

Sentencing Snapshot

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

December 2008
No. 63

Causing injury recklessly

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of causing injury recklessly 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 recklessly causes injury to another person without lawful excuse is guilty of the offence of causing injury recklessly.³ Recklessness requires foresight on the part of the accused of the probability that injury will occur as a consequence of his or her actions.⁴ 'Injury' includes unconsciousness, hysteria, pain and any substantial impairment of bodily function.⁵ These definitions are not exhaustive.

Causing injury recklessly is an indictable offence which carries a maximum penalty of 5 years' imprisonment and/or a fine of 1200 penalty units.⁶ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

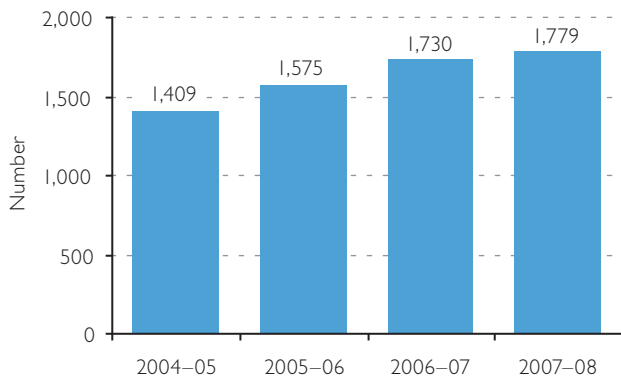
This offence may be heard summarily in the Magistrates' Court if the court considers it appropriate and the defendant consents. This tends to occur where the offence is seen by the court as being less serious in nature. Where an offence is tried summarily, the matter will be heard before a magistrate rather than a judge and a jury. Where causing injury recklessly is heard summarily, it carries a maximum penalty of 2 years' imprisonment and/or a fine of 240 penalty units.⁷

Causing injury recklessly was the principal offence in 2.4% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

People sentenced

Over the four-year period, the Magistrates' Court sentenced 6,493 people for the principal offence of causing injury recklessly. In 2007–08, there were 1,779 people who were sentenced for the principal proven offence of causing injury recklessly.⁸ This remained relatively stable with the previous year, after recording a 9.8% increase from 2004–05.

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



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for causing injury recklessly during 2004–05 to 2007–08. Over the four-year period, the majority of those sentenced for causing injury recklessly received a non-custodial sentence (4,655 people or 71.7%), including 1,917 people who received a fine (29.5%),

1,376 people who received an adjourned undertaking (21.2%) and 1,354 people who received a community-based order (20.9%).

There were also 1,133 people who received a non-immediate custodial sentence (17.4%), including 836 people who received a wholly suspended sentence (12.9%).

An additional 532 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).⁹

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

Sentence Type	Total	%
Immediate custodial	705	10.9
Imprisonment	527	8.1
Partially suspended sentence	135	2.1
Combined custody and treatment order	3	0.0
Youth justice centre order	40	0.6
Other custodial	1,133	17.4
Wholly suspended sentence	836	12.9
Intensive correction order	297	4.6
Non-custodial	4,655	71.7
Community-based order	1,354	20.9
Fine	1,917	29.5
Adjourned undertaking	1,376	21.2
Convicted and discharged (s 73 SA)	4	0.1
Dismissed (s 76 SA)	4	0.1
People sentenced	6,493	100.0
Criminal justice diversion program	532	
Total dispositions	7,025	

Record of conviction

While recording a conviction is mandatory for people sentenced to a custodial order, a magistrate may use discretion when deciding whether to record a conviction for people who receive a non-custodial order.¹⁰ In 2006–07 and 2007–08, a conviction was recorded for 72.9% of the 730 people who received a community-based order, 61.1% of the 1,009 people who received a fine and 14.7% of the 756 people who received an adjourned undertaking.¹¹ Overall, 64.7% of people sentenced had a conviction recorded in 2006–07 and 2007–08.

Age and gender

Over the four-year period, the majority of those sentenced were men (5,646 people or 87.0%).¹² The age of people sentenced for causing injury recklessly ranged from 17 years to 81 years, while the median age was 30 years (meaning that half of the people were aged 30 years or younger and half were 30 years or older). Men sentenced were slightly older than women (a median age of 30 years compared to 29 years).

Sentencing outcomes by gender and age group

Table 2 shows the number and percentage of people who were sentenced for causing injury recklessly by sentence type. The first two columns show sentence types by gender, while the next four columns show the sentence types by age group.

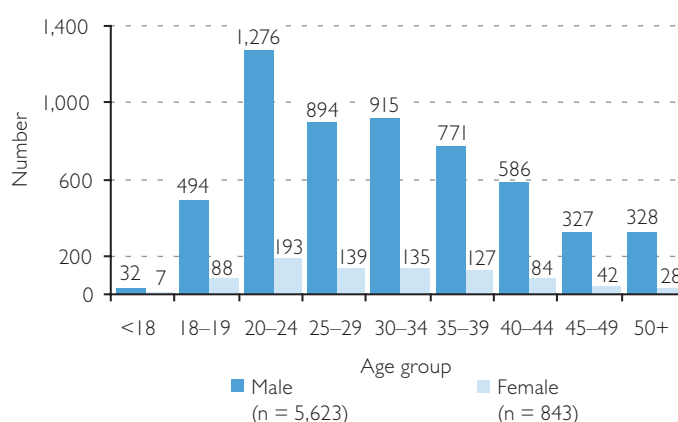
Table 2: The number and percentage of people sentenced for causing injury recklessly by sentence type, gender and age group, 2004–05 to 2007–08

