

# Sentencing Snapshot

## Sentencing trends for affray in the higher courts of Victoria

### 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 2000-01 and 2004-05<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.

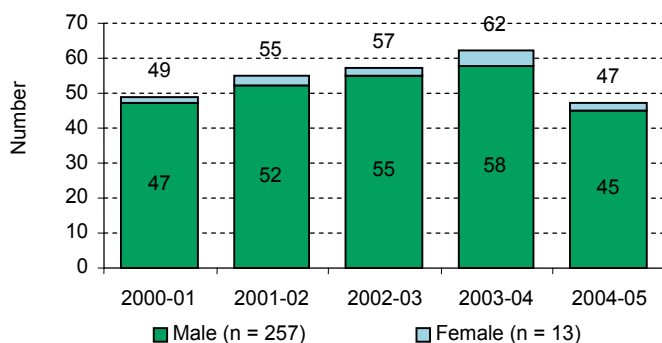
Of all people sentenced for the principal offence of affray, 61.6% were heard in the higher courts<sup>7</sup>. The remaining cases were heard in the Children's and Magistrates' Court<sup>8</sup>.

### People sentenced

Figure 1 shows the number of people sentenced for affray for the period 2000-01 to 2004-05. As shown, 270 people were sentenced for affray over the five year period. There were 47 people sentenced for this offence in 2004-05, down by 15 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (95.2% or 257 of 270 people), including 45 of the 47 people sentenced in 2004-05.

**Figure 1: The number of people sentenced for affray by gender, 2000-01 to 2004-05**



**Figure 2: The number of people sentenced for affray and the number who received a custodial sentence, 2000-01 to 2004-05**

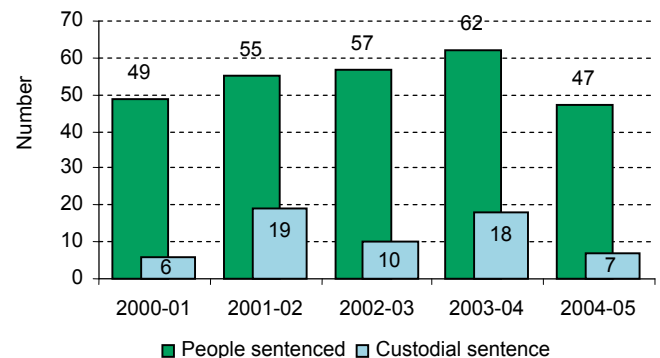


Figure 3 and Table 1 show the number of people sentenced for affray from 2000-01 to 2004-05 by the types of sentences imposed.

Over the five year period, around one in four people sentenced for affray received a wholly suspended sentence of imprisonment (28% or 75 of 270 people), while 26% received a community based order, 10% received a period of imprisonment and 8% received a partially suspended sentence of imprisonment.

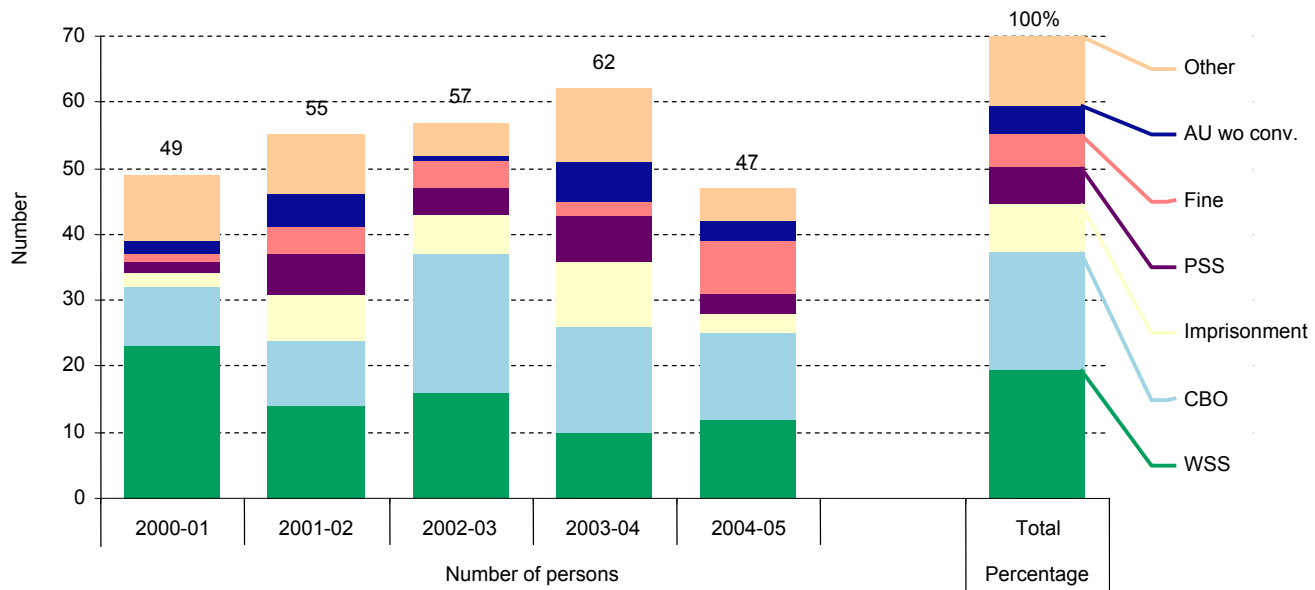
The number of people who received a wholly suspended sentence of imprisonment fluctuated over the five year period, ranging from ten people in 2003-04 to 23 people in 2000-01.

