

Homicide in Victoria: Offenders, Victims and Sentencing

Sentencing Advisory Council
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Contributors

Authors

Kelly Burns

Karen Gelb

Sentencing Advisory Council

Chair

Professor Arie Freiberg

Deputy-Chair

Thérèse McCarthy

Council Members

Carmel Arthur
Bernie Geary OAM
David Grace QC
Rudolph Kirby
Andrea Lott
Jenny Morgan
Simon Overland
Jeremy Rapke QC
Barbara Rozenes
David Ware

Acting Chief Executive Officer

Karen Gelb

The authors would like to thank the following people for their assistance in the preparation of this report:

Ms Megan Davies, Australian Institute of Criminology

Dr Jenny Mouzos, Australian Institute of Criminology

Mr Simon Overland, Deputy Commissioner, Victoria Police

Ms Felicity Stewart, Sentencing Advisory Council

Ms Jessica Chen, Melbourne University, Victoria Law Foundation Internship Program



Executive Summary

In November 2004, the Victorian Law Reform Commission (VLRC) released *Defences to Homicide: Final Report*. In its report, the VLRC recommended the abolition of provocation as a partial defence to homicide; that the Sentencing Advisory Council (SAC) establish a statistical database to monitor sentencing trends in homicide cases; and that the database should allow monitoring of sentencing trends in cases where:

- the offender killed a person who subjected her/him to family violence;
- the offender had previously subjected the deceased to violence;
- the offender acted under provocation from the deceased; and
- the offender was suffering from a mental condition at the time of killing.

The SAC, in collaboration with the Australian Institute of Criminology (AIC) and the Department of Justice (Vic), has developed a unique database containing information on the characteristics of homicide incidents, offenders, victims and sentencing outcomes that occurred in Victoria between 30 June 1990 and 30 June 2005 and that were sentenced in the criminal courts between 30 June 1999 and 30 June 2006 (subject to the necessary data being available). Information on a total of 208 homicide incidents (relating to 243 offenders and 216 victims) was available for analysis in this report.

This report demonstrates how sentencing outcomes for homicide varied on the basis of the characteristics of the incident, the offender and the victim. Although not every variable considered by the court was available for analysis, it is clear that a number of factors had an important influence on sentencing outcomes for homicide, including:

- the offender's age, gender and mental condition;
- the relationship between the victim and the offender;
- whether there was a history of domestic violence;
- whether the victim used violence against the offender;
- whether drugs and/or alcohol were consumed at the time of the incident;
- the type of weapon used; and
- the number of victims and offenders involved in the incident.

These factors had a greater effect on the length of the imprisonment sentence imposed than on the type of sentence imposed in the first instance, as most homicide offenders were sentenced to a term of imprisonment.

Imprisonment rates

Indeed, the report shows that around nine out of every 10 offenders sentenced for murder and manslaughter in Victoria were sentenced to a term of imprisonment.

There are a number of factors that help explain differences in the sentencing outcomes imposed for murder and manslaughter (see Table 1).

For **murder**, imprisonment rates were highest for offenders who had used a firearm, who killed multiple victims or who committed the homicide with at least one co-accused. Imprisonment rates for murder were lowest where the offender was classified as suffering from a mental condition or where the offender killed a family member.

For **manslaughter**, imprisonment rates were highest for offenders who had used a firearm or where the victim and offender were strangers. Imprisonment rates for manslaughter were lowest for female offenders, where the offender suffered from a mental condition or where the offender killed a family member.

Table 1: Rates of immediate imprisonment, by type of homicide and selected characteristics of the offender, the victim and the incident

	Murder	Manslaughter
Offenders sentenced to imprisonment	91%	92%
Male offenders	92%	97%
Female offenders	80%	63%
Offenders who killed a friend or acquaintance	96%	93%
Offenders who killed an intimate partner	91%	88%
Offenders who killed an intimate partner – known history of domestic violence	96%	91%
Offenders who killed an intimate partner – no known history of domestic violence	83%	80%
Offenders who killed a stranger	96%	100%
Offenders who killed a family member	60%	78%
Offenders who successfully raised provocation (10 offenders)	na	90%
Offenders suffering from a mental condition	45%	75%
Offenders who had consumed drugs	92%	95%
Offenders who had consumed alcohol	92%	91%
Offenders who used a firearm	100%	100%
Offenders with a prior criminal history	95%	98%
Incident involving multiple victims	100%	na
Incident involving multiple offenders	100%	94%

Length of imprisonment terms

The report shows that the average length of imprisonment term for offenders sentenced for murder (19 years, 1 month) is almost three times higher than for offenders sentenced for manslaughter (6 years, 11 months).

There are a number of factors that help explain differences in the lengths of prison terms imposed for murder and manslaughter (see Table 2).

For **murder**, imprisonment terms were longest for offenders who killed multiple victims, for offenders classified as suffering from a mental condition, where a firearm was used or where multiple offenders were involved. Imprisonment terms were shortest for female offenders and for offenders who killed a family member.

For **manslaughter**, imprisonment terms were remarkably similar across all the factors considered. Terms were longest for offenders who successfully raised provocation as a defence to a charge of murder and for offenders who were classified as suffering from a mental condition. Imprisonment terms were shortest for female offenders.

Table 2: Average length of imprisonment term imposed for homicide, by type of homicide and selected characteristics of the offender, the victim and the incident

	Murder	Manslaughter
All offenders	19 years, 1 month	6 years, 11 months
Male offenders	19 years, 4 months	7 years, 1 month
Female offenders	16 years, 10 months	5 years, 5 months
Offenders who killed a friend or acquaintance	19 years, 2 months	6 years, 3 months
Offenders who killed an intimate partner	18 years, 10 months	6 years, 10 months
Offenders who killed an intimate partner – known history of domestic violence	19 years, 8 months	7 years, 6 months
Offenders who killed an intimate partner – no known history of domestic violence	18 years, 4 months	6 years, 7 months
Offenders who killed a stranger	19 years, 11 months	7 years, 5 months
Offenders who killed a family member	17 years, 8 months	7 years, 1 month
Offenders who successfully raised provocation (10 offenders)	na	7 years, 11 months
Offenders suffering from a mental condition	22 years, 6 months	7 years, 11 months
Offenders who had consumed drugs	19 years	7 years, 2 months
Offenders who had consumed alcohol	18 years, 3 months	6 years, 5 months
Offenders who used a firearm	21 years, 5 months	6 years, 6 months
Offenders with a prior criminal history	19 years, 5 months	7 years
Incident involving multiple victims	26 years, 2 months	na
Incident involving multiple offenders	20 years, 11 months	6 years, 3 months

The analysis of information on sentencing outcomes for homicide in conjunction with information on the homicide incident, the offender and the victim is important to provide a better understanding of the reasons underlying differences in the types and lengths of sentences imposed for homicide. In this report, we provide a detailed examination of differences in the characteristics of homicide incidents, offenders and victims and how this influences sentencing trends for homicide in Victoria.



1. Introduction

1.1 Background

In November 2004, the Victorian Law Reform Commission (VLRC) released *Defences to Homicide: Final Report*. The report considered how the criminal law should take account of the fact that offenders kill in a range of different situations and that their culpability may be affected by a variety of factors. Specifically, the purpose of the report was to review defences and partial defences to homicide operating in Victoria.¹

The VLRC made 56 recommendations in its report. The main recommendation was the abolition of provocation as a partial defence to homicide and that the difference in degrees of culpability should be dealt with through the sentencing process. Five other recommendations made by the VLRC related to the work of the Sentencing Advisory Council (see Recommendations 52 to 56 below). On 5 May 2005 the Attorney-General wrote to the Council seeking its views on the recommendations made by the VLRC.

Recommendation 52

The SAC should establish a statistical database to monitor sentencing trends in homicide cases. This database should be developed in consultation with members of the judiciary.

Recommendation 53

Construction of the database should allow monitoring of sentencing trends in cases where:

- the offender killed a person who subjected her/him to family violence;
- the offender had previously subjected the deceased to violence;
- the offender acted under provocation from the deceased; and
- the offender was suffering from a mental condition at the time of killing.

Recommendation 54

In consultation with the judiciary, the Sentencing Advisory Council should establish processes for making up-to-date sentencing information about homicide cases available to judges.

Recommendation 55

The Judicial College of Victoria should offer judicial education on sentencing in homicide cases, in collaboration with the Sentencing Advisory Council.

Recommendation 56

The Sentencing Advisory Council should provide public education on sentencing in homicide cases.

In September 2005, the Council released three reports containing statistics on sentencing outcomes for people sentenced for murder, manslaughter and culpable driving causing death in Victoria between 1998-99 and 2003-04. New reports were then released in August 2007 that updated the statistics on these offences with data from 2001-02 to 2005-06, with the additional offence of making a threat to kill. These reports form part of a statistical series (*Sentencing Snapshots*) that presents statistics on sentencing in Victoria. The Council thus discharged Recommendations 54 and 56 through the publication of these Sentencing Snapshots.² This report underpins the Council's response to Recommendations 52 and 53.

1.2 Aim

The aim of this report is to identify trends and relationships between the characteristics of the homicide incident, offender(s) and victim(s) and the type and length of sentence imposed by the court. In order to respond directly to the recommendations made by the VLRC, the report has a particular emphasis on how sentencing outcomes for homicide vary according to whether there was a history of domestic violence, whether the offender acted under provocation and whether the offender was identified by police as suffering from a mental condition at the time of the incident.³

The analysis of sentencing information alone prevents a meaningful analysis of the relationship between aggravating and mitigating circumstances and the type and length of sentence imposed by the courts. The combination of incident, offender, victim and sentencing information provides a unique opportunity to undertake a more detailed and nuanced analysis of sentencing outcomes for homicide in Victoria.

Throughout the report, information on homicide incidents, victims and offenders is categorised according to the original data provided by the Australian Institute of Criminology. Such categorisation, however, does not necessarily represent the definitive approach to classifying information on homicides. In his seminal work on homicide, Polk has suggested that ‘there are important limits to what can be explained from the use of such terms as “stranger”, “friend/acquaintance” or “family” to describe the bond between offender and victim’.⁴ Instead, Polk considers the social contexts in which homicides occur, and classifies them into the following categories:⁵

- homicides in the context of sexual intimacy;
- homicides originating in family intimacy;
- confrontational homicides;
- homicides originating in other crime;
- conflict resolution homicides;
- victims of mass killers;
- unsolved and unclassifiable homicides;
- ‘special’ cases; and
- mercy killings.

In her discussion of the circumstances in which homicide occur, Morgan draws heavily on these categories to examine homicide incidents, victims and offenders.⁶ Morgan’s aim was to ensure that considerations of reform to laws on defences to homicide were informed by the sociological contexts in which people are killed. In particular, Morgan noted the gendered nature of homicides: when women do kill, they usually do so for different reasons than men.⁷ As the categories used in this report reflect the original ones in place in the source dataset (such as ‘stranger’ and ‘family member’), we have not been able to conduct a thorough analysis of the gendered nature of homicide in these data.

Before turning directly to the VLRC recommendations, an overview of homicide in Victoria provides the context for subsequent analyses with a profile of the homicide incidents examined in this report. This includes the age and gender of homicide victims and offenders, as well as the nature of the offences committed, and the broad sentencing outcomes imposed. An examination of sentencing outcomes for male and female homicide offenders is presented in part 4.

In part 5 results are presented of the analyses of variations in sentencing outcomes for homicides according to the relationship between victim and offender. Particular emphasis is given to friends and acquaintances, intimate partners and homicides between strangers and family members. In the next section (part 6) sentencing outcomes for offenders proven guilty of provocation manslaughter are presented. In part 7 variations in sentencing outcomes for offenders with a mental condition are examined, followed by a discussion in Part 8 of the impact of alcohol and drug use by homicide offenders on the type and length of sentence imposed. Part 9 involves an examination of the use of a weapon and sentencing outcomes. Variations in sentencing outcomes according to the offender’s prior criminal history are analysed in part 10. The number of victims and offenders are included in part 11, homicides occurring during the course of another crime are in part 12, and in the last part, sentences imposed for contract killings, gang related homicides and serial killings are examined. The report concludes with a discussion of the findings.

1.3 Data sources & methodology

The Australian Institute of Criminology's (AIC) National Homicide Monitoring Program (NHMP) was established in 1989 and is the leading source of information on homicide incidents, victims and offenders in Australia.

For the purposes of the NHMP, the definition of homicide is the operational definition used by police throughout Australia. As such, the NHMP collects data on the following incidents:

- all cases resulting in a person or persons being charged with murder or manslaughter (including the charge of 'dangerous act causing death' which applies to the Northern Territory), but excluding other driving-related fatalities, except where these immediately follow a criminal event such as armed robbery or motor vehicle theft;
- all murder-suicides classed as murder by the police; and
- all other deaths classed by the police as homicides (including infanticides), even if no offender has been identified or apprehended.

Attempted murder is excluded, as are violent deaths such as industrial accidents involving criminal negligence (unless a charge of manslaughter is laid). Lawful homicide, including incidents involving police in the course of their duties, is also excluded.

There are two key sources of data for the NHMP:⁸

- offence records derived from each Australian state and territory police service, supplemented where necessary with information provided directly by investigating police officers and/or associated staff;⁹ and
- state coronial records such as toxicology and post mortem reports.

The NHMP was used as the primary source of information on the characteristics of homicide incidents, offenders and victims in Victoria. The NHMP Victorian data in this study relate to solved cases only (that is, where an offender was identified, charged and convicted). The Council liaised extensively with the AIC in developing its methodological approach and interpretation of the data.

Information on sentencing outcomes for homicide offenders in Victoria was obtained from the Department of Justice, Courts Statistical Services Unit. This information is compiled from manually prepared Return of Prisoners Convicted forms (conviction returns) from the Supreme Court of Victoria.

Due to the manual data collection systems used by both the AIC and the Department of Justice, the two data sets could not be uniquely matched by an automated process. Strict quality assurance measures were employed to ensure the accuracy of the matching process, including close consultation with the AIC.

1.4 Scope

The scope of information that could be analysed in this report was constrained by the data sources relied upon to establish the Victorian Homicide Monitoring Program (VHMP) – the AIC's NHMP and the Department of Justice, Courts Statistical Services Unit's sentencing outcomes database. The VHMP includes sentencing information for murder, manslaughter and infanticide, but excludes culpable driving offences.

Homicides that occurred between 30 June 1990 and 30 June 2005 that were sentenced in the criminal courts between 30 June 1999 and 30 June 2006 were included in this analysis, subject to the necessary data being available. Information on a total of **208 individual homicide incidents** were successfully matched between the two datasets. This relates to **243 offenders** and **216 victims**. A homicide incident can involve one or more victims and can be committed by one or more offenders, hence the higher victim and offender count when compared with the number of incidents.

There are 90 variables in the VHMP dataset, divided into four key areas: incident data, victim-related data, offender-related data and sentencing data. These divisions reflect those in the source dataset, and are outlined below:¹⁰

- *Incident data*: describes the case and its circumstances (for example, location, date and time, whether incident occurred during the course of another crime);
- *Victim-related data*: contains socio-demographic information relating to the victim(s), cause of death, type of weapon used to kill the victim(s), alcohol and illicit drug use;
- *Offender-related data*: relates to the person(s) charged and includes data on the socio-demographic characteristics of the offender(s), criminal history, alcohol and illicit drug use, mental health status and the offender's relationship to the victim; and
- *Sentencing data*: contains information on the type of offence found proven by the court, the type and length of sentence imposed on the offender, including the non-parole period (where relevant) and whether provocation was successfully raised.

1.5 Data definitions

1.5.1 Type of homicide

As noted earlier, the VHMP includes information on murder, manslaughter and infanticide. Only one infanticide incident was captured in the database. Infanticide is a type of manslaughter and for the purposes of this report the term 'manslaughter' refers to manslaughter and infanticide.

Any reference to offenders 'found guilty' of homicide refers to those offenders who plead guilty, those sentenced after a trial and offenders dealt with by the court after a finding of not guilty due to mental impairment.

1.5.2 Sentence type and length

Sentence types and lengths were calculated using the total effective sentence methodology. The total effective sentence aggregates the individual sentences imposed for each offence proven against an offender, taking account of cumulative and concurrent sentences.

1.5.3 Relationship between the victim and the offender

Information on the type of relationship between homicide victims and offenders refers to the relationship between the offender and the *primary victim*. Where a homicide incident involves multiple victims, the relationship between the offender and primary and secondary victim(s) may differ. However, to maintain a one-to-one relationship between sentencing outcomes and the characteristics of the incident, offender and victim, only information on the primary victim has been analysed. This methodology is not expected to skew the analytical results as 95 per cent of homicide offenders examined in this report killed one victim as opposed to multiple victims (232 out of 243 offenders).

1.5.4 History of domestic violence

The NHMP includes information on whether the victim or the offender had a prior history of domestic violence against an intimate partner. However, the police offence records that form the source of the NHMP do not specify whether the victim or the offender was the perpetrator of the domestic violence. As domestic violence typically has low rates of reporting to police, it is likely that the recorded numbers of offenders and victims with a known history of domestic violence will underestimate its incidence. It is therefore difficult to draw conclusions about the impact of a history of domestic violence on sentencing outcomes for homicide, and caution should be exercised in interpreting the results from this part of the analysis.

1.5.5 Mental health or capacity of the offender

Information regarding the mental health status of the offender and the identification of the offender as suffering from a mental disorder immediately before or at the time of the incident is contained in police offence reports. As these reports may not be based on an official medical diagnosis, the results for this part of the analysis should be interpreted with caution.

1.5.6 Alcohol or drug use

Toxicology reports help to determine whether the victim had consumed alcohol and/or illicit drugs, but this information cannot indicate how the person was affected physiologically (unless the amount consumed was at a relatively high level) or whether their alcohol or drug taking directly precipitated the homicide. Furthermore, NHMP information on whether the offender had consumed alcohol and/or illicit drugs is based on police offence reports. Offender information on alcohol and drug consumption is dependent on whether the police recorded such information, and may not necessarily include all instances where an offender had been drinking alcohol or using drugs prior to the offence.

These data are indicative only of whether the offender had consumed alcohol and/or illicit drugs prior to the incident. They are not necessarily indicative of the offender's state of mind, nor can the drug or alcohol consumption be identified as a causal factor in the homicide incident, particularly as there is no accurate measure of the amount of any substance that had been consumed by the offender.

1.5.7 Criminal history

Information on prior criminal history has been collected as part of the NHMP and is categorised using a unique offence classification system. Where an offender/victim has more than one prior criminal offence, the criminal history variable in the NHMP refers only to the most serious offence for which the person has previously been convicted. The offence classifications, in order of decreasing seriousness, are homicide, sexual assault, other assault, robbery, drug offences, property offences and other offences. The 'other' offences category usually refers to minor offences not captured by other categories in the prior offence hierarchy. For example, drink-driving offences, traffic offences, public order offences (such as being drunk in a public place), possession of weapons offences and some firearms offences.

1.5.8 Other crime data

The NHMP collects information on whether a homicide incident occurs during the course of another crime. Only one precipitating crime may be recorded for each victim in the dataset, which refers to the most serious crime committed in the course of the homicide (in decreasing order of seriousness): sexual assault, kidnapping/abduction, robbery, other violent crime, arson, break and enter, theft, other property offence, prostitution, drug offences and other offences.

1.6 Limitations

The AIC employs a rigorous quality control process to ensure the accuracy of the data from which homicide in Australia is analysed and quantified.¹¹ There are, however, a number of limitations to this data source and some omissions were identified. For example, a homicide may not be recorded in the NHMP where there is uncertainty about whether the death is a murder or a manslaughter and where police have referred it for opinion to the Office of Public Prosecution.¹² Importantly for our response to the VLRC recommendations, the NHMP data cannot identify whether it was the victim or the offender who was the domestic violence perpetrator in cases where there was a known history of domestic violence.

Sentencing information was compiled from manually prepared Return of Prisoners Convicted forms (conviction returns) from the Supreme Court of Victoria. These conviction returns are cross-checked against the daily Court lists to help ensure all available data are captured. Despite the quality assurance measures in place, not all conviction returns are forwarded to the Courts Statistical Services Unit and therefore not all sentencing outcomes for homicide are included in the report. Estimates of missing sentencing data ranged from 1 per cent to 7 per cent between 1997/98 and 2005/06, with an average of 3 per cent of cases missing each year. Information on sentencing outcomes relates to the first instance only and does not include the outcomes of appeals.

Due to the nature of the data used, only those solved homicide incidents included in the NHMP that could be matched to the sentencing database are examined in this report. The AIC and Courts Statistical Services Unit both endeavoured to ensure that their databases were accurate for these analyses, however some omissions were identified. As a result, the final dataset is a subset of the information provided by each agency and is therefore subject to type I error:

- Some incidents in the NHMP could not be matched to a corresponding sentencing outcome because the conviction return was not recorded by the Courts Statistical Services Unit (this may result from either the case still being adjudicated or the conviction return not being forwarded to the Courts Statistical Services Unit).
- Some conviction returns could not be matched to the NHMP because the incident was not recorded as solved in the AIC NHMP. Such cases were unsolved at the time of data collection, but the offender has since been identified, convicted and sentenced. In these cases, only information relating to the incident and the victims are recorded in the NHMP, as offender details were unknown at the time of data collection. These cases were excluded from the analyses presented in this report.

2. The legal context of sentencing for murder and manslaughter

This section discusses the legal definition of murder and manslaughter, the legislative penalty range, and the mitigating and aggravating factors courts have taken into account when sentencing an offender for homicide. While the maximum penalty for an offence provides an indication of Parliament's assessment of the gravity of the offence, it is only an indirect guide to the type and length of sentence that should generally be imposed for that offence. Individual sentences must be determined by reference to a range of factors including the maximum penalty, general sentencing principles and the specific circumstances of the offender and the offence.

Some of the factors discussed in this section are based on cases from jurisdictions other than Victoria (such as Commonwealth cases) and that occurred prior to the reference period of this report. Nonetheless, the cases are indicative of the legal context of sentencing for murder and manslaughter.

2.1 Murder

2.1.1 Legal definition and penalty range

The offence of murder applies when a person intentionally or recklessly kills another or intentionally or recklessly inflicts severe injury on another person who dies as a result. Murder is an offence that carries a maximum penalty of life imprisonment.¹³ Where a person is sentenced to a life sentence or a term of imprisonment of two years or more, the court must¹⁴ fix a non-parole period unless it considers that the nature of the offence or the past history of the offender make the fixing of a non-parole period inappropriate.¹⁵ Where a non-parole period is fixed, the person must serve that period in prison before becoming eligible to apply for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term. Generally, it is only for what have been termed as the 'most callous and dreadful' murders – such as multiple murders or where the offender displays no remorse – that a court will decline to fix a non-parole period.¹⁶

The Supreme Court of Victoria is the only court that has jurisdiction to sentence people found guilty of murder in Victoria.¹⁷

2.1.2 General sentencing principles

The purposes for which sentences may be imposed include the punishment of the offender, denunciation by the court of the offender's conduct, deterrence of either the offender or other people from committing such, rehabilitation of the offender, and protection of the community.¹⁸ The weight to be attached to each purpose depends upon the particular circumstances of each case.

