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POLICE SEARCH FOR OFFENSIVE WEAPONS -

AN HISTORICAL OVERVIEW.

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I. INTRODUCTION.

Section 53A of the Police Offences Act, 1927 as amended by Section 2 of the Police Offences Amendment Act, 1979 [1] provides that if a person has with him in a public place an offensive weapon without a lawful or a reasonable excuse then he may be stopped and searched without warrant. The constable can search the person and any package he has with him in the motor vehicle in which he is travelling or from which he has alighted. The constable can conduct the search if he has reasonable grounds for believing that the person has with him an offensive weapon in a public place, that being an offence, and that he does not have lawful authority or reasonable excuse for doing so. [2]

If the person is elsewhere than in a public place no such search can be conducted but the person is guilty of an offence against the section if they had possession of an offensive weapon in circumstances which prima facie showed they intended to use it to commit an offence involving injury. [3]

Providing he has reasonable grounds to believe that an offence is being committed, whether or not it was in a public place, the constable can arrest without warrant. [4] After the arrest and once the person has been taken into Police custody the Police have a power to search him. [5]

The maximum penalty upon conviction is a fine not exceeding $400 and/or imprisonment for up to a year. [6]

It is the writer's intention to evaluate the section by tracing its historical development, examining each step along the way to determine whether it was a necessary intrusion upon

citizens' rights. That study, combined with an analysis of the present section and other provisions relating to Police powers of search introduced at a similar time, will then be set in the context of providing an examination of the New Zealand Government's approach to legislating.

II. COMMON LAW.

Before there was a statutory offence for the possession of offensive weapons in both the public and private place what was the common law position?

The common law confers on the Police no power of search before arrest and there is no general right to search every arrested person. [7]

There is no common law offence of carrying an offensive weapon [8] but the Police could search for one after arresting him for an offence like attempted assault. The arrest in that case could be made without warrant if a constable found the person committing, or had good cause for suspecting, that a person had committed an assault. [9] However the constable would have to have reason to suspect that he might have on him:

(i) either evidence relating to the crime for which he was arrested or other crimes;

(ii) something which would cause injury to himself or the person and property of others whilst he is in custody. [10]

It is important to note that this common law power of search continues unaffected by the Police Amendment Act, 1979 which gives the Police a more general power of search subsequent to arrest. [11]

III. FROM 1884 TO 1956

The main effect of the relevant provisions of the Police Offences Act 1884 was to make possession, in some circumstances, of an offensive weapon an offence. But in terms of a right to search, subsequent to arrest, it confers very little extra power upon the Police than does the common law.

Police powers pertaining to offensive weapons are not handled in one section, but the net effect of it must be added up from four different sections. They are subsection 27 (1), 28 (7) 32, 35, of the 1884 Act. [12] It is proposed to discuss them separately, considering the important phrases, then briefly conclude as to their overall effect.

Idle and disorderly persons, Section 27 (1). [13]

It is an offence committable only at night which is a considerable restraint.

The accused must give a good account of his means of support, and assign a valid and a satisfactory reason for being armed. This act is similar to the English Vagrancy Act, 1824 and there are no cases subsequent to it or to this act which define that phrase. It is sufficient to say then that it is a subjective test, in that there can be varying definitions of what is a good means of support. It could depend on the judge's own living standard with the facts of the case being determinative.

However since he has to give the said account to a justice when required, it places upon him a burden to prove that he had a means of support. He has to discharge this to the balance of probabilities standard. [14]

Rogue and Vagabond, Section 28 (7) [15] A felonious intent is required, but this must be construed as meaning intent to

commit an indictable offence. [16]

Phrases Common to both Section 27 (1) and Section 28 (7): [17]

(i) "offensive weapon", when interpreted by the ejusdem generis principle, it appears that it means something inherently dangerous like a gun or a sword. Some English cases, not interpreting this section, nor a similar English one, but the term "offensive weapon," broaden this definition to include a stick if used in an offensive, aggressive manner, [18] and a stone. [19] This definition corresponds to that which Section 53A describes as articles made or altered for the purposes of causing bodily injury. [20]

(ii) The offensive weapon becomes forfeited upon conviction.

(iii) It appears from the sections that these offences can be committed in both the private and the public place.

A right to seize? Section 32. [21] The goods in the person's possession, which must include the weapon, can be seized but the person must be charged and they are then conveyed to a Justice. The section does not provide for a power to search, therefore it appears that obvious things only can be seized.

Arrest without warrant? Section 35. [22] This can only be done if the person will not give his name and address or if he is an idle and disorderly person disturbing the peace. Thus a constable cannot arrest without warrant for possession of an offensive weapon only, there have to be these other factors present.

Upon combination of these sections it is clear that there is no addition to the common law power of search for offensive weapons. Nor will the power to arrest without warrant be able

to be used frequently. This, together with the idle and disorderly person provision having to be committed at night, and the rogue and vagabond provision requiring an intention to commit an indictable offence, means that the net effect is a section that will only be able to be used sparingly by the Police.

Were these powers adequate to cope with what was perceived to be the offensive weapon carrying problem?

In the late 1950's they were not seen to be, as in 1956 Parliament decided to introduce a specific section dealing with carrying an offensive weapon in a public place. [23] But was the change needed? Unfortunately, since the period between 1884 and 1956 was such a massive time of change, it is difficult to obtain reliable statistics to compare the regime's effectiveness when it was introduced with when it was succeeded.

However there are some statistics available. The average number of convictions in both the Magistrate's and the Supreme Courts for offences against the person for the years 1887 - 1890 was 1.3 per 1,000 head of population and for 1956 it was 0.78 per 1,000 head of population. 1956 was a fairly typical year for this sort of offence. [24] It must be remembered these figures include sexual offences which are not likely to include the use of offensive weapons. For the years 1887 - 1890 there was an average number of 676 assault convictions in the Magistrate's Court and for the years 1952 - 1956 there was an average of 751, but the population had more than trebled. [25] Although these figures are affected by the growth of a larger, more efficient police force and other variables, for our purpose of determining the number of offences involving the carriage of offensive weapons, they provide a clear trend.

The degree of violent offending between 1887 and 1956 decreased considerably, and that is likely to be evident in offensive weapon offences as well, because violence will often follow possession of an offensive weapon.

Although the 1884 regime, together with the common law, seemed as though it was controlling offensive weapon possession very well compared with when it was first introduced, there was an increase of at least fifty per cent in the number of convictions for common assault and other offences in the Magistrate's Court between 1950 and 1956. The figures for the number of arrests for offences against the person between 1952 and 1956 does not show such a consistent trend but it is definitely one of increase.[26]

As there can be a number of variables in these statistics it is important not to take them literally, the trend is the point to note. Unfortunately there are no statistics available for actual offences which would give us the clearest picture of the true situation. The difference between the trend for arrests and for actual offences would depend upon police practice at the time. We can only assume that they were not prone to both excessive leniency and charge bargaining, which could distort the apparent trend considerably. This probable substantial increase in violent crimes is likely to include the use of offensive weapons.

Therefore the Government seemed to have at least some justification for introducing Section 53A, in the Police Offences Amendment Act, 1956.

IV. 1956, POLICE OFFENCES ACT, 1927, SECTION 53A.[27]

The introduction of Section 53A can be considered a complete

addition to earlier law in that Sections 27 and 28 (7) continued as Sections 51 (a) and 52 (g) respectively and remain so. [28] Section 53A gave the Police power to arrest, without warrant, any person who has with him, without a reasonable excuse, in a public place an offensive weapon, providing he could not satisfy a constable of his identity, or the constable had reasonable cause to believe that he might use the weapon in the commission of another offence.

Before a consideration of the Government's reasons for introducing a new provision, when the old one seemed to be serving its purpose, is undertaken, it is necessary to determine what the constituent parts of Section 53A actually mean.

Subsection (i) - "without lawful authority or reasonable excuse." A lawful authority provides a legal exception to the operation of the act, therefore it is confined to those who carry an offensive weapon as a matter of duty, for example, a soldier or a police officer. [29]

The test to determine if a person has a reasonable excuse is whether a reasonable man would think it excusable to carry an offensive weapon in a public place for the reasons given. This is a question of fact. [30] Self defence is not necessarily a reasonable excuse, there must be an immediate and particular threat against a defendant before he would have a reasonable excuse. [31]

Subsection (1) - "proof of which shall be on him". This places the burden of proof upon the accused and it is discharged by the balance of probabilities standard. [32]

Subsection (1) - "[H] as with him ... " The accused must know that the offensive weapon is in his possession and the onus

is on the prosecution to prove beyond reasonable doubt that he had such knowledge. The onus to prove this factor remains on the Crown throughout the case. [33]

"Public place" is defined in the Act. [34]

Subsection (5) provides for arrest without warrant. A concerning feature about it is its allowance of subjectivity. Subsection (5)(a) incorporates no objective test which means that a constable could claim that he was not satisfied as to a person's identity and the court could not effectively challenge that. However, whether a reasonable person would be satisfied would help a court to decide if it believes the officer's claim or not, even if that is not part of the test. Subsection 5(b) is not the same, the constable's reasons are reviewable objectively, "reasonable cause to believe" is the highest objective test that the law provides [35] but it is still open to abuse by the Police because it is so hard to determine what are the grounds for a reasonable belief. Also it is a well known, but unverifiable fact, that the Court would prefer to believe the Police's evidence, compared with any of the accused's objections.