Similarly, the number of people who received a community based order fluctuated from nine people in 2000-01 to 21 people in 2002-03

### Sentence types and trends<sup>9</sup>

Figure 2 shows the total number of people sentenced for affray and the number who received a custodial sentence<sup>10</sup>. Over the five year period, 22% of people were given a custodial sentence. This peaked at 35% (19 of 55) in 2001-02 after a low of 12% (6 of 49) in 2000-01. In 2004-05, 15% of people sentenced (7 of 47) were given a custodial sentence.

**Figure 3: The number of people sentenced for affray each year and the percentage breakdown over the five years combined by sentence type, 2000-01 to 2004-05**



Note: WSS refers to wholly suspended sentence of imprisonment, CBO refers to community based order, PSS refers to partially suspended sentence of imprisonment and AU wo conv. refers to adjourned undertaking without conviction. Other includes adjourned undertaking with conviction, youth training centre order, mix (community based order & fine), intensive correction order, mix (wholly suspended sentence & fine), mix (wholly suspended sentence & aggregated fine) and mix (intensive correction order & fine).

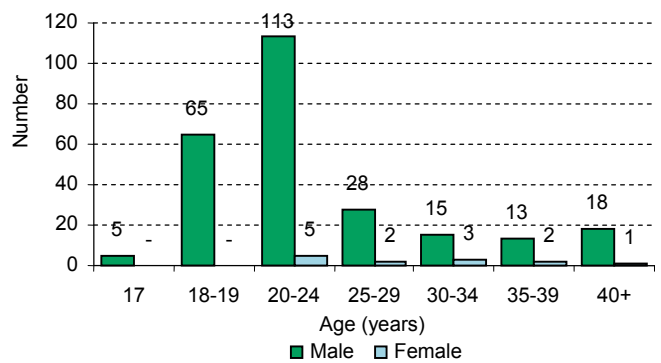
**Table 1: The number and percentage of people sentenced for affray by sentence type, 2000-01 to 2004-05**

Sentence type	00-01	01-02	02-03	03-04	04-05
Wholly suspended sentence	23	14	16	10	12
	47%	25%	28%	16%	26%
Community based order	9	10	21	16	13
	18%	18%	37%	26%	28%
Imprisonment	2	7	6	10	3
	4%	13%	11%	16%	6%
Partially suspended sentence	2	6	4	7	3
	4%	11%	7%	11%	6%
Fine	1	4	4	2	8
	2%	7%	7%	3%	17%
Adjourned undertaking without conviction	2	5	1	6	3
	4%	9%	2%	10%	6%
Adjourned undertaking with conviction	5	1	1	1	3
	10%	2%	2%	2%	6%
Youth training centre order	2	6	0	1	1
	4%	11%	-	2%	2%
Mix (community based order & fine)	1	0	2	5	0
	2%	-	4%	8%	-
Intensive correction order	0	2	1	3	1
	-	4%	2%	5%	2%
Mix (wholly suspended sentence & fine)	2	0	0	0	0
	4%	-	-	-	-
Mix (wholly suspended sentence & aggregated fine)	0	0	0	1	0
	-	-	-	2%	-
Mix (intensive correction order & Fine)	0	0	1	0	0
	-	-	2%	-	-
<b>People sentenced</b>	<b>49</b>	<b>55</b>	<b>57</b>	<b>62</b>	<b>47</b>

## Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for affray grouped by their age<sup>11</sup> between 2000-01 and 2004-05. The average age of people sentenced for affray was twenty-four years and five months. Women sentenced over this period were older than men (an average age of twenty-nine years and four months for women compared to twenty-four years and two months for men). Five male juveniles were sentenced over this period.