The circumstances in which murder is committed are so varied that the Court of Appeal has not laid down any specific tariff or formal guidelines for sentencing, and has also resisted delivering informal guidelines.

2.1.3 Factors that may influence the sentence

Sentences for murder take account of the particular circumstances of the offence and the offender, as well as a variety of legal principles. The sentencer may have regard to factors personal to the offender but in the case of murder their weight may not be as significant as in other cases. In addition, the circumstances of the offence may be considered so serious that a focus on the rehabilitative purpose of sentencing may not be appropriate. For crimes considered to be in the 'worst class' category of murders, deterrence and punishment assume greater importance.¹⁹

The following discussion provides an overview of some of the factors that have been considered by the courts in relation to sentencing for murder. This is not an exhaustive list of factors; rather, it is confined to those factors that were available for analysis in this report.

2.1.3.1 Age of the offender

As in all areas of the criminal justice system, in determining the appropriate sentence, the offender's youth is a relevant and important consideration.²⁰

For young offenders, age is a mitigating factor to which the court must have regard in determining the duration of the sentence and the fixing of the non-parole period.²¹ Where an immediate custodial sentence is appropriate, the youth of the offender, in the absence of any previous periods in custody, may justify a shorter term than that which would be warranted for an adult.²² For young offenders, it may be appropriate to fix a low non-parole period or a longer period of parole than usual to provide a better prospect of rehabilitation.²³ However, the Court of Appeal has stated that where the circumstances of the offending behaviour are sufficiently grave, the youth of the offender and prospects for rehabilitation will not diminish the importance of deterrence, condemnation and just punishment as the primary purposes of sentencing.²⁴

The youth of the offender may also mitigate the type of sentence imposed and youth detention may be an appropriate sentence even for murder.²⁵ In determining whether to impose a sentence of imprisonment or one of detention in a youth training centre, the court must have regard to the nature of the offence, as well as the age, character and past history of the offender.²⁶

The offender's age is also a relevant consideration in determining whether a sentence of life imprisonment or a sentence of life imprisonment without parole is appropriate.²⁷

For older offenders, age is a mitigating factor to which the court must have regard in determining the duration of the sentence and the fixing of the non-parole period in order to allow the older offender some prospect for the future.²⁸ However, there will be cases where the offender is considered to have forfeited the right to any such mitigation.²⁹ The Court of Appeal has stated that although the age of the offender is a relevant consideration and may in some cases be of considerable significance, it alone cannot justify the imposition of an inappropriate sentence.³⁰

2.1.3.2 The relationship between the victim and the offender

Cases that involve a murder arising out of a relationship are not to be considered as any less heinous as a class than other types of murder.³¹ In fact, domestic killings characterised by murderous intent (regardless of whether provocation was successfully raised) can be an aggravating factor.³²

2.1.3.3 The vulnerability of the victim

Offences committed against persons regarded as vulnerable are considered as more serious. This may reflect the exploitation of their vulnerability and the need to offer increased protection to these groups through sentencing. Common categories of vulnerable victims include infants,³³ children,³⁴ older people³⁵ and pregnant women.³⁶

2.1.3.4 Mental health or capacity of the offender

The mental health status of the offender does not act to mitigate the sentencing outcome if the offender demonstrates a propensity and likelihood that if released, the criminal behaviour will continue.³⁷

Drug addiction that distorts the offender's judgment yet falls short of a drug-induced psychosis may mitigate the moral culpability of the offender.³⁸ An offender's clear mental disturbance, short of mental impairment, psychosis or mental illness, may also mitigate the moral culpability of the offender.³⁹

2.1.3.5 Alcohol or drug use

If alcohol or drug addiction is the result of attempting to cope with a painful disease and in turn leads to the commission of the instant offence, the sentencer may consider the addiction as a mitigating factor.⁴⁰ However, where the offender knew of the usual effect on him/her of alcohol or drugs, the voluntary consumption of these substances is an aggravating factor rather than a mitigating factor.⁴¹

2.1.3.6 Use of a weapon

The type of weapon used will commonly be relevant to an assessment of the gravity of the offending. Although there is no limitation on the class of items that may be classified as 'weapons', the more dangerous the item, or the greater its capacity to invoke fear, the more aggravating its use will be. The use of a weapon is a particularly aggravating factor where the victim is unarmed.⁴²

2.1.3.7 Criminal history

A history of prior convictions and the type of prior convictions are important factors that can aggravate the sentencing outcome and can influence whether the court will decline to set a non-parole period.⁴³ Where the offender's prior criminality demonstrates a persistent and dangerous threat to the community, it may warrant the imposition of a sentence of life imprisonment without parole.⁴⁴

2.1.3.8 The number of victims

The commission of multiple murders in a single incident is a significant aggravating factor that influences the length of the prison term imposed,⁴⁵ whether a non-parole period should be set and the duration of the non-parole period if one is set. Serial incidents will also significantly increase the sentence.⁴⁶

2.2 Manslaughter

2.2.1 Legal definition and penalty range

The offence of manslaughter applies where a person kills another in circumstances where the offender's culpability is less than that required to constitute murder. Manslaughter may arise in one of two ways. Voluntary manslaughter is committed in circumstances where, but for some mitigating factor, the killing would constitute murder, such as by reason of provocation.

Prior to its abolition, establishing the partial defence of provocation required the following:

- that there was evidence of provocative conduct by the victim;
- that the defendant lost self-control as a result of that provocation;
- that the provocation must have been such that it was capable of causing an ordinary person to lose self-control and form an intention to cause serious bodily harm or death; and
- that the provocation must have actually caused the defendant to lose self-control and the defendant must have acted 'whilst deprived of self-control before he has had the opportunity to regain his composure'.⁴⁷

Involuntary manslaughter arises where there is no intent to kill but the offence still results in death. This kind of manslaughter is committed where the death is caused by an unlawful and dangerous act⁴⁸ or by omission,⁴⁹ or where the death is caused by 'criminal negligence'.⁵⁰

Manslaughter is an offence that carries a maximum penalty of 20 years' imprisonment.⁵¹ Where a person is sentenced to a term of imprisonment of two years or more, the court must fix a non-parole period unless it considers that the nature of the offence or the past history of the offender make the fixing of a non-parole period inappropriate.⁵² Where a non-parole period is fixed, the person must serve that period in prison before becoming eligible to apply for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Both the Supreme and County Court of Victoria have jurisdiction to sentence people for the offence of manslaughter.⁵³

2.2.2 General sentencing principles

The purposes for which sentences may be imposed in relation to manslaughter are the same as those that guide the sentencing of offenders for murder.⁵⁴ The weight to be attached to each factor depends upon the particular circumstances of each case, which can vary enormously in terms of gravity and culpability. Manslaughter cases can include both voluntary and involuntary acts of homicide.⁵⁵

The Court of Appeal has not given any formal guideline judgment in respect of the offence of manslaughter. However, the Court of Appeal has commonly stated that because of the gravity of the offence, it is only in exceptional cases that a non-custodial sentence will be justified for this offence. Beyond this, the circumstances in which manslaughter is committed are so varied that the Court of Appeal has not laid down any specific tariff or guidelines for sentencing.

2.2.3 Factors that may influence the sentence

Sentences for manslaughter take account of the particular circumstances of the offence and the offender, as well as a variety of legal principles. However, due to the seriousness of the offence of manslaughter, the weight given to the circumstances of the offender may not be as significant as in other cases. Deterrence, rehabilitation and denunciation are important principles that guide sentencing for manslaughter; however, deterrence and denunciation may outweigh the prospects of rehabilitation where the offence committed is particularly grave.⁵⁶ Lengthy sentences have been imposed for particularly brutal manslaughters that fall short of murder.⁵⁷ In contrast, the use of self-defence may be a mitigating factor that may warrant a non-custodial sanction, particularly for older offenders subjected to ongoing abuse by the victim.⁵⁸

The following discussion provides an overview of some of the factors that have been considered by the courts in relation to sentencing for manslaughter. This is not an exhaustive list of factors; rather, it is confined to those factors that were available for analysis in this report.

2.2.3.1 Age of the offender

The offenders' youth is a mitigatory factor but does not justify the imposition of an unacceptably inappropriate sentence.⁵⁹ Significant consideration is given to a young offender's prospects of rehabilitation and, coupled with the offender's youth, may warrant the release of the offender on a non-custodial order.⁶⁰ However, the conduct of the offender and the relative gravity of the offence may sometimes bear greater importance on the sentencing outcome than the offender's youth.⁶¹

2.2.3.2 Gender of the offender

The gender of the offender alone provides no legal basis for differential treatment in sentencing⁶² (although in practice, the data do show gender differences; see part 4 below).

2.2.3.3 Relationship between the victim and the offender

The relationship between the offender and the victim may affect the gravity of the offence. Where the victim is a child, any relationship between the offender and the victim will commonly be a circumstance of aggravation.

2.2.3.4 Age and vulnerability of the victim

Whether the victim is considered 'vulnerable' and in need of protection is a significant aggravating factor. Categories of victims considered vulnerable because of their age include infants⁶³ and older victims.⁶⁴

2.2.3.5 Use of a weapon

The type of weapon used is relevant to an assessment of the gravity of the offending. The more dangerous the item, the more aggravating its use will be, particularly where the weapon created ‘substantial and frightening violence’.⁶⁵ However, an offence is not less serious merely because no knife or other weapon was used.⁶⁶

2.2.3.6 Criminal history

An important aggravating factor is whether the offender has a prior criminal history that demonstrates a persistent threat to the community.⁶⁷ A repeated pattern of criminal behaviour will warrant a more severe penalty.⁶⁸

2.2.3.7 Gang related incidents

Longer sentences have been imposed for killings that arise from pack assaults motivated by racial hatred.⁶⁹

2.3 Summary

In summary, there is a wide range of factors that the court can consider when determining the type and length of sentence to impose for homicide. In the following parts of this report, we examine whether, and to what degree, sentences for homicide vary according to the characteristics of the offence, the offender and the victim.



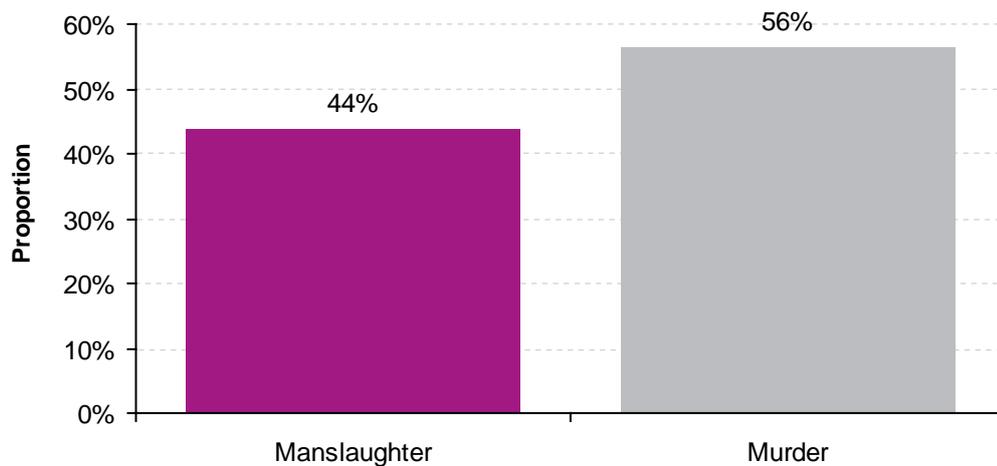
3. A profile of homicide in Victoria

In this section, broad information is presented about the types of homicide committed in Victoria (including the number, gender and age of homicide offenders and victims) and the range of sentences imposed.

3.1 Types of homicide

Of the 243 homicide offenders examined in this report, 137 (56 per cent) were sentenced for murder and 106 (44 per cent) were sentenced for manslaughter (including infanticide) (see Figure 1).⁷⁰

Figure 1: Homicide offenders, by type of homicide



See Appendix Table 7

3.2 Gender

Figure 2 shows a breakdown of homicide offenders and victims according to their gender and the type of homicide committed. Men are overwhelmingly both the offenders and victims of homicide in Victoria:

- of the 131 murder victims, men account for 54 per cent;
- of the 137 murder offenders, men account for 89 per cent;
- of the 85 manslaughter victims, men account for 71 per cent; and
- of the 106 manslaughter offenders, men account for 85 per cent.

Figure 2: Homicide victims and offenders, by gender and type of homicide



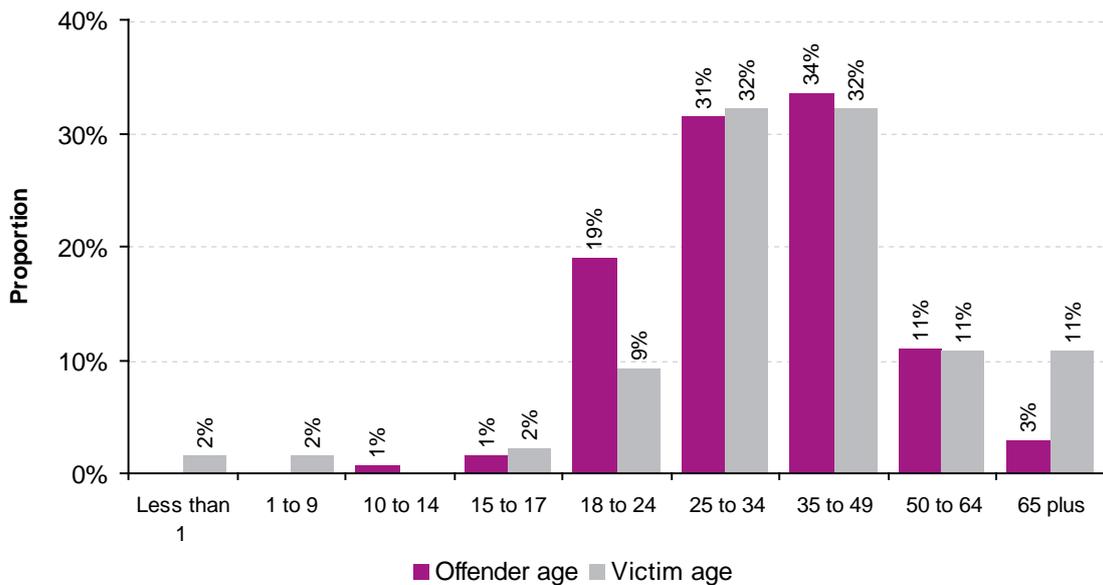
See Appendix Table 7

3.3 Age

Figure 3 and Figure 4 show the age distribution of murder and manslaughter victims and offenders. Offenders sentenced for murder were generally of a similar age as victims of murder:

- Offenders sentenced for murder were most commonly aged between 35 and 49 years, and victims were most commonly aged between 25 and 49 years.
- The average age of offenders sentenced for murder was 35 years, and the average age of their victims was 39 years.

Figure 3: Age distribution of murder victims and offenders

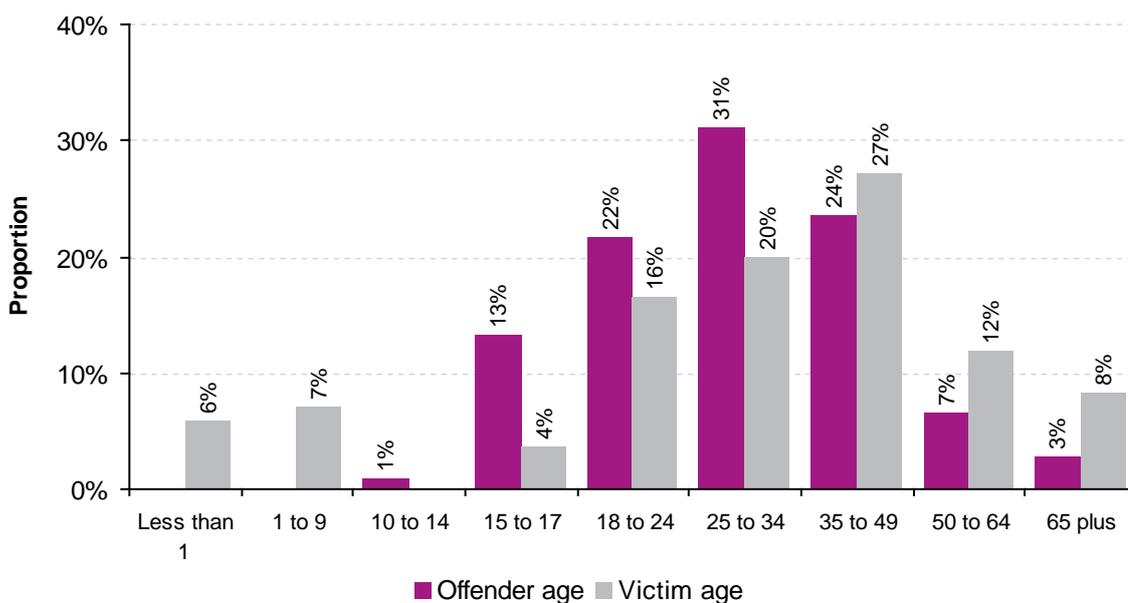


See Appendix Table 8

Offenders sentenced for manslaughter were also generally of a similar age as victims of manslaughter (see Figure 4):

- Offenders sentenced for manslaughter were most commonly aged between 25 and 34 years, and victims were most commonly aged between 35 and 49 years.
- Offenders sentenced for manslaughter were aged 32 years on average and their victims were aged 33 years on average.

Figure 4: Age distribution of manslaughter victims and offenders

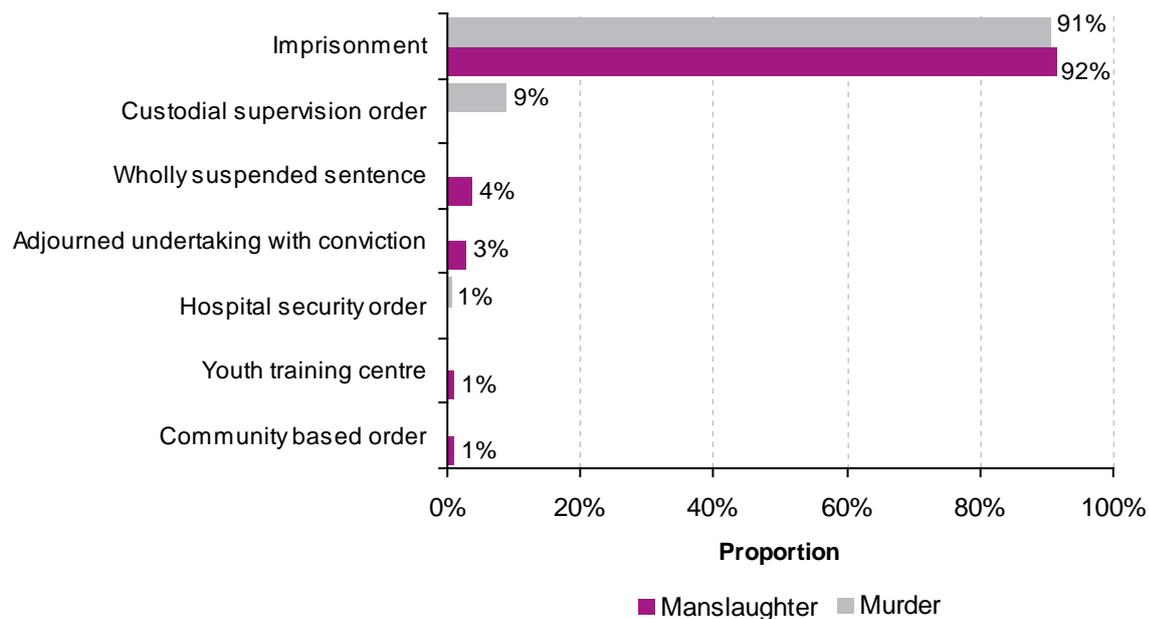


See Appendix Table 8

3.4 Sentencing outcomes

The 243 homicide offenders examined in this report attracted a range of sentencing outcomes and, as Figure 5 shows, the likelihood of the court sentencing an offender to imprisonment for murder or manslaughter was almost identical: a term of imprisonment was imposed on 91 and 92 per cent of offenders found guilty of murder and manslaughter respectively.

Figure 5: Sentencing outcomes for homicide, by type of homicide



See Appendix Table 9

The second most common sentencing outcome for murder was a custodial supervision order (9 per cent). Under s 26 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) if a person is found not guilty by reason of mental impairment the court can sentence the person to a custodial supervision order which is an indefinite custodial sentence.

In contrast, the second most common sentence imposed for manslaughter was a wholly suspended sentence of imprisonment (4 per cent). This was followed by adjourned undertakings with conviction, with 3 per cent of all offenders sentenced for manslaughter attracting this disposition.

Offenders found guilty of murder – as opposed to manslaughter – are expected to attract more severe sentencing dispositions because murder involves malice aforethought (*mens rea*). The evidence supports this contention; more severe sentencing outcomes were imposed on offenders found guilty of murder (including imprisonment, custodial supervision order and hospital security order) and less severe sentences were handed down to offenders found guilty of manslaughter (including adjourned undertakings, community based orders and wholly suspended sentences of imprisonment). No offender found guilty of murder received a wholly suspended sentence of imprisonment, community-based order or adjourned undertaking with conviction.

3.4.1 Imprisonment for Murder

A total of 124 offenders were sentenced to imprisonment for murder, accounting for 91 per cent of all offenders sentenced for this offence. Imprisonment terms ranged from 10 years to life imprisonment, with an average length of 19 years and 1 month. One offender sentenced to life imprisonment for murder was deemed not eligible for parole. Of the remaining 123 offenders sentenced to imprisonment for murder and eligible for parole, non-parole periods ranged from 7 to 26 years, with an average of 15 years and 4 months.

All of the offenders who were not sentenced to imprisonment for murder were sentenced to other custodial orders designed to treat their diagnosed mental conditions.

3.4.2 Imprisonment for Manslaughter

A total of 97 offenders were found guilty of manslaughter and were sentenced to imprisonment (92 per cent). The minimum imprisonment term imposed was 3 years and the maximum was 15 years. The average sentence length was 6 years and 11 months' imprisonment – 64 per cent less than the average sentence length for murder. All offenders sentenced to imprisonment for manslaughter were eligible for parole. One offender was eligible for parole immediately and for the remaining 96 offenders non-parole periods ranged from 3 days to 13 years, with an average of 4 years and 6 months.

