

Sentencing Snapshot

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

June 2009
No. 86

Culpable driving causing death

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of culpable driving causing death and details the age and gender² of people sentenced for this offence in the County Court of Victoria between 2003–04 and 2007–08.³

This offence covers homicides caused by the culpable driving of a motor vehicle. This offence is committed where a person drives a motor vehicle negligently, recklessly or whilst under the influence of drugs or alcohol and causes the death of another person.⁴ Culpable driving causing death is an indictable offence which carries a maximum penalty of 20 years' imprisonment and/or a fine of 1800 penalty units.⁵

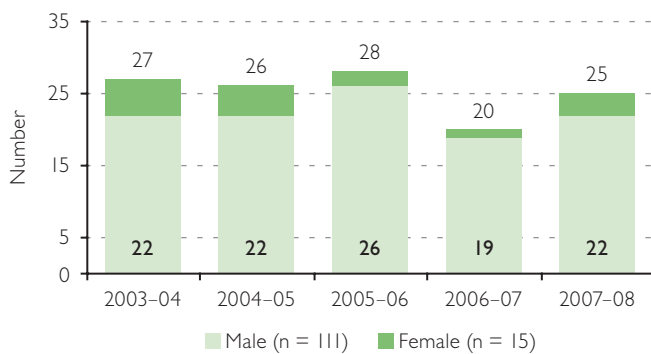
Culpable driving causing death was the principal offence in 1.2% of cases sentenced in the higher courts between 2003–04 and 2007–08.

People sentenced

Figure 1 shows the number of people sentenced for the principal proven offence of culpable driving causing death for the period 2003–04 to 2007–08. As shown, 126 people were sentenced for culpable driving causing death over the five-year period. There were 25 people sentenced for this offence in 2007–08, up by 5 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (88.1% or 111 of the 126 people), including 22 of the 25 people sentenced in 2007–08.

Figure 1: The number of people sentenced for culpable driving causing death by gender, 2003–04 to 2007–08



Sentence types and trends

Figure 2 shows the total number of people sentenced for culpable driving causing death 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.⁶ Over the five-year period, 91% of people were given an immediate custodial sentence. This peaked at 96% (27 of 28) in 2005–06 before decreasing to 85% (17 of 20) in 2006–07. In 2007–08, 92% of people sentenced (23 of 25) were given an immediate custodial sentence.

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

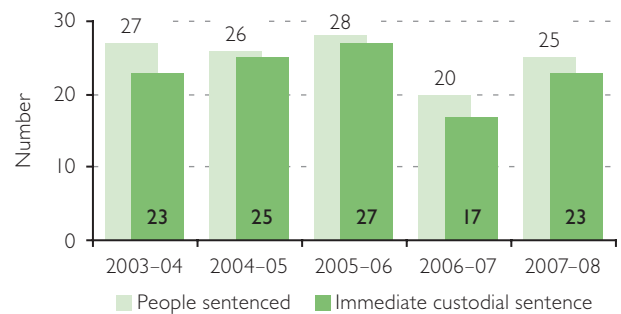


Table 1 shows the number of people sentenced for culpable driving causing death from 2003–04 to 2007–08 by the types of sentences imposed.⁷

Over the five-year period, the majority of the people sentenced for culpable driving causing death received a period of imprisonment (78% or 98 of 126 people), while 13% received a youth training centre order.

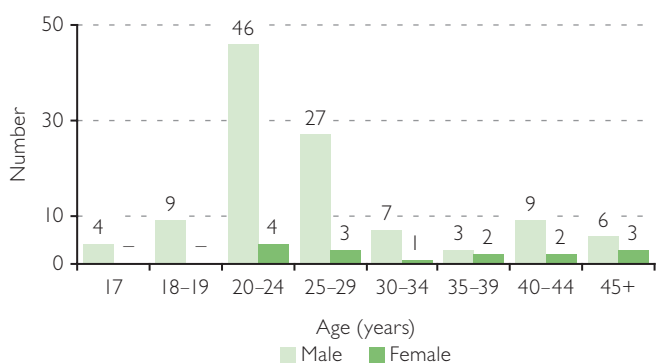
Table 1: The number and percentage of people sentenced for culpable driving causing death by sentence type, 2003–04 to 2007–08