**Figure 4: The number of people sentenced for affray by gender and age, 2000-01 to 2004-05**

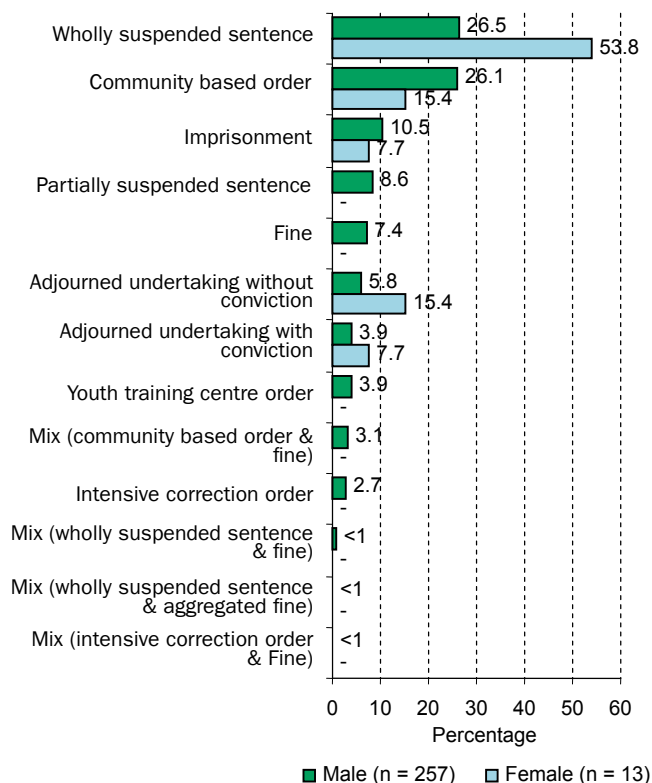


## Sentence types by gender<sup>12</sup>

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 community based order (26.1% compared to 15.4% of women), a partially suspended sentence of imprisonment (8.6% compared to no women), a fine (7.4% compared to no women) and a youth training centre order (3.9% compared to no women).

Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (53.8% compared to 26.5% of men), an adjourned undertaking without conviction (15.4% compared to 5.8%) and an adjourned undertaking with conviction (7.7% compared to 3.9%).

**Figure 5: The percentage of people sentenced for affray by sentence type and gender, 2000-01 to 2004-05**



**Table 2: The number and percentage breakdown of people sentenced for affray by gender, 2000-01 to 2004-05**

Sentence type	Male	Female	Total
Wholly suspended sentence	68	7	75
Community based order	67	2	69
Imprisonment	27	1	28
Partially suspended sentence	22	0	22
Fine	19	0	19
Adjourned undertaking without conviction	15	2	17
Adjourned undertaking with conviction	10	1	11
Youth training centre order	10	0	10
Mix (community based order & fine)	8	0	8
Intensive correction order	7	0	7
Mix (wholly suspended sentence & fine)	2	0	2
Mix (wholly suspended sentence & aggregated fine)	1	0	1
Mix (intensive correction order & Fine)	1	0	1
<b>People sentenced</b>	<b>257</b>	<b>13</b>	<b>270</b>

## Sentence types by age

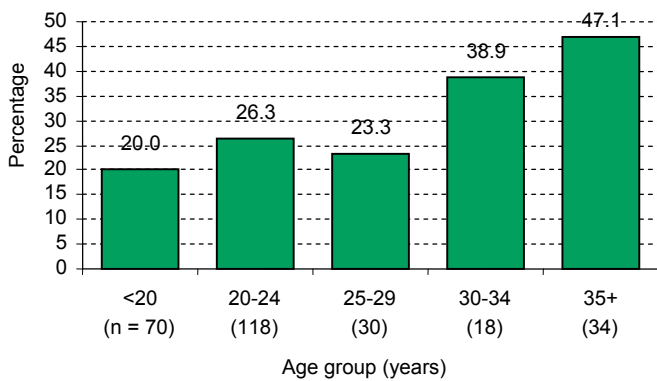
As shown in the table above, the four most common sentence types were wholly suspended sentences of imprisonment, community based orders, imprisonment and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

### Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 35 years and older (47% or 16 of the 34 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged under 20 years (20% or 14 of the 70 people in this age group).

**Figure 6: The percentage of people who were sentenced to a wholly suspended sentence of imprisonment for affray by age group, 2000-01 to 2004-05**

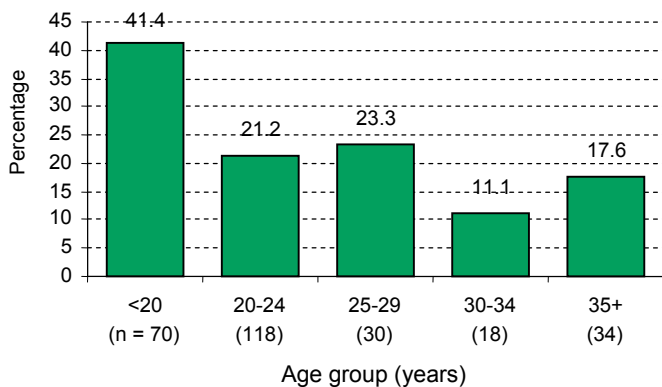


### Community based orders

Community based orders were most likely to be given to people aged under 20 years (41% or 29 of the 70 people in this age group).

