based penalties which became available on 24 September 2018.

The Commission recently enhanced the statistics viewer to include a domestic violence offence case characteristic filter, improved communications tools, and access to relevant offence provisions and maximum penalties.



The Judicial Information Research System (JIRS) is an online database for judicial officers and the legal profession created and maintained by the Judicial Commission of NSW. It contains sentencing information and statistics, judgments and legislation, the Bench Books and other resources primarily relating to the criminal law and sentencing in NSW. Access to JIRS for legal practitioners in private practice and at the Bar is via paid subscription.

On 24 September 2018, the sentencing landscape in NSW changed with the overhaul of penalty options available to courts dealing with criminal matters. The *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (the Act) removed good behaviour bonds, community service orders and s 12 suspended sentences as sentencing options. The Act introduced conditional release orders and community correction orders, together with a broad range of conditions for sentencing orders better suited to the protection of the community and the rehabilitative needs of the offender.

The sentencing statistics available on JIRS now accommodate these new sentencing options in all relevant jurisdictions.

The statistics containing the penalty options available from 24 September 2018 are displayed separately to the penalty options available before that date. They are not able to be displayed together in the one graph however a link is available on each statistics page to toggle between them.

Recent enhancements to JIRS

The JIRS statistics viewer has also been improved as follows:

- A “domestic violence offences” case characteristic option to further filter sentencing statistics has been included.
- The ability to email or print filtered statistics, or create a link to them, at a click.
- The relevant legislation and maximum penalties are available on each set of statistics.
- Statistics may be viewed in a wall chart or circular chart, as well as a standard column chart.

The Judicial Commission implemented these changes to improve the usability and accessibility of the statistics for sentence proceedings before NSW courts.

The Commission is considering further enhancements to the JIRS statistics viewer, including additional case characteristic filter options.

How to optimally use the statistics

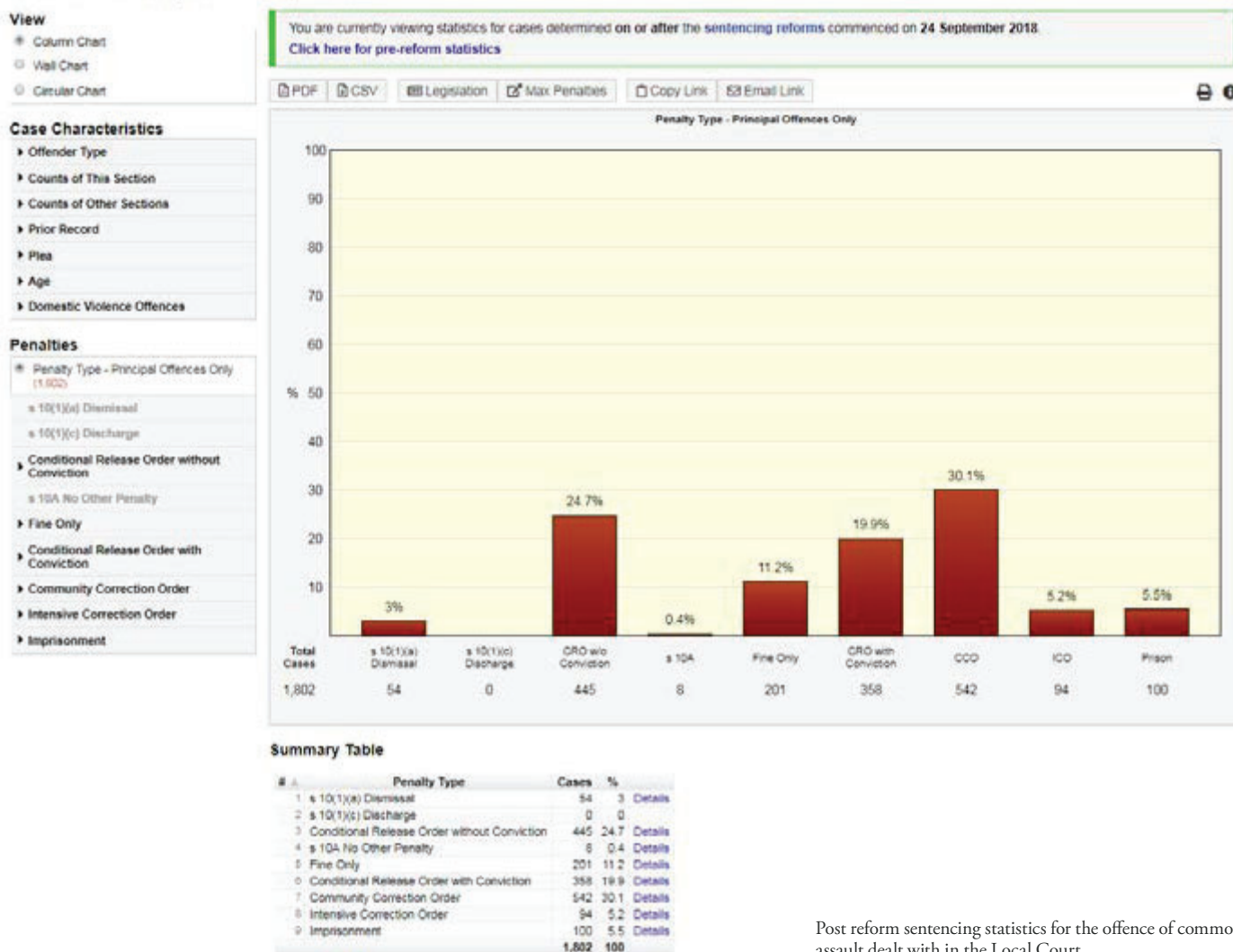
Higher courts have regularly commented on the use of statistics in sentence proceedings and one should be aware of the limitations of their use in court. The plurality in the High Court decision of *Barbaro v The Queen* [2014] HCA 2, referring to *Hili v The Queen* [2010] HCA 45, said at [40]–[41]:

