

## No. 42: Sentencing trends for affray in the higher courts of Victoria, 2002-03 to 2006-07

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of affray and details the age and gender<sup>2</sup> of people sentenced for this offence in the County and Supreme Courts of Victoria between 2002-03 and 2006-07<sup>3</sup>.

A person who is involved in unlawful fighting, violence or a display of force which might cause fear to an innocent member of the public is guilty of the offence of affray. This offence does not require a member of the public actually to be present, but rather that the fighting, violence or display of force was of a magnitude that a person, if present, would have been afraid<sup>4</sup>.

Affray is an indictable offence which carries a maximum penalty of 5 years' imprisonment<sup>5</sup> and/or a fine of 600 penalty units<sup>6</sup>. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

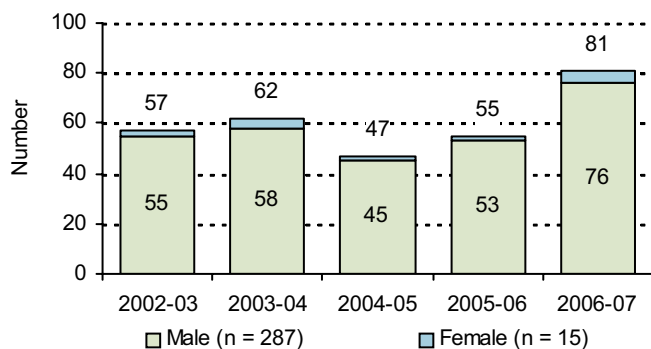
Of all people sentenced for the principal offence of affray, 61.5% had their cases heard in the higher courts. The remaining cases were heard in the Children's and Magistrates' Court<sup>7</sup>. Affray was the principal offence in 2.9% of cases sentenced in the higher courts between 2002-03 and 2006-07.

### People sentenced

Figure 1 shows the number of people sentenced for affray for the period 2002-03 to 2006-07. As shown, 302 people were sentenced for affray over the five year period. There were 81 people sentenced for this offence in 2006-07, up by 26 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (95.0% or 287 of the 302 people), including 76 of the 81 people sentenced in 2006-07.

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



### Sentence types and trends

Figure 2 shows the total number of people sentenced for affray and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention<sup>8</sup>. Over the

five year period, 16% of people were given a custodial sentence. This peaked at 29% (18 of 62) in 2003-04 before decreasing to 7% (4 of 55) in 2005-06. In 2006-07, 11% of people sentenced (9 of 81) were given a custodial sentence.

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

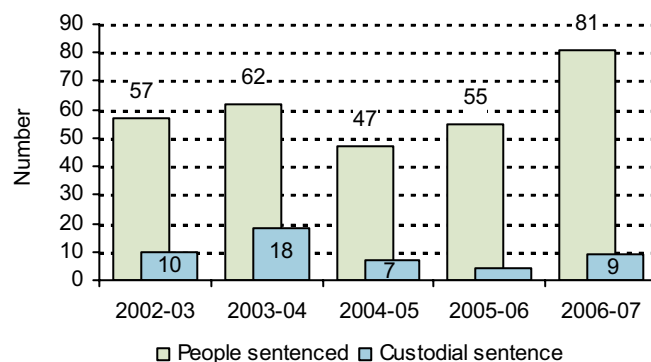
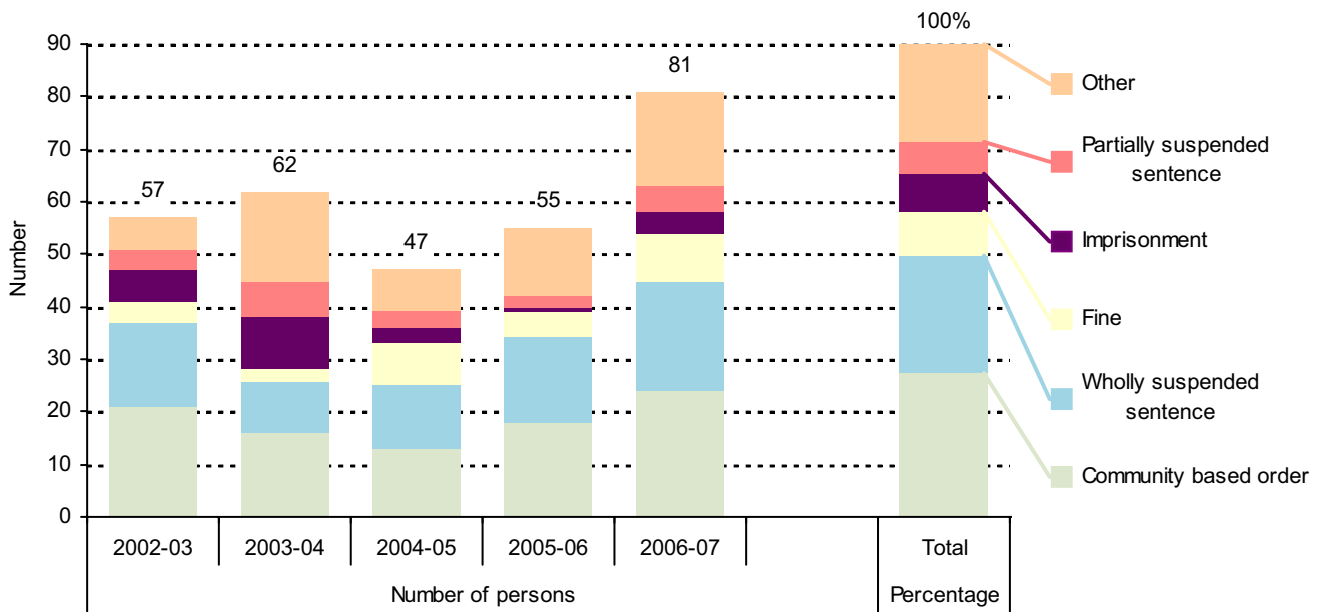