Conversely, community based orders were least common for those aged 30-34 years old (11% or two of the 18 people in this age group).

**Figure 7: The percentage of people who were sentenced to a community based order for affray by age group, 2000-01 to 2004-05**

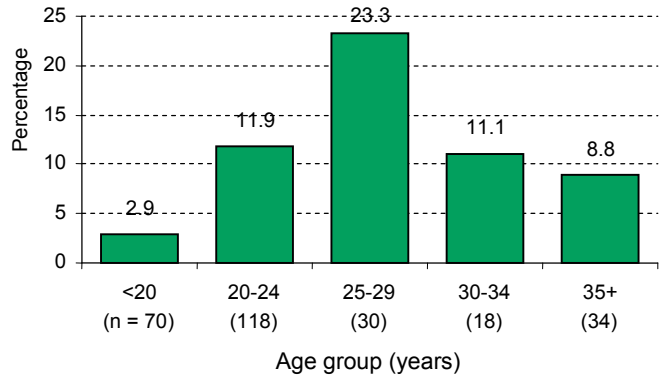


## Imprisonment

Sentences of imprisonment were most likely to be given to people aged 25-29 years old (23% or seven of the 30 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 20 years (3% or two of the 70 people in this age group).

**Figure 8: The percentage of people who were sentenced to a period of imprisonment for affray by age group, 2000-01 to 2004-05**

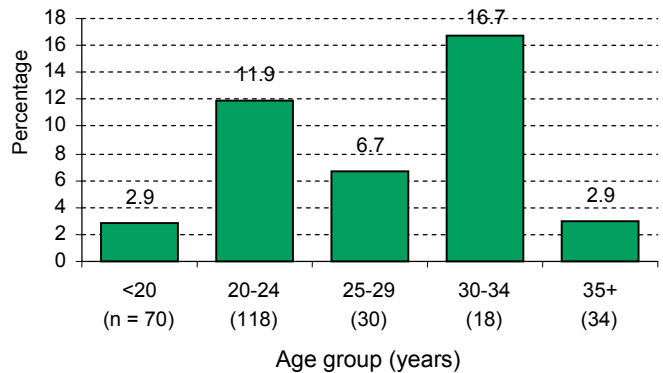


### Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 30-34 years old (17% or three of the 18 people in this age group).

Conversely, partially suspended sentences of imprisonment were least common for those aged under 20 years (3% or two of the 70 people in this age group) and people aged 35 years and older (3% or one of the 34 people in this age group).

**Figure 9: The percentage of people who were sentenced to a partially suspended sentence of imprisonment for affray by age group, 2000-01 to 2004-05**



## 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 2000-01 to 2004-05.

### Principal sentence of imprisonment

Figure 10 shows the number of people sentenced to imprisonment for affray between 2000-01 and 2004-05 by the length of the imprisonment term. Imprisonment terms ranged from 4 months to 3 years, while the median length of imprisonment was between 9 months and 10 months.

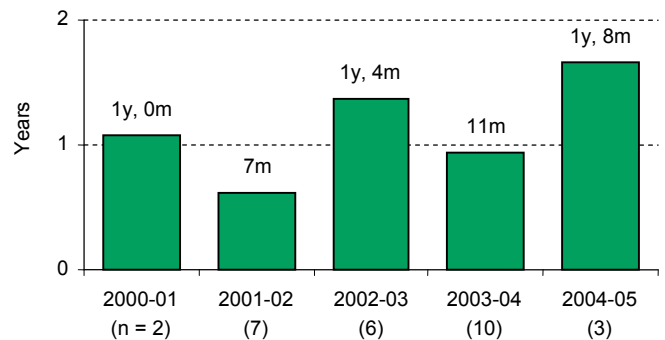
The most common length of imprisonment imposed was 1 year (10 people).

**Figure 10: The number of people sentenced to imprisonment for affray by length of imprisonment term, 2000-01 to 2004-05**



As shown in Figure 11, the average length of imprisonment term imposed on people sentenced for affray ranged from seven months in 2001-02 to one year and eight months in 2004-05.

