

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2003–04 to 2007–08

June 2009
No. 83

Rape

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of rape and details the age and gender² of people sentenced for this offence in the County and Supreme Courts of Victoria between 2003–04 and 2007–08.³

A person who intentionally sexually penetrates another person without that person's consent is guilty of the offence of rape.⁴ Sexual penetration includes oral, anal and vaginal penetration⁵ and may be committed by and against both men and women. However, rape is overwhelmingly committed by men against women. Rape is an indictable offence which carries a maximum penalty of 25 years' imprisonment⁶ and/or a fine of 3000 penalty units.⁷

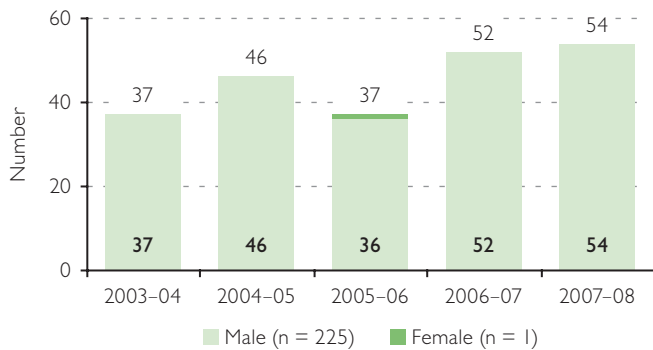
Rape was the principal offence in 2.1% of cases sentenced in the higher courts between 2003–04 and 2007–08.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of rape for the period 2003–04 to 2007–08. As shown, 226 people were sentenced for rape over the five-year period. There were 54 people sentenced for this offence in 2007–08, up by 2 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (99.6% or 225 of 226 people), including all of the 54 people sentenced in 2007–08. There was one woman sentenced over the five-year period.⁸

Figure 1: The number of people sentenced for rape by gender, 2003–04 to 2007–08



Sentence types and trends

Figure 2 shows the total number of people sentenced for rape and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.⁹ Over the five-year period, 92% of people were given an immediate custodial sentence. This peaked at 98% (51 of 52) in 2006–07 before decreasing to 89% (48 of 54) in 2007–08.

Figure 2: The number of people sentenced for rape and the number who received an immediate custodial sentence, 2003–04 to 2007–08

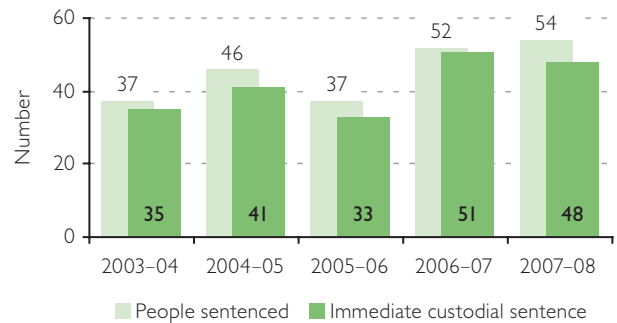


Table 1 shows the number of people sentenced for rape from 2003–04 to 2007–08 by the types of sentences imposed.¹⁰

Over the five-year period, the majority of the people sentenced for rape received a period of imprisonment (81% or 183 of 225 people). The percentage of people who received imprisonment was higher in 2006–07 and 2007–08 than each of the previous three years.

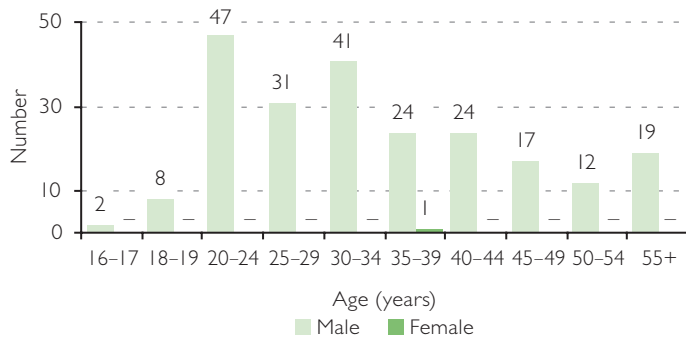
Table 1: The number and percentage of people sentenced for rape by sentence type, 2003–04 to 2007–08