Sentencing outcome	Gender		Age group				All People
	Male	Female	<18	18–24	25–39	40+	
Immediate custodial	661	44	2	195	394	110	705
	(11.7%)	(5.2%)	(5.1%)	(9.5%)	(13.2%)	(7.9%)	(10.9%)
Imprisonment	495	32	0	126	307	91	527
	(8.8%)	(3.8%)	–	(6.1%)	(10.3%)	(6.5%)	(8.1%)
Partially suspended sentence	127	8	0	30	85	19	135
	(2.2%)	(0.9%)	–	(1.5%)	(2.9%)	(1.4%)	(2.1%)
Combined custody and treatment order	3	0	0	1	2	0	3
	(<0.1%)	–	–	(<0.1%)	(<0.1%)	–	(<0.1%)
Youth justice centre order	36	4	2	38	0	0	40
	(0.6%)	(0.5%)	(5.1%)	(1.9%)	–	–	(0.6%)
Other custodial	1,040	93	0	254	647	226	1,133
	(18.4%)	(11.0%)	–	(12.4%)	(21.7%)	(16.2%)	(17.4%)
Wholly suspended sentence	763	73	0	176	483	172	836
	(13.5%)	(8.6%)	–	(8.6%)	(16.2%)	(12.3%)	(12.9%)
Intensive correction order	277	20	0	78	164	54	297
	(4.9%)	(2.4%)	–	(3.8%)	(5.5%)	(3.9%)	(4.6%)
Non-custodial	3,945	710	37	1,602	1,940	1,059	4,655
	(69.9%)	(83.8%)	(94.9%)	(78.1%)	(65.1%)	(75.9%)	(71.7%)
Community-based order	1,148	206	16	526	560	247	1,354
	(20.3%)	(24.3%)	(41.0%)	(25.6%)	(18.8%)	(17.7%)	(20.9%)
Fine	1,724	193	9	618	865	416	1,917
	(30.5%)	(22.8%)	(23.1%)	(30.1%)	(29.0%)	(29.8%)	(29.5%)
Adjourned undertaking	1,068	308	12	455	514	392	1,376
	(18.9%)	(36.4%)	(30.8%)	(22.2%)	(17.2%)	(28.1%)	(21.2%)
Convicted and discharged (s 73 SA)	3	1	0	2	1	1	4
	(<0.1%)	(0.1%)	–	(<0.1%)	(<0.1%)	(<0.1%)	(<0.1%)
Dismissed (s 76 SA)	2	2	0	1	0	3	4
	(<0.1%)	(0.2%)	–	(<0.1%)	–	(0.2%)	(<0.1%)
People sentenced	5,646	847	39	2,051	2,981	1,395	6,493
	(100.0%)	(100.0%)	(100.0%)	(100.0%)	(100.0%)	(100.0%)	(100.0%)

A higher percentage of men received non-immediate custodial sentences (18.4% of men compared to 11.0% of women) and immediate custodial sentences (11.7% compared to 5.2%). Conversely, a higher percentage of women received non-custodial sentences (83.8% of women compared to 69.9% of men).

When examining individual sentence types, a higher percentage of men received fines (30.5% compared to 22.8% of women), sentences of imprisonment (8.8% compared to 3.8%) and wholly suspended sentences (13.5% compared to 8.6%). Conversely, a higher percentage of women received adjourned undertakings (36.4% compared to 18.9% of men).

Figure 2: The number of people sentenced for causing injury recklessly by gender and age, 2004–05 to 2007–08



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

Sentencing outcomes by year

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

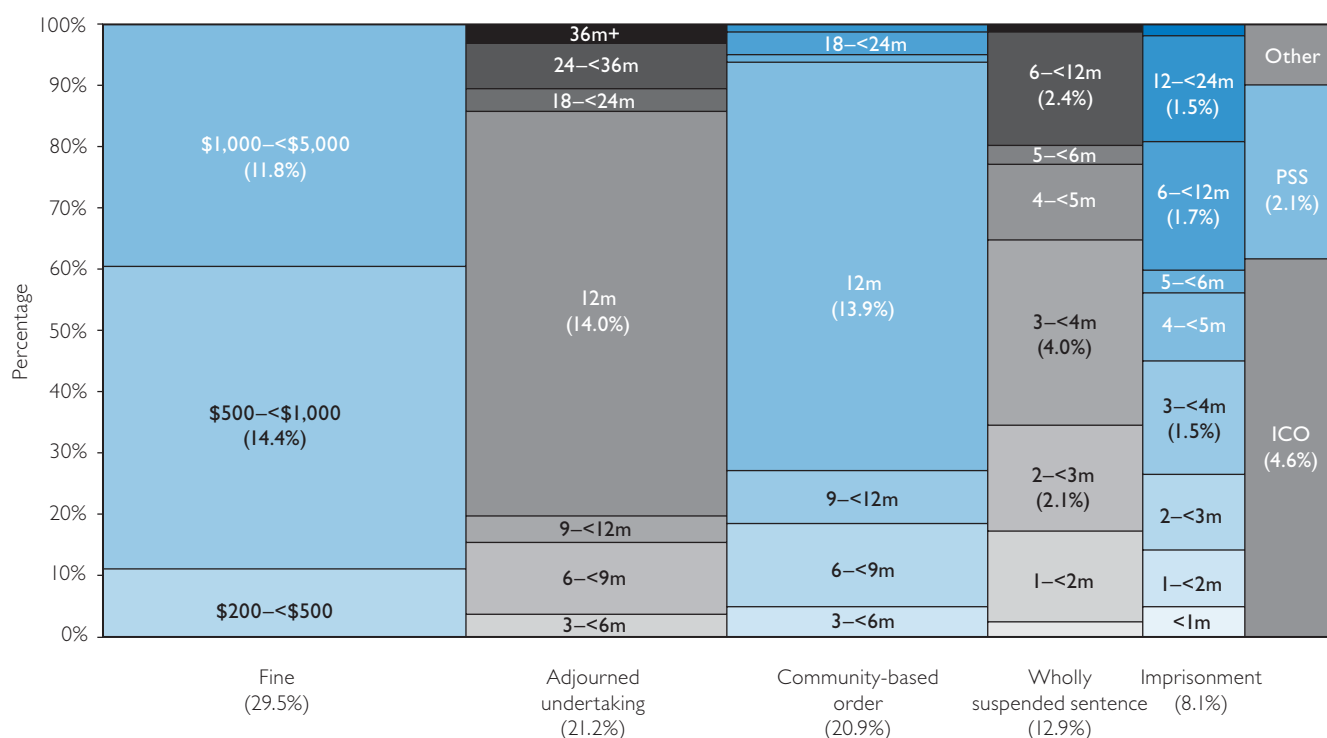
While the number of people who received an immediate custodial sentence increased from 161 people in 2004–05 to 194 people in 2007–08, the percentage of people remained relatively stable.