**Figure 11: The average length of imprisonment term imposed on people sentenced for affray, 2000-01 to 2004-05**



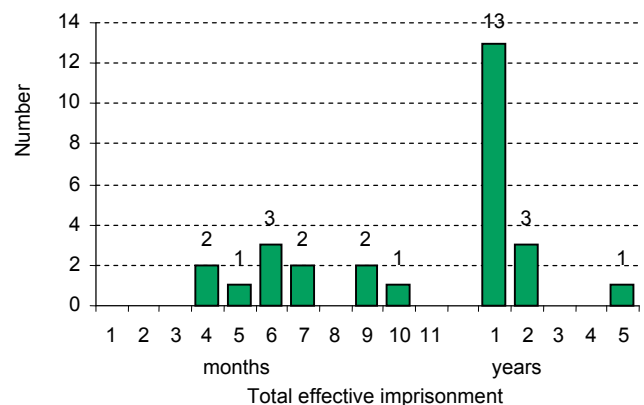
From 2000-01 to 2004-05, the majority of the people who received a term of imprisonment for affray were men (27 people or 96.4%).

### Total effective sentence of imprisonment

There were 28 people given a total effective sentence of imprisonment<sup>13</sup>. Figure 12 shows the number of people sentenced to imprisonment for affray between 2000-01 and 2004-05 by the length of their total effective sentence. The length of total effective sentences ranged from four months to five years<sup>14</sup>, while the median total effective length of imprisonment was one year (meaning that half of the total effective sentence lengths were below one year and half were above).

The most common total effective imprisonment length imposed was 1 year (13 people).

**Figure 12: The number of people sentenced to imprisonment for affray by total effective length of imprisonment term, 2000-01 to 2004-05**



## Non-parole period

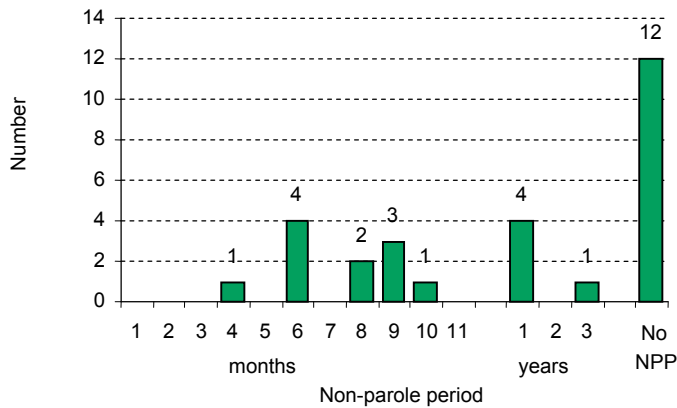
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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 28 people who were sentenced to imprisonment for affray, 17 were eligible for parole<sup>15</sup>. Of these people, 16 were given a non-parole period (94%). Figure 13 shows the number of people sentenced to imprisonment for affray between 2000-01 and 2004-05 by the length of their non-parole period. Non-parole periods ranged from four 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).

The most common non-parole periods imposed were 6 months and 1 year (4 people each).

**Figure 13: The number of people sentenced to imprisonment for affray by length of non-parole period, 2000-01 to 2004-05**



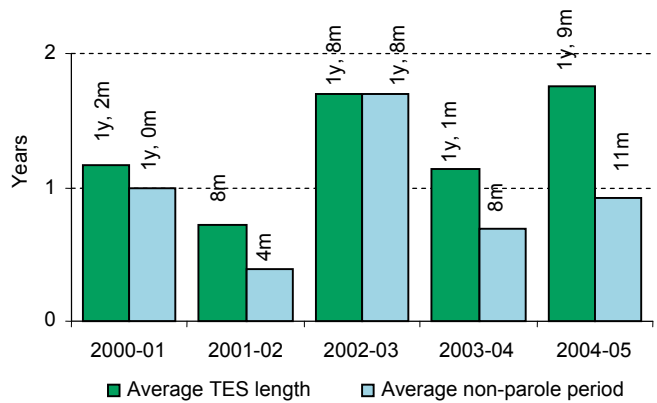
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

## Total effective sentences of imprisonment and non-parole periods

Figure 14 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all people from 2000-01 to 2004-05<sup>16</sup>.

From 2000-01 to 2004-05, the average length of total effective sentence for all people ranged from eight months in 2001-02 to one year and nine months in 2004-05. Over the same period, the average length of non-parole period ranged from four months in 2001-02 to one year and eight months in 2002-03.