Section 7 provides for three classes of offensive weapon.[36] They are:

(i) Articles whose purpose is to cause bodily injury, weapons per se, such as guns.

(ii) Articles adapted for the purposes of causing bodily injury, such as a block of wood with a razor blade inserted in it, or a broken bottle adapted for the purpose, not just one accidentally broken. The intent must be present. Once articles in this class are adapted they become an offensive weapon per se. [37]

(iii) Articles whose purpose is not to cause bodily in-

jury but which are intended by their user to do so such as a bicycle chain or a sandbag. Sometimes it is equivocal as to whether an article is in this class or not, such as a razor. [38] This third class is an addition to the requirements of the 1884 section. [39]

In classes (i) and (ii) the prosecution has to prove no more than knowing possession in a public place, then the defendant has to prove lawful authority etc. But if the article is in (iii) the prosecution also has to prove that the defendant had the intent to injure, as in itself the article is not likely to cause injury. Once that is proven beyond reasonable doubt the burden passes to the accused. [40]

For class three offensive weapons, the intention of the defendant has to be prior to any usage; innocent possession is not transformed into guilty possession merely by use. This was decided in New Zealand by Police v Smith [41] in which the appellant, a guest, used a table knife to threaten a pie cart proprietor. However, the actual use of the weapon may be a factor to be considered along with other facts, to determine whether the article was originally carried with the necessary intent. [42]

Thus Section 53A is a preventative section, aimed at the prevention of the use of offensive weapons rather than being a remedy once they have been used.

When an overall view is taken of Section 53A it is evident that by subsections (1), (5), (7), it is possible for somebody to commit an offence and to be arrested without warrant, if he merely carries an offensive weapon per se, in a public place, without a reasonable excuse and he cannot satisfy an unsympathetic constable of his identity. For that limb of Section 53A no intention is required, mere knowing possession is enough.

However it must be realised that it will be rare that anybody will carry such a weapon in a public place without intent to use it in the commission of an offence. If they are not carrying it with such intent they are likely to have such obvious innocent motives like just taking the gun home after having bought it, to avoid arrest.

The reasonable excuse provision could be used by an accused in an attempt to convince the constable that he should not be arrested, but technically it is only a defence to be used in the Court and therefore really only saves the innocent from conviction. [43]

When compared with the 1884 and common law provisions the section gives the Police more extensive powers in that under the offensive weapon per se limb no intention is needed (compared with a felonious intent): there is no requirement that it be committed in the dark; a much broader definition of offensive weapon; and considerably more extensive powers of arrest without warrant. This power to search subsequent to arrest is not affected, at common law it is the same for all offences. [44]

This increase in the Police's power is at the expense of citizens' freedom to carry whatever they like about in a public place providing they are not interfering with others.

Why did the Government change the law?

The major reason was that in 1953 the House of Commons enacted the Prevention of Crime Act. [45, 46] It is almost exactly the same as our Section 53A but there are some differences. They are mainly the punishments allowable and the definition of "offensive weapon", [47] which does not exclude the possession of tools of trade for employment related activities, as our definition does. [48]

The reasons for which the English law was changed help us to determine why our law was changed.

The carriage of offensive weapons was previously the sole domain of Section 4 of the Vagrancy Act, 1824, which is a similar statute to our 1884 provision.[49]

The Prevention of Crime Act, 1953, was introduced in an attempt to check and substantially reduce crimes of violence against the person. In the years 1948 - 1952 there was approximately a thirty per cent increase in the number of violent crimes, and in 1952 the rate was approximately treble the pre war one.[50]

The Act's prime thrust appears to have been at a hooligan problem which encompasses gangs using knives, knuckle dusters and bicycle chains. It sought to be preventative, to strengthen the law, but to be taken in conjunction with other measures to combat the problem, such as strengthening the Police force.[51]

Was there a similar situation in New Zealand?

In introducing Section 53A the Minister of Justice, the Hon. Mr Marshall, seemed to think so. He relied heavily on the Prevention of Crime Act as providing a justification for having a similar provision in New Zealand.[52] He claimed without verifying it, that the English Act had proved itself to be reasonable and workable for nearly three years, and therefore it would be satisfactory here also.

The opposition challenged that as a ground for changing the New Zealand law. They claimed that there had been no such wave of violence in New Zealand.[53] Is this true, did New Zealand experience an increase in violent offences against the person in the early and middle 50's?

The statistics considered in III above indicate that we experienced an increase in crime, similar, if not greater, to that which

England experienced before it introduced the Prevention of Crime Act. Thus there was at least partial justification for relying on the Prevention of Crime Act so heavily. There were more localised reasons than that though.

The perceived manifestation of this increase in violent offences was in the number of knife related incidents. [54] One such incident was a brutal murder in Auckland [55] which seemed to be at the forefront of Members of Parliament's minds. [56] In that case, the murderer plunged a flick knife up to its hilt in the deceased's neck. He had been carrying the knife around town with him all day. As a result of this, some Auckland newspapers apparently pressured the Government to change the law, [57] although the writer was able to find no public evidence of this. It must be remembered that this was only one incident, although Parliamentarians claimed there were others. This concern over the use of knives was prominent throughout the Parliamentary passage of the bill. [58] That, together with England having a convenient and usuable section, seem to have been the reasons for the introduction of Section 53A.

Could Black have been arrested under the 1884 Act? By the fact that he threatened to kill the deceased the night before, it could have been proven that he had a felonious intent. If a constable had known the circumstances of that night, he might have had good cause to suspect that Black was about to commit a felony. That would have made Black a rogue and a vagabond who could have been arrested without warrant. Thus, in the circumstances of Black, the 1884 Act would have been enough, but it is doubtful that before the murder a constable would have had enough information to make the arrest. That requirement of background information certainly would not be satisfied in the

majority of cases.

It seems therefore, that some form of preventative section was necessary, but Section 53A has gone beyond what was desirable into that which is unnecessary. This applies particularly under the limb that provides for the possibility of arrest without warrant, for mere possession only, without a reasonable excuse. Powers conferring arrest without warrant should be given sparingly and in Section 53A they are conferred too liberally. Some degree of mens rea should be required for every type of offensive weapon offence, by the mere fact that it is a criminal offence, conviction of which could bring a maximum of one year's imprisonment with all the consequences of that.

V. THE 1976 AMENDMENT TO SECTION 53A. [59]

Despite the provisions of the 1956 Section 53A erring on the side of being unnecessarily excessive in some circumstances, Parliament saw fit to confer even greater powers upon the Police in an amendment to Section 53A, in Section 4 of the Police Offences Amendment Act, 1976.

The major changes effected in this amendment were:

(i) a reconstitution of the definition of the offence, such that it could be committed in the public place.

(ii) an extension of the power to search without warrant.

(iii) the creation of a power to arrest without warrant.

Subsection (1)(b) constitutes the major change by allowing the offence to be committed outside of a public place, for instance, in private homes.

What is the definition of "possession", as opposed to "has with"? It includes not necessarily that which you are carrying, but if you have the power to deal with it as owner, at the ex-

clusion of all other persons, and can do so if needed, that is enough.[60] So, an offensive weapon in a locked cupboard (to which you are the only one who has the key at your disposal) in your home, 100 miles away, constitutes possession. The Crown still has to prove that the accused is knowingly possessing.

Subsection (1)(b) - "[I]n circumstances which prima facie show an intention ..." This creates a rebuttable presumption. It is set up when the Crown proves, beyond reasonable doubt, the accused's possession of the weapon, in circumstances which prima facie show an intention to commit an offence involving bodily injury.

This presumption can only be negated by using subsection (2). Under that, the defendant has the opportunity to disprove the presumed intention which has to be done to the balance of probabilities standard. This subsection has prevented what would have been a conclusive presumption and it was included upon the recommendation of the Statutes Revision Committee.[61]

Subsection (4) gives the Police a general right to arrest without warrant compared to a restricted right under the 1956, Section 53A (5).

Even though subsection (5) is limited to offences committed in public places, it allows the Police to stop and search people without either warrant or arrest. That is a power which they did not have previously for offensive weapons and something that is rarely given to them. This is a major change.

Subsection (10) was included as a result of criticism of the relationship between the definition of offensive weapon in subsection (8) and subsection (1)(b), in that any article could be an offensive weapon as long as it was used with intent.[62] That is not satisfactory in a private place situation because,

as distinct from a public place, there is a greater availability of articles, all of which could be used to prove the intent.[63] Thus a narrower definition was provided, although in practice it is unlikely to make much difference.

However it is submitted by the writer that, in effect, any article 'capable' of causing injury is just as broad a definition. There are no cases interpreting the word, but the Shorter Oxford Dictionary defines it as "Having the capacity for" which includes anything that has a sharp or rough surface, or is heavy and can be swung with force.