Sentence type	2003–04	2004–05	2005–06	2006–07	2007–08
Imprisonment	29 (78%)	34 (74%)	29 (78%)	48 (92%)	43 (80%)
Partially suspended sentence	4 (11%)	4 (9%)	2 (5%)	1 (2%)	3 (6%)
Wholly suspended sentence	1 (3%)	4 (9%)	3 (8%)	1 (2%)	4 (7%)
Youth training centre order	2 (5%)	2 (4%)	2 (5%)	1 (2%)	0 (–)
Community-based order	0 (–)	1 (2%)	0 (–)	0 (–)	1 (2%)
Non-custodial supervision order	0 (–)	0 (–)	1 (3%)	0 (–)	0 (–)
Intensive correction order	1 (3%)	0 (–)	0 (–)	0 (–)	0 (–)
Indefinite term	0 (–)	0 (–)	0 (–)	1 (2%)	0 (–)
Hospital security order	0 (–)	1 (2%)	0 (–)	0 (–)	0 (–)
Custodial supervision order	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)
Aggregate imprisonment	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)
Adjourned undertaking with conviction	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)
People sentenced	37	46	37	52	54

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for rape grouped by their age¹¹ between 2003–04 and 2007–08. The average age of people sentenced for rape was thirty-four years and ten months. Two male juveniles were sentenced over this period.

Figure 3: The number of people sentenced for rape by gender and age, 2003–04 to 2007–08



Sentence types by age

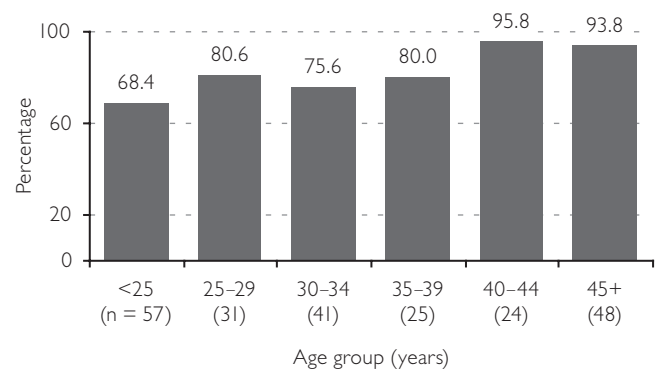
As shown in Table 1, the most common sentence type was imprisonment. The following analysis examines this sentence type by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 40–44 years old (96% or 23 of the 24 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 25 years (68% or 39 of the 57 people in this age group).

Figure 4: The percentage of people who received a period of imprisonment for rape by age group, 2003–04 to 2007–08



Principal and total effective sentences

There are two methods for describing sentence types and lengths – the principal sentence and the total effective sentence.

The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a *total effective sentence*. The total effective sentence aggregates the principal sentence handed down for each charge, and takes into account whether sentences are ordered by the court to be served concurrently (at the same time) or cumulatively.

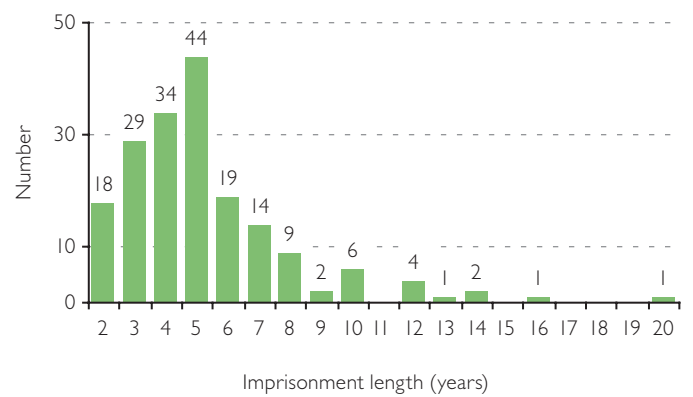
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for rape must be considered in this broader context. The following sections analyse the use of imprisonment for rape over 2003–04 to 2007–08.

Principal sentence of imprisonment

Figure 5 shows the number of people sentenced to imprisonment for rape between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from two years to twenty years, while the median length of imprisonment was five years (meaning that half of the imprisonment terms were shorter than five years and half were longer).