3.4.3 Life imprisonment

Ten offenders were sentenced to life imprisonment for murder (7 per cent of all offenders sentenced for murder) and all were men. The youngest man sentenced to life imprisonment was 19 years old and the oldest was 55 years of age, with an average age of 40 at the time of the offence. Only one offender found guilty of murder was sentenced to life imprisonment without parole and this person was classed as a 'serial killer'. Of the nine offenders sentenced to life imprisonment for murder and eligible for parole, non-parole periods ranged from 23 to 33 years with an average of 25 years and 3 months.

3.4.4 Custodial supervision order

Twelve offenders were sentenced to a custodial supervision order⁷¹ for murder. Of these, nine were men (75 per cent) and three were women (25 per cent). All orders were for a nominal period of 25 years.⁷² Two offenders sentenced to a custodial supervision order were classified as intellectually disabled, and eight were classified as suffering from some form of mental condition (the specific type of condition was unknown for two offenders).

3.4.5 Hospital security order

One man was sentenced to a hospital security order for murder. The order was for a period of 20 years, with a 15 year non-parole period. At the time of the offence the man was aged 36 years, had consumed alcohol immediately prior to the offence and suffered from a mental condition. The victim and offender did not know one another and the cause of death was a stab wound. It is unknown if the offender had a prior criminal history.

3.4.6 Detention in a youth training centre

A 17 year old woman was sentenced to 3 years' detention in a youth training centre without parole for manslaughter. The victim – an acquaintance of the offender – was also a young woman aged 18 years at the time of the offence. Both young women had consumed alcohol at the time of the manslaughter and the victim died from a stab wound. The offender had a prior criminal history for 'other' offences.⁷³

3.4.7 Wholly suspended sentence

Three men and one woman who were found guilty of manslaughter received wholly suspended sentences of imprisonment. Imprisonment terms wholly suspended by the court ranged from 2 to 3 years, as did the operational period of these orders. None of the offenders had a known prior criminal history, suffered from a mental condition or had a history of domestic violence. Of the four, only one man successfully raised the defence of provocation.

3.4.8 Community-based order

A 30 year old woman was sentenced to a community-based order for infanticide, a type of manslaughter. The community-based order was for a period of 18 months. The defendant had not consumed drugs or alcohol, but was suffering from depression. The defendant drowned her baby daughter, aged less than 1 year at the time of death. The offender did not have a prior criminal history.

3.4.9 Adjourned undertaking with conviction

All three adjourned undertakings with conviction were imposed on women sentenced for manslaughter. All three women killed male victims and although none of these women successfully raised the defence of provocation, two of the offenders were co-accused and acted in self defence. None had consumed drugs or alcohol, suffered from a mental condition or had a prior criminal history.

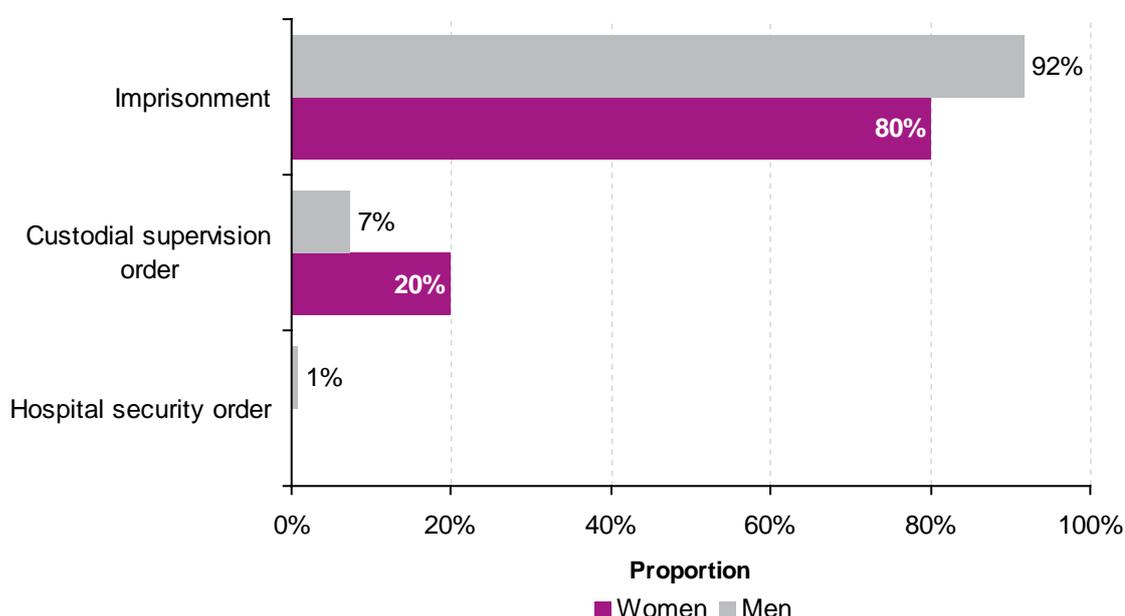
4. Offender demographics and sentencing outcomes

This section provides a comparative analysis of the sentencing outcomes imposed on men and women found guilty of murder and manslaughter, as well as those imposed on offenders of varying age groups. The aim is to identify any relationships between an offender's age and gender, and the type and length of sentence imposed for homicide.

4.1 Sentencing men and women for murder

Of the 137 offenders sentenced for murder, 89 per cent were men (n=122) and 11 per cent were women (n=15). Figure 6 shows the distribution of sentences imposed on men and women found guilty of murder. All 137 offenders sentenced for murder were given some form of custodial sentence.

Figure 6: Sentence types imposed for murder, by gender of offender



See Appendix Table 9

Imprisonment was the most common sentence imposed on both men and women found guilty of murder. However, men were 15 per cent more likely to be sentenced to imprisonment than were women. This may be partly due to the fact that women suffering from some form of mental condition were more likely to avoid prison for murder:

- Of the 15 women sentenced for murder, three suffered from a mental condition and all three were sentenced to a custodial supervision order.
- 19 out of the 122 men sentenced for murder suffered from a mental condition and only 10 were sentenced to a custodial supervision or hospital security order. The remaining nine were sentenced to imprisonment despite their mental condition.

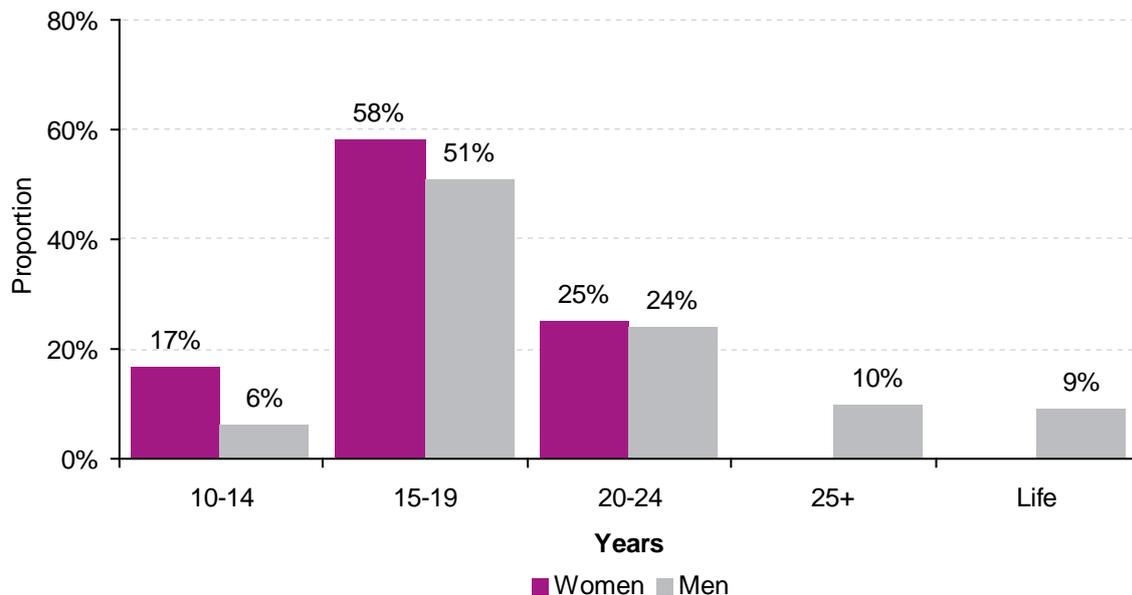
If all men found guilty of murder and suffering from a mental condition had been sentenced to a custodial supervision or hospital security order, the proportion of men sentenced to imprisonment for murder would approach that of women (84 per cent).

It is also possible that gender differences in the sentence types imposed for murder reflect the different circumstances in which men and women kill, with women being more likely to kill in a domestic context, often responding to violence from their male partners.⁷⁴

4.1.1 Sentencing men and women to imprisonment for murder

Figure 7 shows the distribution of length of imprisonment terms imposed on men and women found guilty of murder. It is important to remember that the number of men and women sentenced to imprisonment for murder is vastly different. Of the 124 offenders sentenced to imprisonment for murder, 90 per cent were men (n=112) and 10 per cent were women (n=12).

Figure 7: Length of imprisonment terms imposed for murder, by gender of offender



See Appendix Table 10

Not only were women less likely to be sentenced to imprisonment for murder, but imprisonment terms imposed on women for murder were shorter than those for men (see Figure 7):

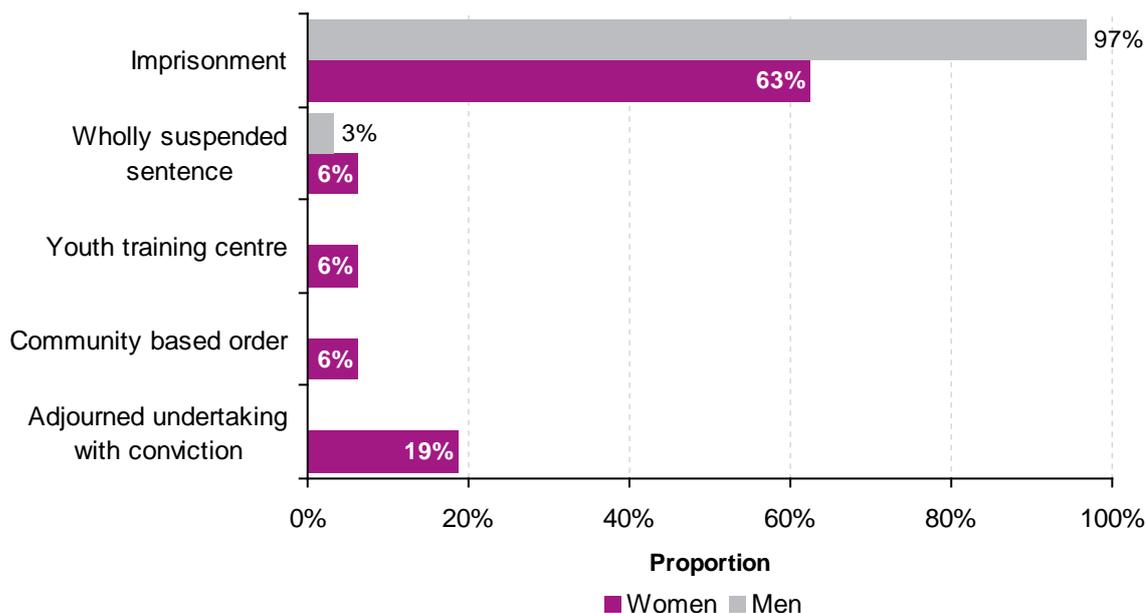
- The length of imprisonment terms for men ranged from 13 years to life imprisonment, and for women they ranged from 10 to 23 years.
- The average length of imprisonment term imposed on men for murder was 19 years and 4 months, compared to 16 years and 10 months for women.
- Ten men and no women were sentenced to life imprisonment for murder.

It is possible that these differences reflect the different circumstances in which men and women kill. As Morgan points out, 'Men are much more likely than women to kill their female partners (or sexual rivals) out of jealousy, possessiveness or control. Women are much more likely to kill their male partners in response to violence from them'.⁷⁵

4.2 Sentencing men and women for manslaughter

Of the 106 offenders sentenced for manslaughter, 85 per cent were men (n=90) and 15 per cent were women (n=16). Figure 8 shows the distribution of sentences imposed on men and women found guilty of manslaughter.

Figure 8: Sentence types imposed for manslaughter, by gender of offender



See Appendix Table 9

As Figure 8 shows, imprisonment was the most common sentence imposed on both men and women found guilty of manslaughter. As was the case with murder, men were more likely to be sentenced to imprisonment for manslaughter than women. In fact, men were 54 per cent more likely to be sentenced to imprisonment for manslaughter than women.

In contrast to the results found above for murder, there was more variety in sentencing outcomes for manslaughter, including non-custodial options, which were used particularly for women. Of the 16 women sentenced for manslaughter, five avoided immediate prison or detention (31 per cent). Of these:

- One was sentenced to a wholly suspended sentence for the manslaughter of her male friend who had used violence against her after consuming drugs and alcohol. The woman had also consumed alcohol at the time of the offence. The victim had used violence against the offender and the cause of death was a beating using a blunt instrument.
- One was suffering from an intellectual disability and was sentenced to a community based order.
- Two were aged 14 and 16 years and were sentenced to an adjourned undertaking with conviction for the manslaughter of the step-father of one of the offenders. The step-father had a prior history of domestic violence and had initiated the use of violence against the young women. He had consumed both alcohol and drugs at the time of the killing and had a prior criminal history for 'other' offences. The cause of death was a stab wound with a knife.
- One was 68 years of age and was sentenced to an adjourned undertaking with conviction for the manslaughter of her spouse. The victim was 68 years old and had consumed alcohol at the time of the offence. The cause of death was a beating, using a blunt instrument. The victim had not used violence against the offender, but there was a history of domestic violence.
- None had a prior criminal history.

Unlike the case for murder where every woman with a mental condition avoided prison, one woman found guilty of manslaughter and suffering from a mental condition was sentenced to 7 years' imprisonment, which is comparable to the average length of imprisonment imposed for manslaughter generally (6 years and 11 months).

Three of the 16 women sentenced for manslaughter were responding to the use of violence by the victim. Only two of these women avoided prison (the two young women identified above who were both sentenced to an adjourned undertaking with conviction). The one woman who did not avoid prison had consumed alcohol at the time of the incident and had a history of domestic violence. She was sentenced to 4 years' imprisonment – the third shortest imprisonment term imposed for manslaughter.

No woman sentenced for manslaughter successfully raised the defence of provocation. Four of the 16 women sentenced for manslaughter killed a partner or father with a prior history of domestic violence and two of these women were not sentenced to a term of imprisonment.

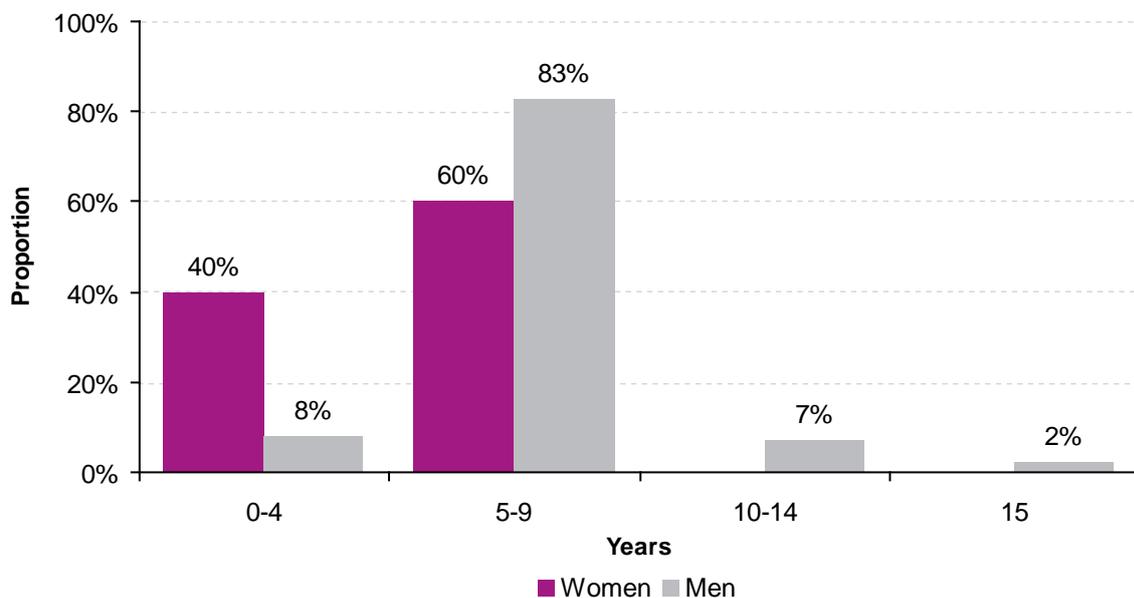
Of the 90 men sentenced for manslaughter, 10 successfully raised the defence of provocation and one male offender was not sentenced to prison (sentenced to a wholly suspended sentence). Overall, three out of the 90 men sentenced for manslaughter were not imprisoned (3 per cent) and of these:

- none had a history of domestic violence;
- none had a prior criminal history; and
- one successfully raised the defence of provocation.

4.2.1 Sentencing men and women to imprisonment for manslaughter

Of the 97 offenders sentenced to imprisonment for manslaughter, 90 per cent were men (n=87) and 10 per cent were women (n=10). Figure 9 shows the distribution of length of imprisonment terms imposed on men and women found guilty of manslaughter.

Figure 9: Length of imprisonment terms for manslaughter, by gender of offender



See Appendix Table 11

Not only were women less likely to be sentenced to imprisonment for manslaughter, but the length of imprisonment terms were shorter than those for men (see Figure 9):

- Imprisonment terms for men ranged from 3 to 15 years, and for women ranged from 3 years to 8 years.
- The average term of imprisonment imposed on men for manslaughter was 7 years and 1 month, and for women it was 5 years and 5 months.

4.3 Sentencing for murder and the influence of age

Table 3 shows the types of sentences imposed for murder according to the age of the offender at the time of the incident. It appears that age has little influence on the type of sentence imposed for murder: two offenders sentenced for murder were eligible for detention in a youth training centre and both were sentenced to imprisonment.⁷⁶

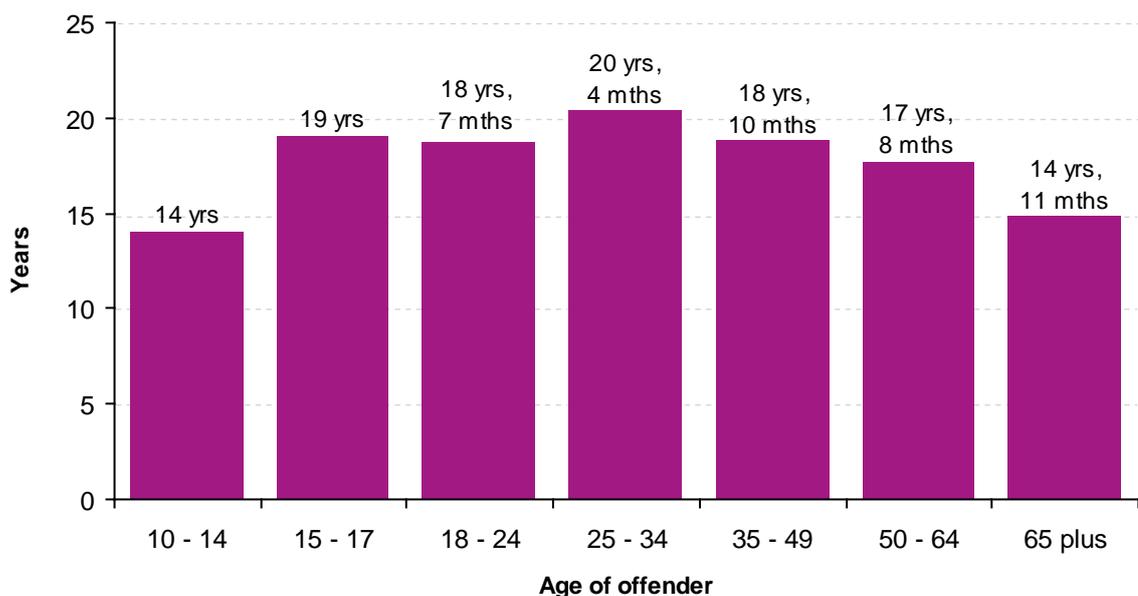
Table 3: Offenders sentenced for murder, by sentence type and age of offender

	Imprisonment	Custodial supervision order	Hospital security order	Total
10 to 14	1			1
15 to 17	2			2
18 to 24	22	4		26
25 to 34	40	3		43
35 to 49	42	3	1	46
50 to 64	13	2		15
65 plus	4			4
Total	124	12	1	137

As noted above, it appears that a sentence of imprisonment is always imposed for murder except where the offender suffered from a mental condition. Therefore, the age of the offender is unlikely to have an influence on the type of sentence imposed for murder. The following analysis of the impact of the age of the offender on sentencing outcomes will therefore focus on the length of imprisonment term imposed.

Figure 10 shows the average term of imprisonment imposed for murder according to the age of the offender (excluding life sentences of imprisonment). The evidence shows that the duration of imprisonment terms for murder appears to be influenced by the age of the offender: shorter prison sentences are imposed on younger offenders and on older offenders aged over 65. The average imprisonment term for murder peaked at 20 years and 4 months for offenders aged 25 to 34 years; imprisonment terms were shortest for the youngest offenders (14 years for offenders aged 10 to 14 years) and for older offenders (14 years and 11 months for offenders aged 65 years and above).

Figure 10: Average length of imprisonment term imposed for murder, by age of offender



See Appendix Table 12

4.4 Sentencing for manslaughter and the influence of age

Table 4 shows the types of sentences imposed for manslaughter according to the age of the offender at the time of the homicide incident. There appears to be some relationship between the offender's age and the type of sentence imposed for manslaughter:

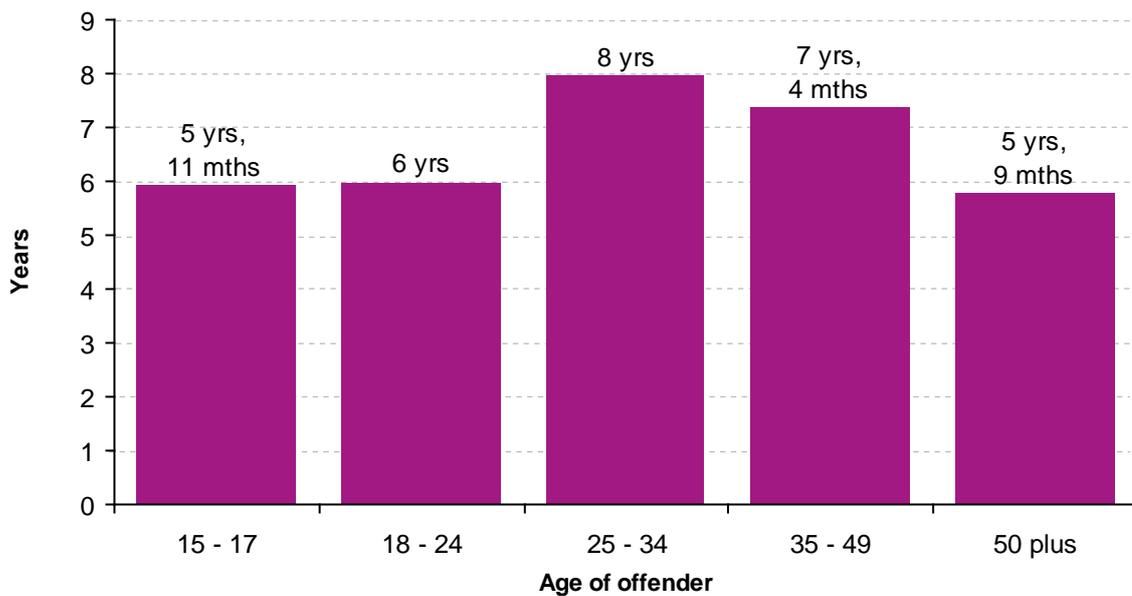
- Only one offender aged over 65 years was sentenced to imprisonment; the remaining two received an adjourned undertaking with conviction and a wholly suspended sentence of imprisonment.
- Of the 15 offenders aged less than 18 years, three (20 per cent) avoided immediate imprisonment and were sentenced to adjourned undertakings with conviction or detention in a youth training centre.