Sentence type	2003–04	2004–05	2005–06	2006–07	2007–08
Imprisonment	21 (78%)	23 (88%)	21 (75%)	14 (70%)	19 (76%)
Youth training centre order	2 (7%)	2 (8%)	6 (21%)	3 (15%)	3 (12%)
Wholly suspended sentence	4 (15%)	1 (4%)	1 (4%)	1 (5%)	1 (4%)
Non-custodial supervision order	0 (–)	0 (–)	0 (–)	1 (5%)	1 (4%)
Partially suspended sentence	0 (–)	0 (–)	0 (–)	0 (–)	1 (4%)
Mix (wholly suspended sentence and fine)	0 (–)	0 (–)	0 (–)	1 (5%)	0 (–)
People sentenced	27	26	28	20	25

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for culpable driving causing death grouped by their age⁸ between 2003–04 and 2007–08. The average age of people sentenced for culpable driving causing death was twenty-seven years and eleven months. Women sentenced over this period were much older than men (an average age of thirty-three years and nine months for women compared to twenty-seven years and one month for men). Four male juveniles were sentenced over this period.

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



Sentence types by gender

Figure 4 and Table 2 show the types of sentence imposed for culpable driving causing death grouped by gender. As shown, a higher percentage of men received a youth training centre order (14.4% compared to no women). Conversely, a higher percentage of women received a period of imprisonment (86.7% compared to 76.6% of men) and a wholly suspended sentence of imprisonment (13.3% compared to 5.4%).

Figure 4: The percentage of people sentenced for culpable driving causing death by sentence type and gender, 2003–04 to 2007–08

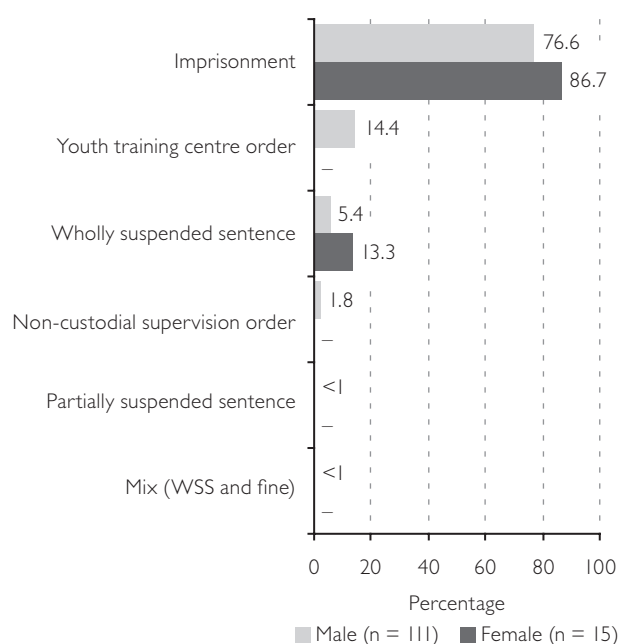


Table 2: The number and percentage breakdown of people sentenced for culpable driving causing death by gender, 2003–04 to 2007–08

Sentence type	Male	Female	Total
Imprisonment	85 (77%)	13 (87%)	98 (78%)
Youth training centre order	16 (14%)	0 (–)	16 (13%)
Wholly suspended sentence	6 (5%)	2 (13%)	8 (6%)
Non-custodial supervision order	2 (2%)	0 (–)	2 (2%)
Partially suspended sentence	1 (<1%)	0 (–)	1 (<1%)
Mix (wholly suspended sentence and fine)	1 (<1%)	0 (–)	1 (<1%)
People sentenced	111	15	126

Sentence types by age

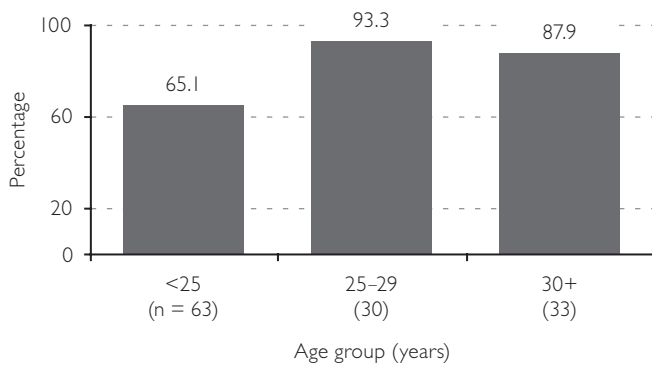
As shown in Table 2, the most common sentence types was imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 25–29 years old (93% or 28 of the 30 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 25 years (65% or 41 of the 63 people in this age group).