**Figure 14: People sentenced to imprisonment for affray by average total effective sentence and average non-parole period, 2000-01 to 2004-05**

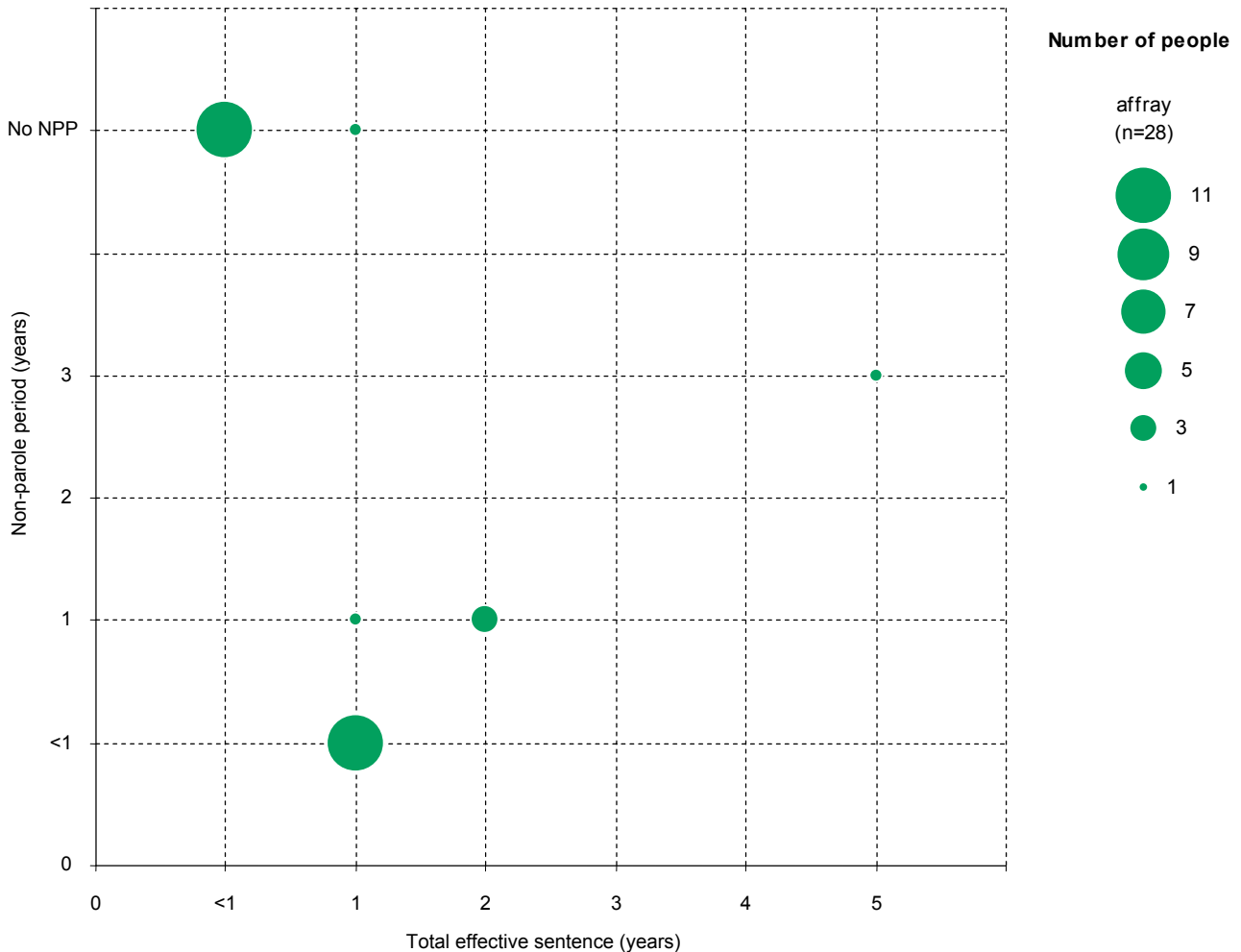


## Total effective sentence of imprisonment by non-parole period

While Figure 12 and Figure 13 present the lengths of the total effective sentences and non-parole periods separately, Figure 15 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>17</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 (11 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from four months with no non-parole period to five years with a non-parole period of three years and six months<sup>18</sup>.

**Figure 15: The number of people sentenced to imprisonment for affray by the total effective sentence and the non-parole period imposed, 2000-01 to 2004-05<sup>19</sup>**