Table 4: Offenders sentenced for manslaughter, by sentence type and age of offender

	Imprisonment	Youth training centre	Wholly suspended sentence	Community based order	Adjourned undertaking with conviction	Total
10 to 14					1	1
15 to 17	12	1			1	14
18 to 24	23					23
25 to 34	32			1		33
35 to 49	23		2			25
50 to 64	6		1			7
65 plus	1		1		1	3
Total	97	1	4	1	3	106

Figure 11 shows the average length of imprisonment terms imposed for manslaughter by the age of the offender. The duration of prison terms handed down for manslaughter appears to be influenced by the age of the offender: shorter prison sentences were imposed on young offenders and on older offenders aged over 50. The average imprisonment term for manslaughter peaked at 8 years for offenders aged 25 to 34 years; imprisonment terms were shortest for young offenders (5 years and 11 months for offenders aged 15 to 17 years) and older offenders (5 years and 9 months for offenders aged 50 years and above).⁷⁷

Figure 11: Average length of imprisonment term imposed for manslaughter, by age of offender



See Appendix Table 13

4.5 Summary

In summary, sentencing outcomes for homicide vary according to the age and gender of the offender.

For **murder**:

- The type of sentence imposed varied according to the gender and mental condition of the offender: offenders with mental health issues – and in particular women with mental health issues – were less likely to be sentenced to imprisonment and more likely to be sentenced to an order providing treatment for their condition (including custodial supervision and hospital security orders).
- The duration of prison terms varied according to the gender of the offender, with women attracting shorter prison terms on average.
- Sentence type did not vary according to the age of the offender, however, the duration of prison terms did (sentence lengths were shorter for older and younger offenders).

For **manslaughter**:

- Sentencing outcomes varied according to the gender of the offender: women were less likely to be sentenced to imprisonment and – where imprisonment was imposed – prison terms were on average shorter for women.
- Sentencing outcomes varied according to the age of the offender: adjourned undertakings were only handed down to young and older offenders and – where imprisonment was imposed – sentence lengths were shorter for these groups.

The difference in sentence types and lengths imposed on men and women found guilty of homicide is likely to reflect the different circumstances in which men and women commit homicide: women are far more likely to kill in the context of responding to violence from their male partners, while men are more likely to kill in the context of jealousy, possessiveness or control. In the following sections of this report, further analysis of the characteristics of homicide incidents, offenders and victims is undertaken to help inform these differences in sentencing patterns.

5. Relationship between victim and offender

The VLRC specifically recommended that the Sentencing Advisory Council monitor sentencing trends in cases of family violence. The following section presents analyses of sentencing outcomes in such cases by examining the relationship between homicide victims and offenders, with particular emphasis on how the type and length of sentence imposed for homicide varies according to this relationship. A full list of relationship types and classifications is provided in Table 14 in the Appendix.

Figure 12 shows the distribution of relationship types between homicide offenders and the *primary victim*, by whether the offender was sentenced for murder or manslaughter. The relationship between the offender and the primary victim is known for 236 out of the 243 homicide offenders (97 per cent).

The most prevalent type of relationship between homicide offenders and victims was a **friend or acquaintance** (39 per cent). Offenders who killed a friend or acquaintance were more commonly sentenced for murder as opposed to manslaughter.

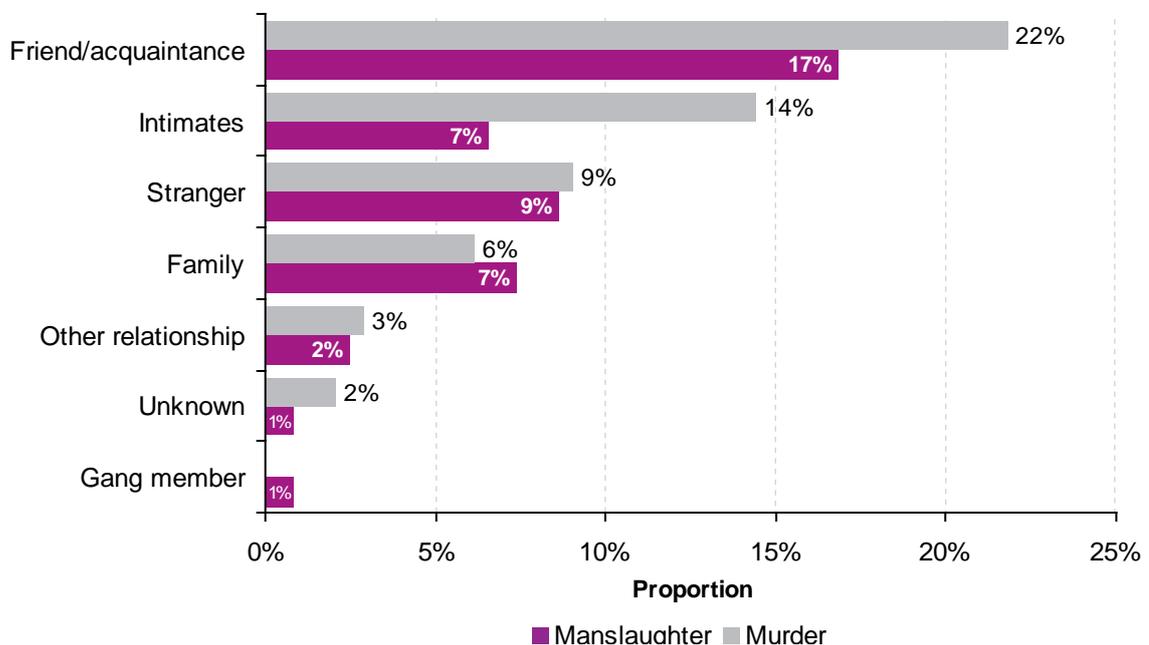
One in five homicide offenders was the **intimate partner** of the victim (21 per cent) and most of these offenders were sentenced for murder as opposed to manslaughter.

18 per cent of homicide offenders were **strangers** to their victim and these homicides were equally split between murder and manslaughter.

13 per cent of homicide offenders were **family members** of their victim; again, these homicides were almost equally split between murder and manslaughter.

A small proportion involved gang members, 'other' relationships⁷⁸ or unknown relationships.

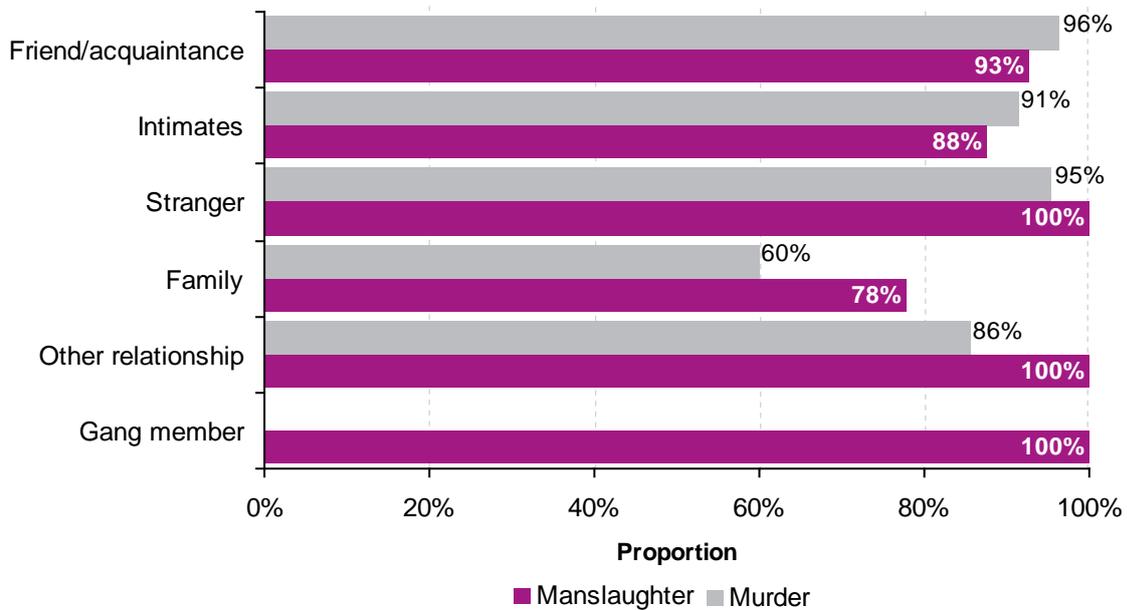
Figure 12: Relationship between homicide victim and offender, by type of homicide



See Appendix Table 15

Figure 13 shows the proportion of homicide offenders sentenced to imprisonment, according to the relationship between the victim and offender and the type of homicide. Overall, offenders sentenced for the *manslaughter of a stranger or gang member* were most likely to be sentenced to imprisonment (100 per cent) and offenders sentenced for the *murder of a family member* were least likely to be sentenced to imprisonment (60 per cent). In fact, offenders who killed strangers or family members were more likely to be sentenced to imprisonment if convicted of manslaughter rather than murder.

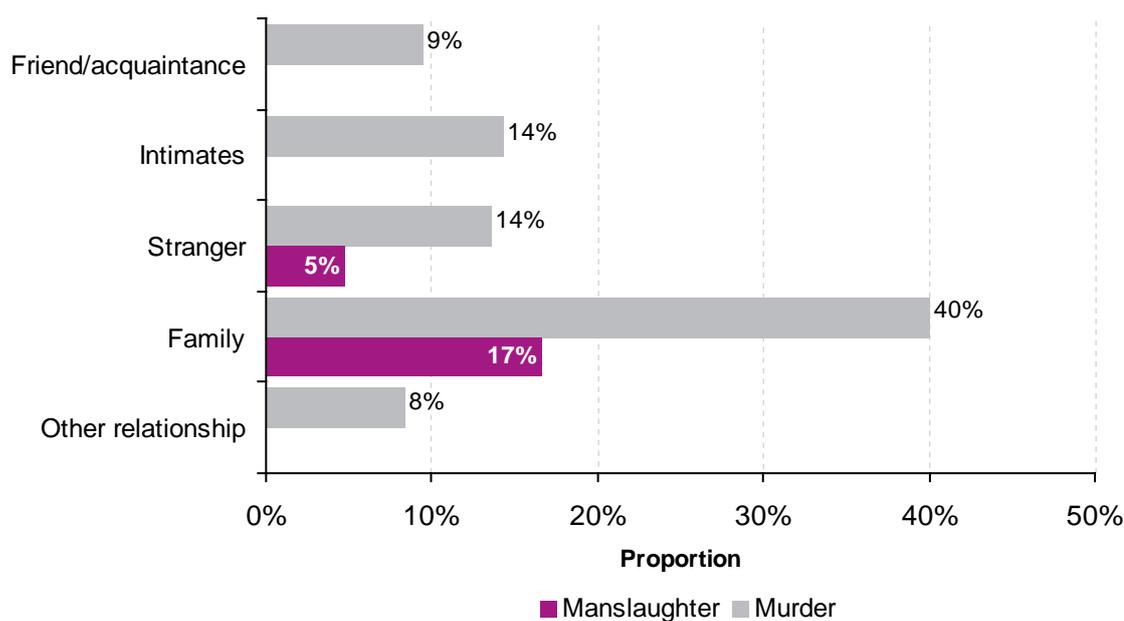
Figure 13: Proportion of homicide offenders sentenced to imprisonment, by type of homicide and relationship between victim and offender



See Appendix Table 16

It is important to remember that any difference in the type and length of sentence imposed for homicide according to the type of relationship between the victim and offender is likely to reflect the different circumstances in which offenders kill and differences in the characteristics of the incident, offender and victim. For example, offenders sentenced for the murder of a family member were least likely to be sentenced to imprisonment and this may be because these offenders were more likely to suffer from a mental condition. As Figure 14 shows, 40 per cent of offenders sentenced for the murder of a family member suffered from a mental condition and offenders suffering from such conditions were more likely to avoid prison and receive an order providing treatment.

Figure 14: Proportion of offenders sentenced for homicide who suffered from a mental condition, by type of homicide and type of relationship between victim and offender



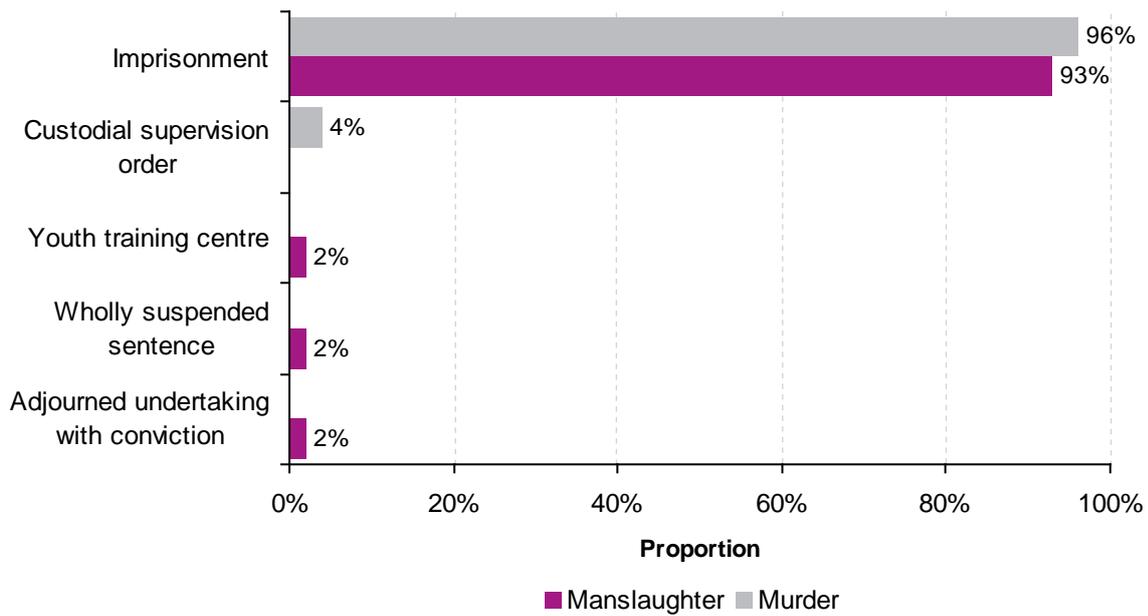
See Appendix Table 17

The following sub sections provide a more detailed examination of sentencing outcomes for homicides between friends/acquaintances, intimate partners, strangers and family members with particular emphasis on the type of homicide, aggravating or mitigating circumstances and the type and length of sentence imposed by the court.

5.1 Friends and acquaintances

A total of 94 of the 243 offenders sentenced for homicide were the friends or acquaintances of the *primary* victim (39 per cent). Of the 94 offenders sentenced for the homicide of a friend or acquaintance, 56 per cent (53 offenders) were sentenced for murder and 44 per cent (41 offenders) were sentenced for manslaughter. Figure 15 shows the distribution of sentence types imposed on homicide offenders who were friends or acquaintances with the *primary* victim, by the type of homicide. As Figure 15 shows, offenders sentenced for the murder of a friend or acquaintance were slightly more likely to be sentenced to imprisonment than those sentenced for manslaughter.

Figure 15: Homicide offenders who were friends or acquaintances with the primary victim, by sentence imposed and type of homicide



See Appendix Table 18

5.1.1 Murder

A total of 51 out of the 53 offenders sentenced for the murder of a friend/acquaintance received a term of imprisonment. Five of the 53 offenders sentenced for the murder of a friend/acquaintance suffered from a mental condition and two of these were not sentenced to prison:

- one offender suffered from an intellectual disability and was sentenced to 18 years' imprisonment;⁷⁹
- one offender suffered from depression and was sentenced to 27 years' imprisonment; and
- three offenders suffered from a mental illness; two were sentenced to a custodial supervision order and one was sentenced to 27 years' imprisonment.

Of the 51 offenders sentenced to imprisonment for the murder of a friend/acquaintance, imprisonment terms ranged from 10 years to life imprisonment, with an average of 19 years and 2 months. The average imprisonment term imposed for the murder of a friend/acquaintance is comparable to that imposed for murder generally (19 years and 1 month).

21 of the 53 offenders sentenced for the murder of a friend or acquaintance had a prior criminal history (40 per cent) and all were sentenced to imprisonment. Offenders sentenced to imprisonment for the murder of a friend or acquaintance who had a prior criminal history attracted longer prison terms:

- Offenders with a prior criminal history were sentenced to an average imprisonment term of 20 years and 9 months.
- Offenders with no prior criminal history were sentenced to an average imprisonment term of 18 years and 4 months.

5.1.2 Manslaughter

38 out of 41 offenders sentenced for the manslaughter of a friend/acquaintance received a term of imprisonment. Only three offenders sentenced for the manslaughter of a friend/acquaintance avoided prison or detention and all were women:

- A 17 year old girl with a prior criminal history for 'other' offences was sentenced to 3 years' detention in a youth training centre for the manslaughter of an 18 year old female acquaintance. Both the offender and victim had consumed alcohol.
- A 16 year old girl with no prior criminal history was sentenced to an adjourned undertaking with conviction for the manslaughter of a 35 year old male acquaintance. The victim had initiated the use of violence against the offender and had consumed alcohol and drugs.
- A 41 year old woman with no prior criminal history was sentenced to a wholly suspended sentence for the manslaughter of her 31 year old male friend. The victim had used violence against the offender, but only in retaliation for the offender's violence. The victim had consumed drugs (marijuana) and alcohol, and the offender had also consumed alcohol.

Of the 38 offenders sentenced to imprisonment for the manslaughter of a friend or acquaintance, the length of imprisonment terms ranged from 3 to 15 years with an average of 6 years and 3 months. Similarly to the results found for murder, imprisonment terms imposed for the manslaughter of a friend/acquaintance are comparable to those imposed for manslaughter generally (6 years and 11 months).

Only one offender sentenced for the manslaughter of a friend/acquaintance successfully raised the defence of provocation. The 18 year old had killed a 19 year old friend with a knife and was sentenced to 8 years' imprisonment, which is longer than the average imposed for the manslaughter of a friend/acquaintance generally (6 years and 3 months).

22 out of the 41 offenders sentenced for the manslaughter of a friend or acquaintance had a prior criminal history and all were sentenced to imprisonment or detention. Offenders sentenced to imprisonment for the manslaughter of a friend or acquaintance who had a prior criminal history attracted more severe sentencing outcomes:

- Offenders with a prior criminal history were sentenced to an average of 6 years and 10 months' imprisonment.
- Offenders with no prior criminal history were sentenced to an average of 5 years and 8 months' imprisonment.

Women sentenced for the manslaughter of friends or acquaintances were less likely to receive a term of imprisonment:

- All 34 male offenders sentenced for the manslaughter of a friend/acquaintance received a term of imprisonment (100 per cent).
- Only four out of seven women sentenced for the manslaughter of a friend/acquaintance received a term of imprisonment (57 per cent).

5.1.3 Summary

Sentencing outcomes for **murder** did not vary according to whether the victim and offender were friends or acquaintances. Sentencing outcomes for the murder of a friend or acquaintance did, however, vary according to the mental condition of the offender and their prior criminal history:

- Offenders sentenced for the murder of a friend/acquaintance were primarily sentenced to immediate imprisonment; the only exception was some offenders suffering from a mental condition who were sentenced to a custodial supervision order.
- Imprisonment terms imposed for the murder of a friend/acquaintance were similar to those imposed for murder generally; however, offenders with no prior criminal history attracted shorter prison terms on average.

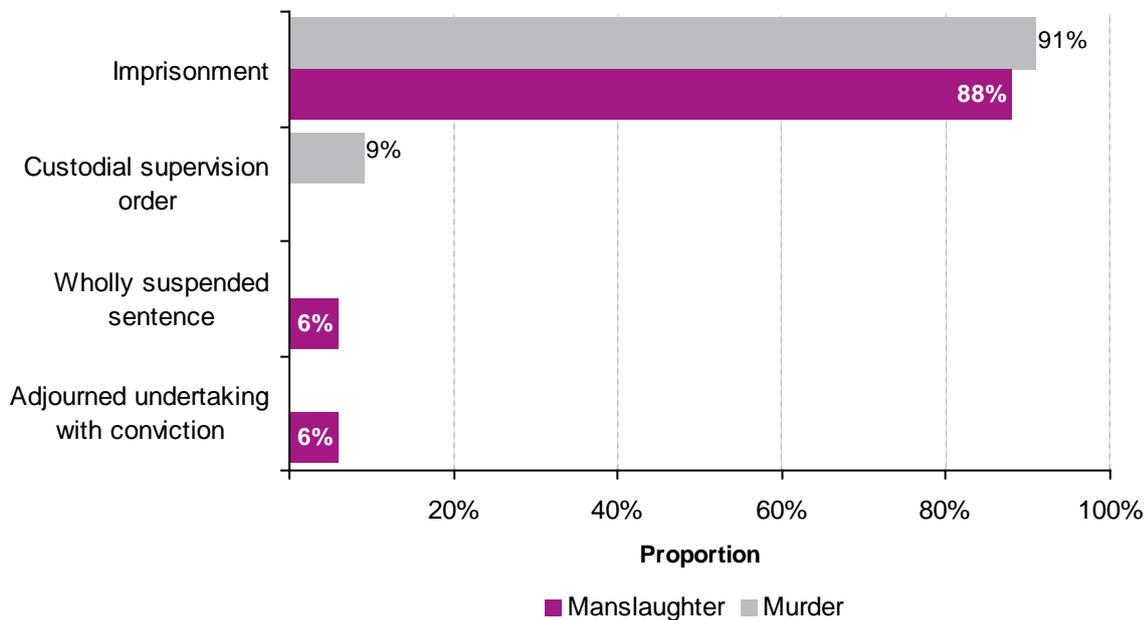
Sentencing outcomes for **manslaughter** did not vary according to whether the victim and offender were friends or acquaintances. Sentencing outcomes for the manslaughter of a friend or acquaintance did, however, vary according to the age, gender and prior criminal history of the offender as well as the use of violence by the victim:

- All male offenders sentenced for the manslaughter of a friend/acquaintance were sentenced to immediate imprisonment, compared to 57 per cent of women. Women who avoided prison for the manslaughter of a friend/acquaintance were either extremely young (aged less than 17 years), subjected to violence by the victim, or both.
- Imprisonment terms imposed for the manslaughter of a friend/acquaintance were similar to those imposed for manslaughter generally; however, offenders with no prior criminal history attracted shorter prison terms on average.

