

No. 41: Sentencing trends for causing injury intentionally or recklessly in the higher courts of Victoria, 2002-03 to 2006-07

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of causing injury intentionally or recklessly and details the age and gender² of people sentenced for this offence in the County and Supreme Courts of Victoria between 2002-03 and 2006-07³. This offence is less serious than the offences of 'causing serious injury intentionally' and 'causing serious injury recklessly'. For an analysis of sentencing trends for these two offences, please refer to Sentencing Snapshots No. 39 and No. 40.

A person who intentionally or recklessly causes injury to another person without lawful excuse is guilty of the offence of causing injury intentionally or recklessly⁴. Recklessness requires foresight on the part of the accused of the probability that injury will occur as a consequence of his or her actions⁵. 'Injury' includes unconsciousness, hysteria, pain and any substantial impairment of bodily function⁶. These definitions are not exhaustive.

Causing injury intentionally or recklessly is an indictable offence which carries a maximum penalty of 10 years' imprisonment and/or a fine of 1200 penalty units⁷. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

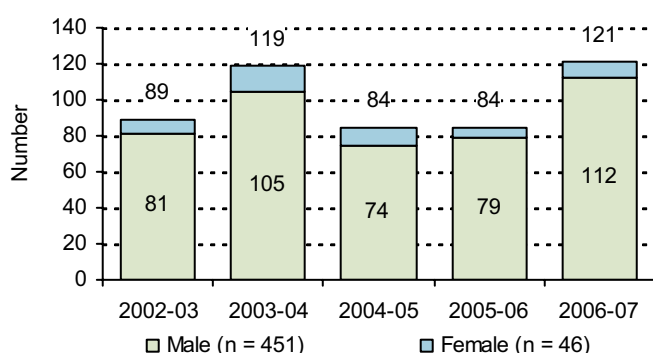
Of all people sentenced for the principal offence of causing injury, 4.4% had their cases heard in the higher courts. The remaining cases were heard in the Children's and Magistrates' Court⁸. Causing injury was the principal offence in 4.8% of cases sentenced in the higher courts between 2002-03 and 2006-07.

People sentenced

Figure 1 shows the number of people sentenced for causing injury for the period 2002-03 to 2006-07. As shown, 497 people were sentenced for causing injury over the five year period. There were 121 people sentenced for this offence in 2006-07, up by 37 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (90.7% or 451 of the 497 people), including 112 of the 121 people sentenced in 2006-07.

Figure 1: The number of people sentenced for causing injury by gender, 2002-03 to 2006-07



Sentence types and trends

Figure 2 shows the total number of people sentenced for causing injury and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention⁹. Over the five year period, 28% of people were given a custodial sentence. This peaked at 33% (28 of 84) in 2004-

05 before decreasing to 19% (16 of 84) in 2005-06. In 2006-07, 31% of people sentenced (37 of 121) were given a custodial sentence.

Figure 2: The number of people sentenced for causing injury and the number who received a custodial sentence, 2002-03 to 2006-07

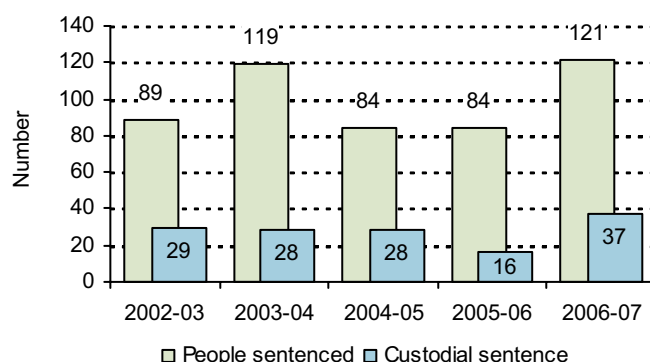
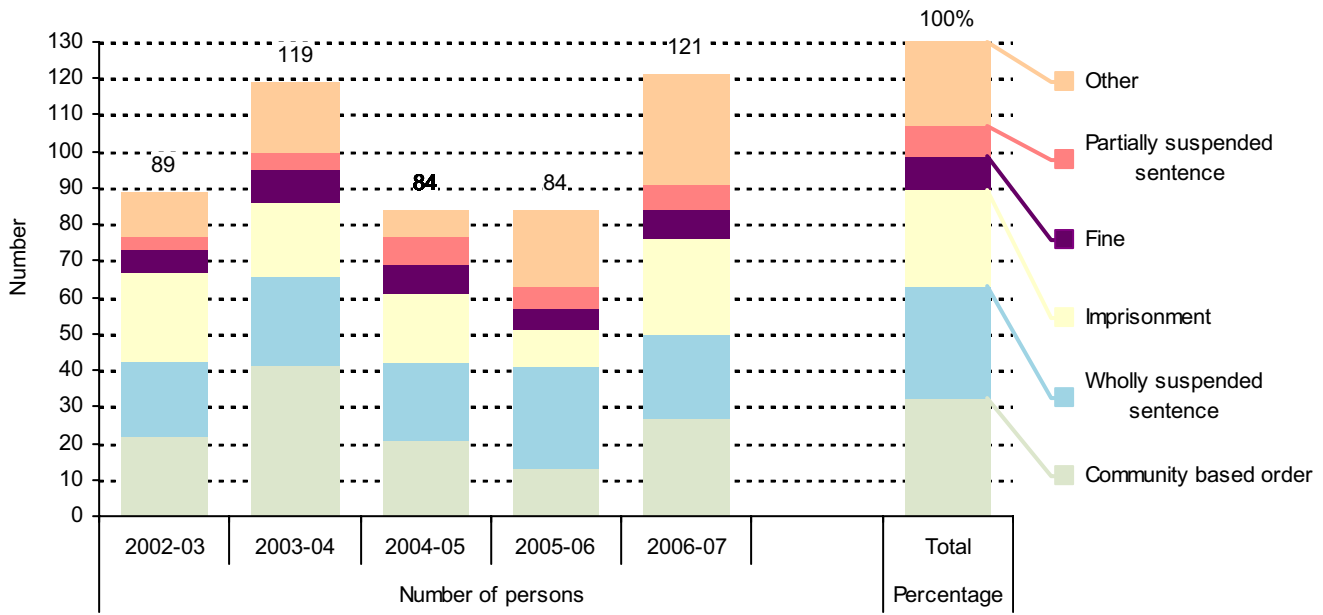