Figure 5: The percentage of people who received a period of imprisonment for culpable driving causing death 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 culpable driving causing death must be considered in this broader context. The following sections analyse the use of imprisonment for culpable driving causing death over 2003–04 to 2007–08.

Principal sentence of imprisonment

Figure 6 shows the number of people sentenced to imprisonment for culpable driving causing death between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from two years to eight years and six months, while the median length of imprisonment was five years and six months (meaning that half of the imprisonment terms were shorter than five years and six months and half were longer).

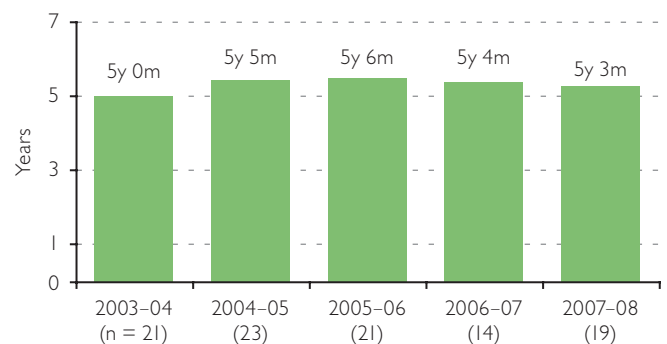
The most common length of imprisonment imposed was six years (27 people).

Figure 6: The number of people sentenced to imprisonment for culpable driving causing death by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 7, the average length of imprisonment term imposed on people sentenced for culpable driving causing death ranged from five years in 2003–04 to five years and six months in 2005–06.

Figure 7: The average length of imprisonment term imposed on people sentenced for culpable driving causing death, 2003–04 to 2007–08



From 2003–04 to 2007–08, the majority of those people who received a term of imprisonment for culpable driving causing death were men (85 people or 86.7%). Figure 8 shows that over the five-year period, men received a similar average term of imprisonment (five years and three months compared to five years and four months for women).

Figure 8: The average period of imprisonment imposed on people sentenced for culpable driving causing death by gender, 2003–04 to 2007–08

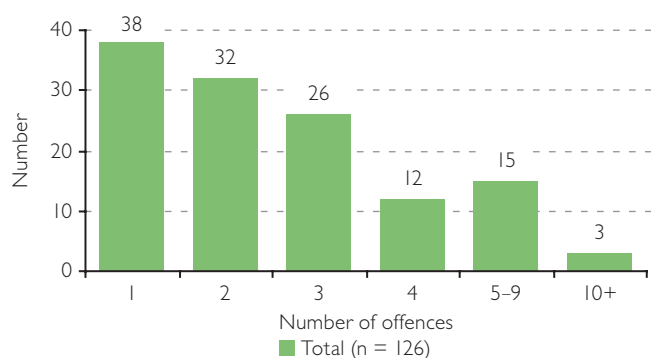


Other offences finalised at the same hearing

Often people prosecuted for culpable driving causing death 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 culpable driving causing death.

Figure 9 shows the number of people sentenced for the principal offence of culpable driving causing death by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 12, while the median was 2 offences. There were 38 people (30.2%) sentenced for the single offence of culpable driving causing death alone. The average number of offences per person sentenced for culpable driving causing death was 2.73.

Figure 9: The number of people sentenced for the principal offence of culpable driving causing death by the number of sentenced offences per person, 2003–04 to 2007–08



While Figure 9 presents the number of sentenced offences for those sentenced for culpable driving causing death, Table 3 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, 47 of the total 126 people (37.3%) also received sentences for negligently causing serious injury. On average, they were sentenced for 1.43 counts of negligently causing serious injury.