When the Bill was passing through the select committee stages there was considerable criticism of it, and as little of it has changed, much of that criticism still applies.

In effect, subsection (1)(b) represents an extension of the law of attempts to preparatory acts, in that it requires circumstances which show an intention to commit an offence involving bodily injury. That means, for an offence under Section 53A, there will be circumstances that display an intention to attempt an offence like assault, but not sufficiently proximate acts to amount to the attempt.

Thus, because less evidence is required under Section 53A it is an easier method of searching and arresting somebody, without warrant, for a more serious offence. Before or after arrest further evidence can be obtained leading up to the laying of more serious charges.

Also, with the very broad interpretation that the courts have given to possession, the section becomes far too wide ranging in its application, in that a person can be guilty of an offence when there is no immediate danger to the public, which is what Section 53A should be aimed at. All in all, subsection (1)(b)

provides the Police with a very useful law enforcement device but it is a dangerous erosion of citizens' civil liberties.

The phrase in subsection (5), "reasonable grounds for believing" was open to all forms of abuse by the Police, especially with the broad definition of "offensive weapon", as the Court will have to form an opinion as to the reasonableness of the constable's subjective beliefs as to the intentions of the suspect. Membership of a gang, clothing, mode of transport and past offences could quite legitimately constitute that reasonable belief which would provide for guilt by association.[64]

Even though that is the highest objective test the law provides, the constable's subjective belief will be virtually unchallengable. Intentions of a suspect are so hard to determine that almost any grounds will be considered reasonable. The real problem is that whatever test is used, it is open to abuse by the Police because they interpret it subjectively, though anything potentially absurd will be rejected by the Court. If there is abuse the real sanction lies not in the test, but the remedies available to the accused. A discussion of these will occur later.[65]

Subsections (4) and (5) - this right of arrest without warrant could be used as an instrument of harassment, with the Police being able to stop and search people if they believe he or she is of the type who would be carrying an offensive weapon. This would be particularly useful in a group situation, with the Police being able to stop and search everybody on the possibility of some having weapons. They could then decide not to press charges, but the search would still be legal, and the Police would have achieved their purpose of interrupting the group's passage.[66]

The interaction between subsections (1)(b) and (10) allows

almost any article on the premises to be used to prove an intention.

Thus it would be wrong to believe that all this amendment does is to extend the possible circumstances for the commission of an offence from a public place to anywhere else. It does more than that. It represents a major increase in police powers, and consequently a substantial erosion of citizens' civil liberties, in the way it extends the right of arrest without warrant and creates a right of search. It is wide open to abuse.

What is beginning to emerge is a gradual denial of civil liberties as the Police are given more power with amendment after amendment surreptitiously building on each other. Consider the extent to which virtually unreviewable discretions and wide ranging powers have been conferred upon the Police in the 1976 amendment. There should be good reasons for it, are there?

The crime statistics establish that the number of reported offensive weapon offences had approximately remained constant for five years after an increase in the four years previously.[67] However, there had been a general increase in the number of arrests for non sexual violent offences.[67 A]

There certainly does not seem to be a sufficient increase in the carriage of offensive weapons to justify a change in the law.

However the report of the Police Department to the House of Representatives in 1976[68] expresses grave concern at the level of violence in the community:

> "[T]he use of weapons such as baseball bats, chains, bottles, fence palings, and knives which were used only infrequently a few years ago have now become common place."

I shall discuss later whether the figures for violent offending confirm that.

There was much more than that which concerned the Police.

What really worried them was:

> "[T]he overt challenge that violence, 'bikie' and kindred gang activities pose to social peace and tranquility."[69]

The gang problem did not play any part in the introduction of Section 53A, with the gangs such as the Mongrel Mob only beginning in 1956.

The real growth in gangs occurred in the late 1960's with the formation of Black Power, Headhunters, Stormtroopers, - a phenomenon that flourished in the 70's.[70]

The crime statistics discussed above[71] do not indicate that the growth of a gang problem manifested itself in the commission of offensive weapon offences. The effect of gangs then, on the area of this study, remains open to question, unless the Police were not using, to their maximum effectiveness, the existing measures available to them.

It does not seem credible that new powers of such magnitude can be justified when the existing ones were not utilised. The Police, under the existing Section 53A, could still have arrested without warrant, if people were carrying an offensive weapon, without a reasonable excuse, in a public place, with intent to commit another offence. That seems to be an adequate power but obviously it was not seen to be enough - why?

In the first reading debate[72] the Minister of Justice said that the reason subsection (1)(b) was needed, was to enable the Police to conduct a search when it is suspected that a quantity of weapons are stored on private premises for sinister purposes. This was an attempt to prevent gang warfare by discouraging them from stockpiling weapons. Instead of only being able to act when an offence was committed in a public place, (which would be much closer in the chain of events leading up to the actual

brawl), the Police could head it off. However a search warrant would be needed, as no specific power of search is conferred in the section. [73]

This power of search in the private place should have only been required if there had been masses of arrests of people in public places, or brawls that got out of hand. If that happened the Police would need to go one step back in the causation sequence, due to the difficulties of making arrests in such situations, with the result being that arrests were impossible.

The Police and the legislators did not empirically justify the need for the amendment, their reasons seem to have been more of an emotional response to a difficult situation.

Even if the Police could have empirically justified the extension of the constituting factors of the offence beyond the public place, there was no need to change other parts of the section in such an excessive manner.

Since the Police and Parliament exercised such zeal in seeking such a change in the law when they could not factually prove the need for it, and since the change is potentially open to considerable abuse, how has it worked in practice?

This is very difficult to determine because the Police do not release statistics on the number of searches declared illegal. However they do release figures on the number of offensive weapon carrying offences reported. [74] For the years 1977 to 1979, inclusive the increase was seventy four percent. It must be remembered that in this time the Wanganui Computer was brought into use and therefore a considerable amount of this increase could have been due to more efficient data compiling methods, and also there was probably an increased awareness of

the offence.

Despite this, however, the trend is evident. It indicates that the Police were using the amended Section 53A to a considerable degree, especially compared with the previous Section 53A. By the very fact that they found it so useful must mean that it was at least a partial success and, from a Police point of view, it must have gone some way towards remedying a need.

What about from a civil liberties point of view, did the potential for abuse realise itself?

Not surprisingly, the Police do not keep information on this aspect so the only way to evaluate it is by examining the attitude of the Courts. The only case to reach the Supreme Court in the 1976 Section 53 was Waenga v Police.[75] The appellant Waenga was charged under Section 53A (1)(a).

He was wearing a chain link and belt but not for the purposes of holding his trousers up. He was not a gang member but had just been standing outside a disco near a gang brawl. The constable asked if he would use the belt if involved in a fight with Black Power, and he replied that he probably would.

The belt was held to be a type (iii) offensive weapon[76] and therefore the Magistrate convicted him on the basis of that conversation proving that he had an intention to cause bodily injury. He did not question a thing, in fact, his whole attitude seems to have been quite the opposite. He accused the appellant of telling lies and the foundation for the conviction seemed to be on guilt by association:

> "If he wants to stand in the middle of a group of people who have been involved in brawling then he involves himself with them and has no evidence of any independent reason for being in that situation." 77

Those are not grounds for convicting somebody and the

Magistrate receives a mild rebuff from his Honour, Barker J for doing so:

> "There is just no evidence that the appellant himself was involved in any of the brawling."

His Honour makes it quite clear that the evidence is insufficient to sustain the conviction. He decided that the conversation was equivocal, and that there was no unequivocal evidence that proved beyond reasonable doubt that the appellant had an intention to cause bodily injury.

What is concerning about the case is that the Magistrate was prepared to convict somebody who was a Maori, wearing gang type clothing, being near a brawl, and who associated with gang members. That does not constitute an offence but it seemed to be the sole basis of conviction.

Waenga would be one of the few people of the type who associated with gang members that would appeal against such a conviction. When people have been subjected to harassment the last thing they want to do is to antagonise the Police even further. They are most reluctant to seek the Court for a remedy because they are probably scared of the Police retaliating and trying to pin another charge on them. Such people are inherently suspicious and untrusting of the Court. Therefore if these people experience such a conviction at District Court level, based on such evidence, as was Waenga, they are unlikely to appeal to the High Court which means that we never get to hear of their cases.

The Courts then, do not provide a sufficiently reliable check against abuse of the powers given in Section 53A. There can be no other forum for determining the validity of a conviction. But, for intrusions on liberty, there are remedies available to

somebody who feels that he has been unjustly treated. What are they?

The Secretary of Justice in his letter to the Statutes Revision Committee in 1976, outlining his response to the submissions before them on the amendment to Section 53A said:

> "Some witnesses have asked whether the power to stop and search a person suspected of carrying an offensive weapon could be made subject to safeguards. We doubt whether that is practicable." 78

Is that true, are safeguards impractical and a waste of time? It is the submission of the writer that they are not and that there are already some existing safeguards but more are possible.