5.2 Intimate partner homicides

A total of 51 of the 243 homicide offenders were in an intimate relationship with their *primary* victim (21 per cent). Intimate partner refers to spouses (whether current, separated or divorced), de-facto, ex de-facto, extra-marital lover/former lover, girlfriend/boyfriend, former girlfriend/boyfriend, homosexual relationship and former homosexual relationship. Of the 51 offenders who killed an intimate partner, 35 were sentenced for murder (69 per cent) and 16 were sentenced for manslaughter (31 per cent). Figure 16 shows the distribution of sentencing outcomes for homicide offenders who were in an intimate relationship with their victim, according to the type of homicide. As Figure 16 shows, the likelihood of an offender being sentenced to imprisonment for the murder of an intimate partner is slightly greater than for offenders sentenced for the manslaughter of an intimate partner.

Figure 16: Homicide offenders who killed an intimate partner, by sentence imposed and type of homicide



See Appendix Table 19

5.2.1 Murder

As shown in Figure 16, 91 per cent of offenders sentenced for the murder of an intimate partner were sentenced to imprisonment (32 out of 35 offenders). Five offenders sentenced for the murder of an intimate partner were suffering from a mental condition and three of these did not receive a prison term; these offenders were sentenced to a custodial supervision order.⁸⁰

Of the 32 offenders sentenced to imprisonment for the murder of an intimate partner, the length of imprisonment terms ranged from 15 years to life imprisonment with an average of 18 years and 10 months. The average imprisonment term imposed for the murder of an intimate partner is slightly shorter than that imposed for murder overall (19 years and 1 month).

5.2.2 Manslaughter

As shown in Figure 16, 88 per cent of offenders sentenced for the manslaughter of an intimate partner received a term of imprisonment (14 out of 16 offenders), compared to 91 per cent of those sentenced for murder. Of the 14 people sentenced to imprisonment for the manslaughter of an intimate partner, length of imprisonment terms ranged from 4 to 11 years with an average of 6 years and 10 months. The average imprisonment term imposed for the manslaughter of an intimate partner is comparable to that imposed for manslaughter generally (6 years and 11 months).

Two offenders sentenced for the manslaughter of an intimate partner did not receive a prison term. Both were older offenders with no prior criminal history:

- A wholly suspended sentence was imposed on a 76 year old man who killed his 78 year old wife following the consumption of illicit drugs (drug type unknown). There was no recorded history of domestic violence and the man attempted suicide following the homicide incident.
- An adjourned undertaking with conviction was imposed on a 68 year old woman who killed her 68 year old husband. There was a history of domestic violence, but the victim had not used violence against the offender during the incident. The victim had consumed alcohol.

The offender's age does not appear to be the sole factor that influences whether an offender will avoid prison for the manslaughter of an intimate partner. There were three offenders aged over 68 years who were sentenced for the manslaughter of an intimate partner and only two avoided imprisonment, with an 82 year old man sentenced to 6 years' imprisonment for the manslaughter of his intimate partner.

Four offenders sentenced for the manslaughter of an intimate partner successfully raised the defence of provocation:

- An 83 year old man stabbed his wife during a domestic argument and was sentenced to 6 years' imprisonment.
- A 55 year old man killed his wife with a stick during an argument in 1981 and was sentenced in 2002 to 7 years' imprisonment.
- A 34 year old man bludgeoned his wife with a hammer when she was trying to end their marriage to be with another man. He was sentenced to 8 years' imprisonment.
- A 43 year old man bludgeoned and then strangled his estranged wife and was sentenced to 11 years' imprisonment.

5.2.3 Use of violence by the victim against the offender(s)

In this section, information is presented about whether the victim used violence against the offender at the time of the homicide incident (also referred to as victim-precipitated homicide). Where possible, a distinction is made between victims who initiated the use of violence against the offender and those victims who used violence in retaliation for the offender's violent behaviour. This information relates to the use of violence at the time of the homicide incident itself and does not refer to any prior history of violent behaviour by either the victim or offender.

Of the 51 offenders sentenced for an intimate partner homicide, four (8 per cent) had been subjected to violence by the victim at the time of the homicide. Two were sentenced for murder and two for manslaughter.

The use of violence against the offender does not appear to mitigate the type of sentence imposed for murder or manslaughter: all four homicide offenders subjected to violence by the victim at the time of the homicide were sentenced to imprisonment. However, the length of the imprisonment term imposed does appear to be influenced by whether the victim initiated the violence or responded to the offender's violent behaviour for manslaughter but not for murder:

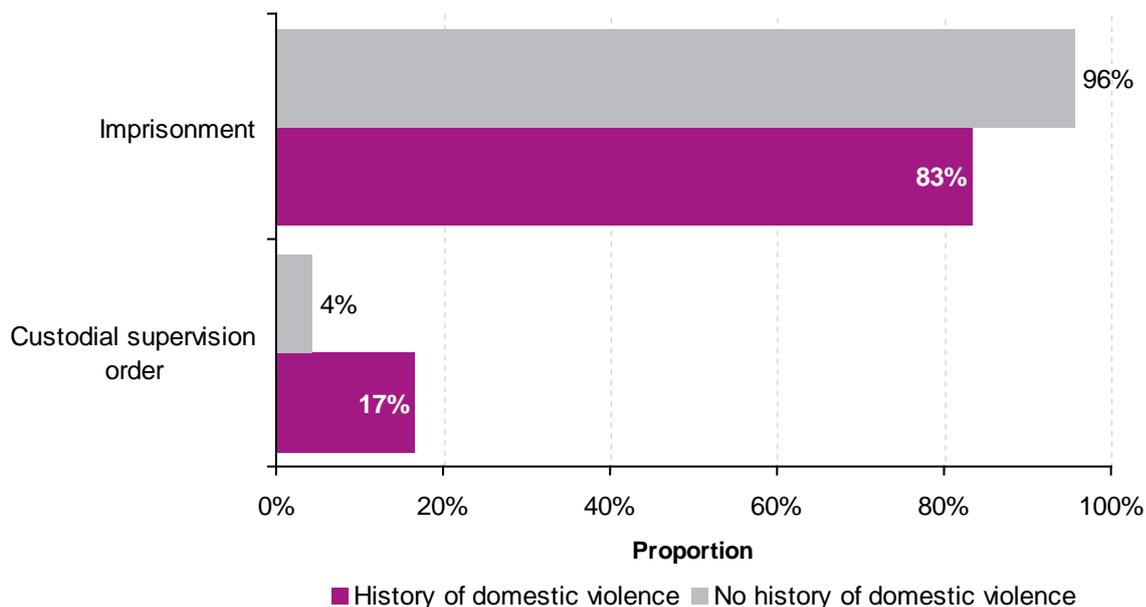
- A four year sentence of imprisonment – the shortest imposed for homicide cases examined in this report – was imposed on an offender for the manslaughter of a victim who had initiated the use of violence against the offender at the time of the offence. The offender was eligible for parole after 1 year and 4 months – again the shortest non-parole period imposed for homicide cases examined here.
- Two offenders sentenced for the murder of a victim who used violence in response to the offender's violent behaviour were sentenced to 17 and 20 years' imprisonment. This is comparable to the average imprisonment term imposed for murder generally.

5.2.4 Sentencing offenders for murder where there is a history of domestic violence

The VLRC recommended that the Sentencing Advisory Council monitor sentencing trends in cases where the offender had previously been subjected to family violence and in those where the offender had previously subjected the deceased to violence. The available data only allow analysis of incidents where either the victim or the offender had a history of domestic violence; they do not distinguish whether the offender was the perpetrator or the victim during this history. The following sections therefore examine sentencing outcomes for murder and manslaughter cases where there is a history of domestic violence on the part of either the victim or the offender, without differentiating who was the perpetrator and who the victim.

Of the 35 offenders sentenced for the **murder** of an intimate partner, 34 per cent (12 offenders) had a history of domestic violence as either perpetrators or victims.⁸¹ Figure 17 shows the distribution of sentence types imposed for the murder of an intimate partner, by whether there was a history of domestic violence in the relationship.

Figure 17: Offenders sentenced for the murder of an intimate partner, by sentence imposed and whether there was a history of domestic violence



See Appendix Table 20

Offenders sentenced for the murder of an intimate partner where there was a history of domestic violence in the relationship were less likely to be sentenced to imprisonment and more likely to receive a custodial supervision order: 17 per cent of these offenders (two out of 12 offenders) received a custodial supervision order compared to 4 per cent of offenders (one out of 23 offenders) sentenced for murder of an intimate partner where there was no history of domestic violence in the relationship.

83 per cent of offenders sentenced for the murder of an intimate partner where there was a history of domestic violence attracted a sentence of imprisonment (10 out of 12 offenders). A comparison of sentence lengths imposed for murder of an intimate partner reveals that offenders with a history of domestic violence attracted more severe sentencing outcomes:

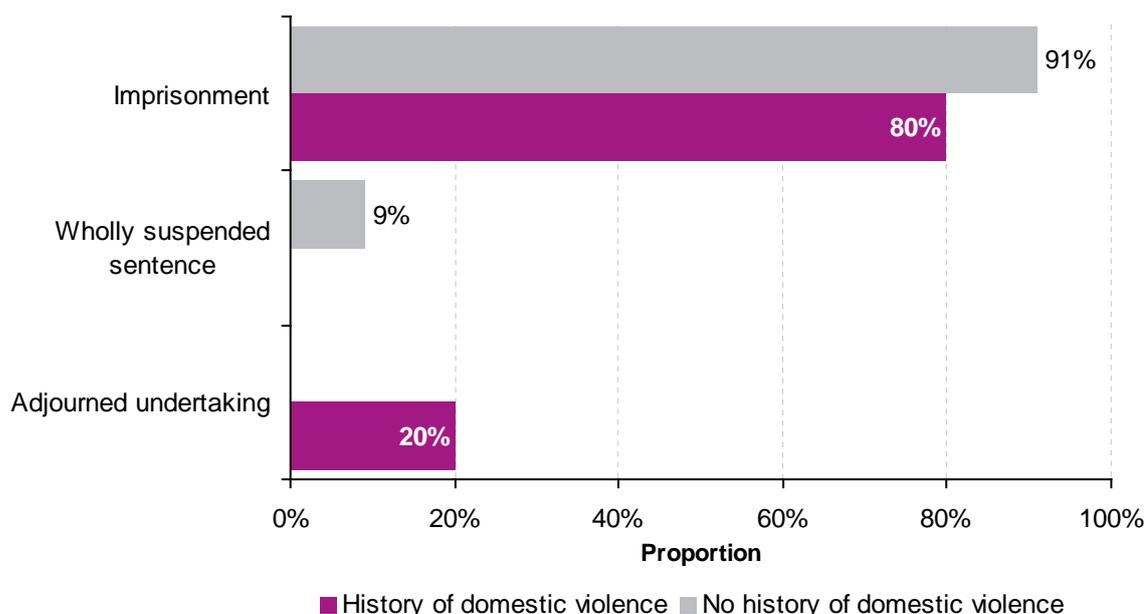
- Where there was a history of domestic violence, the average length of imprisonment term for murder of an intimate partner was 19 years and 8 months.
- Where there was no history of domestic violence, the average imprisonment term for murder of an intimate partner was 18 years and 4 months (excluding life sentences of imprisonment).

No person sentenced for the murder of an intimate partner where there was a history of domestic violence received life imprisonment. There were four offenders sentenced for the murder of an intimate partner who had an intervention order issued against them at the time of the homicide. These offenders were sentenced to an average of 20 years' imprisonment, higher than the average imprisonment term for murder generally (19 years and 1 month).

5.2.5 Sentencing offenders for manslaughter where there is a history of domestic violence

Of the 16 offenders sentenced for the **manslaughter** of an intimate partner, five (31 per cent) had a history of domestic violence as either perpetrators or victims.⁸² Figure 18 shows the distribution of sentence types imposed for the manslaughter of an intimate partner, by whether there was a history of domestic violence in the relationship.

Figure 18: Offenders sentenced for the manslaughter of an intimate partner, by sentence imposed and whether there was a history of domestic violence



See Appendix Table 21

Offenders sentenced for the manslaughter of an intimate partner were less likely to be sentenced to imprisonment if there was a history of domestic violence in the relationship: 80 per cent of these offenders were sentenced to imprisonment (four out of five offenders), compared to 91 per cent of offenders where there was no history of domestic violence in the relationship (10 out of 11 offenders). The one offender sentenced for the manslaughter of an intimate partner who did not receive a prison term was sentenced to an adjourned undertaking with conviction – the least severe sentence type imposed for homicide examined in this report.

A comparison of the length of imprisonment terms imposed for the manslaughter of an intimate partner reveals that offenders received longer prison terms where there was a history of domestic violence in the relationship:

- Where there was a history of domestic violence on the part of either the victim or the offender, the average imprisonment term imposed for the manslaughter of an intimate partner was 7 years and 6 months.
- Where there was no history of domestic violence on the part of either the victim or the offender, the average imprisonment term imposed for the manslaughter of an intimate partner was 6 years and 7 months.

5.2.6 Summary

Sentencing outcomes for **murder** did not vary according to whether the offender and victim were intimate partners. However, the type of sentence imposed for the murder of an intimate partner was influenced by whether there was a history of domestic violence on the part of either the victim or the offender, with offenders being less likely to be sentenced to imprisonment where there was a history of domestic violence. In addition, the duration of prison terms imposed for the murder of an intimate partner varied according to whether there was a history of domestic violence on the part of either the victim or the offender (imprisonment terms were longer where there was a history of domestic violence) but not by whether the victim used violence against the offender at the time of the homicide.

Sentencing outcomes for **manslaughter** did not vary according to whether the offender and victim were intimate partners. However, the type of sentence imposed for the manslaughter of an intimate partner was influenced by the age of the offender, their prior criminal history, whether there was a history of domestic violence on the part of either the victim or the offender and the use of violence by the victim:

- Non-custodial sentences (including wholly suspended sentences and adjourned undertakings) were imposed on older offenders with no prior criminal history.
- Offenders were less likely to be sentenced to imprisonment where there was a history of domestic violence on the part of either the victim or the offender or the victim initiated the use of violence against their intimate partner.

In addition, the duration of prison terms imposed for the manslaughter of an intimate partner varied according to whether there was a history of domestic violence: the average imprisonment term imposed was longer where there was a history of domestic violence in the relationship.

5.3 Strangers

A total of 43 of the 243 offenders (18 per cent) sentenced for homicide were not known to their victim, that is, they were strangers with the *primary* victim. Of these, 21 offenders were sentenced for manslaughter (49 per cent) and 22 were sentenced for murder (51 per cent). All homicide offenders who killed a stranger received a custodial sentence (imprisonment or hospital security order) regardless of whether they were sentenced for the offence of murder or manslaughter (see Table 22 in the Appendix).

Of the 22 offenders sentenced for the **murder** of a stranger:

- 21 were sentenced to imprisonment (three of these offenders were sentenced to life imprisonment) and one was sentenced to a hospital security order.
- 21 were men (96 per cent).

- 12 had a prior criminal history (55 per cent) and the most common type of prior criminal record was for 'other' offences (58 per cent).
- One person was classed as a 'serial killer'.⁸³
- Four were classed as 'contract killers' (18 per cent).
- One incident involved illicit drugs (marijuana).
- Two were sentenced for a gang related murder.
- Five had consumed alcohol (23 per cent).
- One had consumed drugs.
- Three suffered from a mental condition.
- Seven killed in the course of another crime (32 per cent).

Of the 21 offenders sentenced for the **manslaughter** of a stranger:

- All 21 offenders were sentenced to imprisonment.
- 20 were men (95 per cent).
- 14 had a prior criminal history (67 per cent) and the most common type of prior criminal record was for 'other' offences (64 per cent).
- One man successfully raised the defence of provocation and was sentenced to 8 years' imprisonment.
- Five had consumed drugs (24 per cent).
- One incident involved illicit drugs (marijuana).
- Eight had consumed alcohol (38 per cent).
- One suffered from a mental condition.
- Eight killed in the course of another crime (38 per cent).

Figure 19 shows the distribution of the length of imprisonment terms imposed on offenders who killed a stranger according to whether the offender was sentenced for murder or manslaughter.

Figure 19: Homicide offenders who killed a stranger, by type of homicide and length of imprisonment term imposed



See Appendix Table 23

The length of imprisonment terms imposed on offenders guilty of **murdering** a stranger ranged from 14 years to life imprisonment, with an average of 19 years and 11 months. The average length of imprisonment handed down to offenders for the murder of a stranger was slightly longer than that imposed for murder generally (19 years and 1 month). Three offenders were sentenced to life imprisonment for the murder of a stranger (14 per cent) and one was not eligible for parole.

Imprisonment terms imposed on offenders sentenced for the **manslaughter** of a stranger ranged from 5 to 14 years, with an average of 7 years and 5 months. As with murder, the average length of imprisonment term imposed for the manslaughter of a stranger is slightly longer than that imposed for manslaughter generally (6 years and 11 months).

5.3.1 Summary

Sentencing outcomes for **murder** did not vary according to whether the victim and offender were strangers:

- All offenders sentenced for the murder of a stranger received a custodial sentence.
- Offenders sentenced for the murder of a stranger attracted slightly longer imprisonment terms to those sentenced for murder generally.

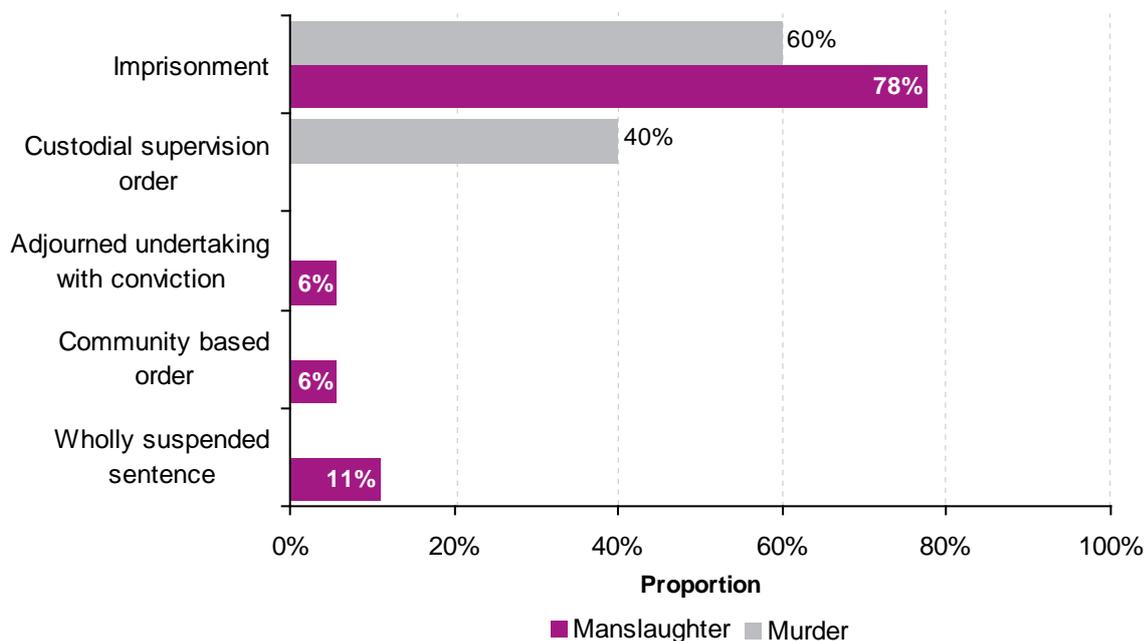
Sentencing outcomes for **manslaughter** did not vary substantially according to whether the victim and offender were strangers:

- All offenders sentenced for the manslaughter of a stranger attracted a sentence of imprisonment.
- Imprisonment terms were slightly longer than those imposed for manslaughter on average.

5.4 Family

Thirty-three out of the 243 offenders sentenced for homicide were family members with their victim. Family relationships include parent-child (whether custodial or not), step parent-child, grandparent-grandchild, sibling, step sibling and other family. Of these, 15 (45 per cent) were sentenced for murder and 18 (55 per cent) were sentenced for manslaughter. Figure 20 shows the types of sentences imposed for the murder and manslaughter of a family member.

Figure 20: Sentence types imposed for the homicide of a family member, by sentence type and type of homicide



See Appendix Table 24

Of the 15 offenders sentenced for the **murder** of a family member, nine were sentenced to imprisonment (60 per cent) and six were sentenced to a custodial supervision order (40 per cent).

Offenders sentenced for the murder of a family member were more likely to suffer from a mental condition and were also more likely to be sentenced to a custodial supervision order reflecting treatment for that condition:

- Six offenders sentenced for the murder of a family member suffered from a mental condition (40 per cent) and all six offenders were sentenced to a custodial supervision order (100 per cent).

Of the nine offenders sentenced to imprisonment for the murder of a family member, the length of imprisonment terms ranged from 13 years to life imprisonment, with an average of 17 years and 8 months – shorter than the average imprisonment term for murder generally (19 years and 1 month).

Two of the 15 offenders sentenced for the murder of a family member had a history of domestic violence. One was sentenced to life imprisonment and the other to 19 years' imprisonment.

Of the 18 offenders sentenced for the **manslaughter** of a family member, 14 were sentenced to imprisonment (78 per cent). The length of imprisonment terms ranged from 5 to 10 years, with an average of 7 years and 1 month – slightly longer than the average imprisonment term for manslaughter generally (6 years and 11 months). This is in contrast to the findings of the analysis above, where imprisonment terms for the murder of a family member were slightly shorter than for murder generally.

Of the four offenders sentenced for the manslaughter of a family member who did not receive a prison term:

- Two received a wholly suspended sentence; one 53 year old man successfully raised the defence of provocation after killing his daughter who had consumed drugs and had used violence against her mother (the offender's wife); the other involved a victim and offender who had both consumed alcohol.
- A 30 year old woman suffering from depression was sentenced to a community based order for the manslaughter (infanticide) of her newborn child.
- A 14 year old girl killed her step father and was sentenced to an adjourned undertaking with conviction. The step father had a history of domestic violence and had initiated the use of violence against the girl and her friend during the incident.

There was a history of domestic violence for two of the offenders sentenced for the manslaughter of a family member. One was sentenced to an adjourned undertaking with conviction, and the other to 6 years' imprisonment.

