

Sentencing Snapshot

Sentencing trends
in the Magistrates'
Court of Victoria
2004–05 to 2007–08

October 2008
No. 57

Burglary

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of burglary and details the age and gender² of people sentenced for this offence in the Magistrates' Court of Victoria between 2004–05 and 2007–08.

A person who enters a building or part of a building as a trespasser and who intends to steal, assault a person in the building or to damage the building or property in the building, is guilty of burglary.³

Burglary is an indictable offence that carries a maximum penalty of 10 years' imprisonment and/or a fine of up to 1200 penalty units.⁴ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.⁵

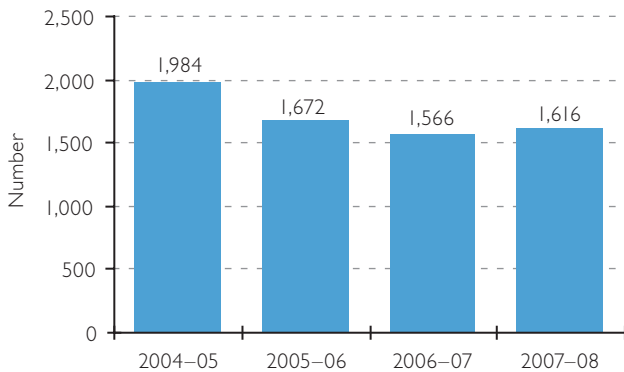
This offence may also be heard summarily in the Magistrates' Court if the court considers it appropriate and the defendant consents. This tends to occur where the offence is seen by the court as being less serious in nature. Where an offence is tried summarily, the matter will be heard before a magistrate rather than a judge and a jury. Where burglary is heard summarily, it carries a maximum penalty of 2 years' imprisonment and/or a fine of 240 penalty units.⁶

Of all people sentenced for the principal offence of burglary, 83.5% had their cases heard in the Magistrates' Court. The remaining cases were heard in the Children's Court and higher courts. Burglary was the principal offence in 2.5% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

People sentenced

Over the four-year period, the Magistrates' Court sentenced 6,838 people for the principal offence of burglary. In 2007–08, there were 1,616 people who were sentenced for the principal proven offence of burglary.⁷ This is a slight increase from 2006–07, after recording a 21.1% decrease in the two years from 2004–05.

Figure 1: The number of people sentenced for burglary, 2004–05 to 2007–08



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for burglary during 2004–05 to 2007–08. Over the four-year period, around four in ten of those sentenced for burglary received an immediate custodial sentence (2,699 people or 39.5%), including 2,195 people who were sentenced to imprisonment (32.1%).

There were also 2,474 people who received a non-custodial sentence (36.2%), including 1,361 people who received a community-based order (19.9%).

An additional 493 people participated in the criminal justice diversion program. These people are not counted towards the total number of people sentenced and are not included in any further analyses in this paper (unless stated).⁸

Table 1: The number and percentage of people sentenced for burglary by sentence type, 2004–05 to 2007–08

Sentence Type	Total	%
Immediate custodial	2,699	39.5
Imprisonment	2,195	32.1
Partially suspended sentence	333	4.9
Combined custody and treatment order	33	0.5
Youth justice centre order	138	2.0
Other custodial	1,665	24.3
Drug treatment order	41	0.6
Home detention order	2	0.0
Wholly suspended sentence	1,242	18.2
Intensive correction order	380	5.6
Non-custodial	2,474	36.2
Community-based order	1,361	19.9
Fine	505	7.4
Adjourned undertaking	599	8.8
Convicted and discharged (s 73 SA)	5	0.1
Dismissed (s 76 SA)	4	0.1
People sentenced	6,838	100.0
Criminal justice diversion program	493	
Total dispositions	7,331	

Sentencing outcomes by year

Table 3 shows the number and percentage of people sentenced each year from 2004–05 to 2007–08 for burglary by the type of sentence imposed.

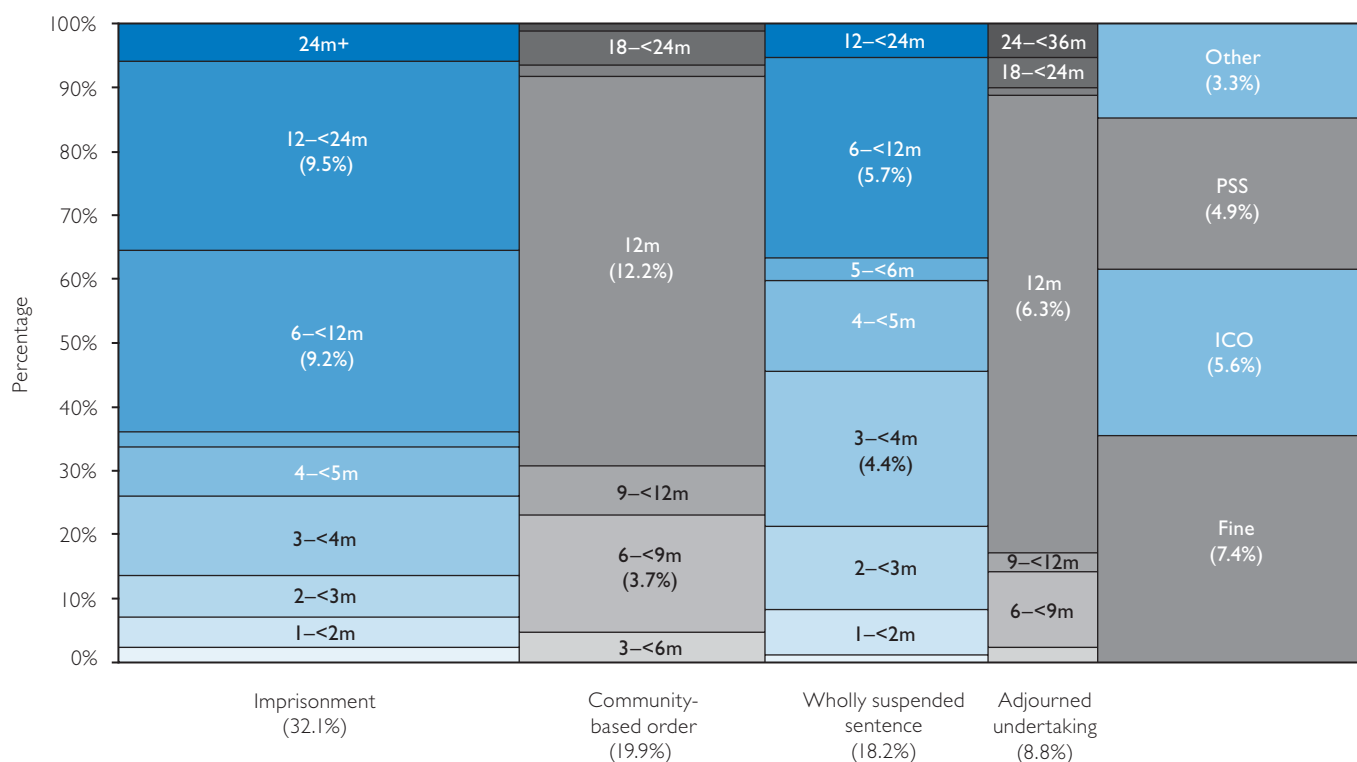
The number and percentage of people who received an immediate custodial sentence decreased from 757 people and 38.2% in 2004–05 to 596 people and 36.9% in 2007–08.