If somebody thinks that they have been illegally searched or arrested, they can seek the Court to prohibit the prosecution from proceeding by exercising its discretion to prevent abuse of its own process, due to the Police having acted improperly. [79] Or if punative measures are sought, a civil suit of trespass, [80] false arrest, [81] or malicious prosecution [82] could be initiated but could be unproductive and very costly. An automatic exclusionary rule for illegal searches such as that in America, or instituting a criminal prosecution for conducting an illegal search, would be two very effective remedies which unfortunately are not available in New Zealand.

Alternatively, a complaint can be laid under Section 33 of the Police Act, but that does not seem to be a creditable, independent alternative. Although there is no direct proof, it seems as though nothing seems to happen by that method. It is not a sufficient remedy. Complaints can be made to the Ombudsman. [83] However he cannot investigate anything which is subject to an internal enquiry under the Police Act, unless a complaint has been made to a superior officer to the one concerned, and that

complaint has not been investigated, or the complainant is dissatisfied with the final result. When such a complaint has been made to the Ombudsman the Police have challenged his jurisdiction to deal with it.[84] The Ombudsman has difficulty in conducting an investigation of this nature, as there is little accurate evidence available with there being a situation of the complainant's word against a number of Police Officers. Also, once the Ombudsman reaches his conclusion he has difficulty in finding an appropriate remedy.[85]

Therefore the Chief Ombudsman has suggested that these complaints be referred to a tribunal whose jurisdiction was not confined to investigating matters of administration only. This should be independent of the Police structure, impartial, and easily accessible to the public at a minimum cost. The Police however did not like the suggestion very much.[87]

It is the writer's opinion that either such an independent tribunal or a Police Ombudsman, which made its report public, will be the public's only effective remedy. Publicity is the greatest santion. This would be a major way of protecting and restoring individual liberties that have been eroded by the wide discretionary powers that are conferred upon the Police in Section 53A.

It is evident then that the 1976 Section 53A had not only an unjustified creation, but has not been a successful law enforcement device, nor a success in maintaining civil liberties. It could be termed a failure, yet the Police still sought a further amendment to it in 1979 in order to make it a success.

VII. THE 1979 AMENDMENT TO SECTION 53A.[88]

In 1979 the legislature decided to build upon an already

ineffective section. The amendment gives the Police the power to search motor vehicles and packages and receptacles without warrant or arrest. Section 2 of the Police Offences Amendment Act, 1979 is limited to the public place.[89]

The meaning of phrases common to both subsections 5 (a) and (b) are:

(i) There must be a reasonable belief that offensive weapons are present. This is a reviewable test. Neither of these requirements were present in the draft bill.[89a]

(ii) There is a time limit on a search, it being as long as is reasonably necessary for the Police to conduct the search. That decreases the chance of the provision being used as an instrument of harassment and allows for a review of Police behaviour. This was included as a result of the Victoria University Law Faculty's submissions.

(iii) The definition of offensive weapon is still a problem[90] as there will always be potentially dangerous packages or articles in the car to imply an intent.

Phrases in subsection 5 (a) only: the vicinity of the search is limited to the things the person has with him, in that the Police cannot go beyond the immediate area in which he is standing. In the original bill the word used was "possession" which allowed for a search some distance away from the actual person,[91] but it was changed as a result of strong criticism.[92]

Phrases in subsection 5 (b) only: any time lag between alighting from a vehicle and the search of it is possible, providing the constable still has reasonable grounds for believing there is an offensive weapon in it. This is open for abuse in that, in one case in Auckland, a gang member left his car parked in one place for a considerable time, The Police searched it with-

out his knowledge and used its jack as proof of it containing an offensive weapon.[93]

Apart from being incorporated into a section already riddled with ambiguities and possibilities for abuse, little criticism can be made of this amendment in its final form. Its wording places reviewable limits on the use of discretions conferred upon the Police, although these tests are subjective by their very nature, with the Courts being more prepared to accept the Police's evidence. Thus, despite the end result of this amendment being reasonably acceptable, the degree of protection provided in it is limited by the lack of effective remedies. It must be realised that the Police initially sought something which would have given them even more extensive and unreviewable powers. Why did they want such measures?

There had been a considerable change in the gang scene since 1976. This was due to three main factors.[94]

(i) Their membership grew and they changed into more cohesive organisations with strong leadership from older members.

(ii) There was more hostility and aggression between them. There became great inter-gang rivalry which resulted largely from the personal animosity between leaders, particularly between the Black Power and Head Hunters.

(iii) The gangs became more of a racial problem, the 'bikie' image faded and an ethnic one rose. The ethnic gangs were not interested in motorcycles so they drove around in cars. Weapons could be hidden in cars whereas with motorcycles little could be hidden.

As a result of this strength and activity they certainly received more media coverage, with 124 reports in the Auckland

Star and 169 reports in the New Zealand Herald for the period October 1978 to July 1979. [95]

Thus there was a much greater public awareness of gang violence which was contributed to by two incidents.

The first was in January 1979, during the above period of analysis, at Nelson. A car load of gang members drew up outside the Cathedral, and they each filed passed the boot, at which time they were handed an offensive weapon. The Police were not able to control the situation and they said this was because that at the time of the incident it was too late, they needed to act sooner.

The second was in August 1979 at Moerewa, where there were injuries sustained and a number of arrests were made. [96]

The Police claimed that these two brawls could have been prevented if they had the power to search motor vehicles. [97]

However under the existing provisions, the Police had the power to arrest gang members in a public place when they had an offensive weapon with them. So if the Police had enough manpower at the scene they could handle the situation. The Police claim that such a presence is not always possible and that the way they operate is that they receive intelligence drawing their attention to a future confrontation, and to act on that, before the situation becomes too explosive, they need the power to search cars. But how reliable is that intelligence? If it was reliable they would be able to search the gang's headquarters and their cars on the property, or place Police at the scene as a deterrent before the gangs arrive. Their intelligence does not seem as reliable as they claim, or, if it is, they should have been able to use the pre 1979 measures available, without needing new

powers. In fact, it seemed as though they had done, as there were 900 offensive weapon offences reported in 1979, an increase of seventy four per cent from 1977. [98]

The main effect of this amendment, then, is not so much as a necessary preventative measure, but one enabling the Police to harass by systematic search of motor vehicles as well as packages and people.

In their perceived inability to cope with the pre 1979 powers this is exactly what they did. They would stop the gang member's car and arrest the driver for dangerous driving, or him and some other occupants on some other nebulous charge, and then search them subsequent to arrest which they thought was legal, but which could have been illegal. [99] Evidence of this practice is given further support by the record weapon hauls made, of which approximately half were made from motor vehicles. These searches could have been legal, having been conducted subsequent to arrest, but the Police have admitted to many of them being illegal. [1]

The use of this illegal practice worried the Police because of what happened in Rudling's case. It would only take one wide awake lawyer to take the issue up in Court, with them subsequently losing, and their practice being publically declared illegal. To avoid that they sought a change in the law. [2]

They sought the change on two bases:

(i) That there had been an oversight in the preparatory process in 1976 which resulted in the power to search motor vehicles being excluded from the legislation. It is highly unlikely such an actual oversight occurred, it is more likely that the Police sought such a change, but that the Justice Department who was responsible for the drafting of the bill would not allow it.

(ii) There had been a change in gang activity (as outlined above) that required the Police to have the power to search motor vehicles.

It is the writer's belief that, upon these two grounds, the Minister gave permission for the bill to proceed, which he did in July. As it could be seen as an erosion of civil liberties, he tried to minimise the attention that it would receive, so he apparently wanted to both treat it as rectifying an oversight in the 1976 law and also to leave its introduction as late in the Parliamentary session as possible.

The Minister's sense of political timing could not have been more perfect, because early in August the terrible Moerewa brawl occurred which gave him the best emotional backdrop for a change in the law that he could have wished for.

In that incident, the Stormtrooper gang smashed up two hotels, then proceeded to have a massive confrontation with the Police where they turned over and burnt a police van, throwing a Policeman into it. He was heroically rescued. The van and fire engine were destroyed, Police cars damaged, and a shot was fired. Two constables and a fireman were injured, and twenty seven Stormtroopers were subsequently arrested. [3]

The public was shocked and dismayed. It was in the newspaper headlines for days, so much so, that the headlines were extremely exaggerated and melodramatic. There was a snap debate in Parliament [4] which contained emotional calls for hard hitting measures to fix the problem for good. Only the Minister of Justice managed to keep his cool by acknowledging that the problem would not be solved by legislation. [5]

Ironically, he later used that emotionally charged context to

his advantage in guiding the Police Offences Amendment Act through the House. He made it appear that it was being introduced as a consequence of Moerewa and, as a result, he encountered very little opposition.

It is obvious that the reason for the amendment to Section 53A in 1979 was an emotional reaction to a gang problem.

How has it worked? The Police claim that the gang situation has calmed down considerably, but that cannot be attributable to the amendment, because all it did was to legalise existing Police conduct.