Figure 3 and Table 1 show the number of people sentenced for causing injury from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, one in four people sentenced for causing injury received a community based order (25% or 124 of 497 people), while 24% received a wholly suspended sentence of imprisonment and 20% received a period of imprisonment.

Figure 3: The number of people sentenced for causing injury by sentence type, 2002-03 to 2006-07



Other includes adjourned undertaking without conviction, intensive correction order, adjourned undertaking with conviction, mix (wholly suspended sentence & fine), aggregate fine, mix (community based order & fine), youth training centre order, aggregate wholly suspended sentence, mix (imprisonment & community based order), mix (fine & adjourned undertaking), non-custodial supervision order, mix (wholly suspended sentence & aggregated fine), mix (intensive correction order & fine), mix (community based order & aggregated fine), mix (aggregated fine. & adjourned undertaking), hospital security order, convicted and discharged, aggregate imprisonment and aggregate community based order.

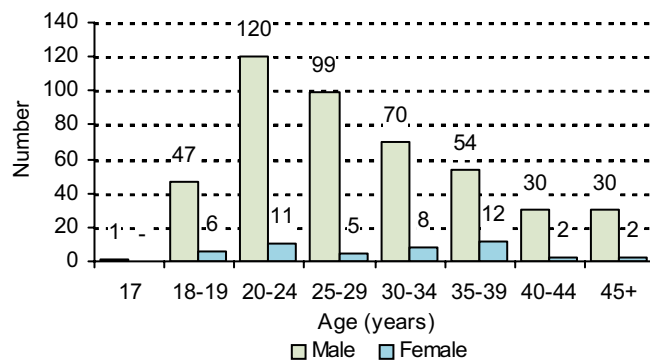
Table 1: The number and percentage of people sentenced for causing injury by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Community based order	22	41	21	13	27
	25%	34%	25%	15%	22%
Wholly suspended sentence	20	25	21	28	23
	22%	21%	25%	33%	19%
Imprisonment	25	20	19	10	26
	28%	17%	23%	12%	21%
Fine	6	9	8	6	8
	7%	8%	10%	7%	7%
Partially suspended sentence	4	5	8	6	7
	4%	4%	10%	7%	6%
Adjourned undertaking without conviction	5	6	1	10	1
	6%	5%	1%	12%	<1%
Intensive correction order	3	2	2	2	6
	3%	2%	2%	2%	5%
Adjourned undertaking with conviction	3	5	2	2	3
	3%	4%	2%	2%	2%
Mix (wholly suspended sentence & fine)	0	1	1	1	4
	-	<1%	1%	1%	3%
Aggregate fine	0	0	0	1	4
	-	-	-	1%	3%
Mix (community based order & fine)	0	1	0	3	0
	-	<1%	-	4%	-
Youth training centre order	0	1	1	0	2
	-	<1%	1%	-	2%
Aggregate wholly suspended sentence	0	0	0	0	3
	-	-	-	-	2%
Mix (imprisonment & community based order)	0	1	0	0	1
	-	<1%	-	-	<1%
Mix (fine & adjourned undertaking)	0	0	0	1	1
	-	-	-	1%	<1%
Non-custodial supervision order	0	0	0	0	1
	-	-	-	-	<1%
Mix (wholly suspended sentence & aggregated fine)	0	1	0	0	0
	-	<1%	-	-	-
Mix (intensive correction order & Fine)	1	0	0	0	0
	1%	-	-	-	-
Mix (community based order & aggregated fine)	0	0	0	0	1
	-	-	-	-	<1%
Mix (agg fine. & adjourned undertaking)	0	0	0	1	0
	-	-	-	1%	-
Hospital security order	0	1	0	0	0
	-	<1%	-	-	-
Convicted and discharged	0	0	0	0	1
	-	-	-	-	<1%
Aggregate imprisonment	0	0	0	0	1
	-	-	-	-	<1%
Aggregate community based order	0	0	0	0	1
	-	-	-	-	<1%
People sentenced	89	119	84	84	121

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for causing injury grouped by their age¹⁰ between 2002-03 and 2006-07. The average age of people sentenced for causing injury was twenty-nine years and three months. Women sentenced over this period were slightly older than men (an average age of twenty-nine years and four months for women compared to twenty-nine years and three months for men). One male juvenile was sentenced over this period.