While the number of people who received a non-immediate custodial sentence decreased from 513 people in 2004–05 to 425 people in 2007–08, the percentage of people increased from 21.8% to 26.3% over the past year. While the number of people who received a non-custodial sentence decreased from 714 people in 2004–05 to 595 people in 2007–08, the percentage of people increased from 35.8% to 36.8% over the past year.

Sentencing map

Figure 3 presents both the sentencing outcome and the quantum for that outcome for people sentenced for burglary. For example, 32.1% of people sentenced were sentenced to imprisonment including 9.5% who were sentenced to imprisonment of 12 to 24 months. The right most column of the graph presents the least common sentencing outcomes without showing the quantum information.

Figure 3: Sentencing map: The percentage of people sentenced for burglary by sentencing outcomes and sentencing quanta, 2004–05 to 2007–08¹³



Note: ICO refers to intensive correction order and PSS refers to partially suspended sentence. Other includes youth justice centre order, drug treatment order, combined custody and treatment order, convicted and discharged (s 73 SA), dismissed (s 76 SA) and home detention order.

Table 3: The number and percentage of people sentenced for burglary by sentence type and year, 2004–05 to 2007–08¹²

Sentence type	2004–05	2005–06	2006–07	2007–08
Immediate custodial	757 (38.2%)	681 (40.7%)	665 (42.5%)	596 (36.9%)
Imprisonment	593 (29.9%)	549 (32.8%)	557 (35.6%)	496 (30.7%)
Partially suspended sentence	97 (4.9%)	80 (4.8%)	79 (5.0%)	77 (4.8%)
Combined custody and treatment order	12 (0.6%)	9 (0.5%)	4 (0.3%)	8 (0.5%)
Youth justice centre order	55 (2.8%)	43 (2.6%)	25 (1.6%)	15 (0.9%)
Other custodial	513 (25.9%)	386 (23.1%)	341 (21.8%)	425 (26.3%)
Drug treatment order	15 (0.8%)	13 (0.8%)	5 (0.3%)	8 (0.5%)
Home detention order	0 –	2 (0.1%)	0 –	0 –
Wholly suspended sentence	387 (19.5%)	285 (17.0%)	249 (15.9%)	321 (19.9%)
Intensive correction order	111 (5.6%)	86 (5.1%)	87 (5.6%)	96 (5.9%)
Non-custodial	714 (36.0%)	605 (36.2%)	560 (35.8%)	595 (36.8%)
Community-based order	397 (20.0%)	321 (19.2%)	307 (19.6%)	336 (20.8%)
Fine	146 (7.4%)	127 (7.6%)	127 (8.1%)	105 (6.5%)
Adjourned undertaking	170 (8.6%)	154 (9.2%)	125 (8.0%)	150 (9.3%)
Convicted and discharged (s 73 SA)	1 (<0.1%)	3 (0.2%)	1 (<0.1%)	0 –
Dismissed (s 76 SA)	–	–	0 –	4 (0.2%)
People sentenced	1984	1672	1566	1616

Principal sentence

This section examines the use of the five most common principal sentencing outcomes for this offence.¹⁴ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided.¹⁵ Finally, where relevant, the details of the sentence (length of order or fine amount) are examined.¹⁶ When a person is sentenced for multiple offences, the court has the power to impose a single aggregate term of imprisonment¹⁷ or aggregate fine.¹⁸ For these people aggregate lengths or fine amounts are shown.¹⁹

The five most common sentences imposed for burglary are imprisonment, community-based order, wholly suspended sentence, adjourned undertaking and fine.

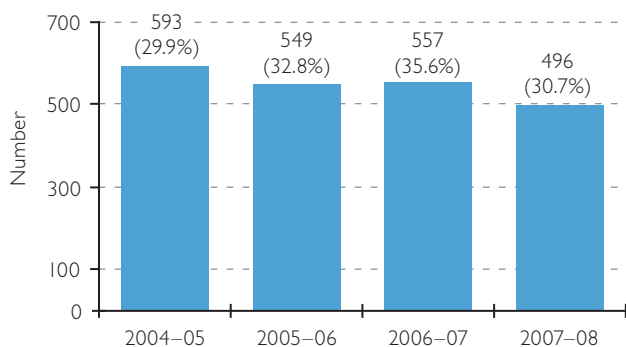
Imprisonment

Trends

There were 2,195 people who were sentenced to imprisonment for burglary. This represented 32.1% of all people sentenced for this offence. Figure 4 shows the trends in the number and percentage of people who were sentenced to imprisonment for burglary.

In 2007–08, 496 people were sentenced to imprisonment for the principal proven offence of burglary. This has decreased over the past year from 557 people in 2006–07, after remaining relatively stable the previous two years. Also, the proportion of people who were sentenced to imprisonment for burglary decreased over the past year from 35.6% to 30.7%.