The number and percentage of people who received a non-immediate custodial sentence increased from 252 people and 17.9% in 2004–05 to 344 people and 19.3% in 2007–08. While the number of people who received a non-custodial sentence increased from 996 people in 2004–05 to 1,241 people in 2007–08, the percentage of people remained relatively stable.

Sentencing map

Figure 3 presents both the sentencing outcome and the quantum for that outcome for people sentenced for causing injury recklessly. For example, 29.5% of people sentenced received a fine including 14.4% who received a fine of \$500 to less than \$1,000. 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 causing injury recklessly by sentencing outcomes and sentencing quanta, 2004–05 to 2007–08¹⁴



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

Table 3: The number and percentage of people sentenced for causing injury recklessly by sentence type and year, 2004–05 to 2007–08¹³

Sentence Type	2004–05	2005–06	2006–07	2007–08
Immediate custodial	161 (11.4%)	170 (10.8%)	180 (10.4%)	194 (10.9%)
Imprisonment	111 (7.9%)	131 (8.3%)	135 (7.8%)	150 (8.4%)
Partially suspended sentence	40 (2.8%)	29 (1.8%)	37 (2.1%)	29 (1.6%)
Combined custody and treatment order	1 (<0.1%)	0 –	1 (<0.1%)	1 (<0.1%)
Youth justice centre order	9 (0.6%)	10 (0.6%)	7 (0.4%)	14 (0.8%)
Other custodial	252 (17.9%)	248 (15.7%)	289 (16.7%)	344 (19.3%)
Wholly suspended sentence	187 (13.3%)	191 (12.1%)	197 (11.4%)	261 (14.7%)
Intensive correction order	65 (4.6%)	57 (3.6%)	92 (5.3%)	83 (4.7%)
Non-custodial	996 (70.7%)	1,157 (73.5%)	1,261 (72.9%)	1,241 (69.8%)
Community-based order	302 (21.4%)	322 (20.4%)	357 (20.6%)	373 (21.0%)
Fine	417 (29.6%)	491 (31.2%)	551 (31.8%)	458 (25.7%)
Adjourned undertaking	276 (19.6%)	344 (21.8%)	350 (20.2%)	406 (22.8%)
Convicted and discharged (s 73 SA)	1 (<0.1%)	0 –	2 (0.1%)	1 (<0.1%)
Dismissed (s 76 SA)			1 (<0.1%)	3 (0.2%)
People sentenced	1,409	1,575	1,730	1,779

Principal sentence

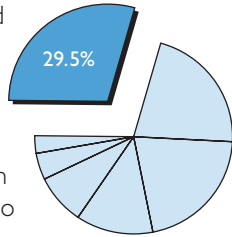
This section examines the use of the five most common principal sentencing outcomes for this offence.¹⁵ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided.¹⁶ Finally, where relevant, the details of the sentence (length of order or fine amount) are examined.¹⁷

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

Fine

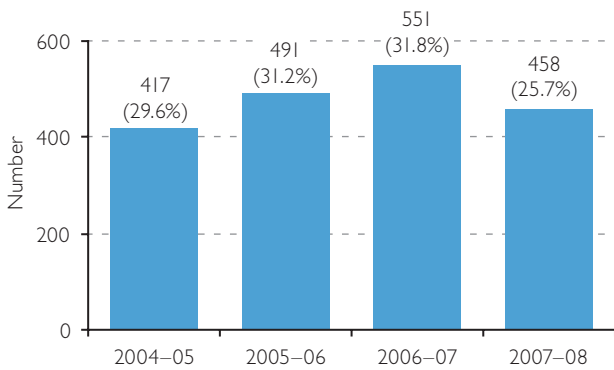
Trends

There were 1,917 people who received a fine for causing injury recklessly. This represented 29.5% of all people sentenced for this offence. Of the 1,009 people who received a fine in 2006–07 and 2007–08, 61.1% also had a conviction recorded (616 people). Figure 4 shows the trends in the number and percentage of people who received a fine for causing injury recklessly.



In 2007–08, 458 people received a fine for the principal proven offence of causing injury recklessly. This has decreased over the past year from 551 people in 2006–07, after increasing substantially the previous two years. Also, the proportion of people who received a fine for causing injury recklessly decreased over the past year from 31.8% to 25.7%.

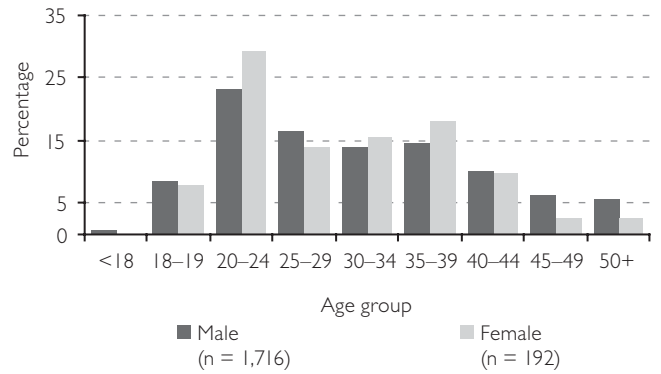
Figure 4: The number and percentage of people who received a fine for causing injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 1,917 people who received a fine, 89.9% were men. Figure 5 shows the age groups of people who received a fine for causing injury recklessly 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).

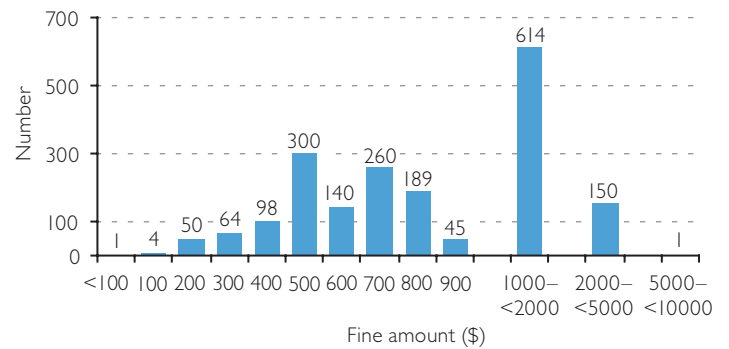
Figure 5: The percentage of people who received a fine for causing injury recklessly by age and gender, 2004–05 to 2007–08



Fine Amount

Figure 6 shows the number of people who received a fine for causing injury recklessly by the amount of the fine. While the amount of the fine ranged from \$50 to \$5,000, the median was \$800. Aggregate fines were imposed for 33.6% of people who received a fine.¹⁸

Figure 6: The number of people who received a fine for causing injury recklessly by the amount of the fine, 2004–05 to 2007–08



Adjourned undertaking

Trends

There were 1,376 people who received an adjourned undertaking for causing injury recklessly. This represented 21.2% of all people sentenced for this offence. Of the 756 people who received an adjourned undertaking in 2006–07 and 2007–08, 14.7% also had a conviction recorded (111 people). Figure 7 shows the trends in the number and percentage of people who received an adjourned undertaking for causing injury recklessly.