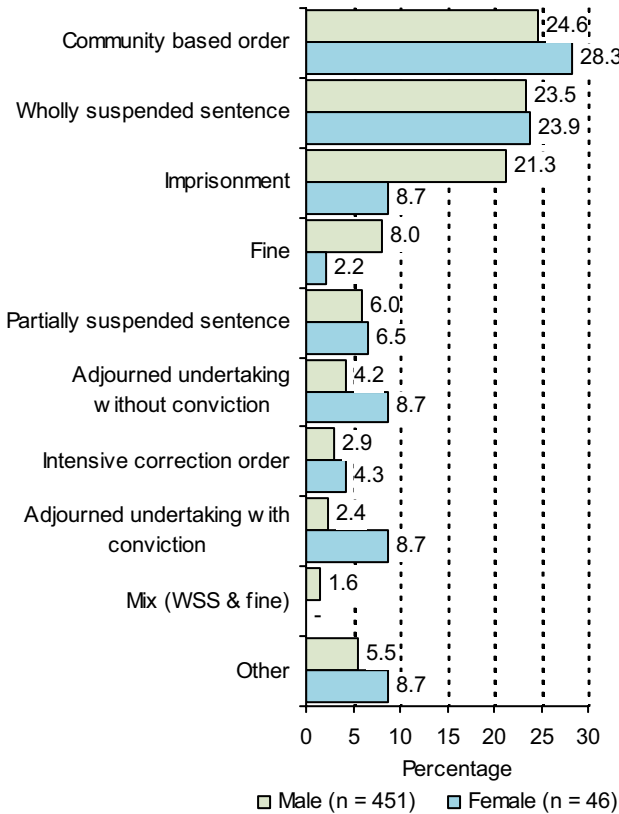
Figure 4: The number of people sentenced for causing injury by gender and age, 2002-03 to 2006-07



Sentence types by gender

Figure 5 and Table 2 show the types of sentence imposed for causing injury grouped by gender. As shown, a higher percentage of men received a period of imprisonment (21.3% compared to 8.7% of women) and a fine (8.0% compared to 2.2%). Conversely, a higher percentage of women received an adjourned undertaking with conviction (8.7% compared to 2.4% of men), an adjourned undertaking without conviction (8.7% compared to 4.2%) and a community based order (28.3% compared to 24.6%).

Figure 5: The percentage of people sentenced for causing injury by sentence type and gender, 2002-03 to 2006-07



Other includes mix (community based order & fine), aggregate wholly suspended sentence, mix (imprisonment & community based order), mix (fine & adjourned undertaking), non-custodial supervision order, mix (wss & aggregated fine), mix (intensive correction order & fine), mix (community based order & aggregated fine), mix (aggregated fine & adjourned undertaking), hospital security order, convicted and discharged, aggregate imprisonment and aggregate community based order and a Youth training centre order and Mix (community based order & fine)

Table 2: The number and percentage breakdown of people sentenced for causing injury by gender, 2002-03 to 2006-07

Sentence type	Male	Female	Total
Community based order	111	13	124
Wholly suspended sentence	106	11	117
Imprisonment	96	4	100
Fine	36	1	37
Partially suspended sentence	27	3	30
Adjourned undertaking without conviction	19	4	23
Intensive correction order	13	2	15
Adjourned undertaking with conviction	11	4	15
Mix (wholly suspended sentence & fine)	7	0	7
Aggregate fine	5	0	5
Youth training centre order	1	3	4
Mix (community based order & fine)	4	0	4
Aggregate wholly suspended sentence	3	0	3
Mix (imprisonment & community based order)	2	0	2
Mix (fine & adjourned undertaking)	1	1	2
Non-custodial supervision order	1	0	1
Mix (wholly suspended sentence & aggregated fine)	1	0	1
Mix (intensive correction order & Fine)	1	0	1
Mix (community based order & aggregated fine)	1	0	1
Mix (agg fine. & adjourned undertaking)	1	0	1
Hospital security order	1	0	1
Convicted and discharged	1	0	1
Aggregate imprisonment	1	0	1
Aggregate community based order	1	0	1
People sentenced	451	46	497

Sentence types by age

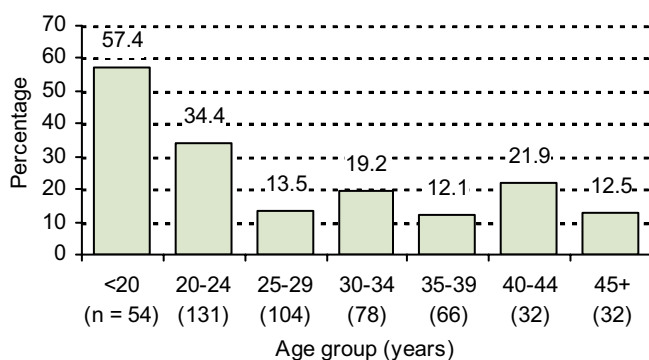
As shown in the table above, the four most common sentence types were community based orders, wholly suspended sentences of imprisonment, imprisonment and fines. The following analysis examines these sentence types by the offender's age group.

Community based orders

Community based orders were most likely to be given to people aged under 20 years (57% or 31 of the 54 people in this age group).

Conversely, community based orders were least common for those aged 35-39 years old (12% or eight of the 66 people in this age group).

Figure 6: The percentage of people who received a community based order for causing injury by age group, 2002-03 to 2006-07

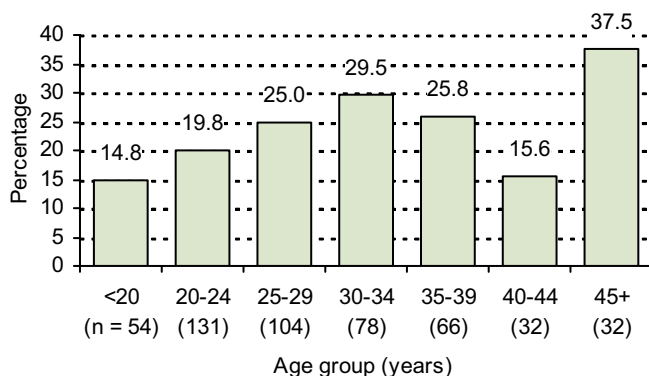


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 45 years and older (38% or 12 of the 32 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged under 20 years (15% or eight of the 54 people in this age group).