Of the 18 offenders sentenced for the manslaughter of a family member:

- three successfully raised the defence of provocation and one of these avoided prison;
- three suffered from a mental condition and one of these avoided prison (sentenced to a community based order); and
- three had a prior criminal history and all three were sentenced to a term of imprisonment.

5.4.1 Summary

The type of sentence imposed for **murder** did not vary according to whether the victim and offender were family members. However, the type of sentence imposed for the murder of a family member did vary according to the mental condition of the offender: almost half (40 per cent) of all offenders sentenced for the murder of a family member suffered from a mental condition and all of these offenders were sentenced to an order providing treatment for their condition. The duration of prison terms imposed for murder varied according to whether the victim and offender were family members, with average imprisonment terms being shorter than those imposed for murder generally.

As was the case with murder, the type of sentence imposed for **manslaughter** did not vary according to whether the victim and offender were family members. However, the type of sentence imposed for the manslaughter of a family member did vary according to the mental condition of the offender and the use of violence by the victim. The duration of prison terms imposed for manslaughter varied according to whether the victim and offender were family members, with average imprisonment terms being longer than those imposed for manslaughter generally.

6. Provocation manslaughter

6.1 Legislative changes

The VLRC recommended that the Sentencing Advisory Council monitor sentencing trends in cases where the offender acted under provocation from the deceased. This section examines sentencing outcomes for offenders who raised provocation as a defence (either successfully or unsuccessfully).

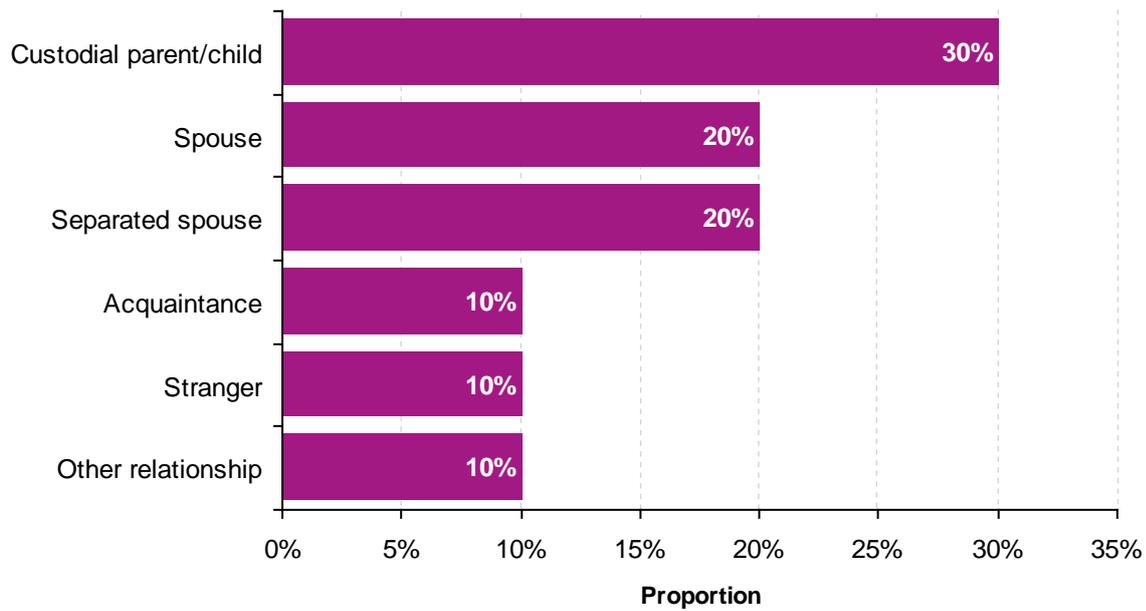
On 5 October 2005, the Attorney-General introduced legislation abolishing provocation as a partial defence to murder in Victoria.⁸⁴ The *Crimes (Homicide) Act 2005* (Vic) ('the 2005 Act') came into force on 23 November 2005. Prior to the 2005 Act the partial defence of provocation had operated to reduce murder to manslaughter if the following criteria were established:

- there was evidence of provocative conduct by the deceased;
- the defendant lost self-control as a result of that provocation; and
- the provocation was such that it was capable of causing an ordinary person to lose self-control and form an intention to cause serious bodily harm or death.⁸⁵

The 2005 Act implemented recommendations from the Victorian Law Reform Commission (VLRC) report, *Defences to Homicide, Final Report* ('the VLRC Homicide report'). The VLRC Homicide report made 56 recommendations, including that the partial defence of provocation be abolished and that the relevant circumstances of an offence, including provocation, be taken into account in the sentencing process.⁸⁶ Recommendation 50 provides that '[i]n sentencing an offender for murder in circumstances where the accused might previously have been convicted of manslaughter on the grounds of provocation, judges should consider the full range of sentencing options'. Recommendation 51 provides that '[w]hen an appropriate case arises, the Court of Appeal should consider indicating the principles which should apply in sentencing an offender who has been subjected to abuse by the deceased and how these should be taken into account in sentencing the offender'.⁸⁷ The VLRC's recommendation that provocation be abolished as a partial defence was motivated by concerns about the inequitable operation of the doctrine as a partial defence to murder.

6.2 Homicide profile

Of the 243 offenders sentenced for homicide examined in this report, 10 (4 per cent) successfully raised the defence of provocation to reduce the charge from murder to manslaughter and all were men (see Table 25 in the Appendix). Figure 21 shows the type of relationship between the victim and the offender where provocation was successfully raised. The most common relationship patterns in provocation manslaughters involved custodial parents and children (30 per cent), followed by separated spouses (20 per cent) and spouses (20 per cent).

Figure 21: Homicide offenders who successfully raised provocation, by their relationship to the victim

See Appendix Table 26

As noted above, a domestic relationship (including spouse and parent/child) was the most common type of relationship between victims and offenders for the 10 offenders who successfully raised the defence of provocation.

Table 5 shows offenders sentenced for homicide according to their relationship to the primary victim and whether provocation was successfully raised. Although 4 per cent of homicide offenders successfully raised the defence of provocation, the defence is more likely to be raised and accepted where the offender killed a family member or intimate partner. In fact, almost one in ten offenders who killed a family member successfully raised this defence thereby reducing a charge of murder to manslaughter.

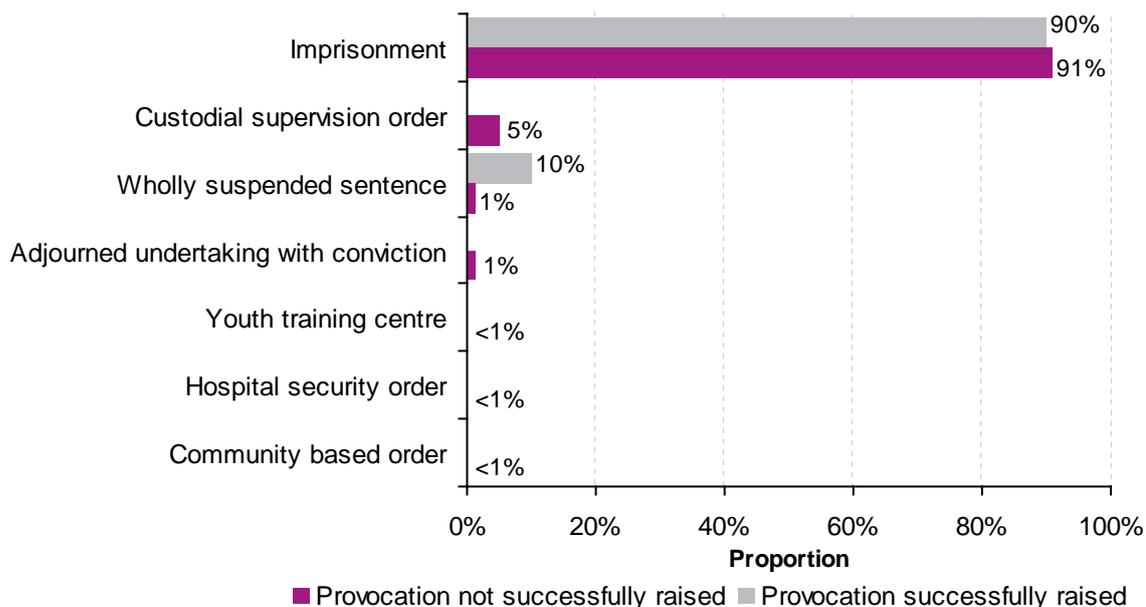
Table 5: Offenders sentenced for homicide according to their relationship with the primary victim and whether provocation was successfully raised

Relationship between offender and primary victim	Total offenders sentenced for homicide	Offenders sentenced who successfully raised provocation	Proportion who successfully raised provocation
Gang member	2	0	0%
Friend/acquaintance	94	1	1%
Stranger	43	1	2%
Other relationship	13	1	8%
Intimates	51	4	8%
Family	33	3	9%
Total	236	10	4%

6.3 Sentencing outcomes

Figure 22 shows the distribution of homicide offenders according to the sentence imposed and whether provocation was successfully raised. As Figure 22 shows, offenders who successfully raised the defence of provocation did not necessarily avoid a prison term. Offenders who were found to have acted under provocation attracted two types of sentencing outcomes: imprisonment (90 per cent or nine offenders) and wholly suspended sentences of imprisonment (10 per cent or one offender).

Figure 22: Homicide offenders by sentencing outcome, by whether provocation was successfully raised



See Appendix Table 28

The single wholly suspended sentence imposed for provocation manslaughter was handed down to a male offender aged 53 years for the manslaughter of his daughter, aged 26 years. There was no history of domestic violence, the offender had no prior criminal history and the victim had not used violence against the offender but was violent towards her mother (the offender's wife). The daughter had used marijuana, but the offender had not consumed any drugs or alcohol. The offender was sentenced to a 3 year term of imprisonment, wholly suspended.

Of the nine offenders who successfully raised provocation and were sentenced to imprisonment, imprisonment terms ranged from 6 to 11 years, with an average length of 7 years and 11 months. This is 14 per cent higher than the average length of imprisonment term for manslaughter generally (6 years and 11 months):

- An 83 year old man stabbed his wife during a domestic argument that arose as part of a long-term, turbulent emotional relationship. He was sentenced to 6 years' imprisonment with a non-parole period of 2 years and 8 months.
- A 27 year old man killed his father with a knife following a long history of physical and verbal abuse by the father. He was sentenced to 6 years' imprisonment with a non-parole period of 3 years.
- A 55 year old man killed his wife with a stick after she attacked him with a knife during an argument in 1981. As nearly 18 years passed before the circumstances of the incident were revealed, he was sentenced in 2002 to 7 years' imprisonment with a non-parole period of 4 years and 6 months.
- An 18 year old stabbed a 19 year old acquaintance after an argument in which the victim threatened the offender with a knife. The offender was sentenced to 8 years' imprisonment with a non-parole period of 5 years.
- A 34 year old man bludgeoned his wife with a hammer when she was trying to end their marriage to be with another man. He was sentenced to 8 years' imprisonment with a non-parole period of 6 years.
- A 43 year old man battered his father to death after an argument and following a long history of being treated badly due to the father's abuse of alcohol. He was sentenced to 8 years' imprisonment with a non-parole period of 6 years.
- A 47 year old man stabbed a stranger after discovering that he was having an affair with the offender's wife. The offender was sentenced to 8 years' imprisonment with a non-parole period of 6 years.

- A 38 year old man strangled a prostitute with whom he had hoped to develop a long-term relationship, after an argument in which she made comments about his sexual and personal characteristics. He was sentenced to 9 years' imprisonment with a non-parole period of 7 years.
- A 43 year old man bludgeoned and then strangled his estranged wife with whom he hoped to re-establish a relationship. He was sentenced to 11 years' imprisonment with a non-parole period of 8 years.

6.4 Summary

In summary, the type of sentence imposed for manslaughter did not vary according to whether the offender successfully raised the defence of provocation. However, the duration of prison terms handed down did vary according to whether provocation was successfully raised: the average length of imprisonment term imposed for provocation manslaughter was longer than that imposed for manslaughter generally.

7. Offenders suffering from a mental condition

The VLRC's final specification in recommendation 53 is that the Sentencing Advisory Council monitor sentencing trends in cases where the offender was suffering from a mental condition at the time of the killing. The following section presents analyses of sentencing outcomes for these offenders.⁸⁸

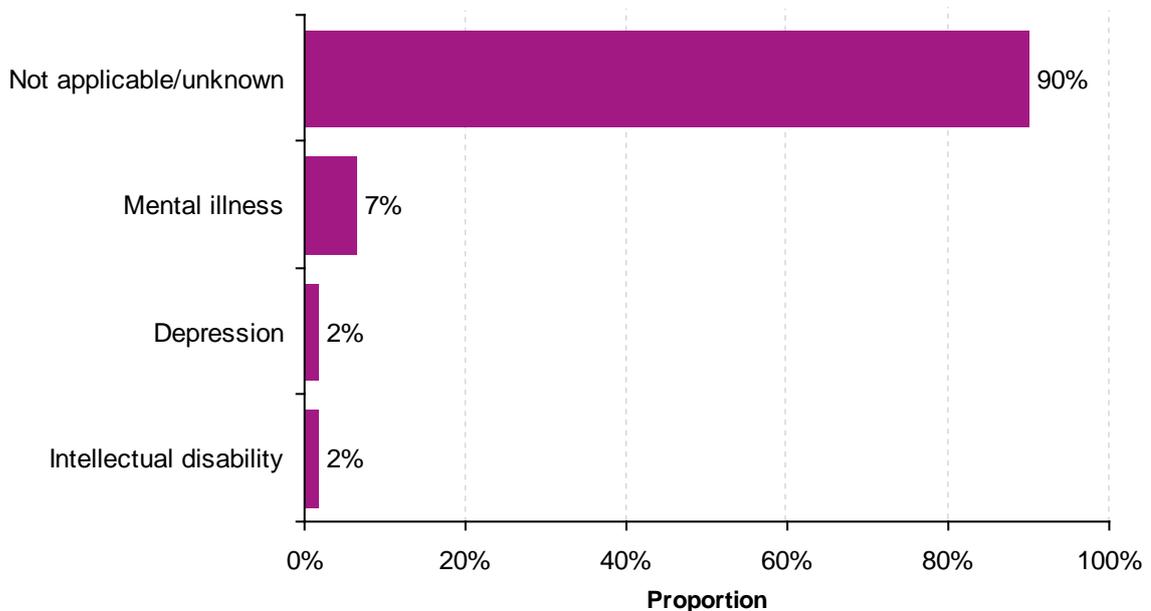
In recent years there has been a growing recognition that imprisonment is an inappropriate sentencing option for offenders with a mental condition because these offenders require treatment that may be unavailable in a prison environment. Victoria has introduced a range of specialised sentencing options for offenders suffering from a mental condition. These orders aim to treat the offender's condition while in custody. It follows that the sentence types imposed on offenders suffering from a mental condition would be different to those imposed on other offenders.

Under s 23 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)*, a person found not guilty by reason of mental impairment can be either released unconditionally or be placed under supervision by way of a custodial supervision order. A custodial supervision order commits the person to custody in either a prison or appropriate treatment facility. No person sentenced for homicide examined in this report was released unconditionally under this act.

Information regarding the mental status of the offender and the identification of the offender as suffering from a mental disorder immediately before or at the time of the incident is contained in police offence reports, which may or may not be based on an official medical diagnosis. The categories used in this analysis are those found in the original police data source and therefore do not represent distinct clinical and diagnostic classifications.

Figure 23 shows the distribution of homicide offenders according to their mental condition. The overwhelming majority of homicide offenders did not suffer from a mental condition (90 per cent or 219 offenders). However, 24 of the 243 homicide offenders did suffer from a mental condition (10 per cent), with the most common classification being 'mental illness' (7 per cent).⁸⁹

Figure 23: Mental condition of homicide offenders, as identified in police offence reports⁹⁰



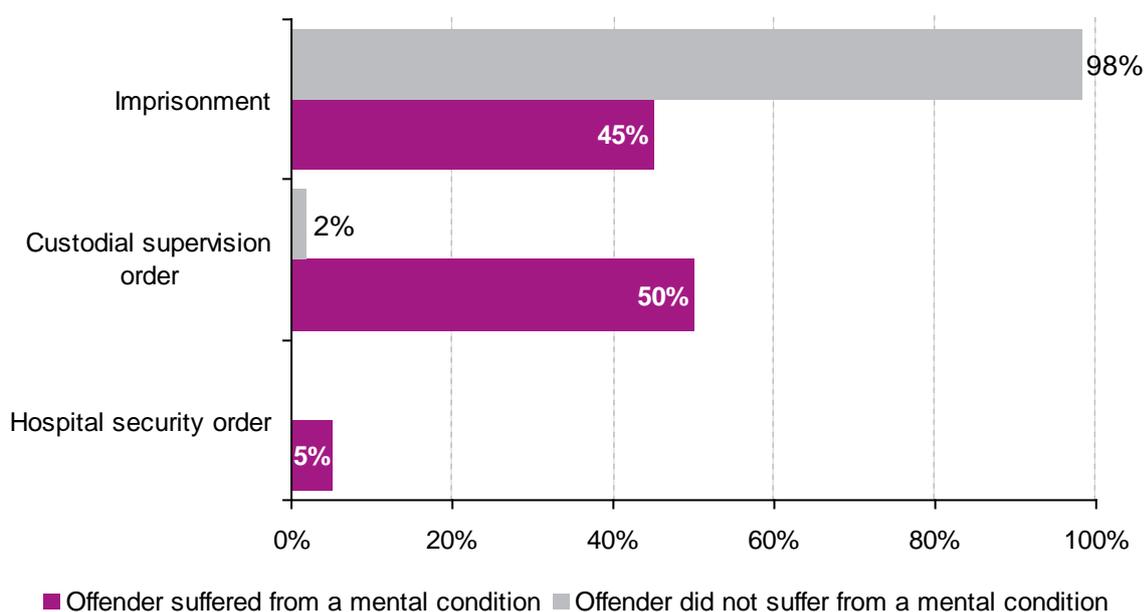
See Appendix Table 29

7.1 Sentencing outcomes

Of the 24 offenders sentenced for homicide and suffering from a mental condition, 20 were sentenced for murder (83 per cent) and four for manslaughter (17 per cent). In this section, we compare sentencing outcomes for offenders suffering from a mental condition according to the type of homicide for which they were sentenced.

Of the 137 offenders sentenced for **murder**, 20 suffered from a mental condition (15 per cent). Figure 24 shows the distribution of sentencing outcomes for murder according to the mental health of the offender. Of the 20 offenders suffering from a mental condition and sentenced for murder, more than half did not receive a prison term but were sentenced to either a custodial supervision order or a hospital security order – both orders providing treatment for their condition (55 per cent or 11 offenders).

Figure 24: Offenders sentenced for murder, by whether the offender suffered from a mental condition and type of sentence imposed



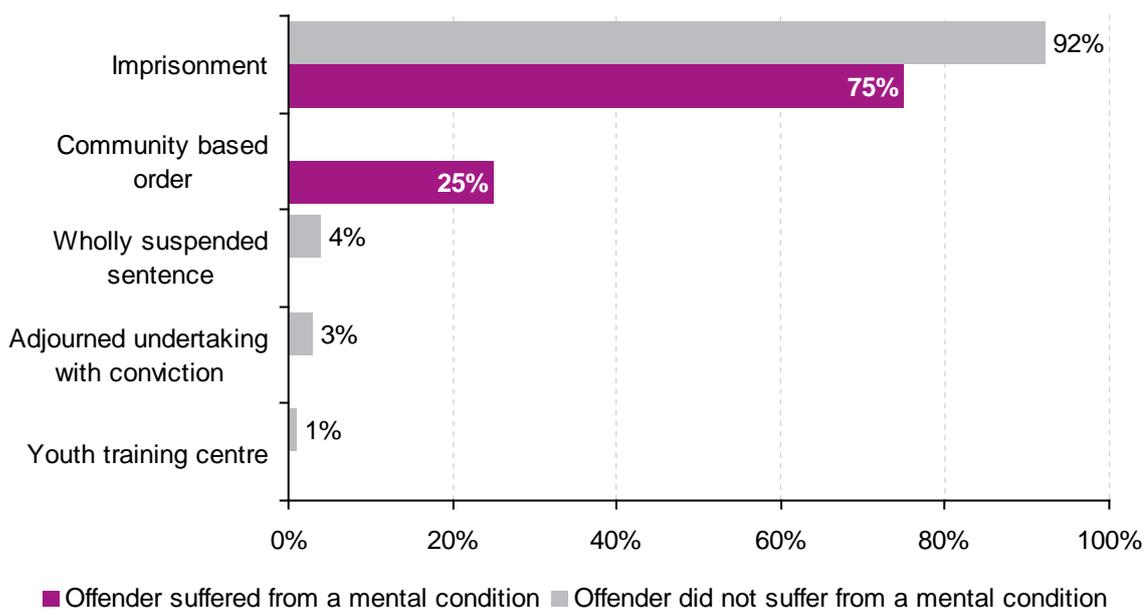
See Appendix Table 30

Imprisonment terms imposed for murder were longer on average where the offender was classified as suffering from a mental condition. Of the nine offenders suffering from a mental condition and sentenced to imprisonment for murder:

- The average imprisonment term imposed was 22 years and 6 months; compared to an average of 18 years and 11 months for offenders who did not suffer from a mental condition.
- 11 per cent were sentenced to life imprisonment, compared to 8 per cent of offenders who did not suffer from a mental condition.

Of the 106 offenders sentenced for **manslaughter**, four were classified as suffering from a mental condition (4 per cent). Figure 25 shows the distribution of sentence types imposed for manslaughter according to the mental condition of the offender.

Figure 25: Offenders sentenced for manslaughter, by mental condition of offender and type of sentence imposed



See Appendix Table 31

Offenders suffering from a mental condition were less likely to receive a prison term when sentenced for manslaughter, compared to offenders who did not suffer from a mental condition:

- 92 per cent of offenders who were not classified as suffering from a mental condition were sentenced to a term of imprisonment.
- 75 per cent of offenders who were classified as suffering from a mental condition were sentenced to a term of imprisonment.

No offenders suffering from a mental condition and sentenced for manslaughter attracted an order requiring treatment for their condition. This contrasts to sentencing trends for murder, where 55 per cent of offenders suffering from a mental condition received an order providing treatment.

However, offenders suffering from a mental condition who were sentenced to imprisonment for manslaughter attracted longer prison terms on average: the average imprisonment term imposed for manslaughter on offenders suffering from a mental condition was 7 years and 11 months, compared to 6 years and 6 months for offenders not suffering from a mental condition.

7.2 Summary

Sentencing outcomes for **murder** varied according to the mental condition of the offender:

- More than half of all offenders sentenced for murder and suffering from a mental condition did not receive a prison term, but instead received an order providing treatment for their condition.
- Offenders suffering from a mental condition who were sentenced to imprisonment for murder on average attracted longer prison terms.