The most common length of imprisonment imposed was five years (44 people).

Figure 5: The number of people sentenced to imprisonment for rape by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 6, the average length of imprisonment term imposed on people sentenced for rape ranged from five years and one month in 2005–06 and 2007–08 to five years and nine months in 2004–05.

Figure 6: The average length of imprisonment term imposed on people sentenced for rape, 2003–04 to 2007–08



Other offences finalised at the same hearing

Often people prosecuted for rape 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 rape.

Figure 7 shows the number of people sentenced for the principal offence of rape by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 46, while the median was 3 offences. There were 53 people (23.5%) sentenced for the single offence of rape alone. The average number of offences per person sentenced for rape was 5.23.

Figure 7: The number of people sentenced for the principal offence of rape by the number of sentenced offences per person, 2003–04 to 2007–08



While Figure 7 presents the number of sentenced offences for those sentenced for rape, Table 2 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, 71 of the total 226 people (31.4%) also received sentences for indecent assault. On average, they were sentenced for 2.99 counts of indecent assault.

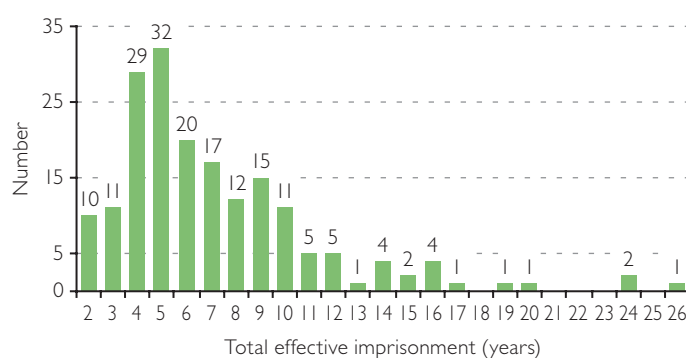
Table 2: The number and percentage of people sentenced for the principal offence of rape by the most common offences that were sentenced and the average number of those offences that were sentenced, 2003–04 to 2007–08

Offence	No.	%	Avg.
1 rape	226	100.0	2.13
2 indecent assault	71	31.4	2.99
3 false imprisonment	36	15.9	1.17
4 causing injury	34	15.0	1.38
5 common law assault	24	10.6	2.46
6 making a threat to kill	22	9.7	1.41
7 aggravated burglary	21	9.3	1.29
8 attempted rape	19	8.4	1.11
9 indecent act with a child under 16	15	6.6	2.93
10 theft	14	6.2	1.14
People sentenced	226	100.0	5.23

Total effective sentence of imprisonment

There were 184 people given a total effective sentence of imprisonment.¹² Figure 8 shows the number of people sentenced to imprisonment for rape between 2003–04 and 2007–08 by the length of their total effective sentence. The length of total effective sentences ranged from two years to twenty-six years,¹³ while the median total effective length of imprisonment was six years (meaning that half of the total effective sentence lengths were below six years and half were above).

Figure 8: The number of people sentenced to imprisonment for rape by total effective length of imprisonment term, 2003–04 to 2007–08



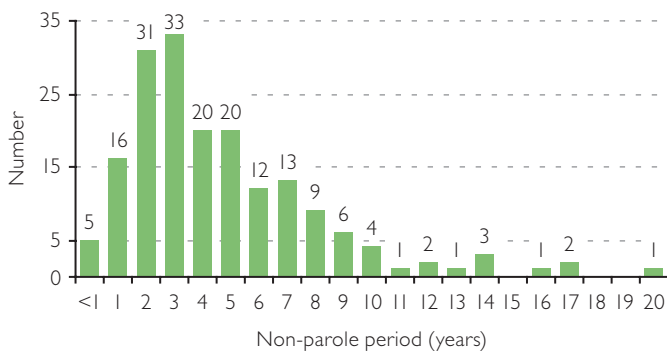
Non-parole period

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 no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under section 11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be longer than the individual principal sentence for rape. Sentences and non-parole periods must be considered in this broader context.