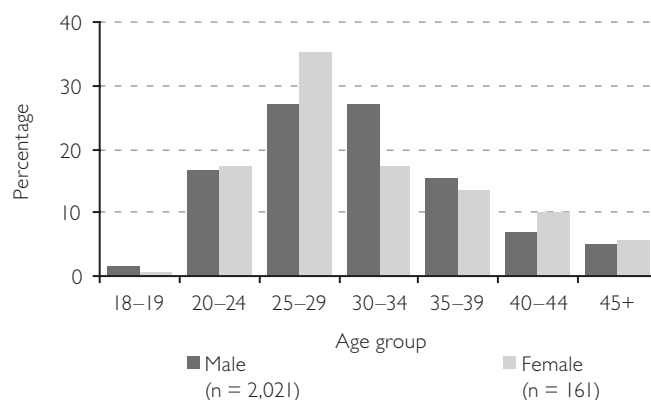
Figure 4: The number and percentage of people who were sentenced to imprisonment for burglary, 2004–05 to 2007–08



Age and gender

Of the 2,195 people who received a period of imprisonment, 92.6% were men. Figure 5 shows the age groups of people who were sentenced to imprisonment for burglary by gender. The median age of these people was 30 years. This was similar for both men and women (30 years for men and 29 years for women).

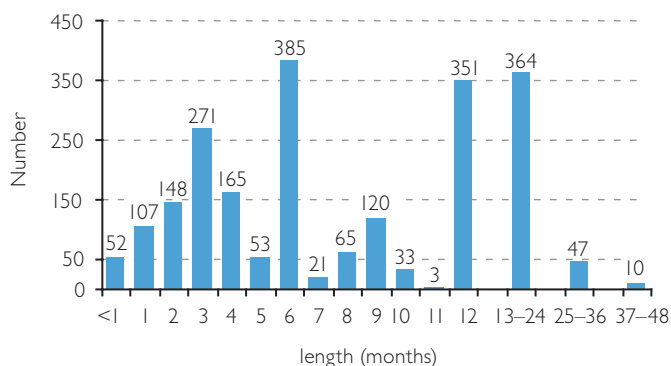
Figure 5: The percentage of people who were sentenced to imprisonment for burglary by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 6 shows the number of people who were sentenced to imprisonment for burglary by the length of the sentence. While the length of imprisonment ranged from one day to four years, the median was six months (meaning that half were shorter than six months and half were longer than six months). Aggregate periods of imprisonment were imposed for 73.0% of people who were sentenced to imprisonment.²⁰

Figure 6: The number of people who were sentenced to imprisonment for burglary by the length of order, 2004–05 to 2007–08



Community-based order

Trends

There were 1,361 people who received a community-based order for burglary. This represented 19.9% of all people sentenced for this offence. Of the 643 people who received a community-based order in 2006–07 and 2007–08, 70.9% also had a conviction recorded (456 people). Figure 7 shows the trends in the number and percentage of people who received a community-based order for burglary.

In 2007–08, 336 people received a community-based order for the principal proven offence of burglary. This has increased over the past year from 307 people in 2006–07, after remaining relatively stable the previous year. The proportion of people who received a community-based order for burglary remained relatively stable over the past four years ranging from 19.2% in 2005–06 to 20.8% in 2007–08.

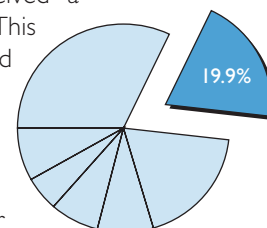
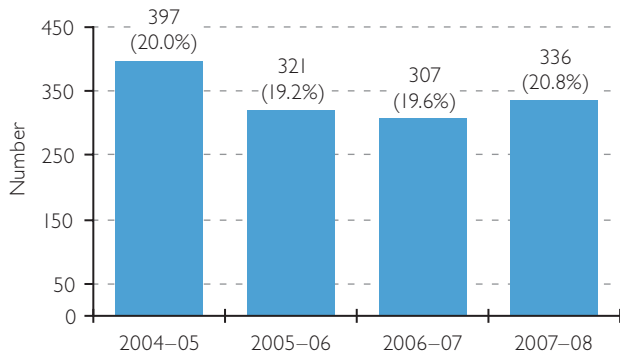


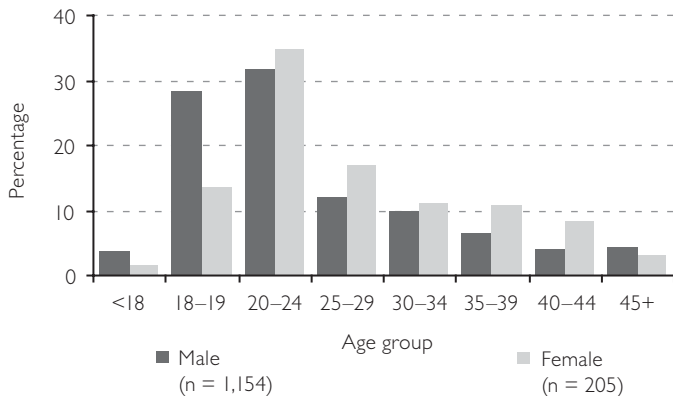
Figure 7: The number and percentage of people who received a community-based order for burglary, 2004–05 to 2007–08



Age and gender

Of the 1,361 people who received a community-based order, 84.9% were men. Figure 8 shows the age groups of people who received a community-based order for burglary by gender. The median age of these people was 22 years, while women were much older than their male counterparts (a median age of 25 years compared to 21 years).

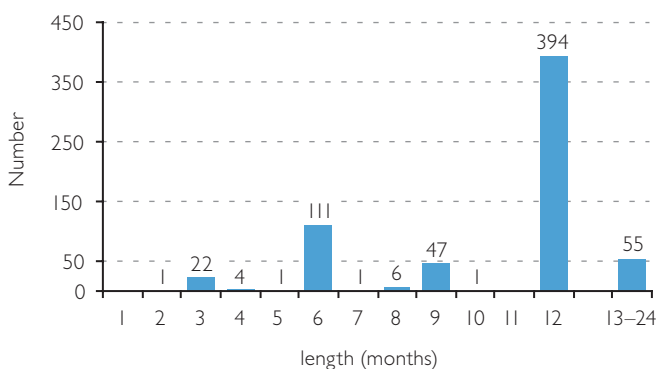
Figure 8: The percentage of people who received a community-based order for burglary by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 9 shows the number of people who received a community-based order for burglary by the length of the sentence. While the length of community-based orders ranged from two months to two years, the majority were for 12 months (61.3%).