Figure 3 and Table 1 show the number of people sentenced for affray from 2002-03 to 2006-07 by the types of sentences imposed.

Over the five year period, around one third of the people sentenced for affray received a community based order (30% or 92 of 302 people), while 25% received a wholly suspended sentence of imprisonment and 9% received a fine.

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



Other includes adjourned undertaking without conviction, intensive correction order, mix (wholly suspended sentence & fine), mix (community based order & fine), adjourned undertaking with conviction, youth training centre order, mix (wholly suspended sentence & aggregated fine) and mix (intensive correction order & fine).

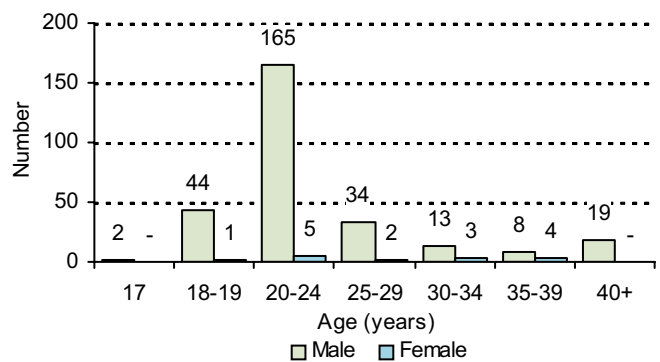
Table 1: The number and percentage of people sentenced for affray by sentence type, 2002-03 to 2006-07

Sentence type	02-03	03-04	04-05	05-06	06-07
Community based order	21	16	13	18	24
	37%	26%	28%	33%	30%
Wholly suspended sentence	16	10	12	16	21
	28%	16%	26%	29%	26%
Fine	4	2	8	5	9
	7%	3%	17%	9%	11%
Imprisonment	6	10	3	1	4
	11%	16%	6%	2%	5%
Partially suspended sentence	4	7	3	2	5
	7%	11%	6%	4%	6%
Adjourned undertaking without conviction	1	6	3	8	1
	2%	10%	6%	15%	1%
Intensive correction order	1	3	1	4	3
	2%	5%	2%	7%	4%
Mix (wholly suspended sentence & fine)	0	0	0	0	10
	-	-	-	-	12%
Mix (community based order & fine)	2	5	0	0	1
	4%	8%	-	-	1%
Adjourned undertaking with conviction	1	1	3	0	2
	2%	2%	6%	-	2%
Youth training centre order	0	1	1	1	0
	-	2%	2%	2%	-
Mix (wholly suspended sentence & aggregated fine)	0	1	0	0	1
	-	2%	-	-	1%
Mix (intensive correction order & Fine)	1	0	0	0	0
	2%	-	-	-	-
<b>People sentenced</b>	<b>57</b>	<b>62</b>	<b>47</b>	<b>55</b>	<b>81</b>

### Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for affray grouped by their age<sup>9</sup> between 2002-03 and 2006-07. The average age of people sentenced for affray was twenty-nine years and ten months. Men sentenced over this period were much older than women (an average age of twenty-nine years and eleven months for men compared to twenty-seven years and eleven months for women). Two male juveniles were sentenced over this period.