Figure 7: The percentage of people who received a wholly suspended sentence of imprisonment for causing injury by age group, 2002-03 to 2006-07

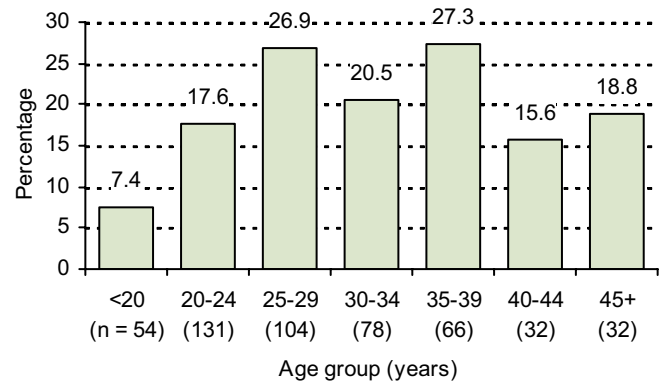


Imprisonment

Sentences of imprisonment were most likely to be given to people aged 35-39 years old (27% or 18 of the 66 people in this age group) followed by people aged 25-29 years old (27% or 28 of the 104 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 20 years (7% or four of the 54 people in this age group).

Figure 8: The percentage of people who received a period of imprisonment for causing injury by age group, 2002-03 to 2006-07

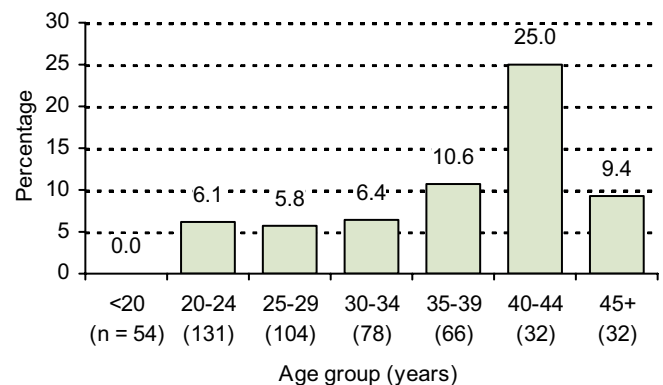


Fines

Fines were most likely to be given to people aged 40-44 years old (25% or eight of the 32 people in this age group).

Conversely, none of the 54 people aged under 20 years received a fine.

Figure 9: The percentage of people who received a fine for causing injury by age group, 2002-03 to 2006-07



Principal and total effective sentences

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

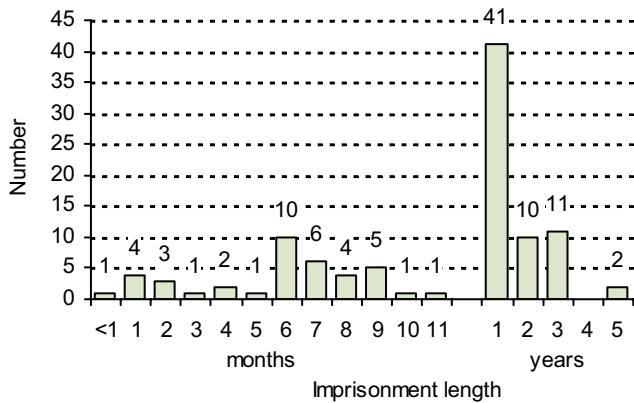
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether 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 causing injury must be considered in this broader context. The following sections analyse the use of imprisonment for causing injury over 2002-03 to 2006-07.

Principal sentence of imprisonment

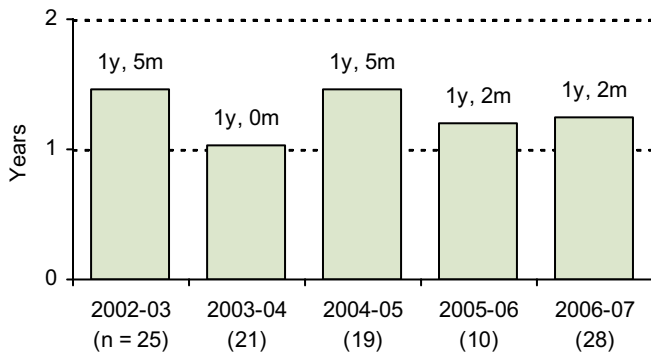
Figure 10 shows the number of people sentenced to imprisonment for causing injury between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from seven days to five years, while the median length of imprisonment was one year (meaning that half of the imprisonment terms were shorter than one year and half were longer).

Figure 10: The number of people sentenced to imprisonment for causing injury by length of imprisonment term, 2002-03 to 2006-07



As shown in Figure 11, the average length of imprisonment term imposed on people sentenced for causing injury ranged from one year in 2003-04 to one year and five months in 2002-03 and 2004-05.

Figure 11: The average length of imprisonment term imposed on people sentenced for causing injury, 2002-03 to 2006-07



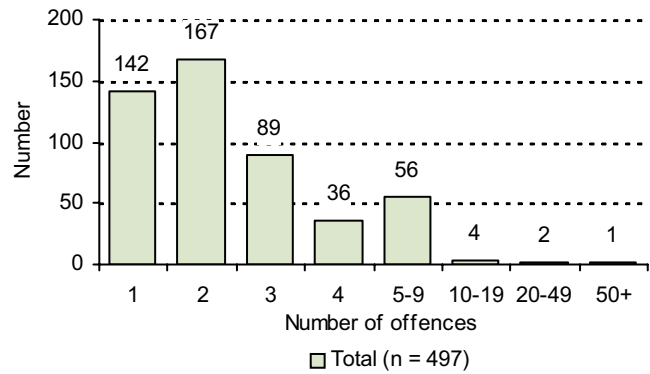
From 2002-03 to 2006-07, the majority of those people who received a term of imprisonment for causing injury were men (99 people or 96.1%).