In 2007–08, 406 people received an adjourned undertaking for the principal proven offence of causing injury recklessly. This has increased each of the past three years from 276 people in 2004–05. Also, the proportion of people who received an adjourned undertaking for causing injury recklessly increased over the past year from 20.2% to 22.8%.

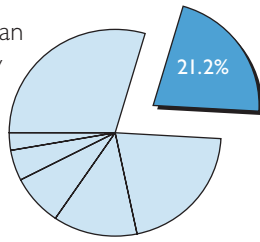
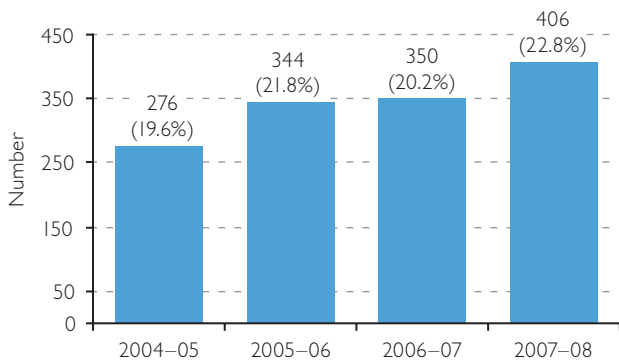


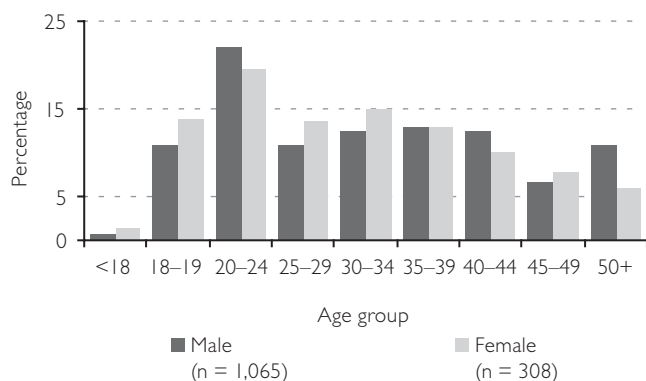
Figure 7: The number and percentage of people who received an adjourned undertaking for causing injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 1,376 people who received an adjourned undertaking, 77.6% were men. Figure 8 shows the age groups of people who received an adjourned undertaking for causing injury recklessly by gender. The median age of these people was 31 years, while men were generally older than their female counterparts (a median age of 32 years compared to 30 years).

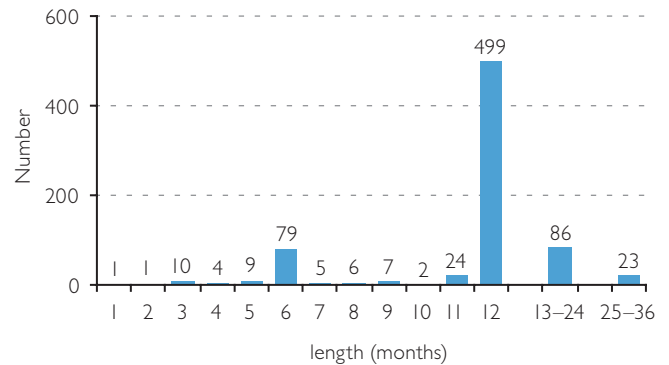
Figure 8: The percentage of people who received an adjourned undertaking for causing injury recklessly by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 9 shows the number of people who received an adjourned undertaking for causing injury recklessly by the length of the sentence. While the length of adjourned undertakings ranged from one month to three years, the majority were for 12 months (66.0%).

Figure 9: The number of people who received an adjourned undertaking for causing injury recklessly by the length of order, 2006–07 and 2007–08



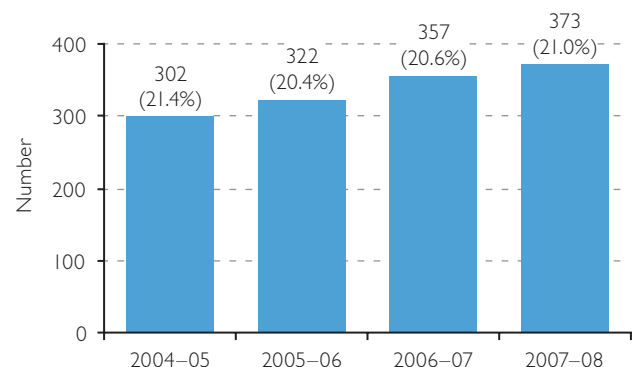
Community-based order

Trends

There were 1,354 people who received a community-based order for causing injury recklessly. This represented 20.9% of all people sentenced for this offence. Of the 730 people who received a community-based order in 2006–07 and 2007–08, 72.9% also had a conviction recorded (532 people). Figure 10 shows the trends in the number and percentage of people who received a community-based order for causing injury recklessly.

In 2007–08, 373 people received a community-based order for the principal proven offence of causing injury recklessly. This has steadily increased in each of the past four years. Also, the proportion of people who received a community-based order for causing injury recklessly remained relatively stable over the past four years ranging from 20.4% in 2005–06 to 21.4% in 2004–05.