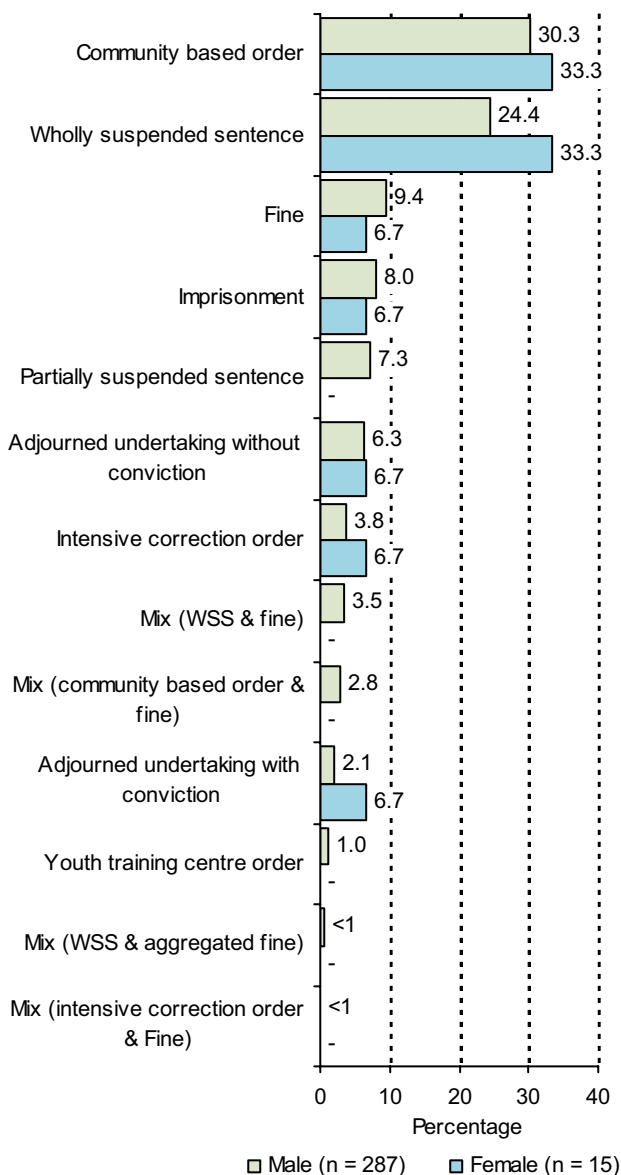
Figure 4: The number of people sentenced for affray by gender and age, 2002-03 to 2006-07



## Sentence types by gender

Figure 5 and Table 2 show the types of sentence imposed for affray grouped by gender. As shown, a higher percentage of men received a partially suspended sentence of imprisonment (7.3% compared to no women), a mixed sentence of a wholly suspended sentence and fine (3.5% compared to no women), a mixed sentence of a community based order and fine (2.8% compared to no women) and a fine (9.4% compared to 6.7%). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (33.3% compared to 24.4% of men), an adjourned undertaking with conviction (6.7% compared to 2.1%), a community based order (33.3% compared to 30.3%) and an intensive correction order (6.7% compared to 3.8%).

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



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

Sentence type	Male	Female	Total
Community based order	87	5	92
	30%	33%	30%
Wholly suspended sentence	70	5	75
	24%	33%	25%
Fine	27	1	28
	9%	7%	9%
Imprisonment	23	1	24
	8%	7%	8%
Partially suspended sentence	21	0	21
	7%	-	7%
Adjourned undertaking without conviction	18	1	19
	6%	7%	6%
Intensive correction order	11	1	12
	4%	7%	4%
Mix (wholly suspended sentence & fine)	10	0	10
	3%	-	3%
Mix (community based order & fine)	8	0	8
	3%	-	3%
Adjourned undertaking with conviction	6	1	7
	2%	7%	2%
Youth training centre order	3	0	3
	1%	-	<1%
Mix (wholly suspended sentence & aggregated fine)	2	0	2
	<1%	-	<1%
Mix (intensive correction order & Fine)	1	0	1
	<1%	-	<1%
<b>People sentenced</b>	<b>287</b>	<b>15</b>	<b>302</b>

## Sentence types by age

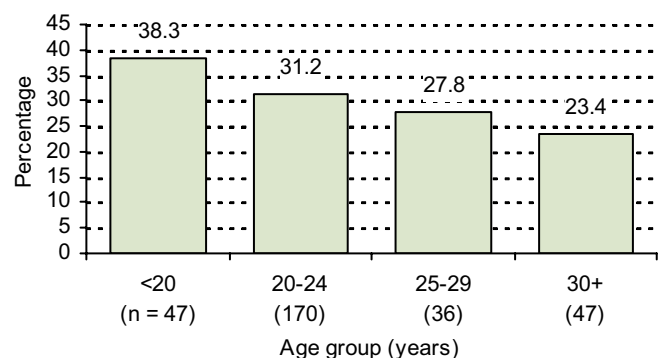
As shown in the table above, the four most common sentence types were community based orders, wholly suspended sentences of imprisonment, fines and imprisonment. The following analysis examines these sentence types by the offender's age group.