As with murder, both the type and the length of sentence imposed for **manslaughter** varied according to the mental condition of the offender:

- No offenders sentenced for manslaughter and suffering from a mental condition received an order providing treatment for their condition.
- Offenders suffering from a mental condition were less likely to receive a sentence of immediate imprisonment than were those without such a condition.
- Offenders suffering from a mental condition and sentenced to imprisonment for manslaughter attracted longer prison terms on average.

8. Alcohol and drug use by the offender

Alcohol and drug use is one of the factors the court can take into account when sentencing an offender. Table 6 shows the number of offenders sentenced for homicide according to whether they had consumed alcohol, drugs or both at the time of the incident. Of the 243 offenders sentenced for homicide and examined in this report:

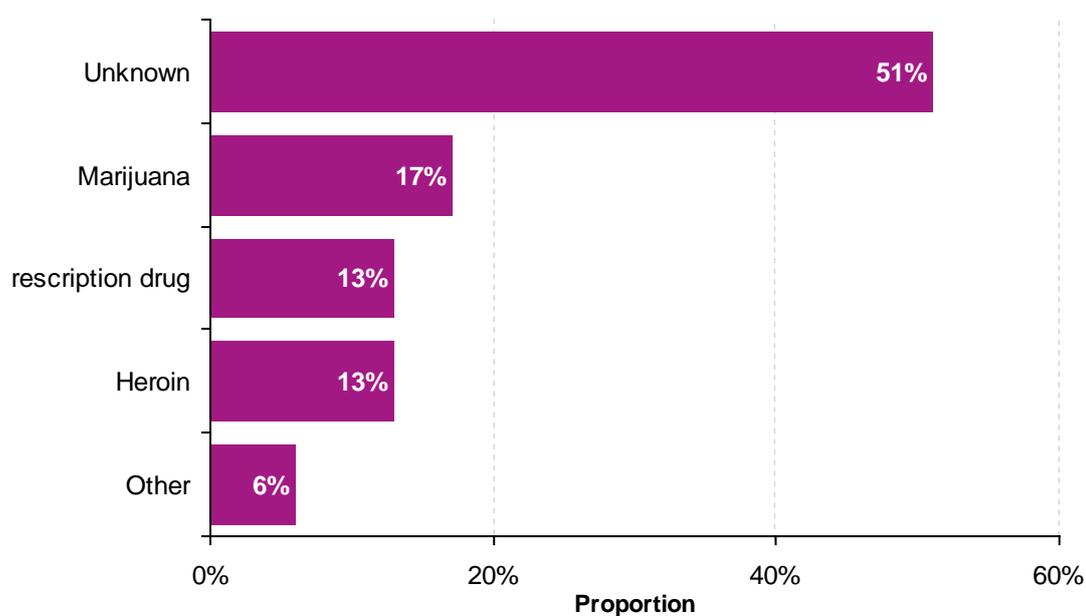
- more than half had not consumed drugs or alcohol during the incident (140 offenders or 58 per cent);
- 58 had consumed alcohol (24 per cent);
- 47 had consumed drugs (19 per cent); and
- 16 had consumed both drugs and alcohol (7 per cent).

Table 6: Homicide offenders, by alcohol and/or drug use

Did offender consume alcohol?	Did offender consume drugs?			Total
	Yes	No	Unknown	
Yes	16 7%	42 17%		58 24%
No	20 8%	140 58%	2 1%	162 67%
Unknown	11 5%		12 5%	23 10%
Total	47 19%	182 75%	1 1%	243 100%

Figure 26 shows the distribution of drug types consumed by the 47 homicide offenders who had used drugs at the time of the incident. For offenders with known drug types, the most common drug type used was marijuana (17 per cent) followed by prescription drugs and heroin (both 13 per cent).⁹¹

Figure 26: Homicide offenders who had consumed drugs, by drug type



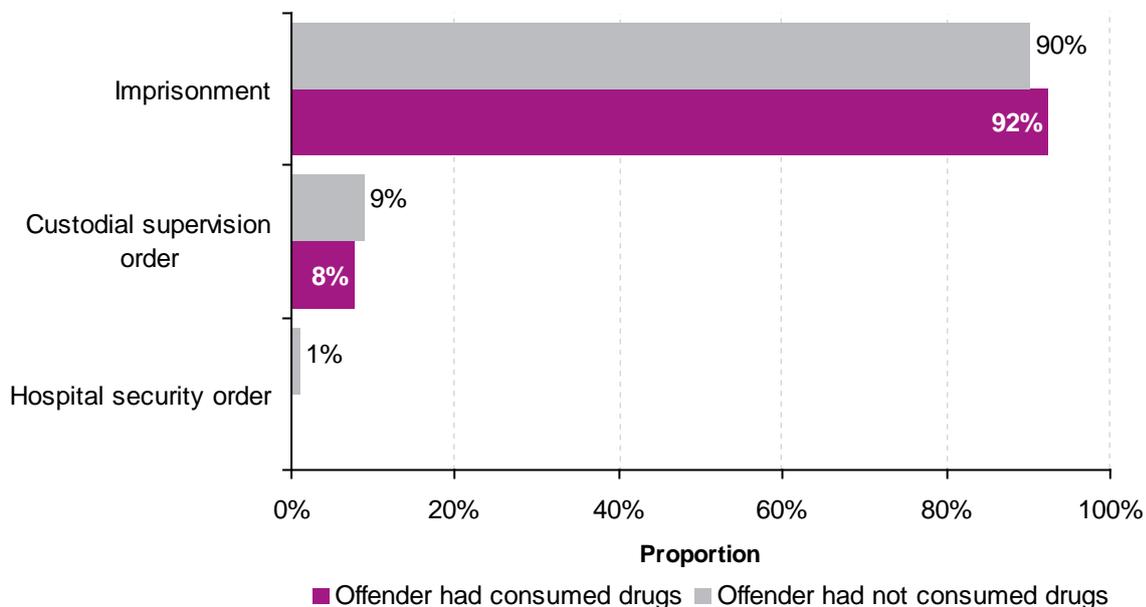
See Appendix Table 32

In the following sections, we examine whether the consumption of drugs and/or alcohol during a homicide incident influenced sentencing outcomes for murder and manslaughter.

8.1 Sentencing offenders who had consumed drugs

Figure 27 shows the distribution of sentence types imposed for **murder** according to whether the offender had consumed drugs. As Figure 27 shows, whether an offender had consumed drugs at the time of the incident had little impact on sentencing outcomes for murder.

Figure 27: Sentencing outcomes for murder, by whether the offender had consumed drugs at the time of the incident



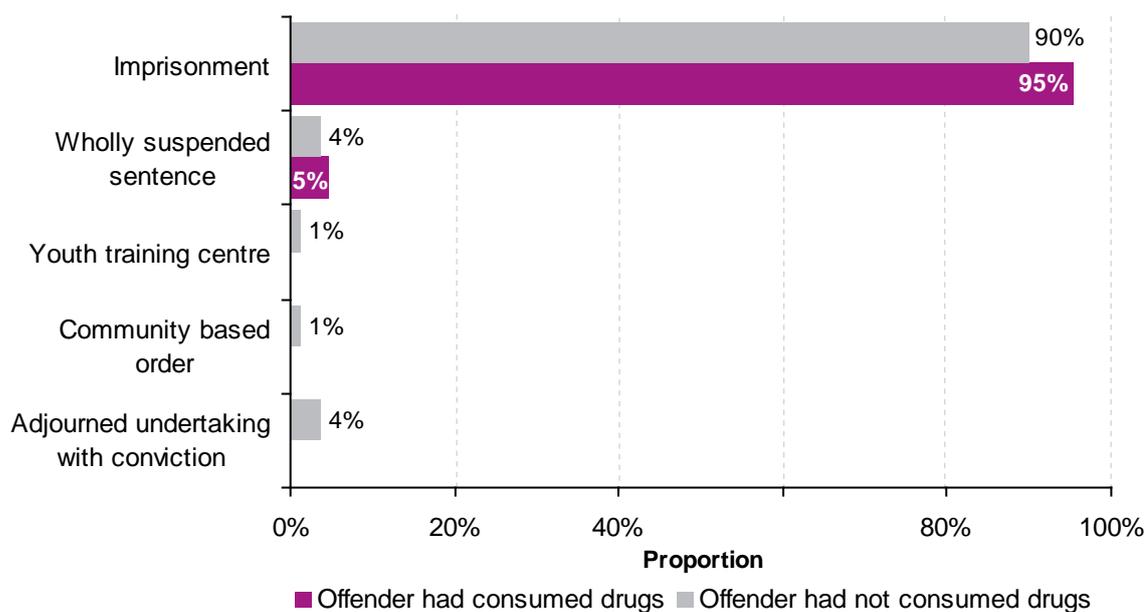
See Appendix Table 33

The use of drugs by the offender also had little influence on the length of imprisonment terms imposed for murder:

- The average length of imprisonment term imposed for murder where the offender had consumed drugs was 19 years, compared to 19 years and 2 months for those who had used drugs.
- 4 per cent of offenders sentenced for murder who had consumed drugs attracted a sentence of life imprisonment, compared to 9 per cent of those who had not used drugs.

Figure 28 shows the distribution of sentence types imposed for **manslaughter** according to whether the offender had consumed drugs. In contrast to the findings for murder, the type of sentence imposed for manslaughter appears to be influenced by whether the offender had consumed drugs: offenders sentenced for manslaughter who had consumed drugs were more likely to be sentenced to a term of immediate imprisonment, while those who had not were the only offenders to receive community based orders or adjourned undertakings with conviction.

Figure 28: Sentence types imposed for manslaughter, by whether the offender had consumed drugs at the time of the incident



See Appendix Table 33

The use of drugs by the offender also appears to influence the length of imprisonment terms imposed for manslaughter:

- The average imprisonment term imposed for manslaughter where the offender had not consumed drugs was 6 years and 10 months.
- The average imprisonment term imposed for manslaughter where the offender had consumed drugs was 7 years and 2 months

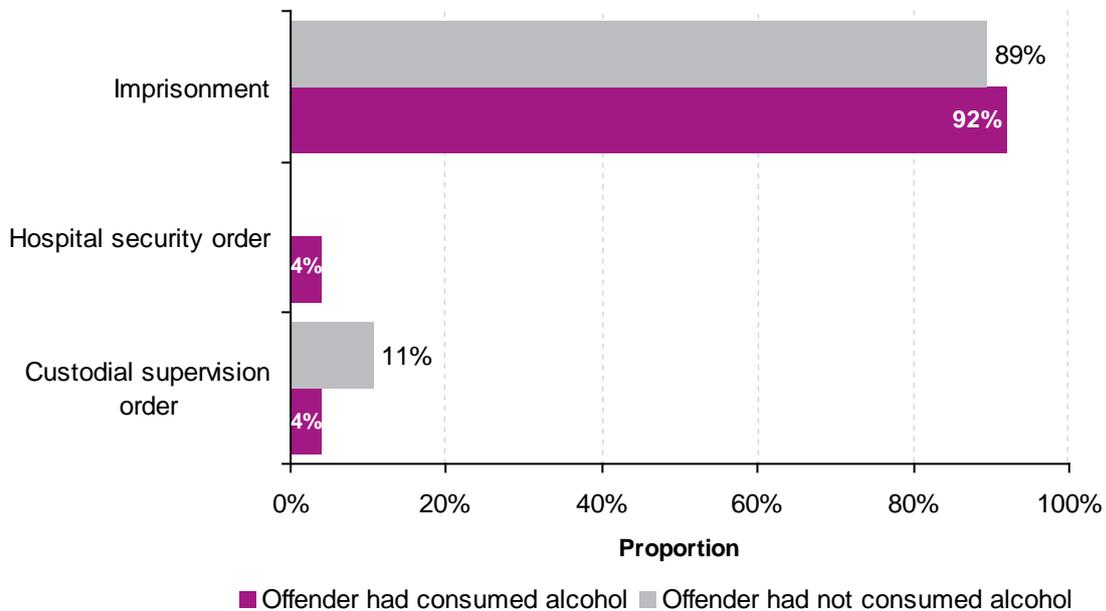
8.1.1 Summary

In summary, sentencing outcomes for **murder** did not vary according to whether the offender had consumed drugs at the time of the incident. For **manslaughter**, however, the type of sentence imposed did vary according to whether the offender had consumed drugs at the time of the incident, with a greater likelihood of receiving a sentence of imprisonment if drugs had been consumed. The duration of prison terms imposed for manslaughter also varied according to whether the offender had consumed drugs at the time of the incident: on average, prison terms imposed for manslaughter were longer where the offender had consumed drugs at the time of the incident.

8.2 Sentencing offenders who had consumed alcohol

Figure 29 shows the distribution of sentence types handed down for **murder**, according to whether the offender had consumed alcohol at the time of the killing. As Figure 29 shows, offenders who had consumed alcohol were only slightly more likely to attract a sentence of imprisonment for murder.

Figure 29: Sentence types imposed for murder, by whether the offender had consumed alcohol at the time of the incident



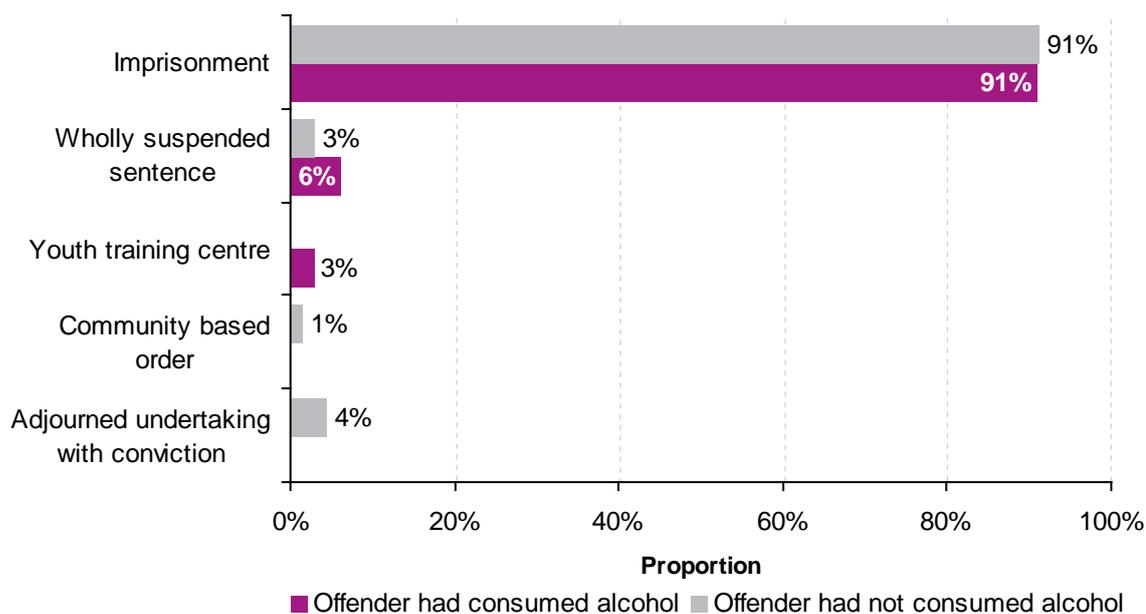
See Appendix Table 34

Offenders who had consumed alcohol and were sentenced to imprisonment for murder attracted slightly shorter imprisonment terms:

- The average imprisonment sentence imposed for murder where the offender had consumed alcohol was 18 years and 3 months; compared to 19 years and 2 months for offenders who had not consumed alcohol.
- 4 per cent of offenders who had consumed alcohol and were sentenced to imprisonment attracted a life sentence of imprisonment, compared to 8 per cent of offenders who had not consumed alcohol.

Figure 30 shows the distribution of sentence types handed down for **manslaughter**, according to whether the offender had consumed alcohol at the time of the killing. As Figure 30 shows, the types of sentencing outcomes were similar regardless of whether the offender had consumed alcohol.

Figure 30: Sentence types imposed for manslaughter, by whether the offender had consumed alcohol at the time of the incident



See Appendix Table 34

As with offenders sentenced for murder, the use of alcohol during the homicide incident appears to have some influence on the duration of imprisonment terms imposed for manslaughter, with offenders who had consumed alcohol attracting slightly shorter imprisonment terms:

- The average imprisonment term imposed for manslaughter where the offender had not consumed alcohol was 7 years.
- The average imprisonment term imposed for manslaughter where the offender had consumed alcohol was 6 years and 5 months.

8.2.1 Summary

In summary, the types of sentencing outcomes for both **murder and manslaughter** did not vary according to whether the offender had consumed alcohol at the time of the incident. For both **murder and manslaughter**, on average, imprisonment terms imposed on offenders who had consumed alcohol were slightly shorter than the average.

8.3 Sentencing offenders who had consumed drugs and alcohol

A total of 16 homicide offenders had consumed both drugs and alcohol at the time of the incident (7 per cent). Of these, seven offenders (44 per cent) were sentenced for murder and nine (56 per cent) for manslaughter. With the exception of one offender suffering from a mental condition and sentenced to a custodial supervision order, all offenders who had consumed drugs and alcohol were sentenced to imprisonment regardless of whether they were guilty of murder or manslaughter.

Of the six offenders sentenced to imprisonment for **murder** who had consumed drugs and alcohol, the length of imprisonment terms ranged from 13 years to life with an average of 17 years and 7 months (slightly shorter than that imposed for murder generally, 19 years and 1 month). All six offenders were eligible for parole.

Of the nine offenders sentenced to imprisonment for **manslaughter** who had consumed drugs and alcohol, the length of imprisonment terms ranged from 5 to 9 years with an average of 6 years and 4 months. All nine offenders were eligible for parole. The average imprisonment term for manslaughter where the offender had consumed drugs and alcohol was slightly shorter than that imposed for manslaughter generally (6 years and 11 months).

8.3.1 Summary

In summary, sentencing outcomes for homicide varied according to whether the offender had consumed both drugs and alcohol at the time of the incident, with all such offenders receiving custodial sentences. Whether a homicide offender had consumed drugs and alcohol appeared to have a greater influence on the duration of prison terms imposed than on the type of sentence handed down for homicide, with slightly shorter imprisonment terms imposed on those who had consumed both drugs and alcohol at the time of the homicide.

9. Weapons

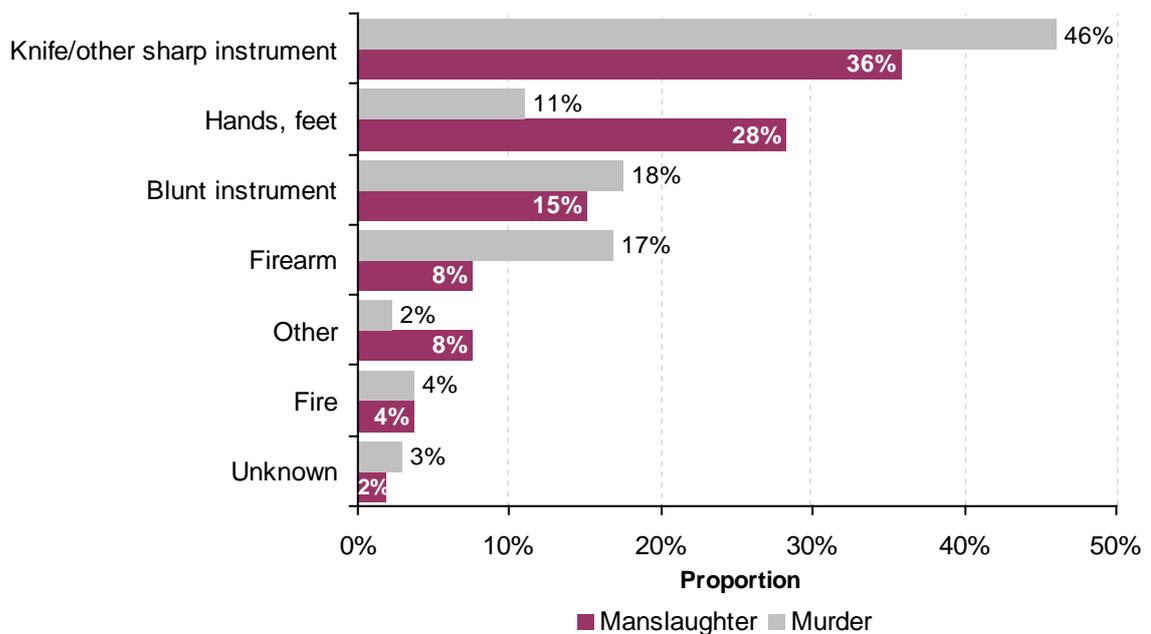
The use of a weapon can be an important factor that the court may take into account when sentencing an offender for homicide. When taking account of the use of a weapon in homicide cases, the court may also consider the type of weapon used to commit the killing.

The overwhelming majority of homicide offenders used a weapon during the incident – of the 243 homicide offenders, 237 (97 per cent) used a weapon to kill the victim(s). The likelihood of a weapon being used in the homicide incident is almost equal for murder and manslaughter:

- Of the 137 offenders sentenced for murder, 133 used a weapon (97 per cent).
- Of the 106 offenders sentenced for manslaughter, 104 used a weapon (98 per cent).

Figure 31 shows the distribution of offenders sentenced for murder and manslaughter according to the type of weapon where a weapon was used.⁹² A knife or other sharp instrument was the most common type of weapon used to commit both murder (46 per cent) and manslaughter (36 per cent). The second most common weapon used to commit a murder was a blunt instrument (18 per cent), whereas for manslaughter it was hands and feet (28 per cent).

Figure 31: Offenders sentenced for homicide, by type of weapon and type of homicide

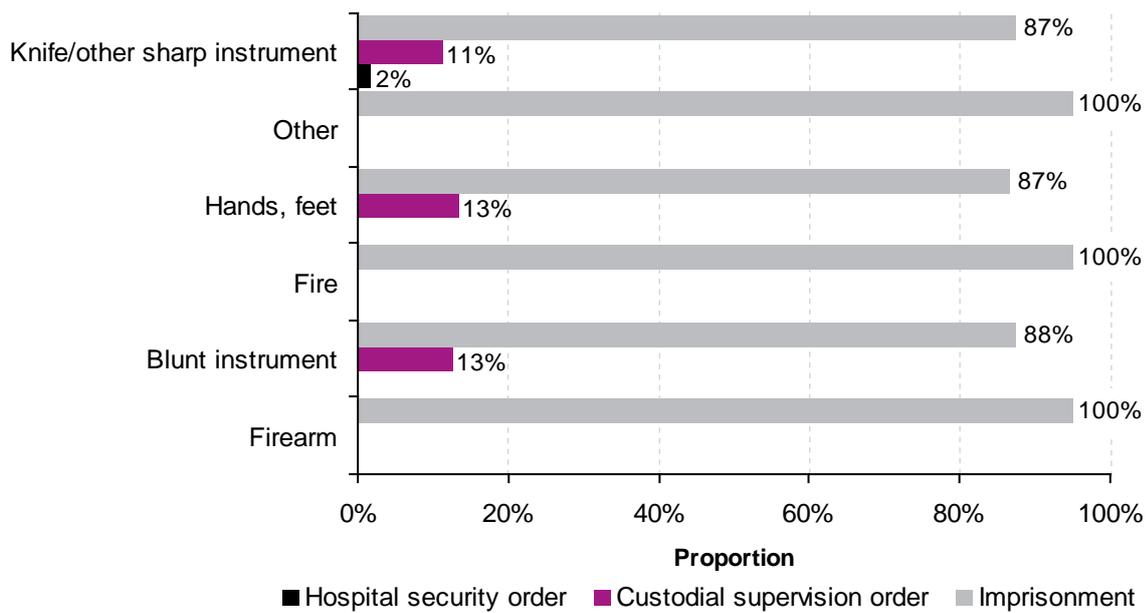


See Appendix Table 35

9.1 Sentencing outcomes

Figure 32 shows the type of sentence imposed for **murder** according to whether a weapon was used and, where a weapon was used, the type of weapon.