Table 3: The number and percentage of people sentenced for the principal offence of culpable driving causing death by the most common offences that were sentenced and the average number of those offences that were sentenced, 2003–04 to 2007–08

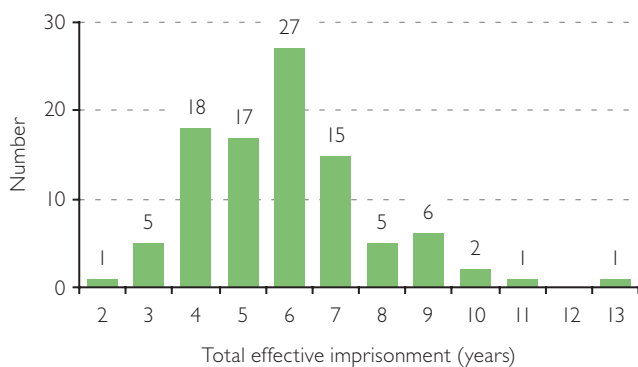
Offence	No.	%	Avg.
1 culpable driving causing death	126	100.0	1.11
2 negligently causing serious injury	47	37.3	1.43
3 exceed blood alcohol limit	23	18.3	1.00
4 conduct endangering life	12	9.5	1.50
5 drive whilst authorisation suspended	10	7.9	1.20
6 theft	9	7.1	2.00
7 fail to render assistance after accident – person injured/property is damaged or destroyed	7	5.6	1.00
8 fail to stop after a motor vehicle accident – person killed	6	4.8	1.00
9 unlicensed driving	5	4.0	1.20
10 at/exceed pca – within 3 hours after driving/being in charge of a motor vehicle – breath test	5	4.0	1.00
People sentenced	126	100.0	2.73

Total effective sentence of imprisonment

There were 98 people given a total effective sentence of imprisonment.⁹ Figure 10 shows the number of people sentenced to imprisonment for culpable driving causing death between 2003–04 and 2007–08 by the length of their total effective sentence. The length of total effective sentences ranged from two years and three months to thirteen years, 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).

The most common total effective imprisonment length was six years (27 people).

Figure 10: The number of people sentenced to imprisonment for culpable driving causing death by total effective length of imprisonment term, 2003–04 to 2007–08



Non-parole period

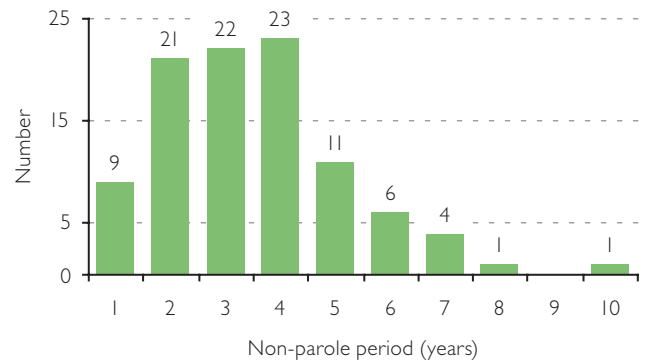
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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 culpable driving causing death. Sentences and non-parole periods must be considered in this broader context.

Of the 98 people who were sentenced to imprisonment for culpable driving causing death, all were given a non-parole period. Figure 11 shows the number of people sentenced to imprisonment for culpable driving causing death between 2003–04 and 2007–08 by the length of their non-parole period. Non-parole periods ranged from one year to ten years, while the median length of the non-parole period was three years, seven months and fifteen days (meaning that half of the non-parole periods were below three years, seven months and fifteen days and half were above).

The most common non-parole period imposed was 4 years (23 people).

Figure 11: The number of people sentenced to imprisonment for culpable driving causing death by length of non-parole period, 2003–04 to 2007–08

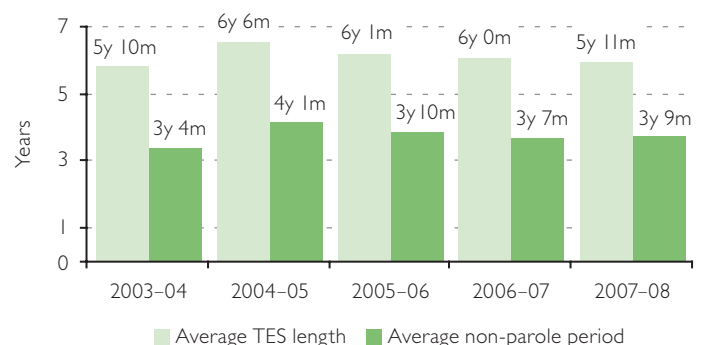


Total effective sentences of imprisonment and non-parole periods

Figure 12 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.