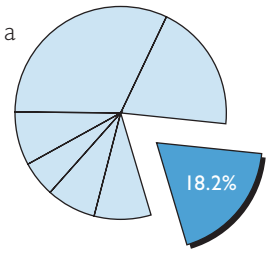
Figure 9: The number of people who received a community-based order for burglary by the length of order, 2006–07 and 2007–08



Wholly suspended sentence

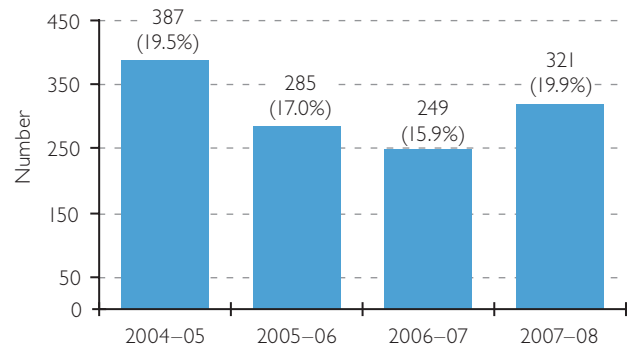
Trends

There were 1,242 people who received a wholly suspended sentence for burglary. This represented 18.2% of all people sentenced for this offence. Figure 10 shows the trends in the number and percentage of people who received a wholly suspended sentence for burglary.



In 2007–08, 321 people received a wholly suspended sentence for the principal proven offence of burglary. This has increased over the past year from 249 people in 2006–07, after decreasing substantially the previous two years. Also, the proportion of people who received a wholly suspended sentence for burglary increased over the past year from 15.9% to 19.9%.

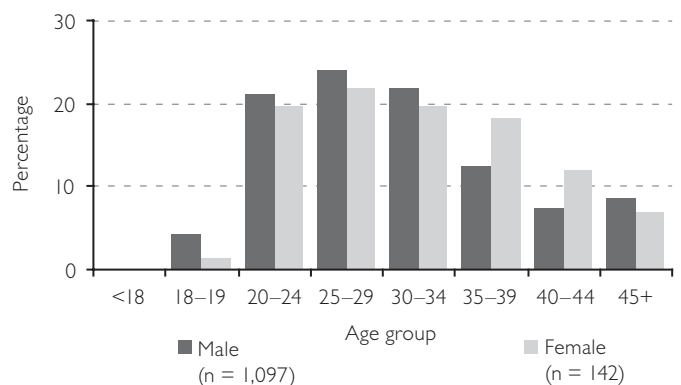
Figure 10: The number and percentage of people who received a wholly suspended sentence for burglary, 2004–05 to 2007–08



Age and gender

Of the 1,242 people who received a wholly suspended sentence, 88.6% were men. Figure 11 shows the age groups of people who received a wholly suspended sentence for burglary by gender. The median age of these people was 30 years. This was similar for both men and women (31 years for women and 30 years for men).

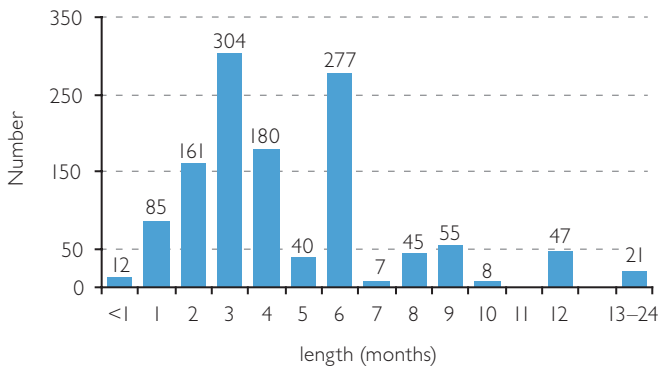
Figure 11: The percentage of people who received a wholly suspended sentence for burglary by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 12 shows the number of people who received a wholly suspended sentence for burglary by the length of the sentence. While the length of wholly suspended sentences ranged from seven days to two years, the median was four months (meaning that half were shorter than four months and half were longer than four months). Aggregate wholly suspended sentences were imposed for 83.0% of people who received a wholly suspended sentence.²¹

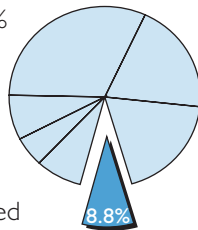
Figure 12: The number of people who received a wholly suspended sentence for burglary by the length of order, 2004–05 to 2007–08



Adjourned undertaking

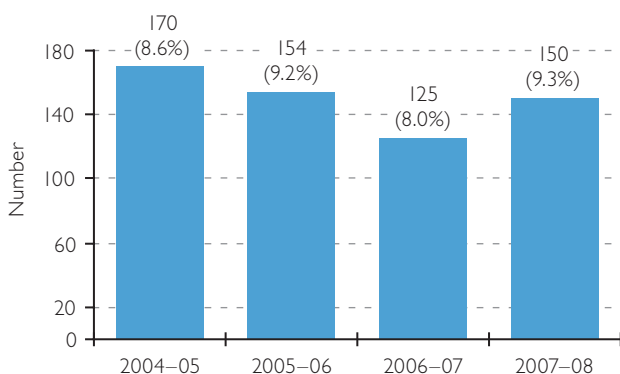
Trends

There were 599 people who received an adjourned undertaking for burglary. This represented 8.8% of all people sentenced for this offence. Of the 275 people who received an adjourned undertaking in 2006–07 and 2007–08, 21.8% also had a conviction recorded (60 people). Figure 13 shows the trends in the number and percentage of people who received an adjourned undertaking for burglary.



In 2007–08, 150 people received an adjourned undertaking for the principal proven offence of burglary. This has increased over the past year from 125 people in 2006–07, after decreasing the previous two years. Also, the proportion of people who received an adjourned undertaking for burglary increased over the past year from 8.0% to 9.3%.