### Community based orders

Community based orders were most likely to be given to people aged under 20 years (38% or 18 of the 47 people in this age group).

Conversely, community based orders were least common for those aged 30 years and older (23% or 11 of the 47 people in this age group).

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

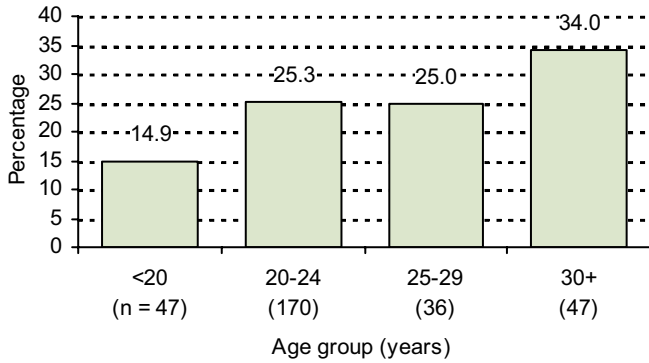


## Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 30 years and older (34% or 16 of the 47 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged under 20 years (15% or seven of the 47 people in this age group).

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

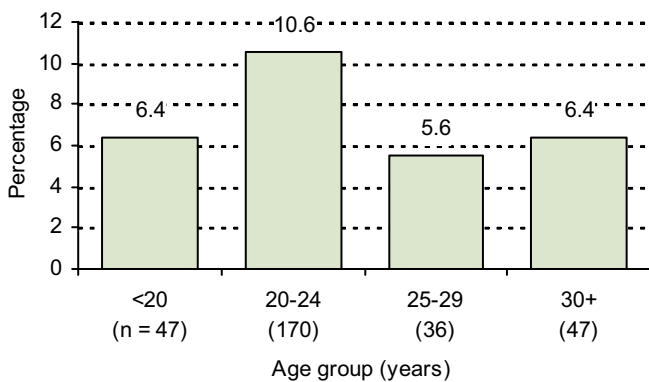


## Fines

Fines were most likely to be given to people aged 20-24 years old (11% or 18 of the 170 people in this age group).

Conversely, fines were least common for those aged 25-29 years old (6% or two of the 36 people in this age group), people aged under 20 years (6% or three of the 47 people in this age group) and people aged 30 years and older (6% or three of the 47 people in this age group).

**Figure 8: The percentage of people who received a fine for affray by age group, 2002-03 to 2006-07**



## Imprisonment

Sentences of imprisonment were most likely to be given to people aged 25-29 years old (17% or six of the 36 people in this age group).

Conversely, none of the 47 people aged under 20 years received a period of imprisonment.

**Figure 9: The percentage of people who received a period of imprisonment for affray 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.

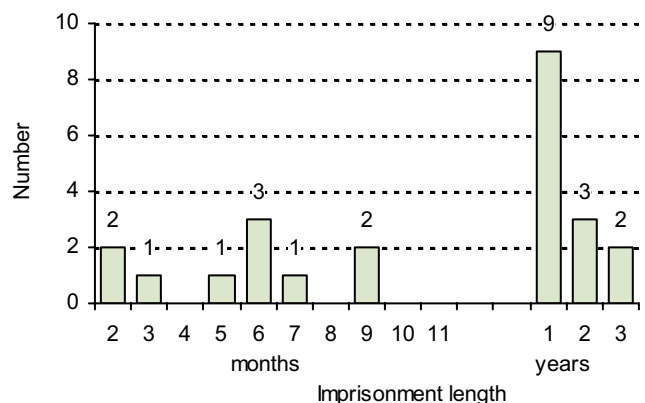
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for affray must be considered in this broader context. The following sections analyse the use of imprisonment for affray over 2002-03 to 2006-07.

## Principal sentence of imprisonment

Figure 10 shows the number of people sentenced to imprisonment for affray between 2002-03 and 2006-07 by the length of the imprisonment term. Imprisonment terms ranged from 2 months to three 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).

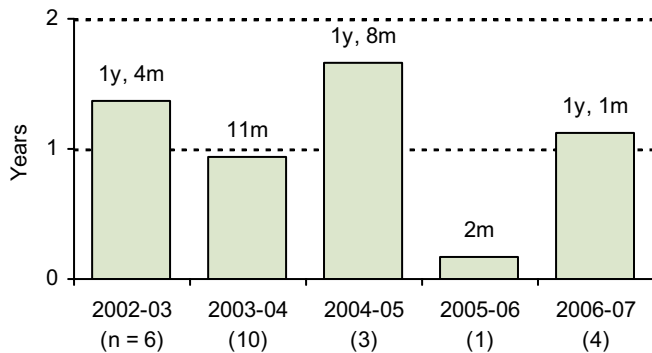
The most common length of imprisonment imposed was less than one year (10 people).