From 2003–04 to 2007–08, the average length of total effective sentences for all people ranged from five years and ten months in 2003–04 to six years and six months in 2004–05. Over the same period, the average length of non-parole periods ranged from three years and four months in 2003–04 to four years and one month in 2004–05.

Figure 12: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for culpable driving causing death, 2003–04 to 2007–08

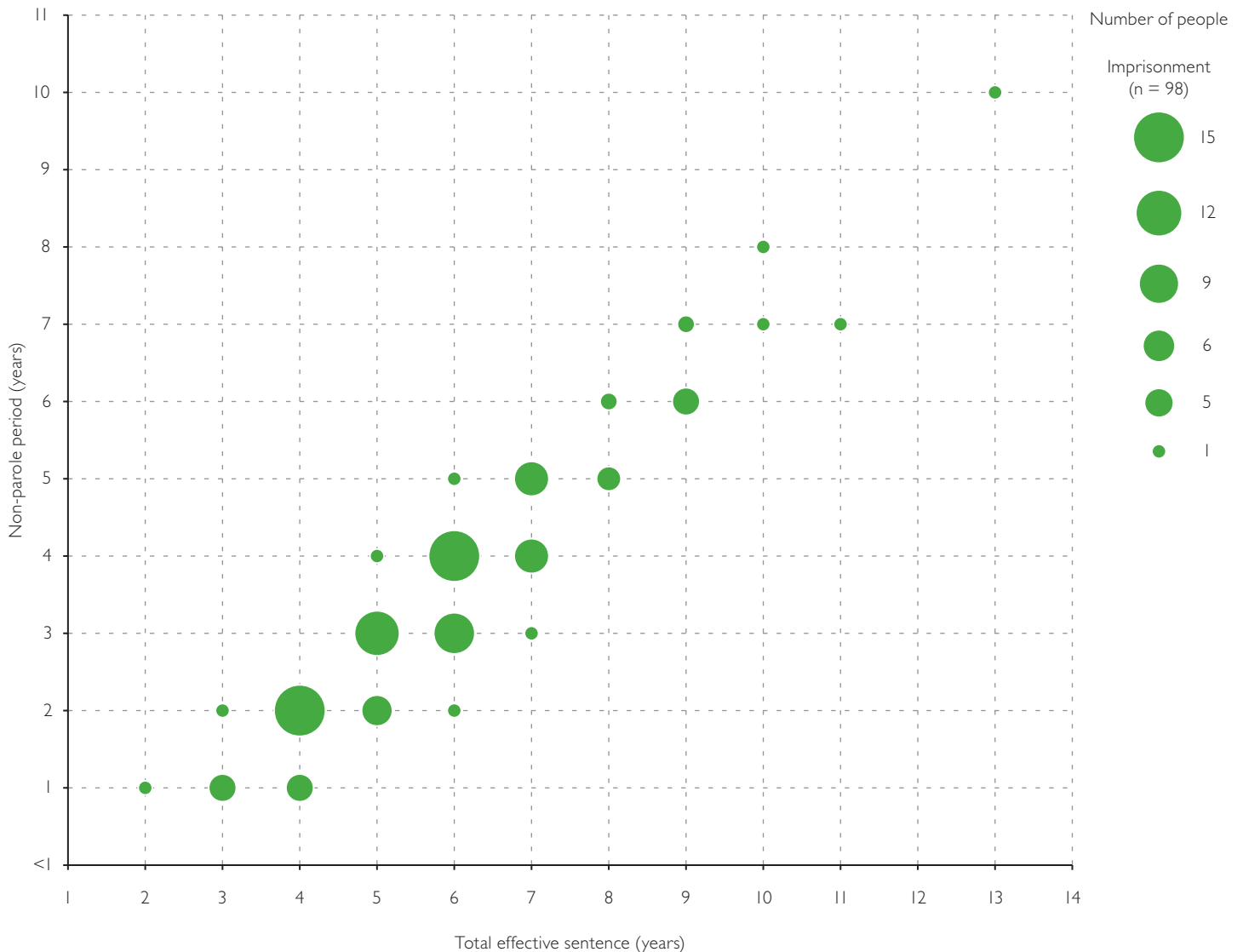


Total effective sentence of imprisonment by non-parole period

While Figures 10 and 11 present the lengths of the total effective sentences and non-parole periods separately, Figure 13 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for culpable driving causing death 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.¹⁰ As shown, the most common combination of imprisonment length and non-parole period imposed was six years with a non-parole period of four years (15 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from two years and three months with a non-parole period of one year and eight months to thirteen years with a non-parole period of ten years.