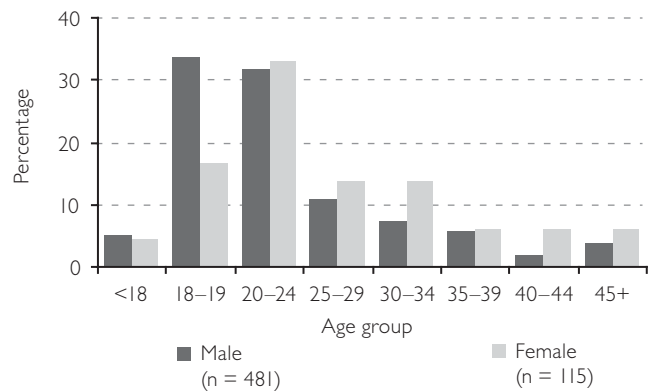
Figure 13: The number and percentage of people who received an adjourned undertaking for burglary, 2004–05 to 2007–08



Age and gender

Of the 599 people who received an adjourned undertaking, 80.6% were men. Figure 14 shows the age groups of people who received an adjourned undertaking for burglary by gender. The median age of these people was 21 years, while women were generally older than their male counterparts (a median age of 24 years compared to 21 years).

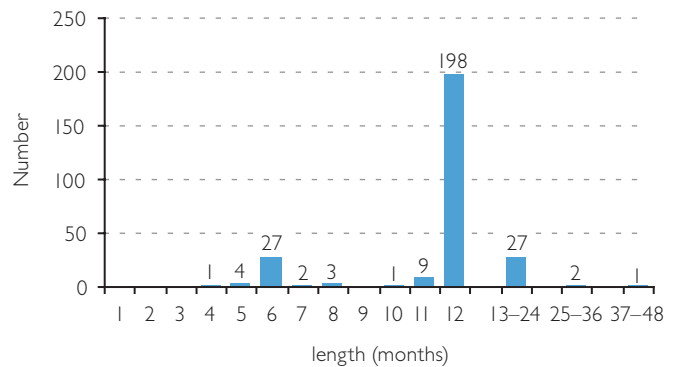
Figure 14: The percentage of people who received an adjourned undertaking for burglary by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 15 shows the number of people who received an adjourned undertaking for burglary by the length of the sentence. While the length of adjourned undertakings ranged from four months to three years and six months, the majority were for 12 months (72.0%).

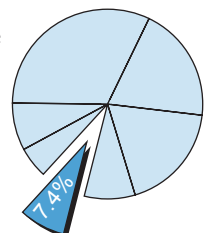
Figure 15: The number of people who received an adjourned undertaking for burglary by the length of order, 2006–07 and 2007–08



Fine

Trends

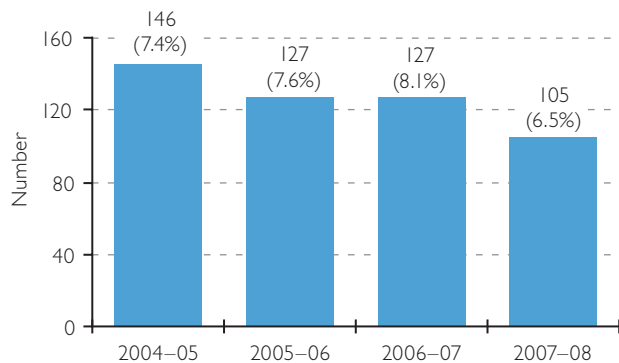
There were 505 people who received a fine for burglary. This represented 7.4% of all people sentenced for this offence. Of the 232 people who received a fine in 2006–07 and 2007–08, 68.5% also had a conviction recorded (159 people). Figure 16 shows the trends in the number and percentage of people who received a fine for burglary.



In 2007–08, 105 people received a fine for the principal proven offence of burglary. This has decreased over the past year from 127 people in 2006–07, after remaining stable the previous year.

Also, the proportion of people who received a fine for burglary decreased over the past year from 8.1% to 6.5%.

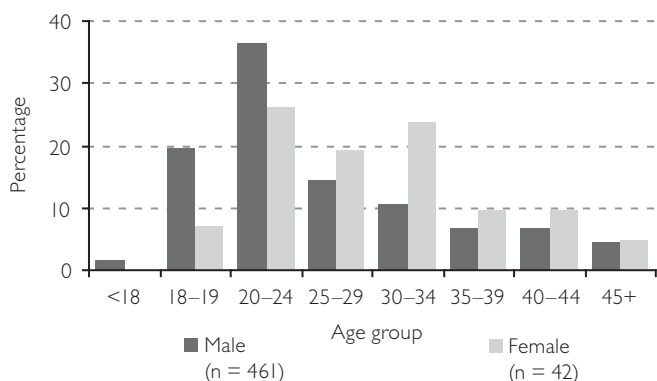
Figure 16: The number and percentage of people who received a fine for burglary, 2004–05 to 2007–08



Age and gender

Of the 505 people who received a fine, 91.7% were men. Figure 17 shows the age groups of people who received a fine for burglary by gender. The median age of these people was 23 years, while women were much older than their male counterparts (a median age of 28 years and six months compared to 23 years).

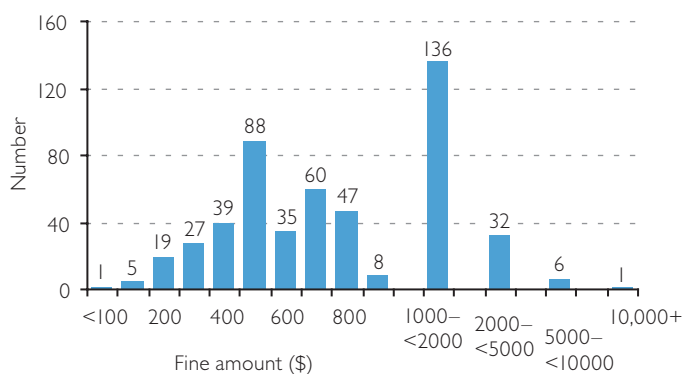
Figure 17: The percentage of people who received a fine for burglary by age and gender, 2004–05 to 2007–08



Fine Amount

Figure 18 shows the number of people who received a fine for burglary by the amount of the fine. While the amount of the fine ranged from \$25 to \$10,000, the median was \$700. Aggregate fines were imposed for 90.9% of people who received a fine.²²

Figure 18: The number of people who received a fine for burglary by the amount of the fine, 2004–05 to 2007–08

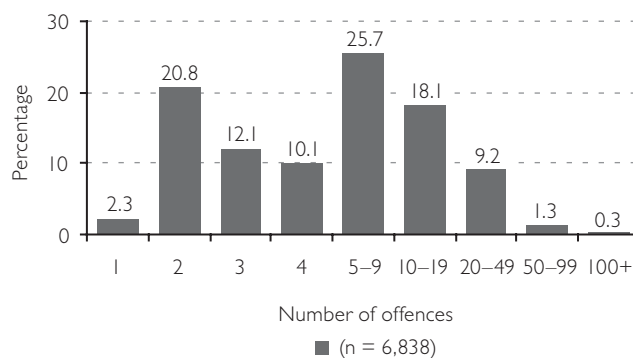


Other offences finalised at the same hearing

Often people prosecuted for burglary face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of burglary.