Of the 184 people who were sentenced to imprisonment for rape, all were eligible to have a non-parole period fixed. Of these people, 180 were given a non-parole period (98%).¹⁴ Figure 9 shows the number of people sentenced to imprisonment for rape between 2003–04 and 2007–08 by the length of their non-parole period. Non-parole periods ranged from six months to twenty years, while the median length of non-parole period was four years (meaning that half of the non-parole periods were below four years and half were above).

Figure 9: The number of people sentenced to imprisonment for rape by length of non-parole period, 2003–04 to 2007–08

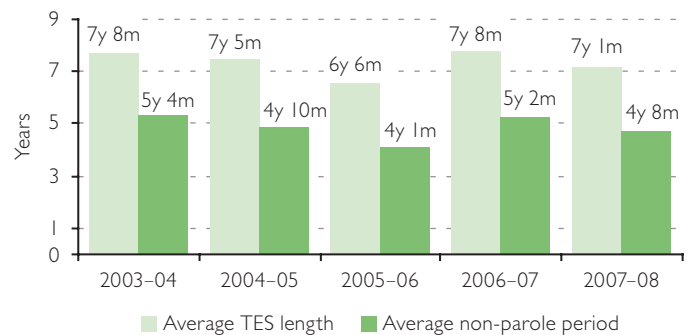


Total effective sentences of imprisonment and non-parole periods

Figure 10 presents the average length of total effective sentences of imprisonment compared to the average length of non-parole periods for all people from 2003–04 to 2007–08.¹⁵

From 2003–04 to 2007–08, the average length of total effective sentences for all people ranged from six years and six months in 2005–06 to seven years and eight months in 2003–04 and 2006–07. Over the same period, the average length of non-parole periods ranged from four years and one month in 2005–06 to five years and four months in 2003–04.

Figure 10: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for rape, 2003–04 to 2007–08