Other offences finalised at the same hearing

Often people prosecuted for causing injury 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.

Figure 12 shows the number of people sentenced for the principal offence of causing injury by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 69, while the median was 2 offences. There were 142 people (28.6%) sentenced for the single offence of causing injury alone. The average number of offences per person sentenced for causing injury was 2.84.

Figure 12: The number of people sentenced for the principal offence of causing injury by the number of sentenced offences per person, 2002-03 to 2006-07



While Figure 12 presents the number of sentenced offences for those sentenced for causing injury, Figure 13 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, 101 of the total 497 people (20.3%) also received sentences for aggravated burglary. On average, they were sentenced for 1.05 counts of aggravated burglary.

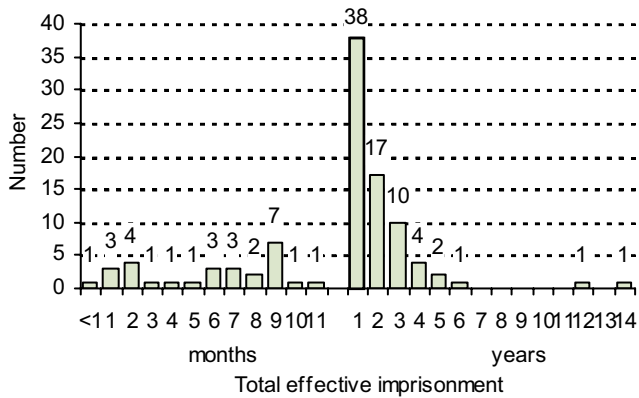
Figure 13: The number and percentage of people sentenced for the principal offence of causing injury by the most common offences that were sentenced and the average number of those offences that were sentenced, 2002-03 to 2006-07

Offence	No.	%	Avg.
1 causing injury	497	100.0	1.24
2 aggravated burglary	101	20.3	1.05
3 affray	78	15.7	1.01
4 intentionally destroy/damage property (criminal damage)	61	12.3	1.20
5 false imprisonment	50	10.1	1.18
6 theft	41	8.2	1.51
7 common law assault	37	7.4	2.05
8 making a threat to kill	23	4.6	1.30
9 robbery	16	3.2	1.19
10 breach of intervention order	10	2.0	1.30
People sentenced	497	100.0	2.84

Total effective sentence of imprisonment

There were 102 people given a total effective sentence of imprisonment¹¹. Figure 14 shows the number of people sentenced to imprisonment for causing injury between 2002-03 and 2006-07 by the length of their total effective sentence. The length of total effective sentences ranged from seven days to fourteen years¹², while the median total effective length of imprisonment was one year and six months (meaning that half of the total effective sentence lengths were below one year and six months and half were above).

Figure 14: The number of people sentenced to imprisonment for causing injury by total effective length of imprisonment term, 2002-03 to 2006-07



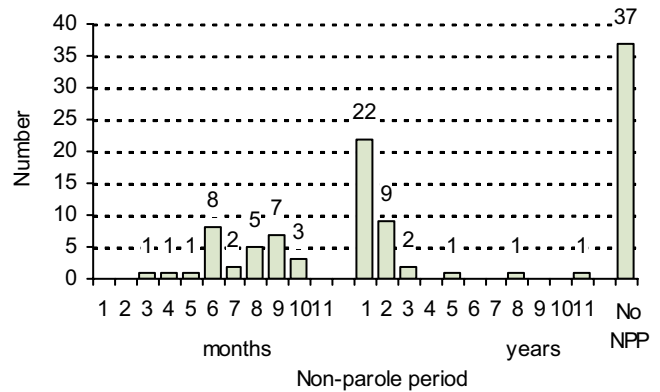
Non-parole period

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 s.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 lengthier than the individual principal sentence for causing injury. Sentences and non-parole periods must be considered in this broader context.

Of the 102 people who were sentenced to imprisonment for causing injury, 74 were eligible to have a non-parole period fixed¹³. Of these people, 64 were given a non-parole period (86%)¹⁴. Figure 15 shows the number of people sentenced to imprisonment for causing injury between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from three months to eleven years and six months, while the median length of the non-parole period was one year (meaning that half of the non-parole periods were below one year and half were above).

Figure 15: The number of people sentenced to imprisonment for causing injury by length of non-parole period, 2002-03 to 2006-07



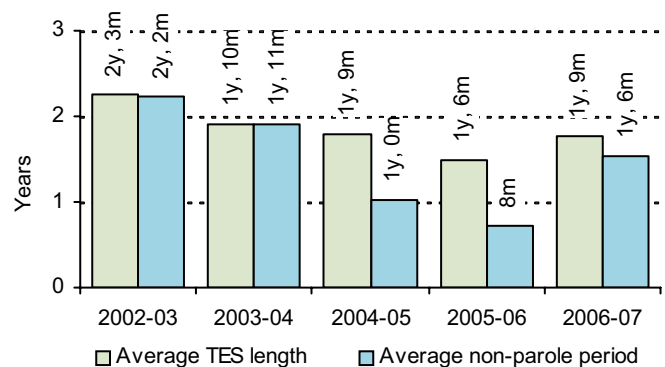
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Total effective sentences of imprisonment and non-parole periods

Figure 16 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all people from 2002-03 to 2006-07¹⁵.

From 2002-03 to 2006-07, the average length of total effective sentence for all people ranged from one year and six months in 2005-06 to two years and three months in 2002-03. Over the same period, the average length of non-parole period ranged from eight months in 2005-06 to two years and two months in 2002-03.