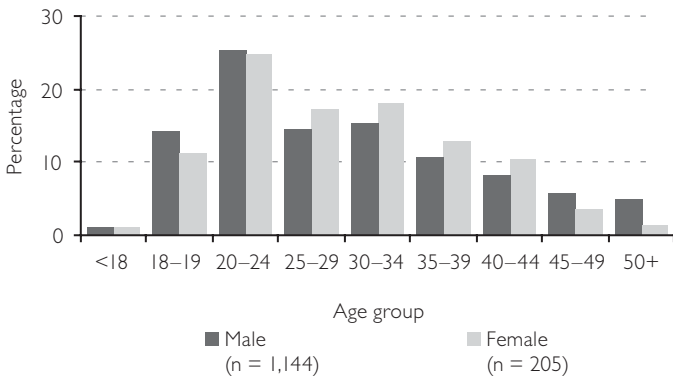
Figure 10: The number and percentage of people who received a community-based order for causing injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 1,354 people who received a community-based order, 84.8% were men. Figure 11 shows the age groups of people who received a community-based order for causing injury recklessly by gender. The median age of these people was 28 years. This was similar for both men and women (28 years for women and 27 years and six months for men).

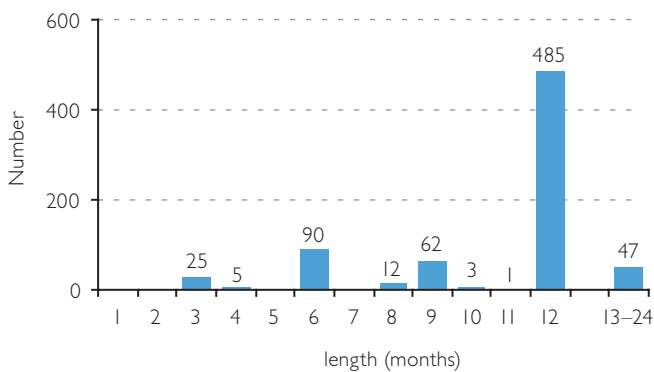
Figure 11: The percentage of people who received a community-based order for causing injury recklessly by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 12 shows the number of people who received a community-based order for causing injury recklessly by the length of the sentence. While the length of community-based orders ranged from three months to two years, the majority were for 12 months (66.4%).

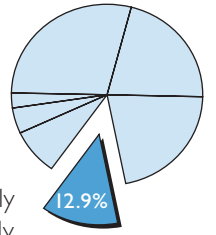
Figure 12: The number of people who received a community-based order for causing injury recklessly by the length of order, 2006–07 and 2007–08



Wholly suspended sentence

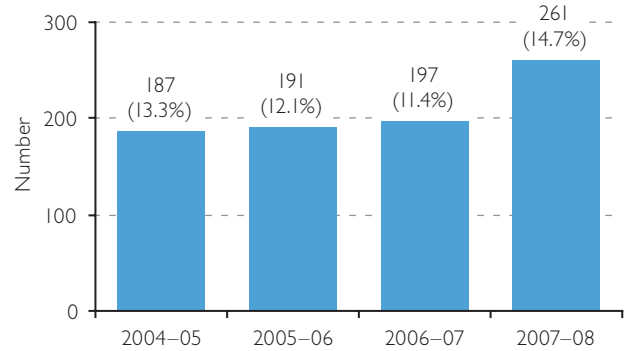
Trends

There were 836 people who received a wholly suspended sentence for causing injury recklessly. This represented 12.9% of all people sentenced for this offence. Figure 13 shows the trends in the number and percentage of people who received a wholly suspended sentence for causing injury recklessly.



In 2007–08, 261 people received a wholly suspended sentence for the principal proven offence of causing injury recklessly. This has increased over the past year from 197 people in 2006–07, after remaining relatively stable for the previous two years. Also, the proportion of people who received a wholly suspended sentence for causing injury recklessly increased over the past year from 11.4% to 14.7%.

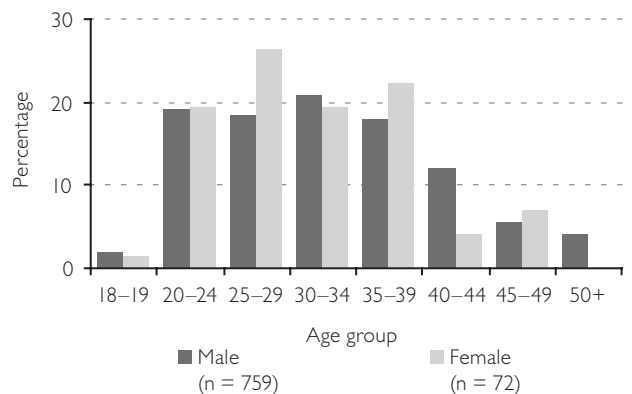
Figure 13: The number and percentage of people who received a wholly suspended sentence for causing injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 836 people who received a wholly suspended sentence, 91.3% were men. Figure 14 shows the age groups of people who received a wholly suspended sentence for causing injury recklessly by gender. The median age of these people was 32 years, while men were generally older than their female counterparts (a median age of 32 years compared to 30 years).

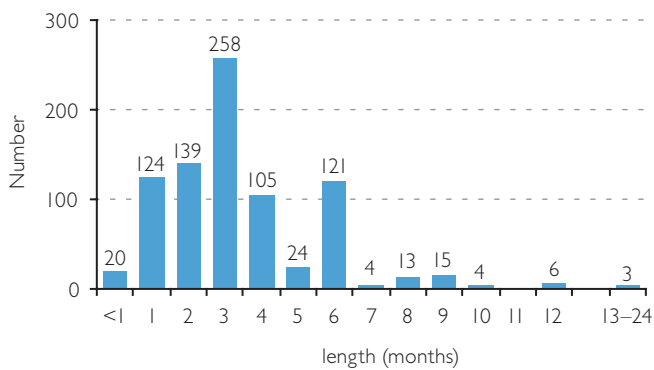
Figure 14: The percentage of people who received a wholly suspended sentence for causing injury recklessly by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 15 shows the number of people who received a wholly suspended sentence for causing injury recklessly by the length of the sentence. While the length of wholly suspended sentences ranged from seven days to one year and six months, the median was three months (meaning that half were shorter than three months and half were longer than three months). Aggregate wholly suspended sentences were imposed for 44.9% of people who received a wholly suspended sentence.¹⁹