VIII. COMPANION MEASURES

Moerewa was not the only reason why the 1979 amendment to Section 53A encountered less opposition that it should have. At a similar time other measures relating to the Police power of search were proceeding through the House. They were the Police Amendment Bill, 1979 and the Crimes Amendment Bill (No. 2), 1979 which was later changed to the Misuse of Drugs Amendment Bill (No. 2), 1979. In introducing the Police Amendment Bill the Minister of Police, Hon. T.F. Gill said:

> "The Police are very anxious to see these very minor (my underlining) pieces of legislation introduced. One is the Bill before us, the second is the Bill giving them the power to search motor vehicles for arms and the third is a Bill giving them the power to search a person's body." [6]

The Minister of Police considered them to be minor but their corporate effect was far from minor. It is apparent from the way the Minister of Justice decided to handle the bills separately, in particular from his letter to the Police,[7] that political considerations, such as avoiding adverse public comment, were paramount.

The Police Amendment Act, 1979 [8] provides the Police with a

blanket power of search when a person is to be locked up in custody. This amendment largely resulted from Rudling v Police [9] which restated the more restrictive common law power. The Police had been disobeying that, so although being in theory a substantial increase in Police power, it, in effect, legalised existing practice. [10]

The provisions of the Misuse of Drugs Amendment [11] were completely innovative as they gave the Police the power to conduct, or to have doctors conduct, internal searches for drugs.

Thus the Police Offences Amendment Act, 1979 must be seen as part of an overall whole. It was obvious that the Police were seeking the granting to them of much more extensive search powers.

Although the National Party has promised a complete review of the Police Offences Act for a number of election campaigns, this has not happened. [12] The review needs to encompass all Police powers. The amendment acts of 1979 that have been the subject of this study have highlighted that need, as all the Acts knitted together form a serious erosion of civil liberties. People are no longer free to walk or drive on our streets because if a constable thinks that a person has an offensive weapon on him, and that it does not look as though he has a reasonable excuse, then he is liable to be stopped and searched, or even arrested without warrant. Or alternatively he could be a physically harmless businessman arrested for a white collar-crime, and be automatically searched by the Police which is completely unnecessary, although not very likely.

The continued extension of Section 53A has clearly not been necessary or justifiable, nor is the blanket power of search that it confers necessary in all circumstances.

The general expansion of Police powers of search can be seen alongside such acts as the National Development Act.[13] Collectively they represent a determination by the Government to deny individuals their freedom, to either move about uninterrupted, or to be free from unwarranted Government interference in their lives.

What is most concerning is the Government's determination to hide its intention by introducing these bills separately and by making only a few changes at any one time, whereas they should be seen as part of an overall whole and progression. If civil liberties are to be considerably affected by legislative measures, as they were in 1979, the bills should be introduced together under the auspices of one bill. New Zealand's citizens have a right to understand the full effect of any extension of Police power.

IX. CONCLUSION

From a complete study of the creation and development of Section 53A another concerning feature of the New Zealand Government's attitude to law making is revealed. That is their arbitrary approach to law making, such that, in 1976, Section 53A was created as a reaction to a knifing problem, and in 1976 and 1979 it was amended as a reaction to the gang problem.

The law has been changing as a result of the emotional reactions of the Police, the public, and the press to sensitive issues. The law has not changed as a result of empirical studies proving that the existing law was not coping with a new situation. That would have established the need for a change.

We have laws being passed to deal with gangs who form an extremely small minority of the population. However that same law is of general application and is eroding the civil liberties

of everyone.

There is absolutely no need for such wide sweeping measures. Certain changes to Section 53A, such as in subsection (i) of the 1976 amendment which extended the definition of the offence out of the public place, were justifiable. However the changes such as the widening of the constituting factors of the offence to just possession, without the intention of committing another offence; the removing of the restriction on arresting without warrant; and the inclusion of a right to stop and search, are not.

A much more cautious, questioning approach, should be taken by the Government before agreeing to a change in the law. The Police's reasons for a change in the law must come under much closer scrutiny.

If it is established that a change in the law is needed, then there should be as few discretions conferred upon the Police as possible.

They should have no power to search without warrant, but limited powers to search after arrest. By using narrower terms and definitions and by conferring less Police discretions it would be possible to ensure that the wording of such sentences is much tighter. That together with making those discretions that must be there much more objectively reviewable, would improve the situation considerably.

Therefore it is absolutely essential that the Government provides a Police Complaints Tribunal or Ombudsman on the terms recommended above.

The Government must also realise that legislating to solve a problem such as the gang one is ineffective in itself, both

from a law enforcement and civil liberties point of view.

A combined approach to the problem is needed, one which enourages the positive aspects of gang membership together with getting to grips with the social causes of the problem. Also, severely dealing with those who do actually offend, is essential.[14]

It is the writer's opinion that the Government should put considerably more resources into the former approach because the legislative approach simply is not working.

Whilst the common law and the 1884 regime would not be enough for 1980, something like a 1956 Section 53A with some of its excesses trimmed, would be more acceptable. After all, England has had no cause to amend the Prevention of Crime Act. That, together with extending the definition of the offence to non public place areas; changing the definition of every type of offensive weapon to one requiring carriage with intent to cause bodily injury; and providing a Police Ombudsman, would provide for a much more satisfactory regime.

What must be avoided in the future is amendments to the law, which affect our civil liberties, being passed in such an ad hoc manner, neglecting their real effect, especially when there is no need for the change.

FOOTNOTES.

1. Appendix A.
2. Appendix H, at subs (1)(a).
3. Ibid, at subs (1)(b).
4. Ibid, at subs (4).
5. Police Act 1958, s57A (1).
6. Supra n.2, at subs (1).
7. Halsbury, Laws of England (4th ed. 1973 -)xi, para 121.
8. Crimes Act 1961, s.9.
9. Ibid, at s.315 (2)(a), (b).
10. Rudling v Police (Unreported, M.No. 1498/78).
11. Police Act 1958, as amended by the Police Amendment Act 1979, s.2.
12. Appendix C.
13. Idem.
14. Justices of the Peace Act 1882, s.67(6).
15. Supra n.12.
16. Butterworths Annotations (1908 - 1957) ii, 834 - 835.
17. Supra n.12.
18. R v Turner 3 CoxC.C. 304 at 306.
19. Harrison v Thornton (1966) 110 Sol Jo 444.
20. Appendix D, at subs (7).
21. Supra n.12.
22. Idem.
23. Appendix D.
24. Appendix F.
25. New Zealand Year Book 1889, 1890, 1893 and 1958.
26. Appendix G.
27. Supra n.23.
28. Supra n.12.

29. Bryan v Mott (1976) 62 Cr App Rep 71 at 73.
30. Idem.
31. Evans v Hughes (1972) 56 Cr App Rep 813.
32. Raynor v Adams [1944] GLR 213 at 214.
33. R v Cugallere [1961] 2 All ER 343.
34. Appendix E.
35. Seven Seas Publishing Ltd. v Sullivan [1968] NZLR 663.
36. Smith and Hogan, Criminal Law (4th ed) 393.
37. R v Petrie [1961] 1 All ER 466 at 468 C - D.
38. Ibid, at 468E .
39. See Section III .
40. Supra n.37, at 468C - F.
41. [1974] 2NZLR 32.
42. Ibid, at 43.
43. Supra n.2 .
44. See Section II .
45. Supra n.24.
46. Hon. Mr Marshall [1956] NZPD 2571.
47. Supra n.24, at subs (4) .
48. Supra n.23, at subs (7).
49. Halsbury, Statutes of England (3rd ed. 1969) xviii, 73.
50. Sir David Maxwell Fye, Commons Debates, vol 511, pp 2323.
51. Idem.
52. Supra n.46.
53. Ibid, Mr Moohan, at 2572.
54. Supra n.46 .
55. R v Black [1956] NZLR 205.
56. Supra n.46, Messrs Jack and Beard, at 2577.
57. Supra n.46, at 2579.
58. Hon. Mr Marshall [1956] NZPD 2202.

59. Appendix H.

60. Agriculture and Fisheries Ministry v Bennett [1977] 1 NZLR 64, 70.

61. [1976] NZPD 4667.

62. Letter by the Secretary of Justice to the Statutes Revision Committee in 1976.

63. Submissions by the Victoria University of Wellington Law Faculty Club to the Statutes Revision Committee, on the Police Offences Amendment Act 1979.

64. Submissions by Cos Jeffrey and the New Zealand Law Students Association to the Statutes Revision Committee in 1976.

65. At pp 22-23.

66. Submissions by Kenneth Hampton a Christchurch Lawyer and Cos Jeffrey a Christchurch Social Worker, to the Statutes Revision Committee in 1976.

67. Appendix I.

67A. Appendix J.

68. Appendix to the Journals of the House of Representatives [1976] iii, G.6.

69. Idem.

70. Research by Dr W. Young, Director of Criminology, Victoria University of Wellington.

71. At Appendix I.

72. [1976] NZPD 3888.