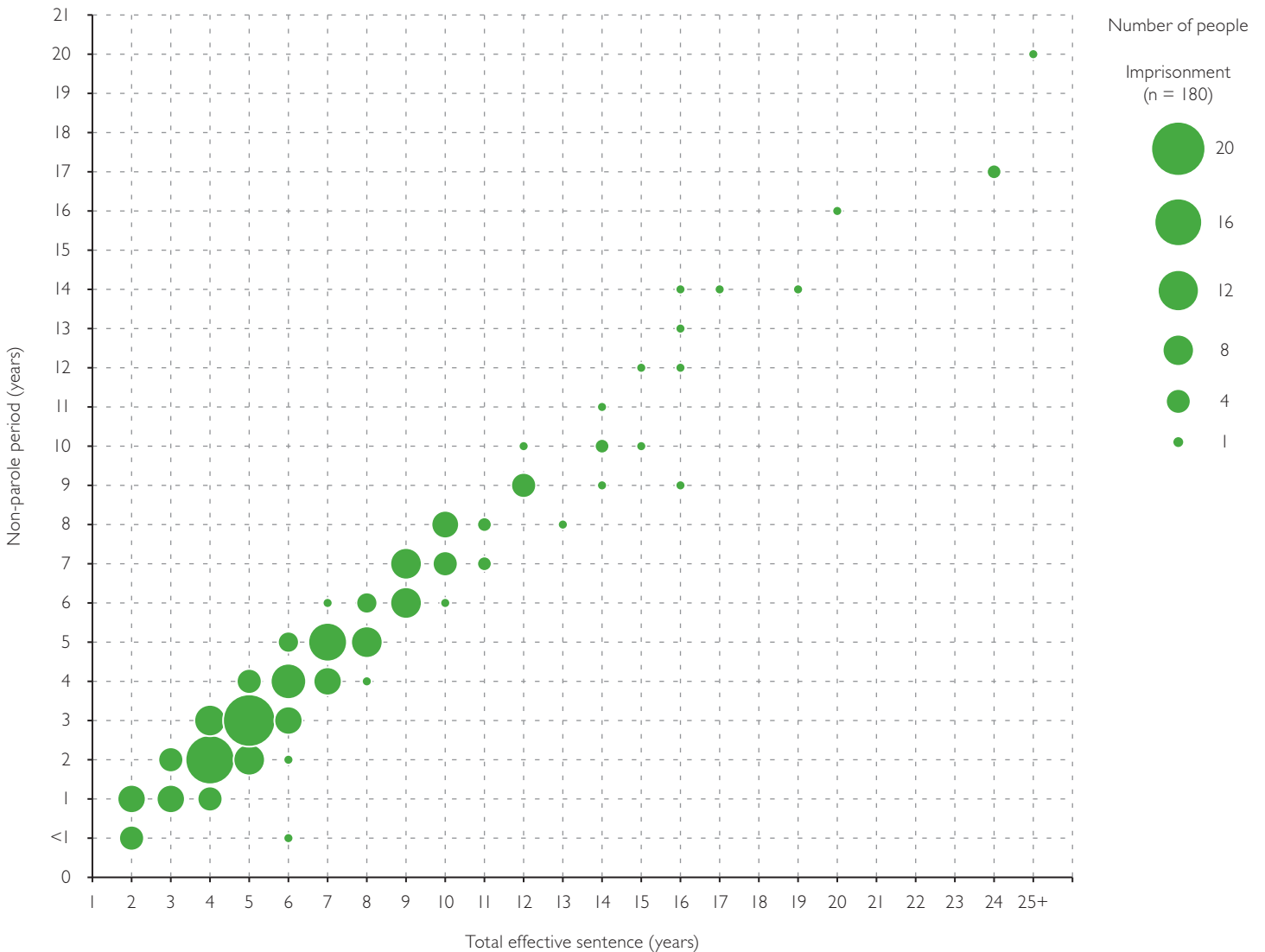


Total effective sentence of imprisonment by non-parole period

While Figures 8 and 9 present the lengths of the total effective sentences and non-parole periods separately, Figure 11 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for rape for each individual person.

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.¹⁶ As shown, the most common combination of imprisonment length and non-parole period imposed was five years with a non-parole period of three years (20 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from two years with a non-parole period of six months to twenty-six years with a non-parole period of twenty years.¹⁷

Figure 11: The number of people sentenced to imprisonment for rape by the total effective sentence and the non-parole period imposed, 2003–04 to 2007–08¹⁸