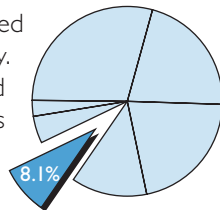
Figure 15: The number of people who received a wholly suspended sentence for causing injury recklessly by the length of order, 2004–05 to 2007–08



Imprisonment

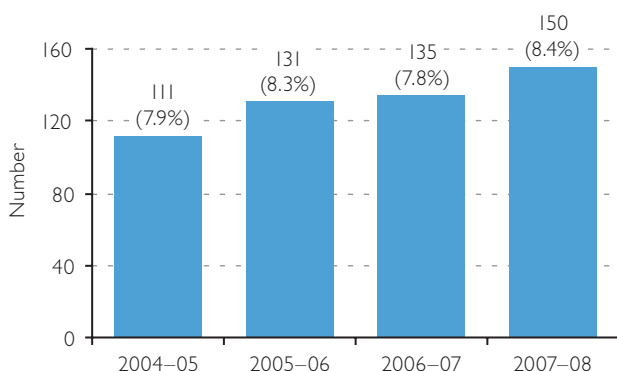
Trends

There were 527 people who were sentenced to imprisonment for causing injury recklessly. This represented 8.1% of all people sentenced for this offence. Figure 16 shows the trends in the number and percentage of people who were sentenced to imprisonment for causing injury recklessly.



In 2007–08, 150 people were sentenced to imprisonment for the principal proven offence of causing injury recklessly. This has increased each of the past three years from 111 people in 2004–05. Also, the proportion of people who were sentenced to imprisonment for causing injury recklessly increased over the past year from 7.8% to 8.4%.

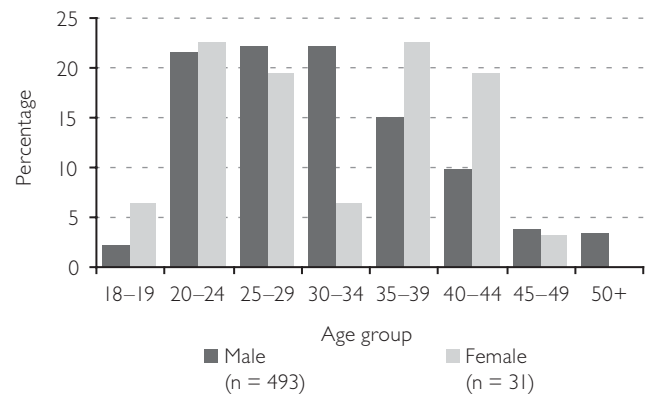
Figure 16: The number and percentage of people who were sentenced to imprisonment for causing injury recklessly, 2004–05 to 2007–08



Age and gender

Of the 527 people who received a period of imprisonment, 93.9% were men. Figure 17 shows the age groups of people who were sentenced to imprisonment for causing injury recklessly by gender. The median age of these people was 30 years and six months, while women were generally older than their male counterparts (a median age of 33 years compared to 30 years).

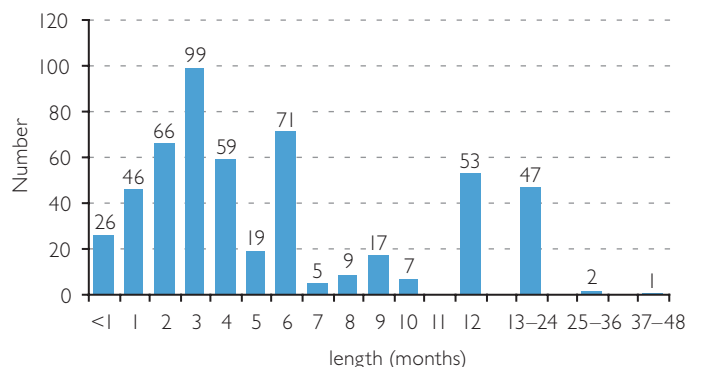
Figure 17: The percentage of people who were sentenced to imprisonment for causing injury recklessly by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 18 shows the number of people who were sentenced to imprisonment for causing injury recklessly by the length of the sentence. While the length of imprisonment ranged from one day to four years, the median was four months (meaning that half were shorter than four months and half were longer than four months). Aggregate periods of imprisonment were imposed for 55.4% of people who were sentenced to imprisonment.²⁰

Figure 18: The number of people who were sentenced to imprisonment for causing injury recklessly by the length of order, 2004–05 to 2007–08

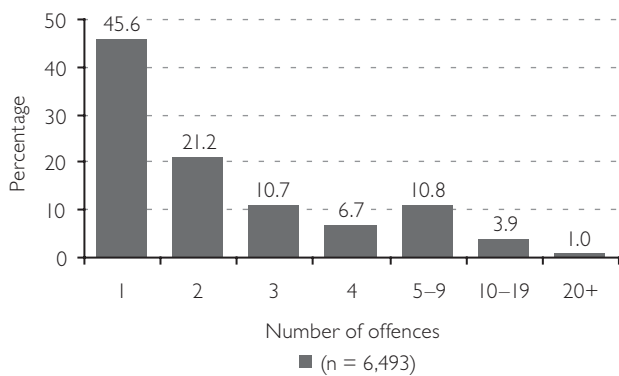


Other offences finalised at the same hearing

Often people prosecuted for causing injury recklessly 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 causing injury recklessly.

Figure 19 shows the number of people sentenced for the principal offence of causing injury recklessly by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 62, while the median was 2 offences. There were 2,963 people (45.6%) sentenced for the single offence of causing injury recklessly alone. The average number of offences per person sentenced for causing injury recklessly was 2.95.

Figure 19: The percentage of cases where causing injury recklessly 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 causing injury recklessly, 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, 910 of the total 6,493 people (14.0%) also received sentences for unlawful assault. On average, they were sentenced for 1.33 charges of unlawful assault. The first row indicates that the average number of charges of causing injury recklessly sentenced per person was 1.10.