Figure 19 shows the number of people sentenced for the principal offence of burglary by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 416, while the median was 5 offences. There were 160 people (2.3%) sentenced for the single offence of burglary alone. The average number of offences per person sentenced for burglary was 9.35.

Figure 19: The percentage of cases where burglary was the principal offence by the number of offences where a sentence was imposed in that case, 2004–05 to 2007–08



While Figure 19 presents the number of sentenced offences for those sentenced for burglary, Table 4 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 6,347 of the total 6,838 people (92.8%) also received sentences for theft. On average, they were sentenced for 3.51 charges of theft. The first row indicates that the average number of charges of burglary sentenced per person was 2.21.

Table 4: The number and percentage of people sentenced for the principal offence of burglary by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2007–08

Offence	No.	%	Avg.
1 burglary	6,838	100.0	2.21
2 theft	6,347	92.8	3.51
3 go equipped to steal	1,345	19.7	1.51
4 fail to appear on bail	1,313	19.2	1.70
5 attempt to commit an indictable offence	1,174	17.2	1.84
6 criminal damage	953	13.9	1.61
7 obtain property by deception	944	13.8	5.24
8 handling stolen goods	864	12.6	1.88
9 possession of a drug of dependence	753	11.0	1.37
10 deal property suspected proceed of crime	663	9.7	1.51
People sentenced	6,838	100.0	9.35

Table 5 is an elaboration of Table 4. It shows the five most common types of theft offences for which people were sentenced in conjunction with burglary. As shown, there were 6,347 people sentenced for theft. On average, these people were sentenced for 3.51 charges of such offences. The most common type of theft was 'other' theft (6,041 people or 95.2% of those who were sentenced for theft). On average, these people were sentenced for 2.80 counts of this offence.

Table 5: The number and percentage of people sentenced for the principal offence of burglary by the types of theft offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2007–08

Offence description	No.	%	Avg.
other theft	6,041	95.2	2.80
theft from a shop	1,182	18.6	2.12
theft of a motor vehicle	902	14.2	1.71
theft from a motor vehicle	502	7.9	2.34
theft of a bicycle	96	1.5	1.54
People sentenced	6,347	100.0	3.51

Table 6 also provides more detail from Table 4. It shows the five most common types of attempted offences for which people were sentenced in conjunction with burglary. As shown, there were 1,174 people sentenced for attempting to commit an indictable offence. On average, these people were sentenced for 1.84 charges of such offences. The most common attempted offence sentenced was attempted burglary (321 people or 27.3% of those who were sentenced for an attempted offence). On average, these people were sentenced for 1.42 counts of this offence.

Table 6: The number and percentage of people sentenced for the principal offence of burglary by the five most common types of attempted offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2007–08

Offence description	No.	%	Avg.
attempt to commit an indictable offence (not further defined)	337	28.7	1.50
attempted burglary	321	27.3	1.42
attempted theft	293	25.0	1.36
attempt to obtain property by deception	164	14.0	1.65
attempted theft from motor vehicle	136	11.6	2.41
People sentenced	1,174	100.0	1.84

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of burglary. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.²³

Table 7 shows the percentages of the six most common sentence types imposed in cases in the Magistrates' Court from 2004–05 to 2007–08 where the principal proven offence was burglary, by the other sentence types also imposed in the case. For example, of the 2,280 people who were sentenced to imprisonment as part of their total effective sentence, 22.4% also received a fine.

Common sentence types imposed in conjunction with another sentence type include:

- an imprisonment term with a fine (31.6% of the 1,613 people who received a fine);
- an imprisonment term with a partially suspended sentence (25.5% of the 333 people);
- a fine with a partially suspended sentence (24.9% of the 333 people); and
- a fine with a wholly suspended sentence (23.4% of the 1,294 people).

Table 7: The percentage of selected sentence types used in conjunction with other sentence types imposed in the same case, 2004–05 to 2007–08

	Imp.	Fine	CBO	WSS	ADU	PSS
Imp.	100%	31.6%	2.3%	2.7%	4.0%	25.5%
Fine	22.4%	100%	9.9%	23.4%	4.9%	24.9%
CBO	1.6%	9.7%	100%	13.0%	4.4%	6.3%
WSS	1.5%	18.8%	10.6%	100%	6.7%	3.3%
ADU	1.3%	2.2%	2.0%	3.8%	100%	1.8%
PSS	3.7%	5.1%	1.3%	0.9%	0.8%	100%
Total	2,280	1,613	1,591	1,294	731	333

Note: Imp. refers to imprisonment, CBO refers to community-based order, WSS refers to wholly suspended sentence, ADU refers to adjourned undertaking and PSS refers to partially suspended sentence.

Total effective sentence of imprisonment and non-parole period

The total effective sentence of imprisonment aggregates the sentences of imprisonment imposed for each charge in a case and takes into account whether the court orders sentences to be served concurrently (at the same time) or cumulatively. When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where the court does not set a non-parole period, the person must serve the entirety of the imprisonment term.