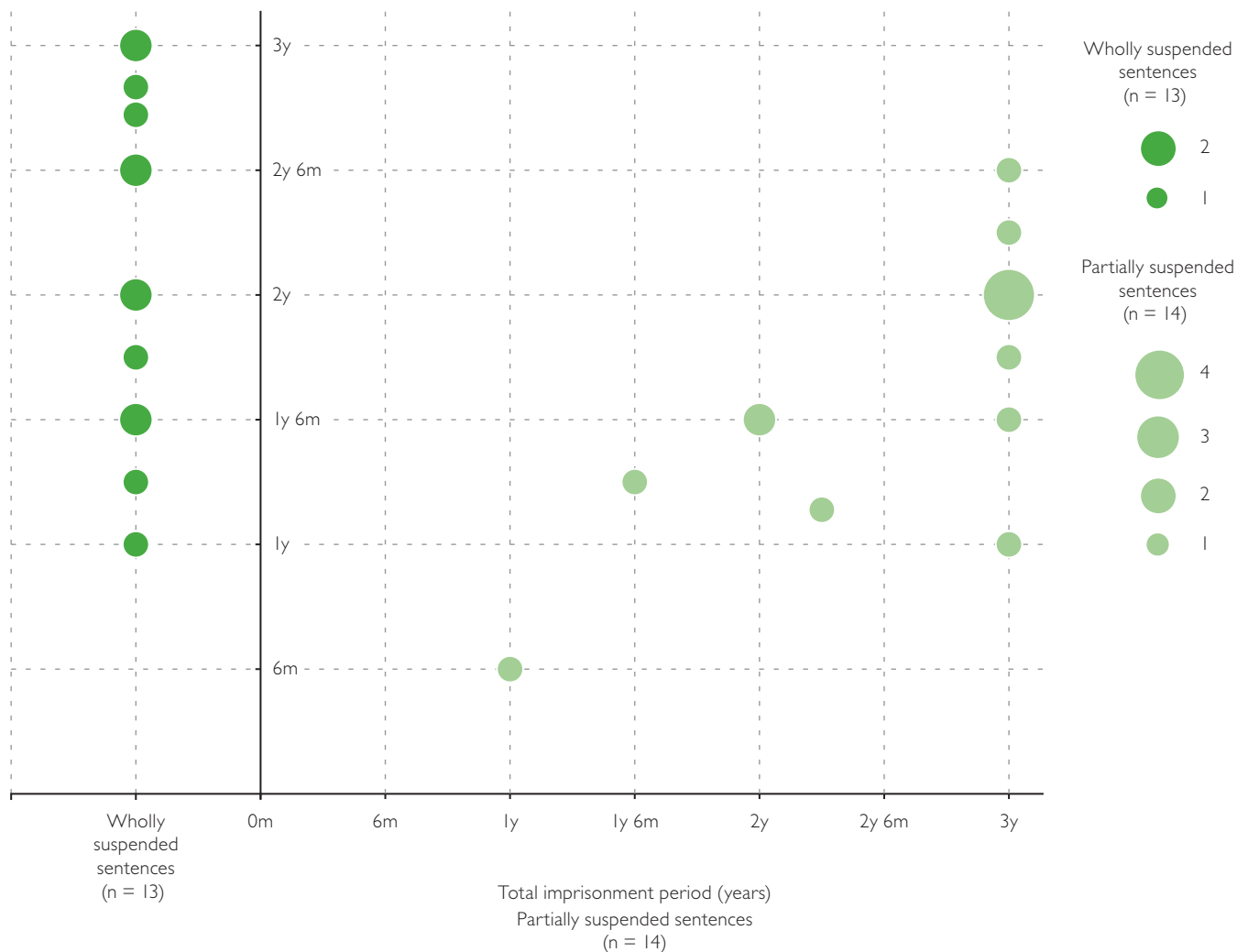
Suspended sentences of imprisonment

There were 27 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 13 people had their prison sentence wholly suspended and 14 received a partially suspended sentence of imprisonment. Figure 12 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the suspended sentence type and length of sentence. The dark green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the light green 'bubbles' to the right of the vertical axis show the combination of total imprisonment length and the suspended period for those sentenced to a partially suspended sentence. The size of the bubble reflects the number of people who received either the wholly or partially suspended prison term.

Wholly suspended sentence lengths ranged from one year to three years. The most common wholly suspended sentence lengths were one year and six months, two years, two years and six months and three years (2 people each – as represented by the four largest dark green 'bubbles' on the chart).

The most common partially suspended sentence combination was three years with two years suspended (4 people – as represented by the largest light green 'bubble' on the chart).

Figure 12: The number of people given a wholly or partially suspended sentence of imprisonment for rape by sentence type and length, 2003–04 to 2007–08



Summary

Between 2003–04 and 2007–08, 226 people were sentenced for rape in the higher courts.

The majority of the people sentenced for rape received a period of imprisonment (81%).

Imprisonment was more common for those older than 40 years of age.

Each of the 226 people was sentenced for an average of 5.23 offences, including 2.13 offences of rape. The most common offence finalised in conjunction with rape was indecent assault (31.4% of all cases). The number and range of offences for which people with a principal offence of rape were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was six years, while the median principal imprisonment length was five years.

Total effective imprisonment lengths ranged from two years with a non-parole period of six months to twenty-six years with a non-parole period of twenty years. The most common sentence of imprisonment was five years with a three year non-parole period.

1. This report presents sentencing outcomes for people sentenced for the principal offence of rape in the County and Supreme Courts of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for rape who received a more serious sentence for another offence forming part of the same presentment. There were 239 people sentenced from 2003–04 to 2007–08 for 501 offences of rape. Rape was the principal proven offence for 226 of these people.

This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases where the defendant is not guilty because of mental impairment. However, they are included in this series as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot No. 26, which described sentencing trends for rape between 2001–02 and 2005–06.
2. The information source for sentencing outcomes for rape only contains information on age and gender characteristics. No other demographic analysis is possible.
3. The statistical information presented here was provided by Court Services, Department of Justice (Vic). While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.
4. *Crimes Act 1958* (Vic) s 38(2)(a).
5. *Crimes Act 1958* (Vic) s 35.
6. *Crimes Act 1958* (Vic) s 38(1).
7. 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>.
8. A 39 year old female was sentenced in 2005–06 to a non-custodial supervision order.
9. Immediate custodial sentence includes imprisonment, partially suspended sentence, youth training centre order, indefinite term, hospital security order, custodial supervision order and aggregate imprisonment.
10. The *Sentencing (Suspended Sentences) Act 2006* (Vic) s 4(2) amended the *Sentencing Act 1991* (Vic) s 26(2B) to restrict the use of wholly suspended sentences for serious offences to cases involving exceptional circumstances. This legislation commenced on 1 November 2006. There were 5 individuals who received a wholly suspended sentence for the principal proven offence of rape in 2006–07 and 2007–08. These offenders committed the offences prior to this legislative change.
11. Age is as at the time of sentencing.
12. All of the 184 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
13. In 2004–05, a 40 year-old man was sentenced for 11 offences including seven counts of rape. He received a total effective sentence of 26 years with a non-parole period of 20 years.