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

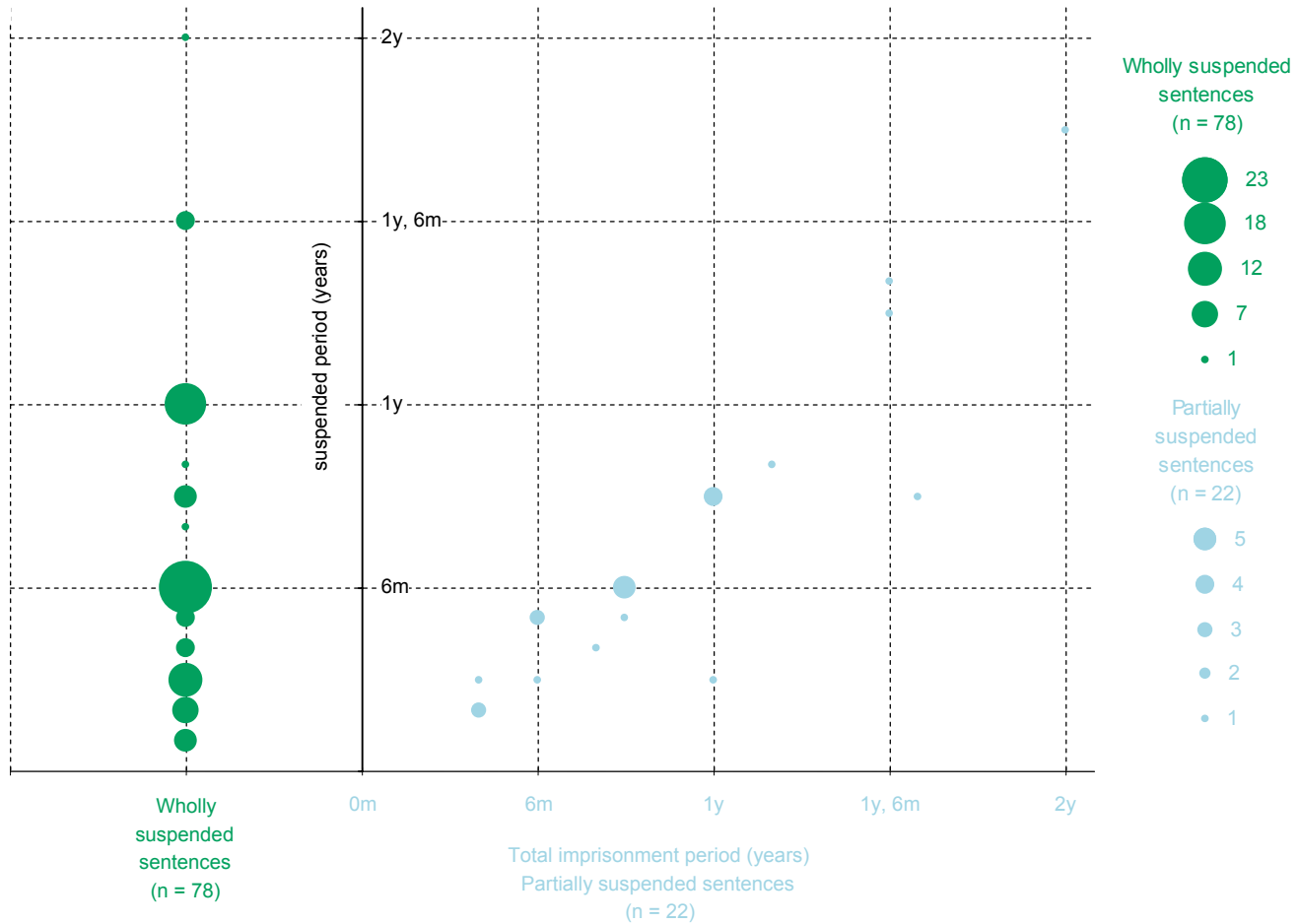
## Suspended sentences of imprisonment

There were 100 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 78 people had their prison sentence wholly suspended and 22 received a partially suspended sentence of imprisonment. Figure 16 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the type of suspended sentence and the length of sentence<sup>20</sup>. The green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences. The blue 'bubbles' to the right of the vertical axis show the combination of total imprisonment length and the suspended period for people 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 imposed ranged from one month to two years. The most common wholly suspended sentence length was six months (23 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 16: The number of people given a wholly or partially suspended sentence of imprisonment by sentence type and length, 2000-01 to 2004-05**

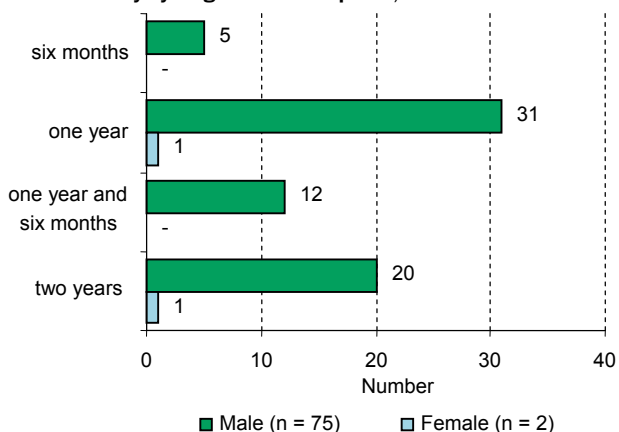


## Community based orders

There were 77 people given a community based order as their total effective sentence.

The length of community based orders imposed 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). The most common length of community based order was one year (32 people).