**Figure 10: The number of people sentenced to imprisonment for affray 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 affray ranged from two months in 2005-06 to one year and eight months in 2004-05.

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



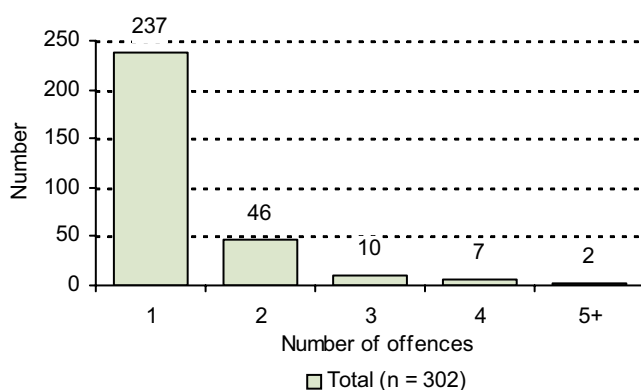
From 2002-03 to 2006-07, the majority of those people who received a term of imprisonment for affray were men (23 people or 95.8%).

### Other offences finalised at the same hearing

Often people prosecuted for affray 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 affray.

Figure 12 shows the number of people sentenced for the principal offence of affray by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 6, while the median was 1 offence. There were 237 people (78.5%) sentenced for the single offence of affray alone. The average number of offences per person sentenced for affray was 1.32.

**Figure 12: The number of people sentenced for the principal offence of affray 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 affray, 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, 27 of the total 302 people (8.9%) also received sentences for causing injury. On average, they were sentenced for 1.07 counts of causing injury.

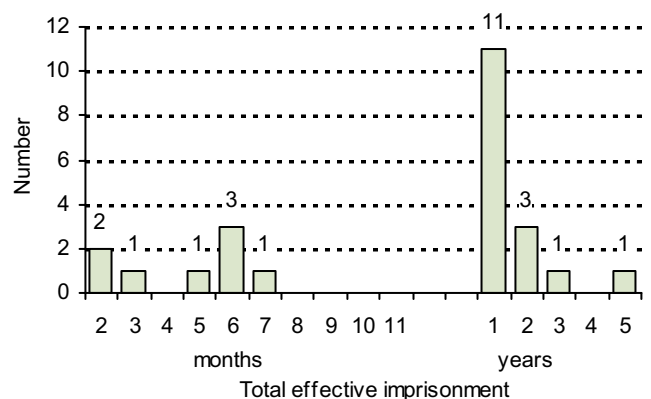
**Figure 13: The number and percentage of people sentenced for the principal offence of affray by the most common offences that were sentenced and the average number of those offences that were sentenced, 2002-03 to 2006-07**

Offence	No.	%	Avg.
1 affray	302	100.0	1.03
2 causing injury	27	8.9	1.07
3 intentionally destroy/damage property (criminal damage)	19	6.3	1.05
4 common law assault	10	3.3	1.20
5 possess a drug of dependence	4	1.3	1.00
6 theft	3	1.0	1.33
7 causing serious injury recklessly	3	1.0	1.00
8 making a threat to kill	2	0.7	1.50
9 unlawful assault	2	0.7	1.00
10 trafficking in a drug of dependence	1	0.3	1.00
<b>People sentenced</b>	<b>302</b>	<b>100.0</b>	<b>1.32</b>

### Total effective sentence of imprisonment

There were 24 people given a total effective sentence of imprisonment<sup>10</sup>. Figure 14 shows the number of people sentenced to imprisonment for affray between 2002-03 and 2006-07 by the length of their total effective sentence. The length of total effective sentences ranged from two months to five years<sup>11</sup>, while the median total effective length of imprisonment was one year and three months (meaning that half of the total effective sentence lengths were below one year and three months and half were above).

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



### Non-parole period

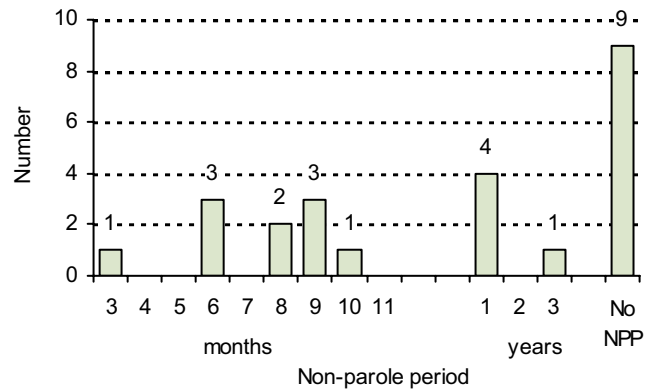
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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

affray. Sentences and non-parole periods must be considered in this broader context.