“The setting of bounds to the available range of sentences in a particular case must, however, be distinguished from the proper and ordinary use of sentence statistics and other material indicating what sentences have been imposed in other (more or less) comparable cases. Consistency of sentencing is important. But the consistency that is sought is consistency in the application of relevant legal principles, not numerical equivalence ... In seeking consistency sentencing judges must have regard to what has been done in other cases. Those other cases may well establish a range of sentences which have been imposed. But that history does not establish that the sentences which have been imposed mark the outer bounds of the permissible discretion. The history stands as a yardstick against which to examine a proposed sentence. What is important is the unifying principles which those sentences both reveal and reflect.”

In the recent decision of *Facer (a pseudonym) v R* [2019] NSWCCA 180

CRIMES ACT 1900 (NSW) S 61 COMMON ASSAULT

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at [59]–[62], Leeming JA (with whom Davies and Button JJ agreed) indicated the aggregated statistics tended to confirm his initial impression regarding the sentence on appeal but that it was necessary to consider the facts of the cases underlying the statistics.

JIRS sentencing statistics form one component of the JIRS database. They provide a guide to the pattern of sentences that the courts impose for criminal offences. The statistics, together with the principles and practice, case summaries and judgments of the various courts, form a package of information intended to assist the courts to achieve consistency in imposing sentences.

The Judicial Commission plans to conduct a CPD seminar on JIRS in early 2020. **BN**

ENDNOTES

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Other Features of JIRS

In addition to the bench books, a useful feature of JIRS for practitioners are the “Offence Packages”, which compile relevant material such as recent case law, legislation and bench book references for some of the most common criminal offences. JIRS has also dedicated collections of resources on selected topics, including bail, evidence and the Land and Environment Court.

Within the “Publications” section of the website are the Judicial Officers’ Bulletin and Recent Law Flyers, which are up-to-date resources on topical legal developments and research.

JIRS now includes podcasts on criminal law topics. The first two podcasts look at the practical operation of reforms to the *Crimes (Sentencing Procedure) Act 1999*, in conversation with the Deputy Chief Magistrate of the NSW Local Court, Michael Allen, and Rosemary Caruana, former Assistant Commissioner, Community Corrections.