**Figure 17: The number of people sentenced to a community based order for affray by length of order imposed, 2000-01 to 2004-05**



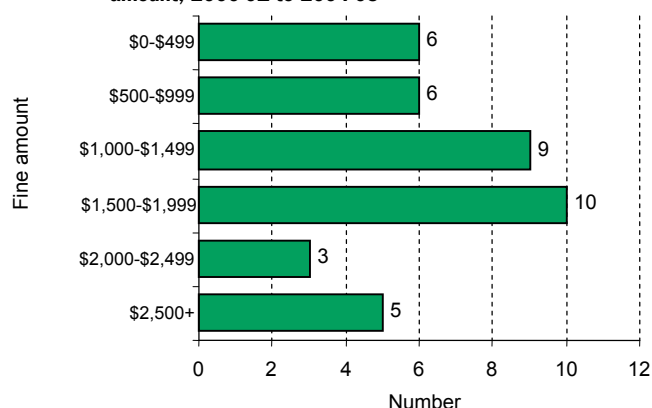
## Fines

This analysis includes all fines that were imposed for cases where affray was the principal offence. Fines were imposed on 39 people.

The fine amount imposed ranged from \$200 to \$10,000, with a median of \$1,200 (meaning that half of the values fell below \$1,200 and half of the values were above \$1,200).

The average fine amount was \$1,537. Fines were only imposed against men.

**Figure 18: The number of people who received a fine for affray by fine amount, 2000-01 to 2004-05**



## Conclusion

Between 2000-01 and 2004-05, 270 people were sentenced for affray in the higher courts. Over this period, the majority of those sentenced were men (95%), while 68% were between the age of 18 and 25 years.

Around one in four people sentenced for affray received a wholly suspended sentence of imprisonment (28%), while 26% received a community based order, 10% received a period of imprisonment and 8% received a partially suspended sentence of imprisonment.

Men were more likely than women to be sentenced to a community based order, a partially suspended sentence of imprisonment or given a fine. Conversely, women were more likely to be sentenced to a wholly suspended sentence of imprisonment or sentenced to an adjourned undertaking without conviction.

Wholly suspended sentences of imprisonment were more common for people aged over 35 years of age, community based orders were more common for people younger than 20 years of age and imprisonment was more common for those aged between 25 and 30 years of age.

The length of imprisonment ranged from four 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 imposed was one year with less than one year non-parole period.

The most common partially suspended sentence length was for nine months with six months suspended, while 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. For example, in 2004-05, 100 people were sentenced for affray. Affray was the principal offence for 47 of the 100 people.
- 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). This report describes sentencing trends for affray since 2000-01. Court Services advises that sentencing data from the higher courts prior to this period may be unreliable due to changed data collection processes and counting rules.
- 4 *Taylor v DPP* [1973] 57 Cr App R 915, 924-5.
- 5 *Crimes Act 1958* s.320.
- 6 Affray carries a maximum fine of 600 penalty units and each penalty unit is worth \$107.43, Victorian Government Gazette, 6 April 2006.
- 7 Affray was the tenth most common principal offence that resulted in a person being sentenced in the higher courts over 2000-01 to 2004-05.
- 8 Data for sentencing outcomes in the Magistrates' Court are not currently available for detailed analysis.
- 9 This section analyses the sentence types imposed against the principal charge of affray.
- 10 Custodial sentence includes imprisonment, partially suspended sentence and youth training centre order. The definition of custodial sentence has been revised to exclude intensive correction orders. In Sentencing snapshots No. 8 to No. 11, intensive correction order was counted as being a custodial sentence. For Sentencing Snapshot No.8 and 9 (robbery and armed robbery), intensive correction orders made up 1% and 4%, respectively, while for Sentencing Snapshot No.10 and 11 (burglary and aggravated burglary), intensive correction orders made up 6% and 2%, respectively.
- 11 Age is as at the time of sentencing.
- 12 Refer fn. 9
- 13 All of the 28 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 14 In 2002-03, a man aged 25 years was sentenced for affray to a period of five years with a non-parole period of three years and six months.
- 15 11 people were not eligible for parole because they were given a total effective sentence length of less than one year.
- 16 Due to the low number of women (1) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.
- 17 Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
- 18 Refer fn. 14
- 19 This graph includes the 28 people who were given a total effective sentence and a non-parole period that related to this case only.
- 20 Sentence lengths are rounded to the nearest month of imprisonment.



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- No. 1 What are suspended sentences?
- No. 2 Use of suspended sentences in Victoria
- No. 3 Breach of suspended sentences in Victoria

**Sentencing trends in the higher courts**

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- No. 10 Burglary
- No. 11 Aggravated burglary
- No. 12 Causing serious injury intentionally
- No. 13 Causing serious injury recklessly
- No. 14 Causing injury
- No. 15 Affray

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Authored by Nick Turner, Data Analyst, Sentencing Advisory Council

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