Figure 16: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for causing injury, 2002-03 to 2006-07

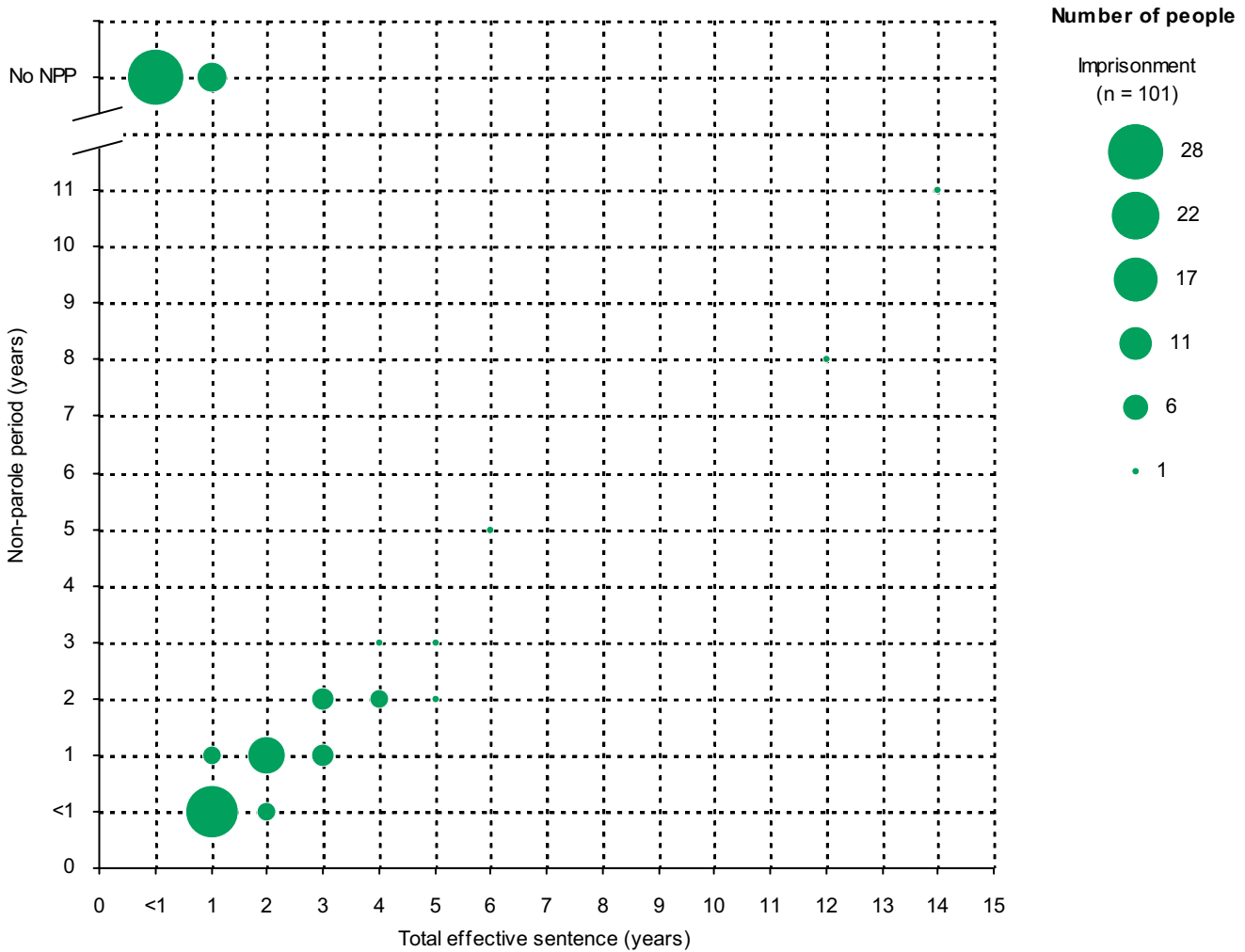


Total effective sentence of imprisonment by non-parole period

While Figure 14 and Figure 15 present the lengths of the total effective sentences and non-parole periods separately, Figure 17 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for causing injury 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 combination¹⁶. As shown, the most common combination of imprisonment length and non-parole period imposed was less than one year with no non-parole period (28 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from seven days with no non-parole period to fourteen years with a non-parole period of eleven years and six months¹⁷.

Figure 17: The number of people sentenced to imprisonment for causing injury by the total effective sentence and the non-parole period imposed, 2002-03 to 2006-07¹⁸



Note: No NPP refers to no non-parole period.