Of the 24 people who were sentenced to imprisonment for affray, 16 were eligible to have a non-parole period fixed<sup>12</sup>. Of these people, 15 were given a non-parole period (94%). Figure 15 shows the number of people sentenced to imprisonment for affray between 2002-03 and 2006-07 by the length of their non-parole period. Non-parole periods ranged from three months to three years and six months, while the median length of the non-parole period was nine months (meaning that half of the non-parole periods were below nine months and half were above).

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



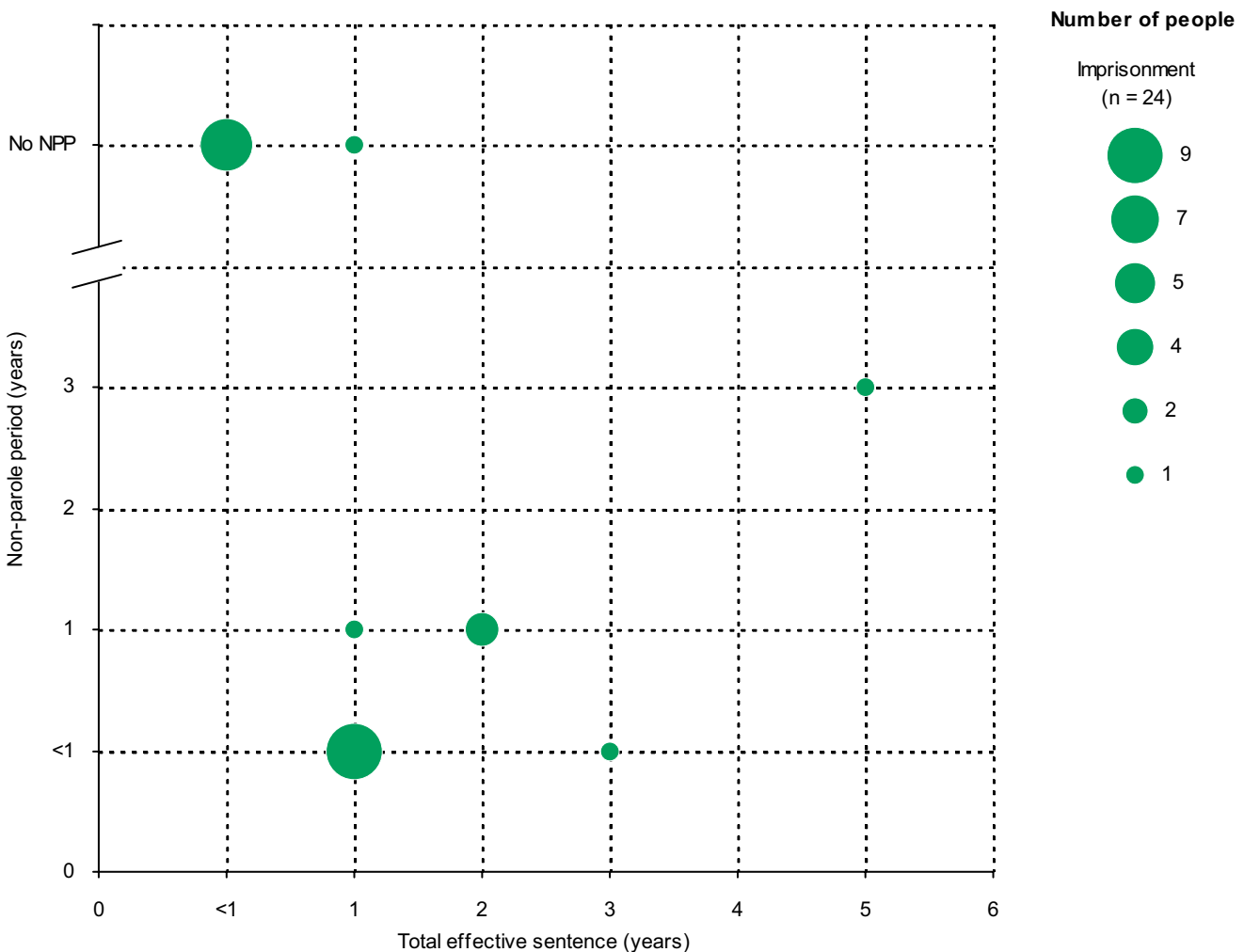
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

### Total effective 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 16 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for affray 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<sup>13</sup>. As shown, the most common combination of imprisonment length and non-parole period imposed was one year with a non-parole period of less than one year (9 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from two months with no non-parole period to five years with a non-parole period of three years and six months<sup>14</sup>.