In 2006–07, a 48 year-old man was sentenced for 30 offences including 16 counts of rape. He received a total effective sentence of 24 years with a non-parole period of 17 years.

In 2007–08, a 21 year-old man was sentenced for 15 offences including 7 counts of rape. He received a total effective sentence of 24 years with a non-parole period of 17 years.
14. Four people were not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to these cases. The non-parole periods for these people are excluded from the analysis.
15. There were no women imprisoned with a non-parole period over the reference period.
16. Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
17. Refer fn. 13.
18. This graph includes the 180 people who were given a total effective sentence and a non-parole period that related to this case only.

Sentencing Snapshots is a series presenting summary information on sentencing trends in Victoria

Sentencing trends in the higher courts, 2003–04 to 2007–08

- 90 Sexual penetration of a child aged under 10
- 89 Sexual penetration of a child under care, supervision or authority
- 88 Sexual penetration of a child aged between 10 and 16
- 87 Making a threat to kill
- 86 Culpable driving causing death
- 85 Manslaughter
- 84 Murder
- 83 Rape
- 82 Maintain a sexual relationship with a child under 16
- 81 Indecent act with a child under 16
- 80 Indecent assault
- 79 Arson
- 78 Obtaining property by deception
- 77 Obtaining a financial advantage by deception
- 76 Theft
- 75 Handling stolen goods

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

- 74 Unlicensed driving
- 73 Driving while suspended
- 72 Driving while disqualified
- 71 Trafficking heroin
- 70 Trafficking ecstasy
- 69 Trafficking cannabis
- 68 Trafficking amphetamines
- 67 Possessing heroin
- 66 Possessing ecstasy
- 65 Possessing cannabis
- 64 Possessing amphetamines
- 63 Causing injury recklessly
- 62 Causing injury intentionally

- 61 Causing serious injury recklessly
- 60 Going equipped to steal
- 59 Handling stolen goods
- 58 Aggravated burglary
- 57 Burglary
- 56 Other theft
- 55 Theft of a bicycle
- 54 Theft from a shop
- 53 Theft from a motor vehicle
- 52 Theft of a motor vehicle

Sentencing trends in the Magistrates' Court, 2004–05 to 2006–07

- 51 Knowingly possess child pornography
- 50 Indecent act with a child under 16
- 49 Indecent Assault

Sentencing trends in the higher courts, 2002–03 to 2006–07

- 48 Cultivating a commercial quantity of narcotic plants
- 47 Cultivating narcotic plants
- 46 Trafficking in a large commercial quantity of drugs
- 45 Trafficking in a commercial quantity of drugs
- 44 Trafficking in a non-commercial quantity of drugs
- 43 Incest
- 42 Affray
- 41 Causing injury intentionally or recklessly
- 40 Causing serious injury recklessly
- 39 Causing serious injury intentionally
- 38 Aggravated burglary
- 37 Burglary
- 36 Attempted armed robbery
- 35 Armed robbery
- 34 Robbery

Authorised by Nick Turner, Senior Data Analyst, Sentencing Advisory Council.
Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

© Copyright State of Victoria, Sentencing Advisory Council, June 2009.

ISSN 1832-6153 (Print)
1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 4, 436 Lonsdale Street, Melbourne.
Printed by BigPrint, 50 Lonsdale Street, Melbourne.

Disclaimer:

The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots are accurate at the time of publishing.

Copies of Sentencing Snapshots
can be downloaded from our website at
www.sentencingcouncil.vic.gov.au