Figure 13: The number of people sentenced to imprisonment for culpable driving causing death by the total effective sentence and the non-parole period imposed, 2003–04 to 2007–08¹¹



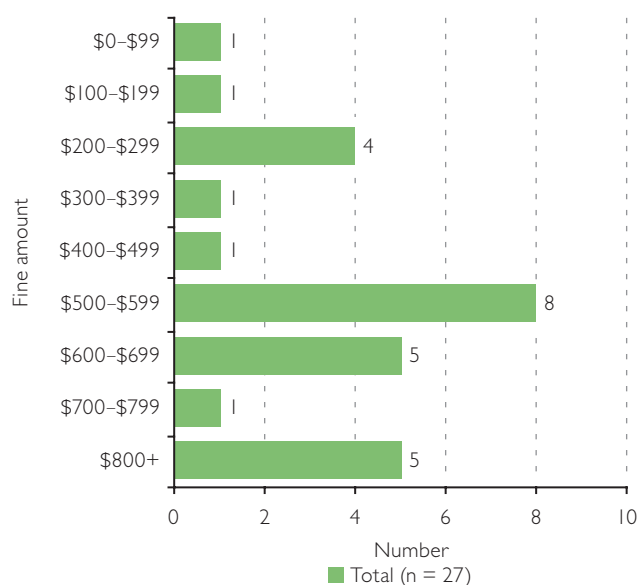
Fines

This analysis includes all fines that were imposed for cases where culpable driving causing death was the principal offence. Fines were imposed on 27 people.

The fine amount imposed ranged from \$50 to \$5,000, with a median of \$500 (meaning that half of the values fell below \$500 and half of the values were above \$500).

The average fine amount was \$673. The average fine amount imposed against the 21 males was \$743, much higher than the average fine for the 6 females (\$425).

Figure 14: The number of people who received a fine for culpable driving causing death by fine amount, 2003–04 to 2007–08



Summary

Between 2003–04 and 2007–08, 126 people were sentenced for the principal proven offence of culpable driving causing death in the higher courts.

The majority of the people sentenced for culpable driving causing death received a period of imprisonment (78%), while 13% received a youth training centre order.

Men were more likely than women to be sentenced to a youth training centre order. Conversely, women were more likely to be sentenced to a period of imprisonment or a wholly suspended sentence of imprisonment.

Imprisonment was more common for those older than 25 years of age.

Each of the 126 people was sentenced for an average of 2.73 offences, including 1.11 offences of culpable driving causing death. The most common offence finalised in conjunction with culpable driving causing death was negligently causing serious injury (37.3% of all cases). The number and range of offences for which people with a principal offence of culpable driving causing death 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 and six months.

Total effective imprisonment lengths ranged from two years and three months with a non-parole period of one year and eight months to thirteen years with a non-parole period of ten years. The most common sentence of imprisonment was six years with a four year non-parole period.

1. This report presents sentencing outcomes for people sentenced for the principal offence of culpable driving causing death in the County Court 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 culpable driving causing death who received a more serious sentence for another offence forming part of the same presentment. There were 126 people sentenced from 2003–04 to 2007–08 for 140 offences of culpable driving causing death. Culpable driving causing death was the principal proven offence for all 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. 29, which described sentencing trends for culpable driving causing death between 2001–02 and 2005–06.
2. The information source for sentencing outcomes for culpable driving causing death 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 318.
5. 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>.
6. Immediate custodial sentence includes imprisonment, youth training centre order and partially suspended sentence.
7. 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 3 individuals who received a wholly suspended sentence for the principal proven offence of culpable driving causing death in 2006–07 and 2007–08. These offenders committed the offences prior to this legislative change.
8. Age is as at the time of sentencing.
9. All of the 98 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
10. 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.
11. This graph includes the 98 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

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