Table 4: The number and percentage of people sentenced for the principal offence of causing injury recklessly 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 causing injury recklessly	6,493	100.0	1.10
2 unlawful assault	910	14.0	1.33
3 criminal damage	857	13.2	1.28
4 failing to appear on bail	573	8.8	1.57
5 theft	518	8.0	2.47
6 breach of intervention order	506	7.8	1.89
7 assault police	405	6.2	1.85
8 aggravated assault	403	6.2	1.18
9 make threat to kill	301	4.6	1.28
10 possession of a drug of dependence	204	3.1	1.23
People sentenced	6,493	100.0	2.95

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of causing injury recklessly. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.²¹

Table 5 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 causing injury recklessly, by the other sentence types also imposed in the case. For example, of the 2,506 people who received a fine as part of their total effective sentence, 11.1% also received a wholly suspended sentence.

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

- a fine with a wholly suspended sentence (32.1% of the 863 people who received a wholly suspended sentence);
- a fine with an imprisonment term (23.2% of the 551 people); and
- a fine with an intensive correction order (17.7% of the 300 people).

Table 5: The percentage of selected sentence types used in conjunction with other sentence types imposed in the same case, 2004–05 to 2007–08

	Fine	CBO	ADU	WSS	Imp.	ICO
Fine	100%	8.9%	3.3%	32.1%	23.2%	17.7%
CBO	5.2%	100%	1.8%	10.3%	2.4%	2.0%
ADU	2.0%	1.8%	100%	3.5%	1.8%	1.3%
WSS	11.1%	6.1%	2.0%	100%	2.0%	3.7%
Imp.	5.1%	0.9%	0.7%	1.3%	100%	0.7%
ICO	2.1%	0.4%	0.3%	1.3%	0.4%	100%
Total	2,506	1,468	1,485	863	551	300

Note: CBO refers to community-based order; ADU refers to adjourned undertaking; WSS refers to wholly suspended sentence; Imp. refers to imprisonment and ICO refers to intensive correction order.

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 284 people given a total effective sentence of imprisonment in 2006–07 and 2007–08.²² There were 75 people eligible for a non-parole period in 2006–07 and 2007–08, of whom 66 were given a non-parole period. This makes up 23.2% of all those who were given a total effective sentence of imprisonment.

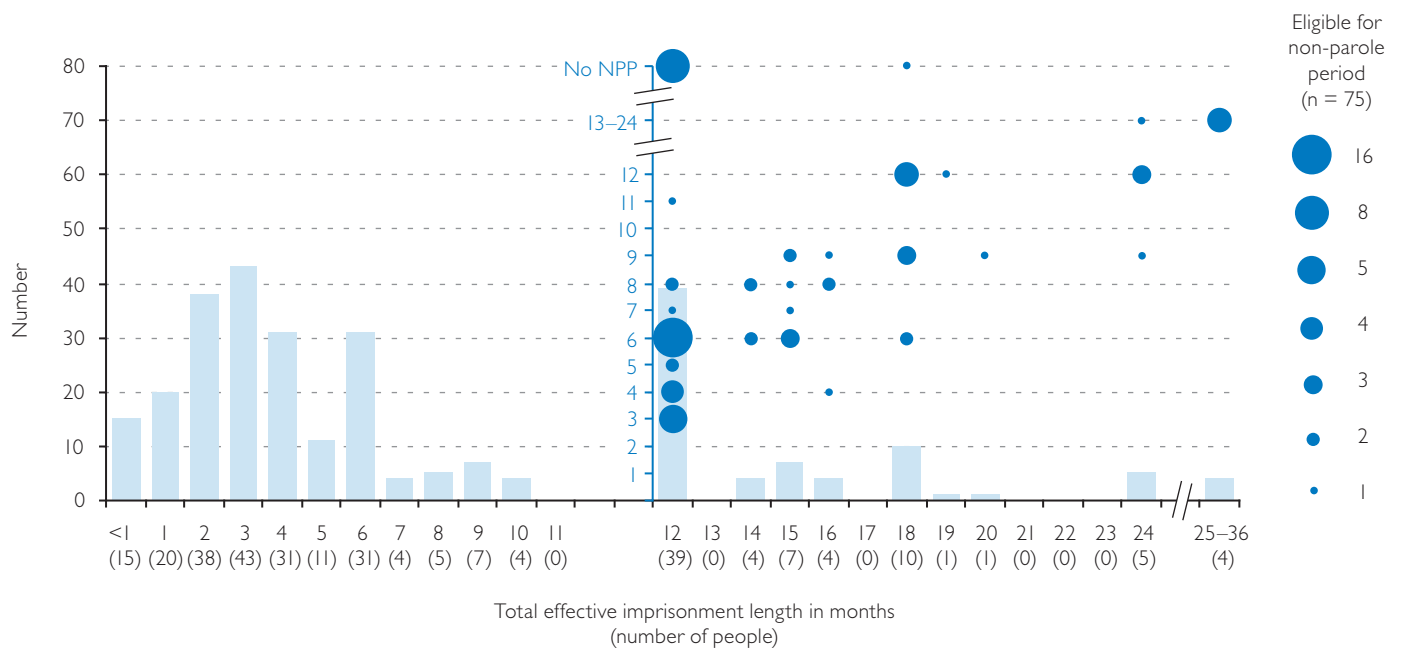
Figure 20 shows the number of people sentenced to imprisonment for causing injury recklessly during 2006–07 and 2007–08

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.²³

Total effective imprisonment lengths ranged from ten days to three years, while the most common length was 3 months (43 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 (16 people – as represented by the largest bubble on the chart). The longest total effective sentence imposed was three years with a non-parole period of one year and six months.

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



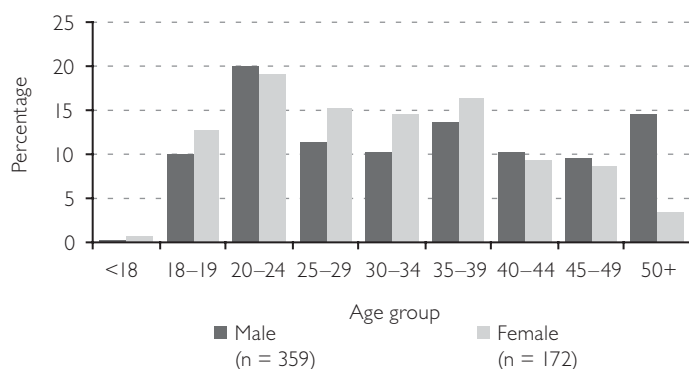
Criminal justice diversion plan²⁴

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 532 people who were given a criminal justice diversion plan.