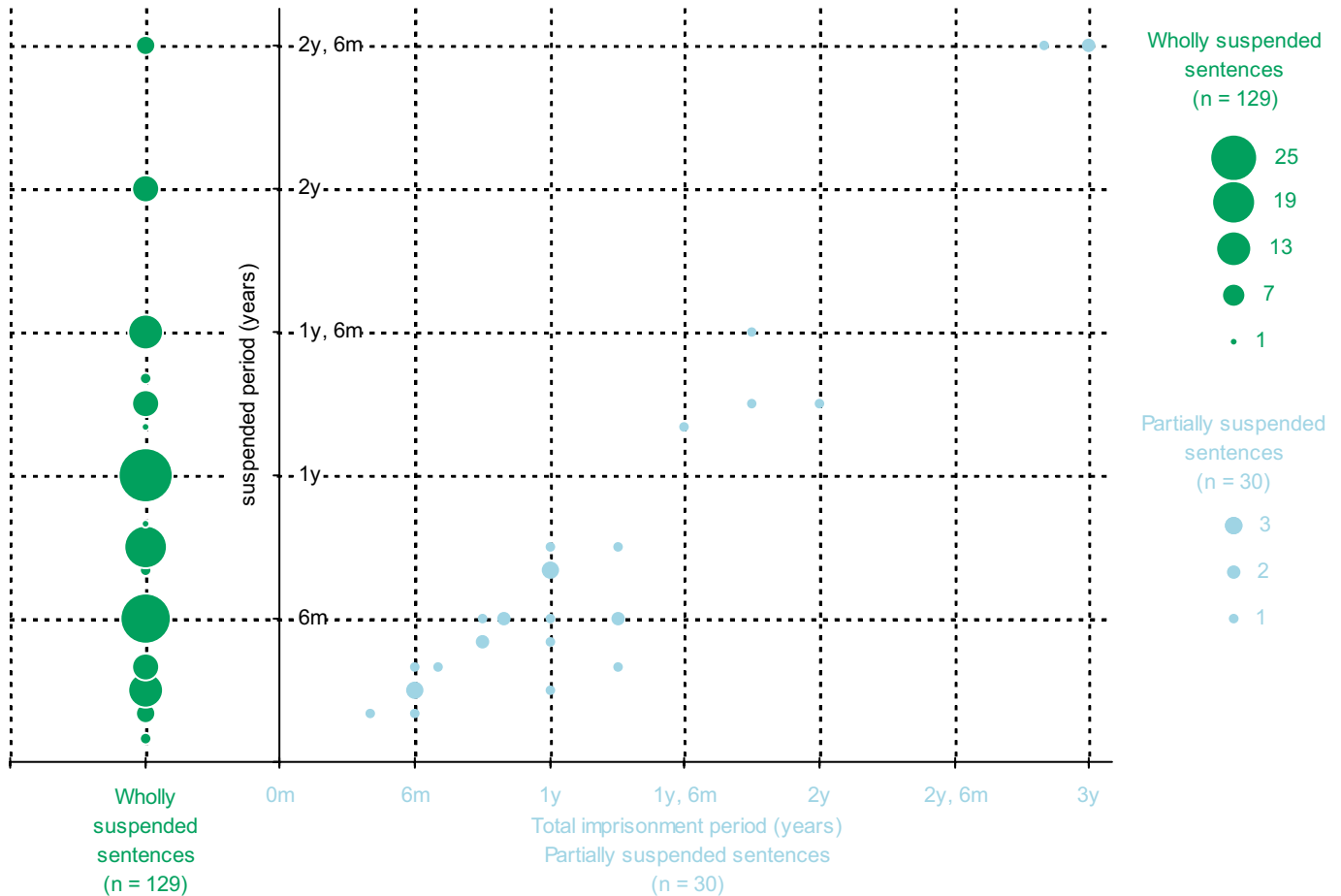
Suspended sentences of imprisonment

There were 159 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 129 people had their prison sentence wholly suspended and 30 received a partially suspended sentence of imprisonment. Figure 18 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 green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the blue '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 month to two years and six months. The most common wholly suspended sentence length was one year (25 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combinations were six months with three months suspended and one year with eight months suspended (3 people each - as represented by the two largest blue 'bubbles' on the chart).

Figure 18: The number of people given a wholly or partially suspended sentence of imprisonment for causing injury by sentence type and length, 2002-03 to 2006-07

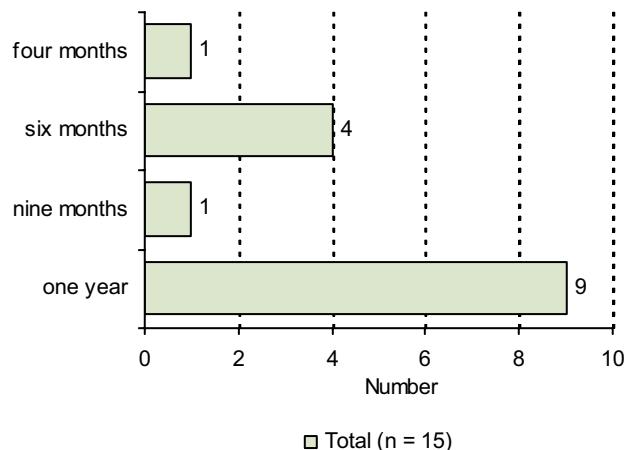


Intensive correction orders

There were 15 people given an intensive correction order as their total effective sentence.

The length of intensive correction orders for causing injury ranged from four months to one year, while the median length was one year (meaning that half of the lengths were shorter than or equal to one year and half were longer than or equal to one year).

Figure 19: The number of people sentenced to an intensive correction order for causing injury by length of order imposed, 2002-03 to 2006-07

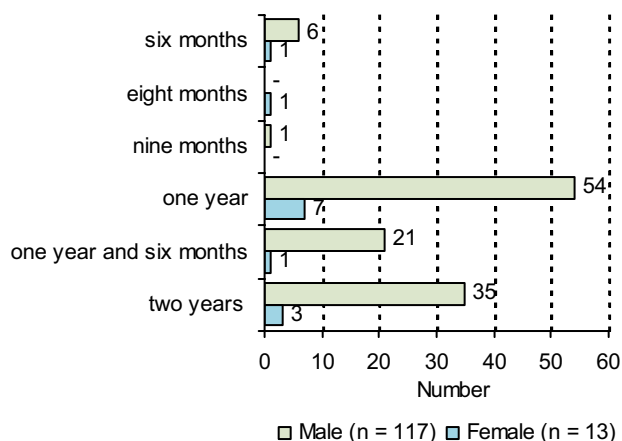


Community based orders

There were 130 people given a community based order as their total effective sentence.