Figure 16: The number of people sentenced to imprisonment for affray by the total effective sentence and the non-parole period imposed, 2002-03 to 2006-07<sup>15</sup>



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

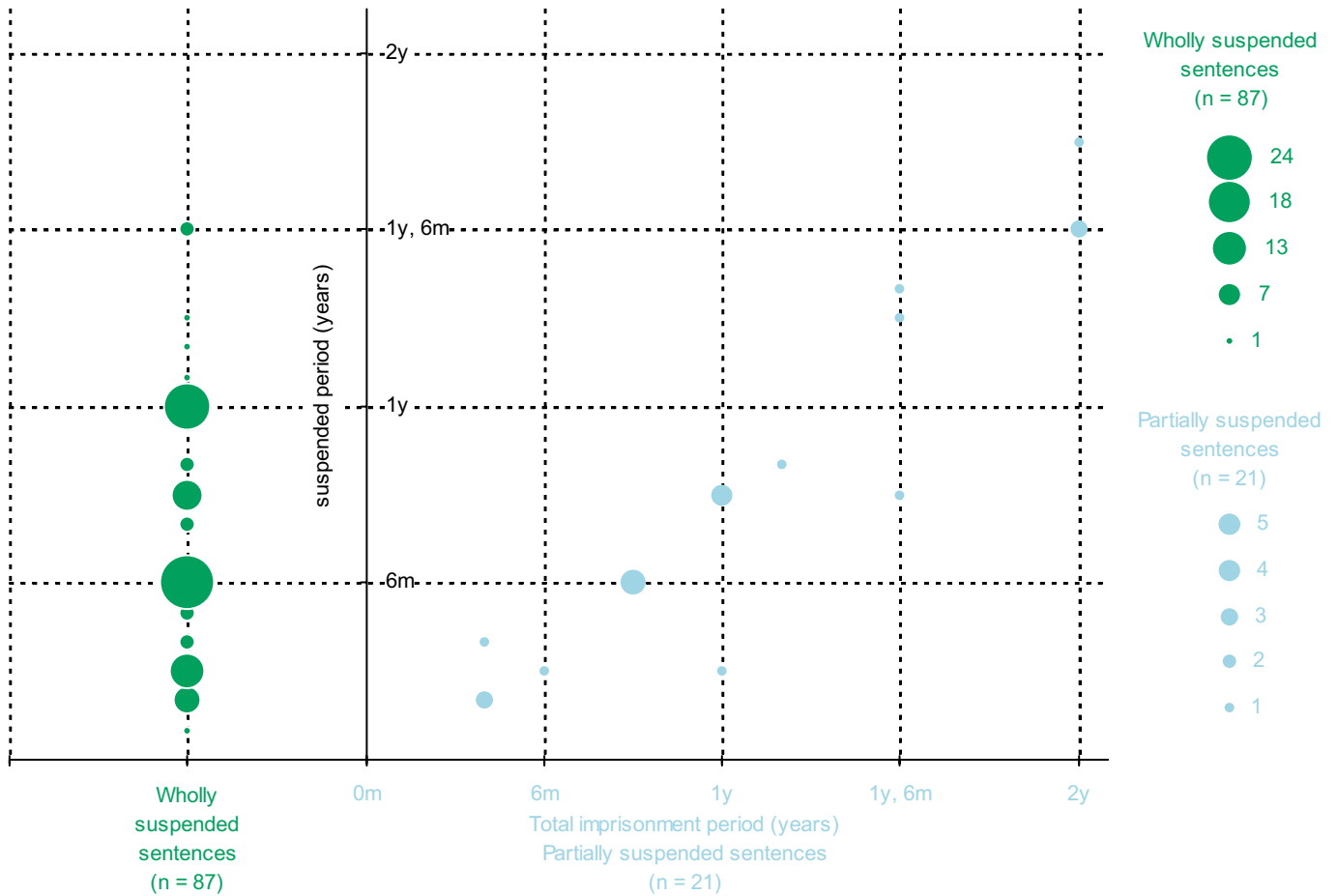
### Suspended sentences of imprisonment

There were 108 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 87 people had their prison sentence wholly suspended and 21 received a partially suspended sentence of imprisonment. Figure 17 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 one year and six months. The most common wholly suspended sentence length was six months (24 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combination was nine months with six months suspended (5 people - as represented by the largest blue 'bubble' on the chart).