73. Appendix H. subs (1)(b).

74. Supra n.70.

75. Unreported, M. No. 1681/79.

76. Ibid, at pp 2.

77. Ibid, at pp 3.

78. Supra n.62.

79. R v Hartley [1978] 2NZLR 199 at 213 - 217.

80. Winfield and Jolowicz, The Law of Torts (11 ed) 347.

81. Ibid, at 62.

82. Ibid, at 513 - 520.

83. Ombusdman Act 1975, s.13.

84. Report of the Ombudsman 1978, pp 8.

85. J.L. Robson, Ombudsmen in New Zealand, Victoria University of Wellington Institute of Criminology Occasional Papers, (No. 11) pp 33.

86. Supra n. 84, at 11 - 13.

87. Supra n. 85.

88. Appendix A.

89. Ibid, at subs. (5).

89[a]. Appendix B.

90. Supra n.63, at pp 5.

91. Supra n.60 .

92. Appendix H. at subs (8) .

93. Conversation with Dr Warren Young, Director of Criminology, Victoria University of Wellington.

94. Supra n.70 .

95. Idem.

96. The Evening Post, August 4, 1979.

97. Interview with a Police Officer.

98. Appendix I.

99. Supra n. 97.

1. Idem.

2. Idem.

3. Supra n.96.

4. [1979] NZPD 2071.

5. Ibid, at 2079.

6. [1979] NZPD 3332.

7, Supra n.97.

8. It becomes s.57A of the Police Act 1958.

9. Supra n. 10.

10. Supra n. 97.

11. (No 2) 1979, which becomes s.18 Misuse of Drugs Act 1975.

12. Mr Prebble [1979] NZPD 3539.

13. 1979, no 147.

14. Report of the Committee on Violent Offending, 1979, pp 36.

APPENDIX A

Police Offences Amendment Act, 1979.

An Act to amend the Police Offences Act 1927 relating to the powers of constables to search for offensive weapons

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Police Offences Amendment Act 1979, and shall be read together with and deemed part of the Police Offences Act 1927* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

2. Offensive weapons—Section 53A of the principal Act (as substituted by section 4 (1) of the Police Offences Amendment Act 1976) is hereby amended by repealing subsection (5), and substituting the following subsection:

"(5) Where any constable has reasonable grounds for believing that any person is committing an offence against subsection (1) (a) of this section, he may—

"(a) Stop and search that person and any package or receptacle he has with him that the constable has reasonable grounds for believing contains an offensive weapon, and may detain that person for as long as is reasonably necessary to conduct that search:

"(b) Stop and search any vehicle in which that person is travelling or from which he has alighted if the constable has reasonable grounds for believing that the vehicle contains an offensive weapon, and may detain that vehicle for as long as is reasonably necessary to conduct that search;—

and, in any such case, the constable may take possession of any offensive weapon found."

APPENDIX B

Police Offences Amendment Bill,1979.

POLICE OFFENCES AMENDMENT

ANALYSIS

A BILL INTITULED

An Act to amend the Police Offences Act 1927 relating to the powers of constables to search for offensive weapons

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Police Offences Amendment Act 1979, and shall be read together with and deemed part of the Police Offences Act 1927* (hereinafter referred to as the principal Act).

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"(5) Where any constable has reasonable grounds for believing that any person is committing an offence against subsection (1) (a) of this section, he may—

"(a) Stop and search that person and any package or receptacle in that person's possession or under that person's control, and may detain that person for the purpose of that search:

"(b) Stop and search any vehicle in which that person is travelling or from which he has alighted, and may detain that vehicle for the purpose of that search;—

and, in any such case, the constable may take possession of any offensive weapon found."

APPENDIX C.

Police Offences, 1884, Section 27:

Any person who commits any of the next following offences shall be deemed an idle and disorderly person within the meaning of this Act, and shall be liable to the punishment next hereinafter mentioned:

(1) Who is found by night armed with any gun, pistol, sword, bludgeon, or other offensive weapon or instrument, and who, being thereto required by any justice, does not give a good account of his means of support, and assign a valid and satisfactory reason for his being so armed;

shall be liable to imprisonment for any time not exceeding six months; and every such gun, pistol, sword, bludgeon, or other offensive weapon or instrument as aforesaid shall, by the conviction of the offender, become forfeited to Her Majesty.

This becomes Section 51(1)(a) in the 1927 Act.

.....

Section 28: Any person who commits any of the next following offences shall be deemed a rogue and vagabond within the meaning of this Act, and be liable to the punishment next hereinafter mentioned:

(7) Is armed with any pistol, sword, bludgeon, or other offensive weapon or instrument, with a felonious intent; shall be liable to imprisonment with hard labour for any time not exceeding one year; and every such .... offensive weapon or instrument as aforesaid shall, by the conviction of the offender

become forfeited to Her Majesty.

This section becomes Section 52 (1)(g) in the Police Offences Act, 1927.

.....

Section 32: Any constable or other person apprehending any person charged with being an idle and disorderly person, or a rogue and vagabond, or an incorrigible rogue, may seize any horse or other cattle, or any vehicle, or goods in the possession or use of such person, and may take and convey the same, as well as such person, before a Justice.

This section becomes Section 58 in the Police Offences Act, 1927.

.....

Section 35: Any constable, and all persons whom he shall call to his assistance, may take into custody, without a warrant, -

Any person who, within view of any such constable, shall offend in any manner against this Act, and whose name and residence shall be unknown to such constable and cannot be ascertained by him;

All loose, idle, and disorderly persons whom he shall find disturbing the public peace, or any person whom he shall have good cause to suspect of having committed, or being about to commit, any felony, misdemeanour, or breach of the peace.

This section becomes Section 73 in the Police Offences Act, 1927.

APPENDIX D

Police Offences Amendment Act, 1956

3. Carrying offensive weapon in public place without lawful excuse—The principal Act is hereby amended by inserting, after section fifty-three, the following section:

"53A. (1) Every person commits an offence who, without lawful authority or reasonable excuse, the proof of which shall be on him, has with him in any public place any offensive weapon.

"(2) Every person who commits an offence against this section is liable on conviction on indictment to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding one year, or to both.

"(3) The offence created by this section is hereby declared to be an offence that may be dealt with by a Magistrate's Court presided over by a Magistrate under and subject to the provisions of the Summary Jurisdiction Act 1952, and the provisions of that Act shall apply accordingly.

"(4) Where any person is convicted of an offence against this section the Court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

"(5) Any constable who has reasonable cause to believe that any person is committing an offence against this section may arrest that person without warrant, if the constable—

"(a) Is not satisfied as to that person's identity or place of residence; or

"(b) Has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an offensive weapon might be used.

"(6) Nothing in section sixty or section seventy-three of this Act shall be construed to authorise the arrest without warrant of any person, under either of those sections, in respect of any offence against this section.

"(7) For the purposes of this section, the expression 'offensive weapon' means any article made or altered for use for causing bodily injury, or intended by the person having it with him for such use; but does not include any tool of trade in the possession of any person in the course of his employment or while he is going to or returning from his work."

Cf. Prevention of Crime Act 1953 (U.K.)

APPENDIX E

Police Offences Act , 1927 :

2. **Interpretation**—In this Act, if not inconsistent with the context,—

...

"Public place" includes and applies to every road, street, footpath, footway, court, alley, and thoroughfare of a public nature, or open to or used by the public as of right, and to every place of public resort so open or used.

INDECENCY AND VAGRANCY

40. **Extended interpretation of "public place"**—In this Part of this Act, if not inconsistent with the context, "public place" shall, in addition to the meaning assigned thereto in section 2 hereof, be deemed to include—

(a) Any public park, garden, reserve, or other place of public recreation or resort; or

(b) Any railway station, platform, or carriage; or

(c) Any public wharf, pier, or jetty; or

(d) Any passenger ship or boat plying for hire; or

(e) Any licensed public vehicle plying for hire; or

(f) Any church, chapel, or other public building where Divine service is being publicly held; or

(g) Any public hall, theatre, or room in which any public concert, theatrical representation, or other public entertainment is being held or performed or is taking place; or

(h) Any market; or

(i) Any auction room or mart or place while a sale by auction is there proceeding; or

(j) Any open bar in the premises of any licensed publican, whether under an annual or temporary licence; or

(k) Any racecourse, cricket ground, football ground, or other such place to which the public have access free or on payment of any gate money; or

(l) Any cabinet or other place in which any telephone is placed for the use of the public; or

(m) Any public place as defined in section 2 hereof, and every other place open to or used by the public, whether on the payment of money or otherwise.

Cf. 1908, No. 146, s. 28; 1919, No. 19, s. 6; 1924, No. 29, s. 5

APPENDIX F

THE PREVENTION OF CRIME ACT 1953

(1 & 2 Eliz. 2 c. 14)

An Act to prohibit the carrying of offensive weapons in public places without lawful authority or reasonable excuse [6th May 1953]

Northern Ireland. This Act does not apply; see s. 2 (3), *post*.

1. Prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse

(1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon shall be guilty of an offence, and shall be liable—

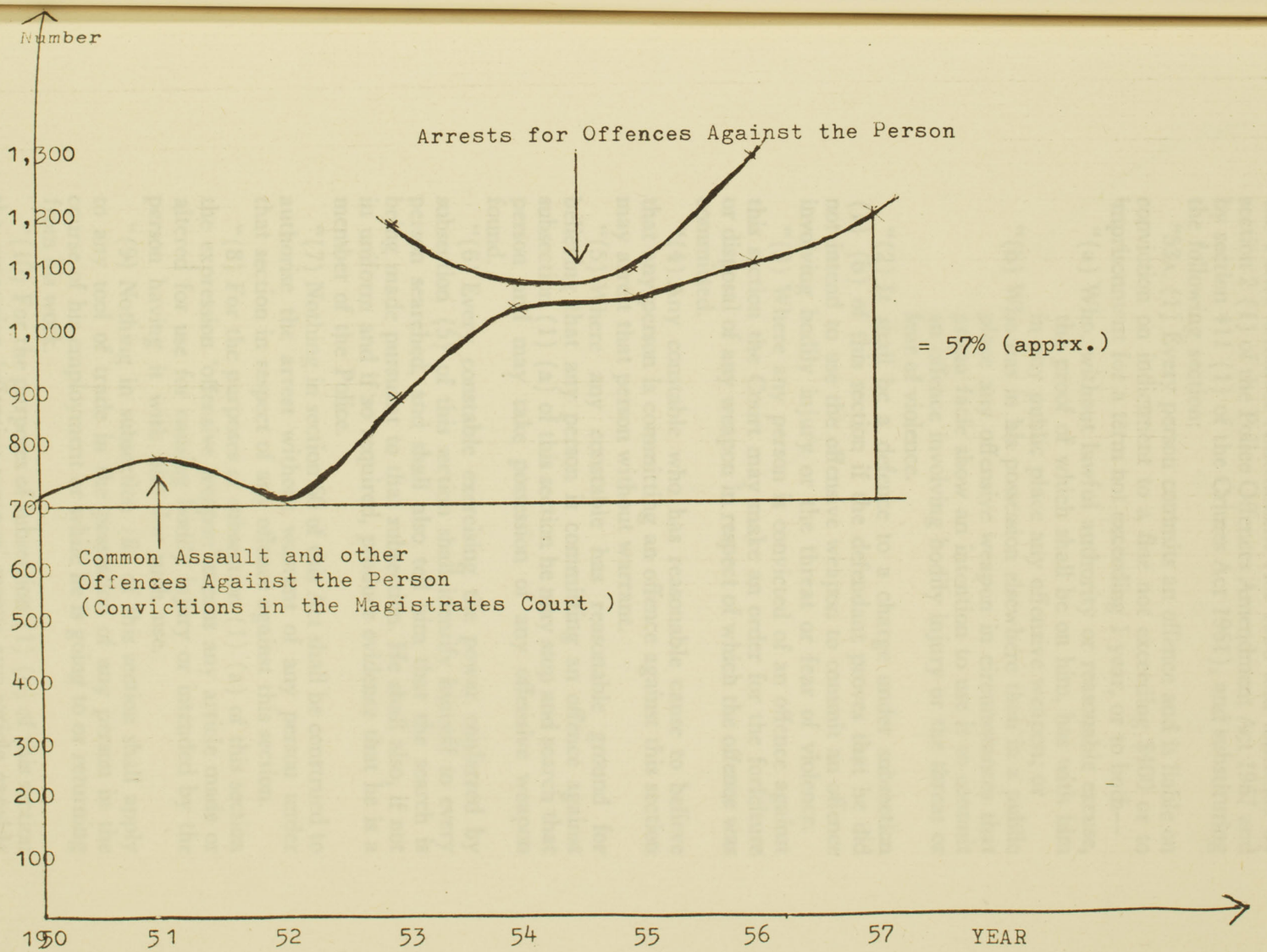
(*a*) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding fifty pounds, or both;

(*b*) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine not exceeding one hundred pounds, or both.

(2) Where any person is convicted of an offence under subsection (1) of this section the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

(3) A constable may arrest without warrant any person whom he has reasonable cause to believe to be committing an offence under subsection (1) of this section, if the constable is not satified as to that person's identity or place of residence, or has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an offensive weapon might be used.

(4) In this section "public place" includes any highway and any other premises or place to which at the material time the public have or are permitted to have access, whether on payment or otherwise; and "offensive weapon" means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him.



APPENDIX H

Police Offences Amendment Act , 1976.

4. Offensive weapons—(1) The principal Act is hereby amended by repealing section 53A (as inserted by section 3 of the Police Offences Amendment Act 1956 and amended by section 2 (1) of the Police Offences Amendment Act 1967 and by section 411 (1) of the Crimes Act 1961), and substituting the following section:

"53A. (1) Every person commits an offence and is liable on conviction on indictment to a fine not exceeding $400 or to imprisonment for a term not exceeding 1 year, or to both—

"(a) Who, without lawful authority or reasonable excuse, the proof of which shall be on him, has with him in any public place any offensive weapon; or

"(b) Who has in his possession elsewhere than in a public place any offensive weapon in circumstances that prima facie show an intention to use it to commit an offence involving bodily injury or the threat or fear of violence.

"(2) It shall be a defence to a charge under subsection (1) (b) of this section if the defendant proves that he did not intend to use the offensive weapon to commit an offence involving bodily injury or the threat or fear of violence.

"(3) Where any person is convicted of an offence against this section the Court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

"(4) Any constable who has reasonable cause to believe that any person is committing an offence against this section may arrest that person without warrant.

"(5) Where any constable has reasonable ground for believing that any person is committing an offence against subsection (1) (a) of this section he may stop and search that person and may take possession of any offensive weapon found.

"(6) Every constable exercising the power conferred by subsection (5) of this section shall identify himself to every person searched, and shall also tell him that the search is being made pursuant to that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a member of the Police.

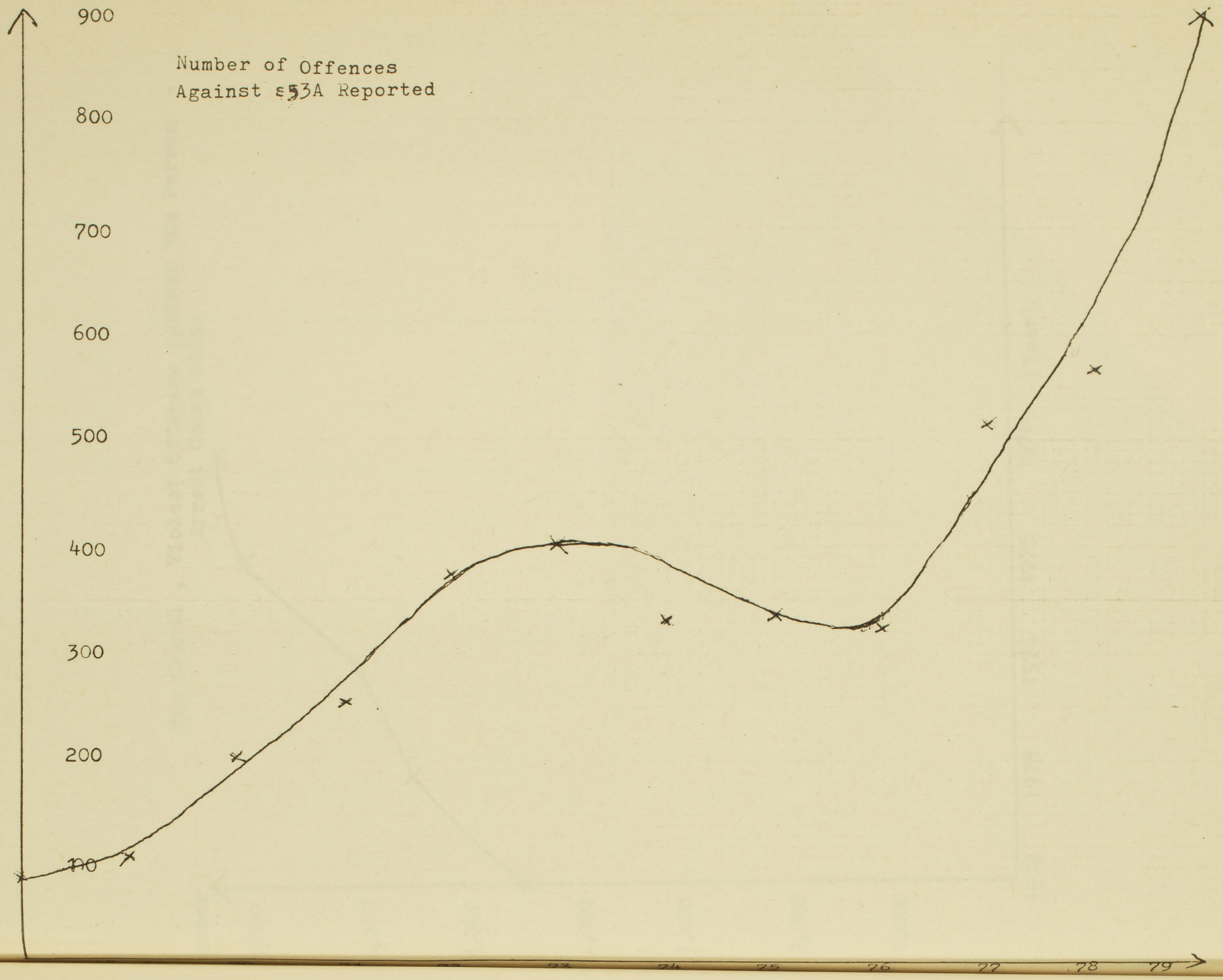
"(7) Nothing in section 60 of this Act shall be construed to authorise the arrest without warrant of any person under that section in respect of any offence against this section.