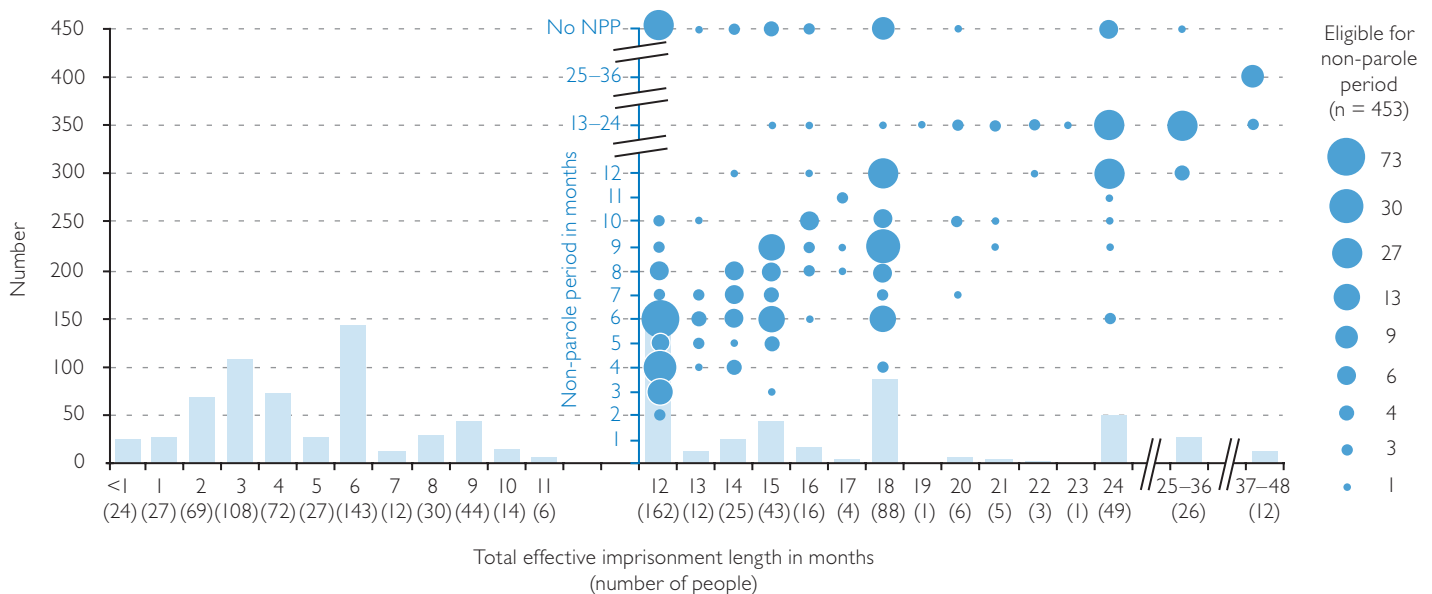
There were 1,029 people given a total effective sentence of imprisonment in 2006–07 and 2007–08.²⁴ There were 453 people eligible for a non-parole period in 2006–07 and 2007–08, of whom 399 were given a non-parole period. This makes up 38.8% of all those who were given a total effective sentence of imprisonment.

Figure 20 shows the number of people sentenced to imprisonment for burglary during 2006–07 and 2007–08 by the length of their total effective sentence. The right side of the graph also shows the length of non-parole periods for people who were sentenced to a period of 12 months' imprisonment or more. The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the bubble reflects the number of people who received that particular combination.²⁵

Total effective imprisonment lengths ranged from one day to four years, while the most common length was 12 months (162 people).

For people who were sentenced to a term of imprisonment of 12 months or longer, the most common combination of imprisonment length and non-parole period was one year with a non-parole period of six months (73 people – as represented by the largest bubble on the chart). The longest total effective sentence imposed was four years with a non-parole period of three years.

Figure 20: The number of people sentenced to imprisonment for burglary by the total effective sentence length and the non-parole period imposed, 2006–07 and 2007–08



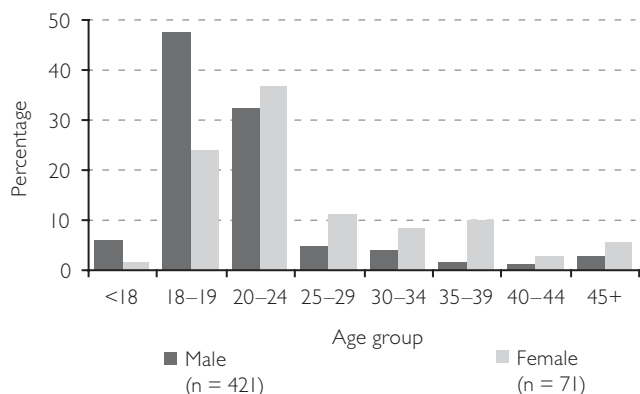
Criminal justice diversion plan²⁶

Although the criminal justice diversion plan is not a sentencing outcome, it is a dispositional process that does help to reflect the work of the courts. Over the four-year period, there were 493 people who were given a criminal justice diversion plan.

Age and gender

Of the 493 people who were referred to the criminal justice diversion program, 85.6% were men. Figure 21 shows the age groups of people who were referred to the criminal justice diversion program for burglary by gender. The median age of these people was 20 years, while women were generally older than their male counterparts (a median age of 22 years compared to 19 years).

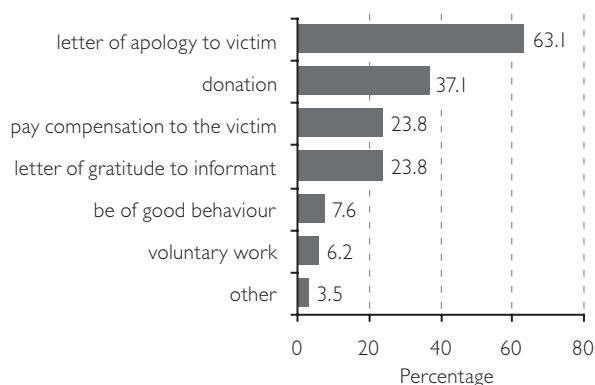
Figure 21: The percentage of people who were referred to the criminal justice diversion program for burglary by age and gender, 2004–05 to 2007–08



Conditions

Figure 22 shows the number of people who received a criminal justice diversion plan for burglary by the types of conditions set. People can be given more than one condition on a diversion plan. As shown, the most common condition listed for diversion plans was a letter of apology to the victim (63.1% of people).

Figure 22: The percentage of conditions set for people who received a criminal justice diversion plan for burglary, 2004–05 to 2007–08



Note: other includes drug awareness course, drug counselling, alcohol counselling/treatment and anger management course.

Summary

The Magistrates' Court sentenced 6,838 people for the principal offence of burglary between 2004–05 and 2007–08. Over this period, the majority of those sentenced were men (6,097 people or 89.2%), while 63% were aged between 20 and 35 years.