The length of community based orders for causing injury ranged from six months to two years, while the median length was one year (meaning that half of the lengths were shorter than or equal to one year and half were longer than or equal to one year).

Figure 20: The number of people sentenced to a community based order for causing injury by length of order imposed, 2002-03 to 2006-07



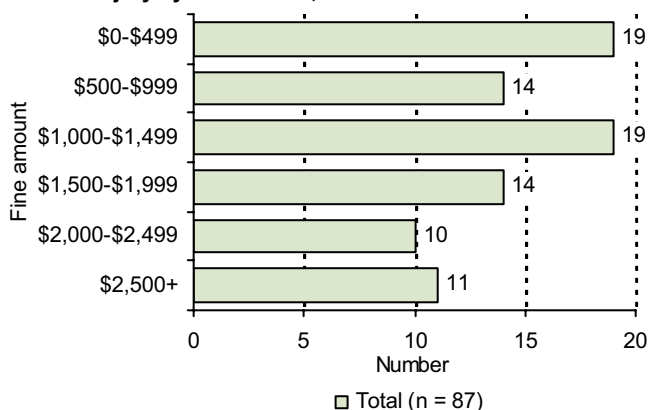
Fines

This analysis includes all fines that were imposed for cases where causing injury was the principal offence. Fines were imposed on 87 people.

The fine amount imposed ranged from \$100 to \$20,000, with a median of \$1,000 (meaning that half of the values fell below \$1,000 and half of the values were above \$1,000).

The average fine amount was \$1,492. The average fine amount imposed against the 85 males was \$1,496, higher than the average fine for the 2 females (\$1,300).

Figure 21: The number of people who received a fine for causing injury by fine amount, 2002-03 to 2006-07



Summary

Between 2002-03 and 2006-07, 497 people were sentenced for causing injury in the higher courts. Over this period, the majority of those sentenced were men (91%), while 58% were between the age of 18 and 30 years.

One in four people sentenced for causing injury received a community based order (25%), while 24% received a wholly suspended sentence of imprisonment and 20% received a period of imprisonment.

Men were more likely than women to be sentenced to a period of imprisonment or given a fine. Conversely, women were more likely to be sentenced to an adjourned undertaking with conviction.

Community based orders were more common for those younger than 20 years of age, wholly suspended sentences of imprisonment were more common for those older than 45 years of age and imprisonment was more common for those aged between 25 and 40 years of age.

Each of the 497 people was sentenced for an average of 2.84 offences, including 1.24 offences of causing injury. The most common offence finalised in conjunction with causing injury was aggravated burglary (20.3% of all cases). The number and range of offences for which people with a principal offence of causing injury 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 one year and six months, while the median principal imprisonment length was one year.

Total effective imprisonment lengths ranged from seven days with no non-parole period to fourteen years with a non-parole period of eleven years and six months.

1 This report presents sentencing outcomes for people sentenced for the principal offence of causing injury 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 causing injury who received a more serious sentence for another offence forming part of the same presentment. There were 1,247 people sentenced from 2002-03 to 2006-07 for 1,461 offences of causing injury. Causing injury was the principal proven offence for 497 of these people.

This Sentencing Snapshot is an update of Sentencing Snapshot No.14, which described the sentencing trends for causing injury in Victoria between 2000-01 and 2004-05. This report is available for download from the Sentencing Advisory Council website (www.sentencingcouncil.vic.gov.au)

- 2 The information source for sentencing outcomes for causing injury 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.18.
- 5 *R v Campbell* [1997] 2 VR 585. See also *R v Crabbe* (1995) 156 CLR 464; *R v Nuri* [1990] VR 641.
- 6 *Crimes Act 1958* (Vic) s.15.
- 7 The value of a penalty unit changes each year and can be found in the Victorian Government Gazette.
- 8 Data for sentencing outcomes in the Magistrates' Court are not currently available for detailed analysis.
- 9 Custodial sentence includes imprisonment, partially suspended sentence, youth training centre order, mix (imprisonment & community based order), hospital security order and aggregate imprisonment.
- 10 Age is as at the time of sentencing.
- 11 Of the 103 people who were given a principal sentence of imprisonment, 102 were also given a total effective sentence of imprisonment. There was one person who was given imprisonment as the principal sentence for causing injury and a combined custody and treatment order as a total effective sentence.
- 12 In 2003-04, a man aged 42 years was sentenced for 69 different offences, including 13 counts of causing injury, 11 counts of indecent assault and 29 counts of common law assault. He was sentenced to 14 years' imprisonment with a non-parole period of 11 years and six months. Also, in 2002-03, a man aged 23 years was sentenced for 30 offences including two counts of causing injury and 26 counts of armed robbery. He was sentenced to 12 years' imprisonment with a non-parole period of eight years and six months.
- 13 28 people were not eligible for parole because they were given a total effective sentence length of less than one year.
- 14 One person was 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 this case. The non-parole period for this person is excluded from the analysis. A non-parole period was not set for nine people who were eligible for a non-parole period.
- 15 Due to the low number of women (2) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.
- 16 Sentence lengths that are longer than one year are rounded to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
- 17 Refer fn 12.
- 18 This graph includes the 101 people who were given a total effective sentence and a non-parole period that related to this case only.

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- No. 20 Arson
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- No. 23 Indecent assault
- No. 24 Indecent act with a child under aged 16
- No. 25 Maintain a sexual relationship with a child aged under 16
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- No. 27 Murder
- No. 28 Manslaughter
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- No. 30 Make threat to kill
- No. 31 Sexual penetration of a child aged between 10 and 16
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Sentencing trends in the higher courts, 2002-03 to 2006-07

- No. 34 Robbery
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- No. 22 The Victorian criminal justice system

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