"(8) For the purposes of subsection (1) (a) of this section the expression 'offensive weapon' means any article made or altered for use for causing bodily injury or intended by the person having it with him for such use.

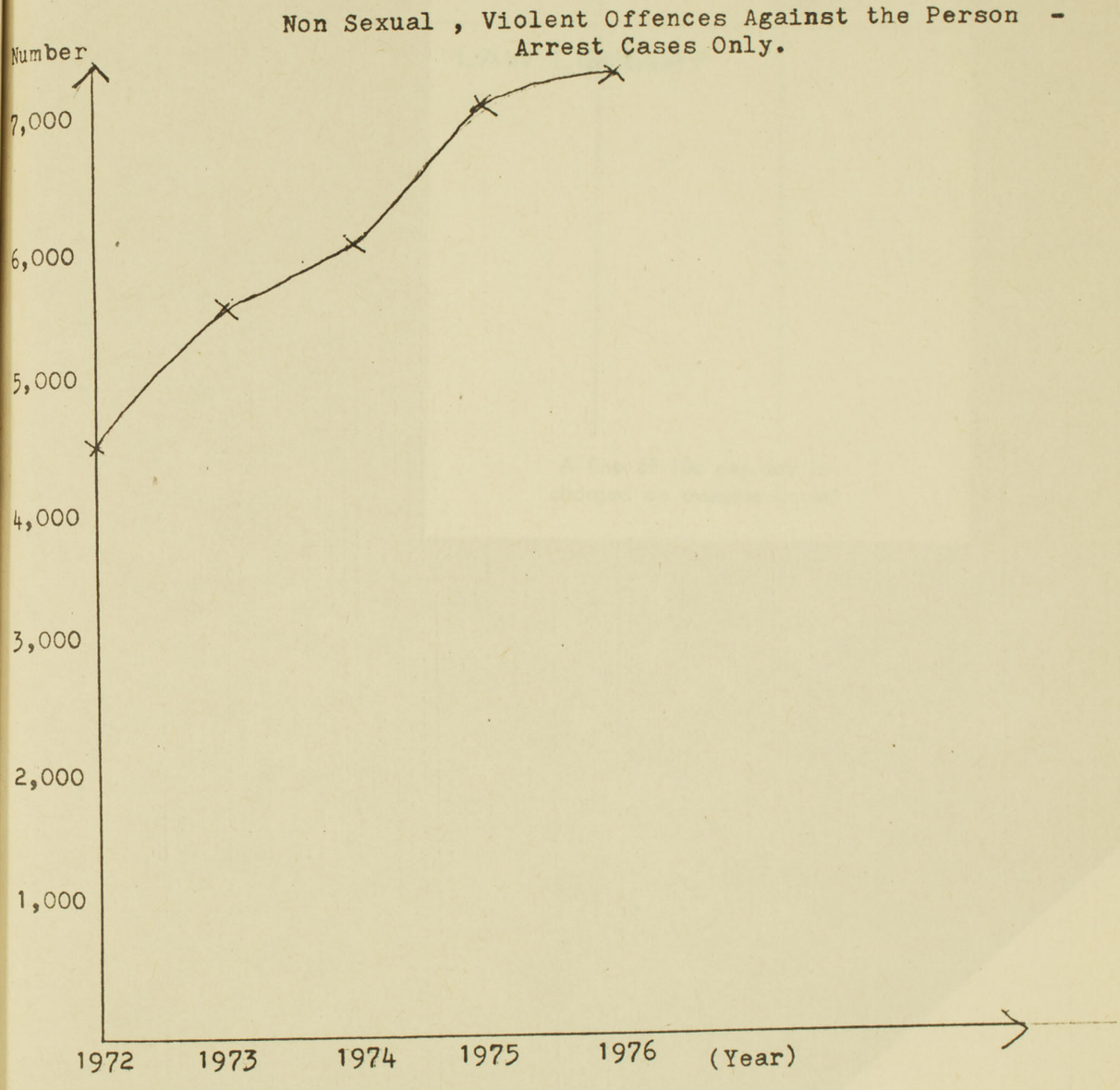
"(9) Nothing in subsection (8) of this section shall apply to any tool of trade in the possession of any person in the course of his employment or while he is going to or returning from his work.

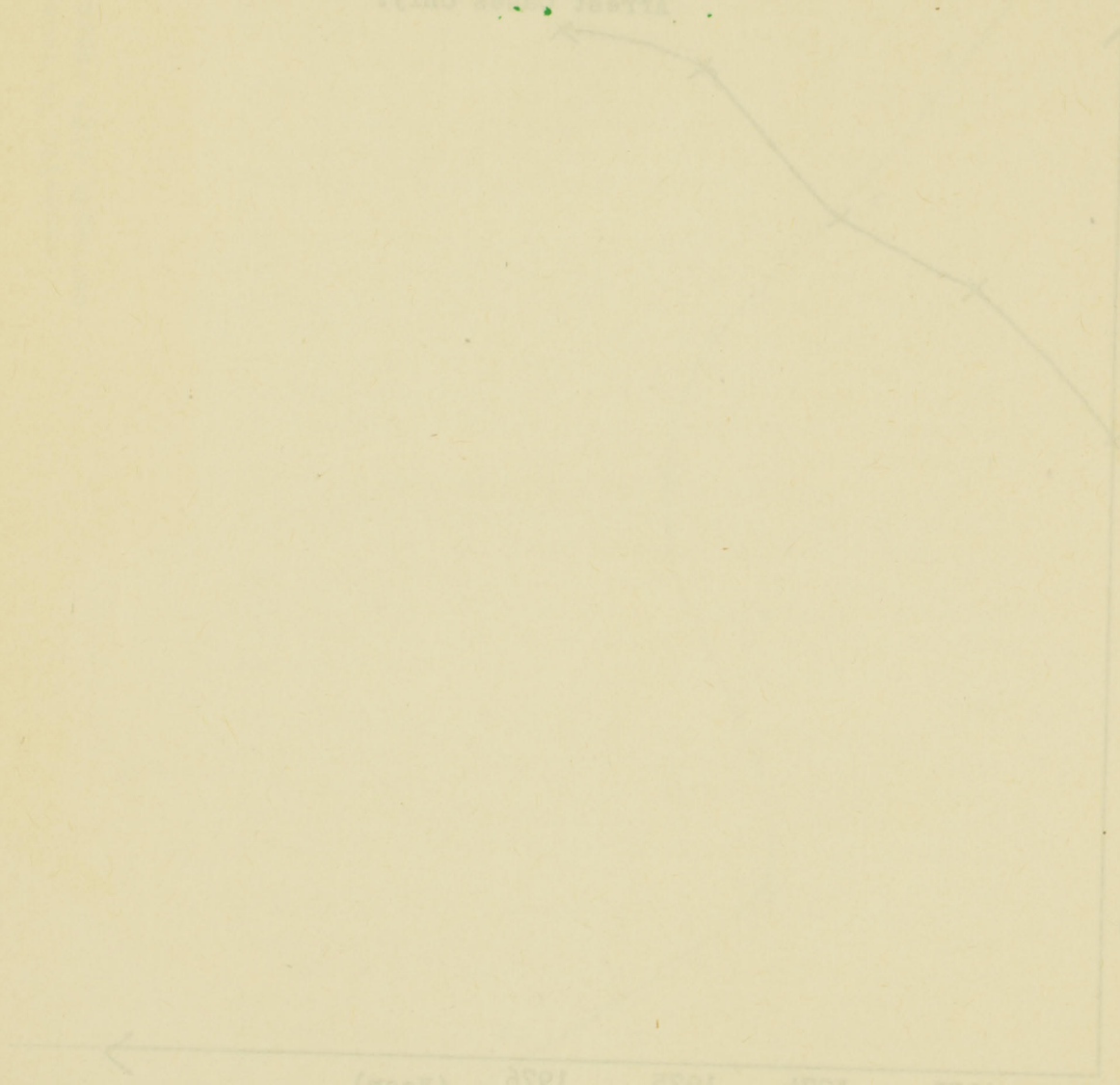
"(10) For the purposes of subsection (1) (b) of this section the expression 'offensive weapon' means any article capable of being used for causing bodily injury."

APPENDIX I


Number of Offences
Against s53A Reported
900
800
700
600
500
400
300
200
100
24
25
26
77
78
79

APPENDIX J





1 HO HOLLISTER-JONES, G.C. Police search for offensive weapons