Around four in ten people sentenced for burglary received an immediate custodial sentence (2,699 people or 39.5%), including 2,195 people who were sentenced to imprisonment (32.1%). A conviction was recorded with the principal sentence for 84.9% of people sentenced.

Men were more likely to receive sentences of imprisonment. Conversely, women were more likely to receive community-based orders and adjourned undertakings.

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence and an immediate custodial sentence, including an imprisonment term and a partially suspended sentence. Conversely, a higher percentage of younger people received a non-custodial sentence, including a community-based order and an adjourned undertaking.

Each of the 6,838 people was sentenced for an average of 9.35 offences, including 2.21 offences of burglary. The most common offence finalised in conjunction with burglary was theft (92.8% of all cases).

Common sentence types imposed in conjunction with another sentence type included an imprisonment term with a fine (31.6% of the 1,613 people who received a fine), an imprisonment term with a partially suspended sentence (25.5% of the 333 people), a fine with a partially suspended sentence (24.9% of the 333 people) and a fine with a wholly suspended sentence (23.4% of the 1,294 people).

Lengths of total effective sentences ranged from one day to four years with a non-parole period of three years. The most common length was 12 months (162 people).

¹ The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision.

This report presents sentencing outcomes for people sentenced for the principal offence of burglary in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for burglary who received a more serious sentence for another offence on the same charge sheet.

² The data used for analysis in this report contain information on age and gender characteristics. Indigenous status was unknown for 61.0% of people sentenced over this period. Therefore no analyses are presented on Indigenous status.

³ *Crimes Act 1958 s 76.*

⁴ The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website (www.ocpc.vic.gov.au).

⁵ Some less serious indictable offences can be finalised summarily by the Magistrates' Court: *Magistrates' Court Act 1989* (Vic), s 25, s 53 (1) and Schedule 4. Under s 53(1) an offence can only be heard summarily if the court is of the opinion that the charge is appropriate to be determined summarily and if the defendant consents.

Burglary can be heard summarily if the offence involves intent to steal property not exceeding \$25,000 in value (*Magistrates' Court Act 1989* (Vic), s 53 (1) and Sched. 4). If this offence is tried summarily in the Magistrates' Court it carries a maximum penalty of 2 years' imprisonment and/or a fine of up to 240 penalty units.

⁶ Under section 113 of the *Sentencing Act 1991* (Vic) this general maximum term is prescribed for indictable offences triable summarily. Though section 113 does not specifically state the maximum number of penalty units that can be imposed for an indictable offence triable summarily, section 109 (3) (a) sets the proportion between the maximum term of imprisonment and the maximum fine.

⁷ The number of people sentenced excludes those who participated in the criminal justice diversion program.

Only the people who had charges that were dismissed in 2006–07 and 2007–08 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (s 360(1)(a) *Children, Youth and Families Act 2005* (Vic)) or 'dismissed' (s 76 *Sentencing Act 1991* (Vic)). The charges that were dismissed in 2004–05 and 2005–06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the four-year period could be an under-representation. However, in 2007–08, no people had charges that were dismissed pursuant to this legislation.

⁸ The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and a diversion is appropriate in the circumstances. The overriding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.

⁹ *Sentencing Act 1991* (Vic) s 7 and s 8.

In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social well being or on the his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).

¹⁰ Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004–05 and 2005–06.

¹¹ The age was unknown for 27 men and 2 women sentenced for burglary (0.4%). These people are excluded from all age analyses in this report.

¹² Refer fn. 7.

¹³ Aggregate sentence lengths are shown for people who received an aggregate sentence. Data for sentence lengths of adjourned undertakings and community-based orders are only available for 2006–07 and 2007–08.

¹⁴ The principal sentence is the individual sentence imposed for a single charge. The principal sentence is the most serious sentence in the case. If more than one type of sentence is imposed for a single charge, only the most serious sentence is counted.

¹⁵ Where there are sufficient numbers of both males and females sentenced for each sentencing outcome, the age groups are shown by gender. Otherwise the age groups are shown independent of gender. Also, the age was unknown for 29 people sentenced for burglary. These people are excluded from these analyses.

¹⁶ Fine amounts lower than \$1,000 are rounded up to the nearest \$100, while fine amounts equal to or over \$1,000 are grouped into categories. Sentence lengths shorter than one year are rounded up to the nearest month, while sentence lengths equal to or over one year are grouped into categories of years. Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006–07 and 2007–08.

¹⁷ *Sentencing Act 1991* (Vic) s 9.

¹⁸ *Sentencing Act 1991* (Vic) s 11.

¹⁹ Where an aggregate sentence of imprisonment is imposed, the aggregate term of imprisonment may not exceed that which could be imposed if each of the maximum terms were imposed for each of the offences (*Sentencing Act 1991* (Vic) s 9(2)). Other limitations can apply here, including the jurisdictional limitation which generally precludes the Magistrates' Court from imposing aggregate sentences of imprisonment over 5 years in length.

²⁰ The length of non-aggregate periods of imprisonment ranged from four days to two years, with a median of six months, while the length of aggregate periods of imprisonment ranged from one day to four years, with a median of six months.

²¹ The length of non-aggregate wholly suspended sentences ranged from thirteen days to one year and six months, with a median of four months, while the length of aggregate wholly suspended sentences ranged from seven days to two years, with a median of four months.

²² The amount of non-aggregate fines ranged from \$180 to \$2,000, with a median of \$500, while the amount of aggregate fines ranged from \$25 to \$10,000, with a median of \$700.

²³ While a total of 2,280 people were sentenced to at least one period of imprisonment in the case, 2,195 people had imprisonment listed against their principal proven offence. There were 85 people sentenced to a period of imprisonment, but who received a partially suspended sentence of imprisonment for the principal proven offence.

Only sentence types that were imposed on the same date as the sentence imposed for the principal proven offence are included.

²⁴ Total effective imprisonment lengths and non-parole periods are only available for 2006–07 and 2007–08.

²⁵ Non-parole periods are rounded down to the nearest month, while non-parole periods greater than one year are grouped into categories of years.

²⁶ The data analysed in this section were compiled by merging the sentencing outcomes database with an extract from the criminal justice diversion plan database. Of the 493 people who were placed on the diversion program for this offence, 369 were matched to and had conditions listed in the criminal justice diversion plan database (74.8%).

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