**Figure 17: The number of people given a wholly or partially suspended sentence of imprisonment for affray by sentence type and length, 2002-03 to 2006-07**

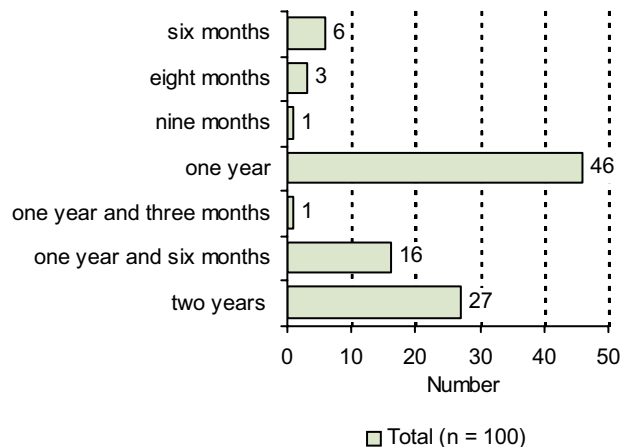


### Community based orders

There were 100 people given a community based order as their total effective sentence.

The length of community based orders for affray 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 18: The number of people sentenced to a community based order for affray by length of order imposed, 2002-03 to 2006-07**



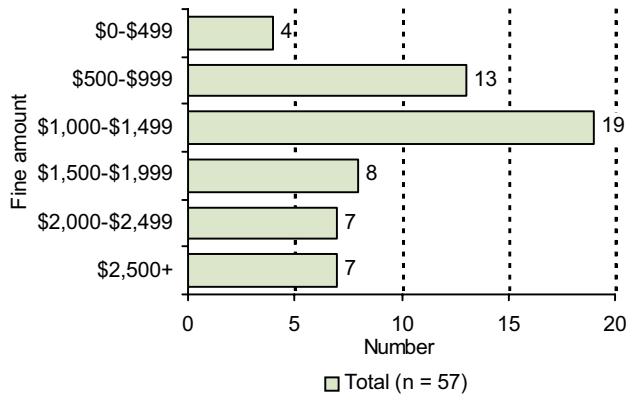
## Fines

This analysis includes all fines that were imposed for cases where affray was the principal offence. Fines were imposed on 57 people.

The fine amount imposed ranged from \$107 to \$10,000, 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 \$1,550. Fines were only imposed against men.

**Figure 19: The number of people who received a fine for affray by fine amount, 2002-03 to 2006-07**



## Summary

Between 2002-03 and 2006-07, 302 people were sentenced for affray in the higher courts. Over this period, the majority of those sentenced were men (95%), while 60% were between the age of 20 and 25 years.

Around one third of the people sentenced for affray received a community based order (30%), while 25% received a wholly suspended sentence of imprisonment and 9% received a fine.

Men were more likely than women to be sentenced to a partially suspended sentence of imprisonment. Conversely, women were more likely to be sentenced to a wholly suspended sentence of imprisonment.

Community based orders were more common for those younger than 20 years of age and wholly suspended sentences of imprisonment were more common for those older than 30 years of age.

Each of the 302 people was sentenced for an average of 1.32 offences, including 1.03 offences of affray. The most common offence finalised in conjunction with affray was causing injury (8.9% of all cases). The number and range of offences for which people with a principal offence of affray 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 three months, while the median principal imprisonment length was one year.

Total effective imprisonment lengths ranged from two months with no non-parole period to five years with a non-parole period of three years and six months. The most common sentence of imprisonment was one year with a non-parole period of less than one year.

The most common wholly suspended sentence length was six months. The most common length of community based order was one year.

1 This report presents sentencing outcomes for people sentenced for the principal offence of affray 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 affray who received a more serious sentence for another offence forming part of the same presentment. There were 538 people sentenced from 2002-03 to 2006-07 for 553 offences of affray. Affray was the principal proven offence for 302 of these people.

This Sentencing Snapshot is an update of Sentencing Snapshot No.15, which described the sentencing trends for affray 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](http://www.sentencingcouncil.vic.gov.au))

2 The information source for sentencing outcomes for affray 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 *Taylor v DPP* [1973] 57 Cr App R 915, 924-5.

5 *Crimes Act* 1958 s.320.

6 The value of a penalty unit changes each year and can be found in the Victorian Government Gazette.

7 Data for sentencing outcomes in the Magistrates' Court are not currently available for detailed analysis.

8 Custodial sentence includes imprisonment, partially suspended sentence and youth training centre order.

9 Age is as at the time of sentencing.

10 All of the 24 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.

11 In 2002-03, a man aged 25 years was sentenced for one count of affray and one count of causing serious injury intentionally. He received a total effective imprisonment term of 5 years with a non-parole period of three years and six months.

12 Eight people were not eligible for parole because they were given a total effective sentence length of less than one year.

13 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.

14 Refer fn 11.

15 This graph includes the 24 people who were given a total effective sentence and a non-parole period that related to this case only.

This "Sentencing Snapshot" is part of a series presenting summary information on sentencing trends in Victoria.

Copies of all the Sentencing Snapshots can be downloaded from our website at

[www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au)

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