Age and gender

Of the 532 people who were referred to the criminal justice diversion program, 67.7% were men. Figure 21 shows the age groups of people who were referred to the criminal justice diversion program for causing injury recklessly by gender. The median age of these people was 32 years, while men were generally older than their female counterparts (a median age of 33 years compared to 30 years).

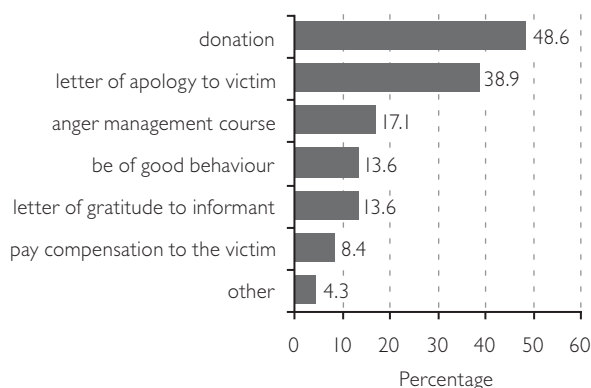
Figure 21: The percentage of people who were referred to the criminal justice diversion program for causing injury recklessly by age and gender, 2004–05 to 2007–08



Conditions

Figure 22 shows the percentage of people who received a criminal justice diversion plan for causing injury recklessly 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 donation (48.6% of people).

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



Note: other includes voluntary work, alcohol counselling/treatment and drug awareness course.

Summary

The Magistrates' Court sentenced 6,493 people for the principal offence of causing injury recklessly between 2004–05 and 2007–08. Over this period, the majority of those sentenced were men (5,646 people or 87.0%), while 55% were aged between 20 and 35 years.

Most people sentenced for causing injury recklessly received a non-custodial sentence (4,655 people or 71.7%), including 1,917 people who received a fine (29.5%), 1,376 people who received an adjourned undertaking (21.2%) and 1,354 people who received a community-based order (20.9%). A conviction was recorded with the principal sentence for 64.7% of people sentenced.

Men were more likely to receive fines, sentences of imprisonment and wholly suspended sentences. Conversely, women were more likely to receive adjourned undertakings.

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

Each of the 6,493 people was sentenced for an average of 2.95 offences, including 1.10 offences of causing injury recklessly. The most common offence finalised in conjunction with causing injury recklessly was unlawful assault (14.0% of all cases).

Common sentence types imposed in conjunction with another sentence type included a fine with a wholly suspended sentence (32.1% of the 863 people who received a wholly suspended sentence), a fine with an imprisonment term (23.2% of the 551 people) and a fine with an intensive correction order (17.7% of the 300 people).

Lengths of total effective sentences ranged from ten days to three years with a non-parole period of one year and six months. The most common length was 3 months (43 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 causing injury recklessly 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 causing injury recklessly 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 56.0% of people sentenced over this period. Therefore no analyses are presented on Indigenous status.
- ³ *Crimes Act 1958* (Vic) s 18.
- ⁴ *R v Campbell* [1997] 2 VR 585. See also *R v Crabbe* (1995) 156 CLR 464; *R v Nuri* [1990] VR 641.
- ⁵ *Crimes Act 1958* (Vic) s 15.
- ⁶ 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).
- ⁷ 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.
- ⁸ 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. In 2007–08, one person had charges that were dismissed pursuant to this legislation. This made up 0.06% of people sentenced in that year.
- ⁹ 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 over-riding 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.
- ¹⁰ *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 his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).
- ¹¹ 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.
- ¹² The age was unknown for 23 men and 4 women sentenced for causing injury recklessly (0.4%). These people are excluded from all age analyses in this report.
- ¹³ Refer fn. 8.
- ¹⁴ Aggregate sentence lengths are shown for people who received an aggregate sentence. Data for sentence lengths of community-based orders and adjourned undertakings are only available for 2006–07 and 2007–08.
- ¹⁵ 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.
- ¹⁶ 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 27 people sentenced for causing injury recklessly. These people are excluded from these analyses.
- ¹⁷ Aggregate sentence lengths are shown for people who received an aggregate sentence. 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.
- ¹⁸ The amount of non-aggregate fines ranged from \$100 to \$5,000, with a median of \$700, while the amount of aggregate fines ranged from \$50 to \$4,000, with a median of \$800.
- ¹⁹ The length of non-aggregate wholly suspended sentences ranged from seven days to one year and six months, with a median of three months, while the length of aggregate wholly suspended sentences ranged from seven days to one year and six months, with a median of three months.
- ²⁰ The length of non-aggregate periods of imprisonment ranged from one day to two years, with a median of three months, while the length of aggregate periods of imprisonment ranged from one day to four years, with a median of five months.
- ²¹ While a total of 551 people were sentenced to at least one period of imprisonment in the case, 527 people had imprisonment listed against their principal proven offence. There were 24 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.
- ²² Total effective imprisonment lengths and non-parole periods are only available for 2006–07 and 2007–08.
- ²³ Non-parole periods are rounded down to the nearest month, while non-parole periods greater than one year are grouped into categories of years.
- ²⁴ 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 532 people who were placed on the diversion program for this offence, 368 were matched to and had conditions listed in the criminal justice diversion plan database (69.2%).

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

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

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- 62 Causing injury intentionally
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- 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

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- 50 Indecent act with a child under 16
- 49 Indecent Assault

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

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- 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

Sentencing trends in the higher courts, 2001–02 to 2005–06

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- 32 Sexual penetration of a child aged 10 to 16 under the care, supervision or authority of the offender
- 31 Sexual penetration of a child aged between 10 and 16
- 30 Making a threat to kill
- 29 Culpable driving causing death
- 28 Manslaughter
- 27 Murder
- 26 Rape
- 25 Maintaining a sexual relationship with a child aged under 16
- 24 Indecent act with a child aged under 16
- 23 Indecent assault

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Sentencing trends in the higher courts, 2001–02 to 2005–06 cont.

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- 20 Arson
- 19 Obtaining property by deception
- 18 Obtaining financial advantage by deception
- 17 Theft
- 16 Handling stolen goods

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