Figure 32: Sentence types imposed for murder, by type of weapon used



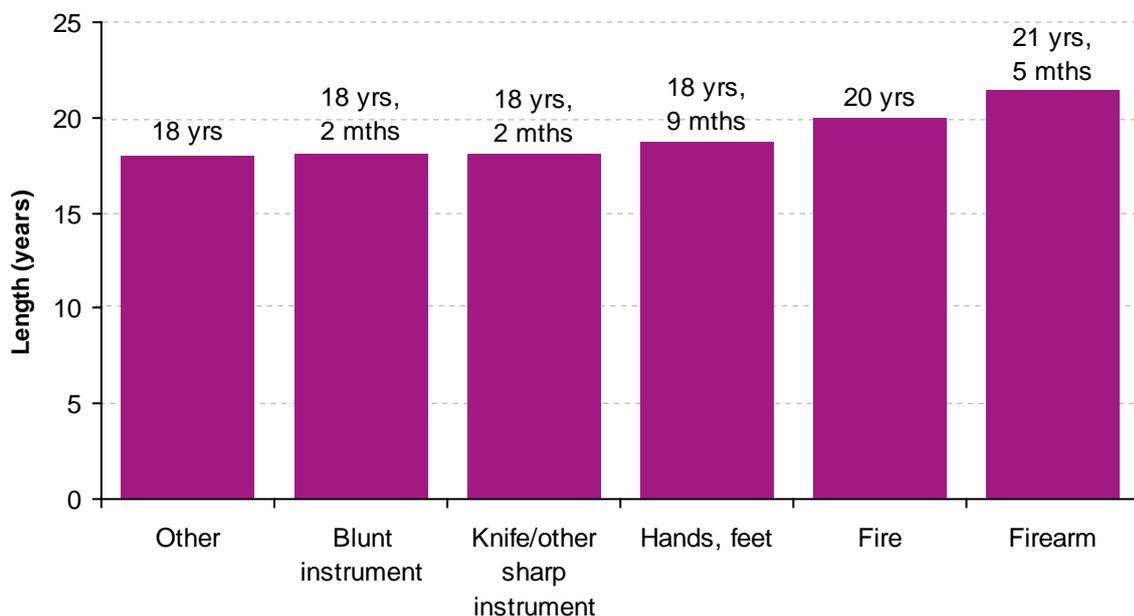
See Appendix Table 36

Figure 32 shows that use of a weapon has no influence on the type of sentence imposed for murder – all offenders sentenced for murder, regardless of whether they used a weapon, were sentenced to some form of custodial order.

As noted above, the most common weapon used to commit a murder was a knife or some other sharp instrument (46 per cent), followed by a blunt instrument (18 per cent) and a firearm (17 per cent). Figure 33 shows the average length of imprisonment sentence imposed for murder by the type of weapon used. The average imprisonment term imposed on offenders sentenced for **murder** varied according to type of weapon used:

- for offenders who used a blunt instrument – 18 years and 2 months; and
- for offenders who used a firearm – 21 years and 5 months.

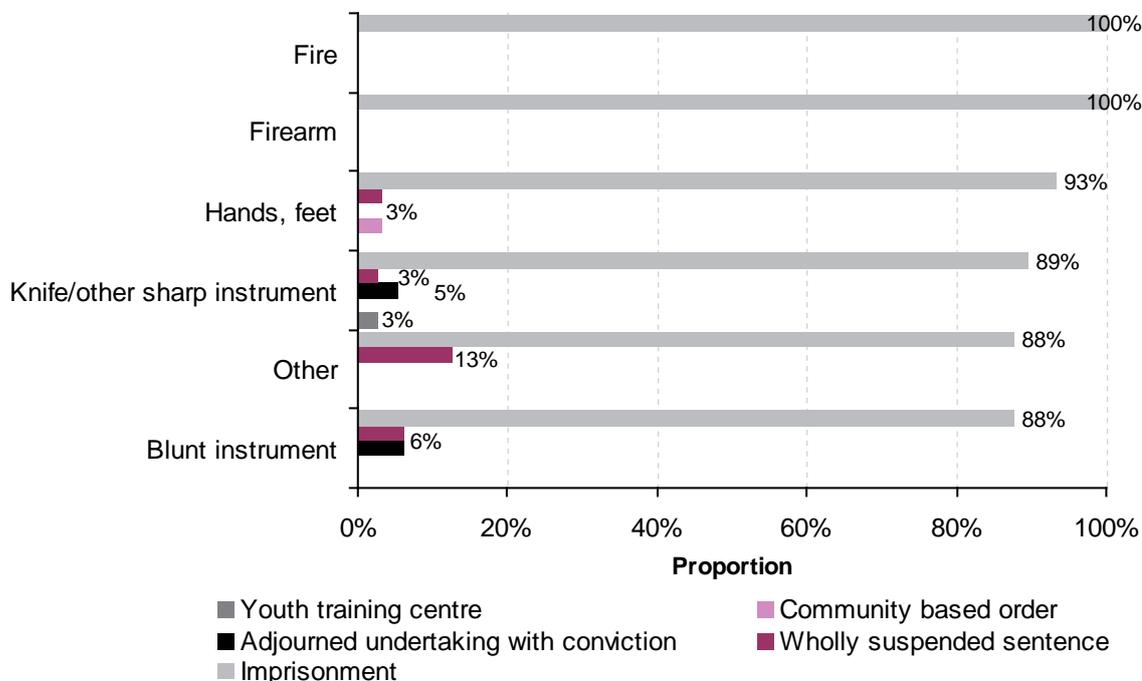
Figure 33: Average length of imprisonment term for murder, by type of weapon used



See Appendix Table 37

As Figure 31 shows, the most common weapon used in **manslaughter** offences was a knife or other sharp instrument (36 per cent) as was the case with murder. This was followed by hands and feet (28 per cent) and blunt instruments (15 per cent); firearms were used in 8 per cent of all manslaughter cases. Figure 34 shows the distribution of sentence types imposed for manslaughter according to the type of weapon used.

Figure 34: Sentence types imposed for manslaughter, by type of weapon used



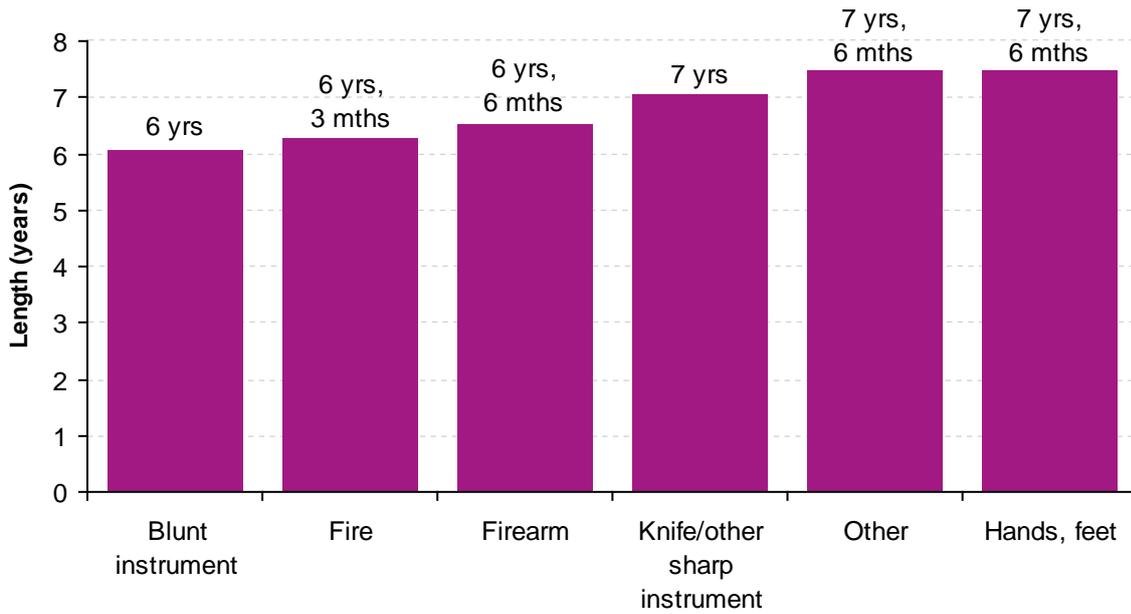
See Appendix Table 38

Figure 34 shows that the type of weapon used appears to influence the type of sentence imposed. For example, eight manslaughter offenders used a firearm and all were sentenced to immediate imprisonment. Only those offenders who used a weapon other than a firearm or fire (in the case of arson) were given a sentence that did not involve immediate imprisonment.

Figure 35 shows the average length of imprisonment sentence imposed for **manslaughter** by the type of weapon used. The average imprisonment term imposed on offenders sentenced for manslaughter varied according to type of weapon used:

- for offenders who used a blunt instrument – 6 years; and
- for offenders who used hands and feet – 7 years and 6 months.

Figure 35: Average length of imprisonment term for manslaughter, by type of weapon used



See Appendix Table 39

9.2 Summary

In summary, the type of sentence imposed for **murder** did not vary according to the weapon used by the offender. However the duration of prison terms imposed for murder did vary according to the type of weapon used, with offenders who used firearms attracting the longest imprisonment terms (21 years and 5 months) – longer than the average for murder generally (19 years and 1 month).

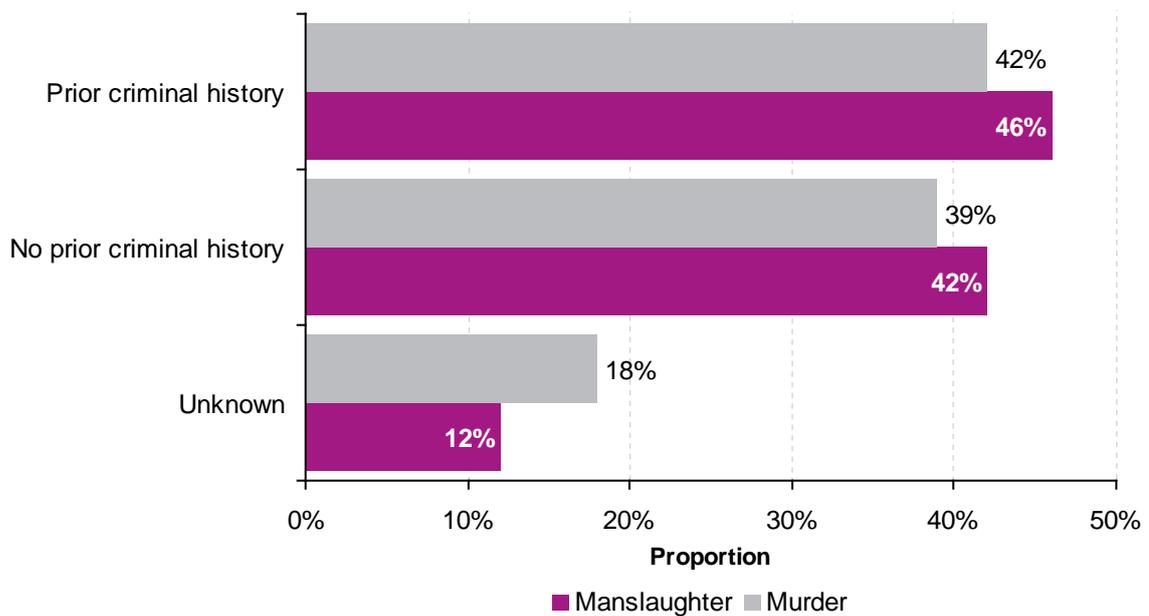
The type of sentence imposed for **manslaughter** did vary according to the type of weapon used by the offender. In addition, the duration of prison terms imposed for manslaughter also varied according to the type of weapon used, with offenders who used a blunt instrument attracting the shortest prison terms and those using hands and feet attracting the longest (7 years and 6 months) – longer than the average for manslaughter generally (6 years and 11 months).

10. Prior criminal history

An offender's prior criminal history is one of the factors that the court can take into account when determining the type and length of sentence to impose for homicide. Arguably, homicide offenders with a prior criminal history – and in particular those with a prior history of offences against the person – will attract harsher sentencing outcomes.

Figure 36 shows the proportion of offenders sentenced for murder and manslaughter who had a prior criminal history. Offenders sentenced for manslaughter were more likely to have a prior criminal record than those sentenced for murder (46 per cent and 42 per cent respectively).

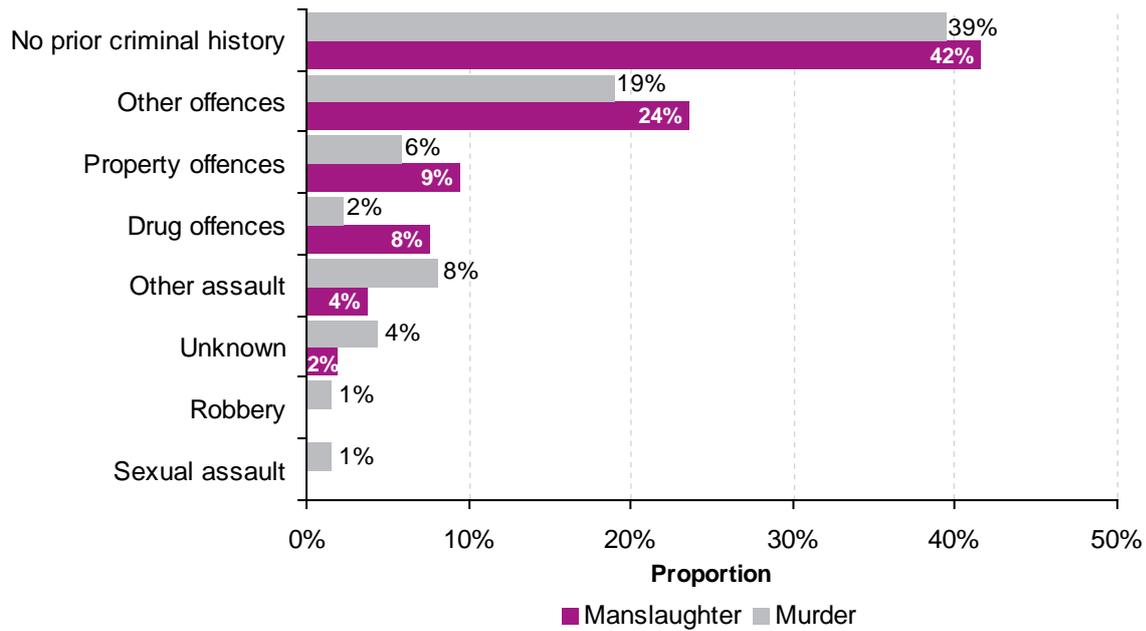
Figure 36: Offenders sentenced for homicide, by whether they had a prior criminal history and type of homicide



See Appendix Table 40

Figure 37 shows the distribution of homicide offenders who had a prior criminal history according to the type of prior criminal history and type of homicide. Where the offender did have a prior criminal history, offenders sentenced for murder and manslaughter were most likely to have a prior criminal record for 'other' offences.⁹³ For manslaughter, the second most common type of prior criminal history was property offences (9 per cent) and for murder was 'other assault' (8 per cent).

Figure 37: Offenders sentenced for homicide, by type of criminal history and type of homicide



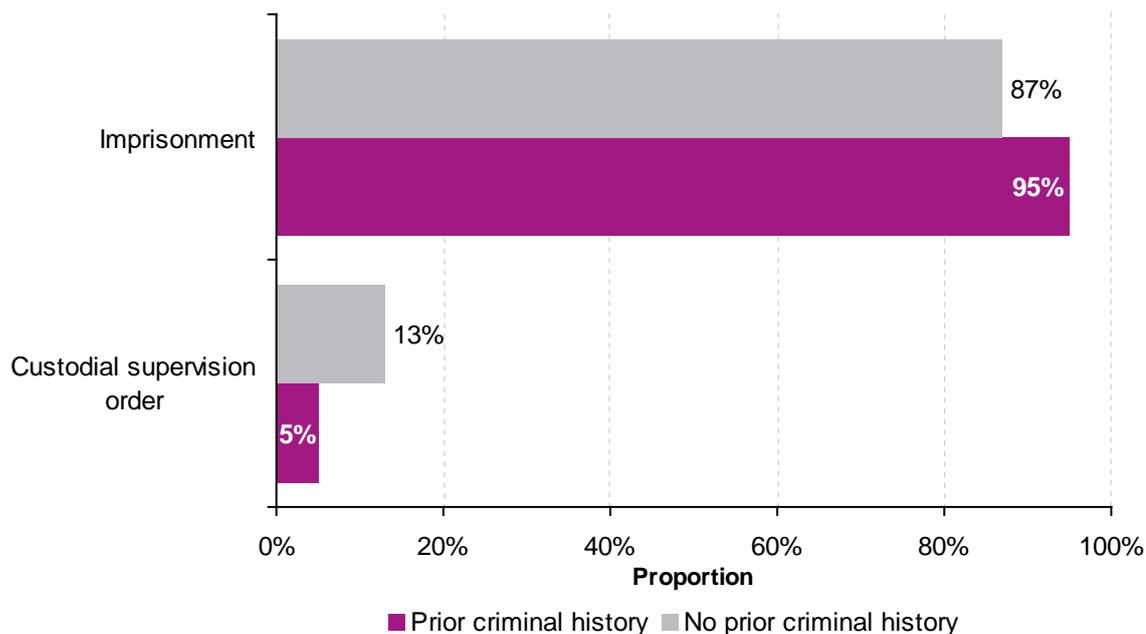
See Appendix Table 41

10.1 Sentencing outcomes

Figure 38 shows sentencing outcomes for **murder** according to whether the offender had a prior criminal history. Offenders with a prior criminal history were more likely to attract a sentence of imprisonment than offenders sentenced for murder who did not have a prior criminal history. This is at least partly because offenders with a prior criminal history who also suffered from a mental condition were more likely to be sentenced to imprisonment; whereas offenders with no prior criminal record who suffered from a mental condition were more likely to receive an order providing treatment:

- 38 per cent of offenders sentenced for murder who had a prior criminal history and suffered from a mental condition received an order providing treatment for their condition (custodial supervision order); and
- 63 per cent of offenders sentenced for murder who did not have a prior criminal history and suffered from a mental condition received an order providing treatment for their condition.

Figure 38: Sentencing outcomes for murder, by whether the offender had a prior criminal history



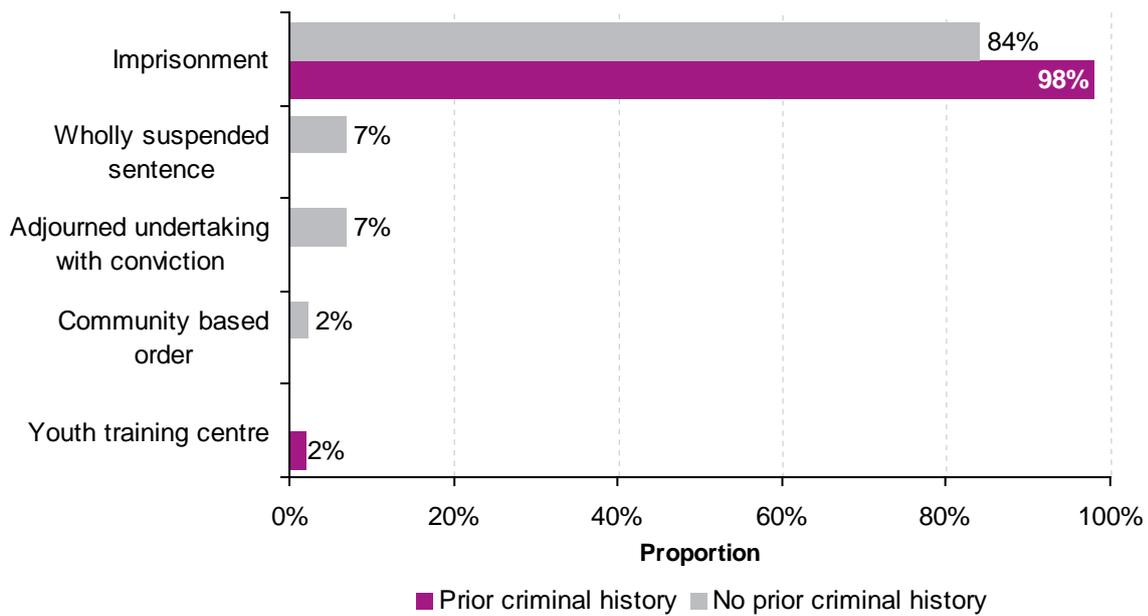
See Appendix Table 42

Of the 124 offenders sentenced to imprisonment for murder, 55 (44 per cent) had a prior criminal history. While offenders with a prior criminal history were more likely to be sentenced to a term of immediate imprisonment, the existence of a criminal history appears to have had little influence on the length of imprisonment terms imposed for murder:

- the average imprisonment term imposed for murder where the offender had a prior criminal history was 19 years and 5 months, compared to 19 years and 4 months for those without a prior criminal history; and
- of the 51 offenders with a prior criminal history who were sentenced to imprisonment for murder, 7 per cent (4 people) received a life sentence, compared to 8 per cent of those without a prior criminal history.

Figure 39 shows sentencing outcomes for **manslaughter** according to whether the offender had a prior criminal history. As Figure 39 demonstrates, offenders with no prior criminal history were the only offenders to avoid a custodial sentence; all offenders sentenced for manslaughter who had a prior criminal history attracted a custodial sentence (including imprisonment and detention in a youth training centre). Adjourned undertakings, community based orders and wholly suspended sentences of imprisonment were all imposed on offenders with no prior criminal history. This is not to say that offenders without a prior criminal history necessarily avoided imprisonment for manslaughter – 84 per cent of offenders sentenced for manslaughter who did not have a prior criminal record were sentenced to a term of imprisonment.

Figure 39: Sentencing outcomes for manslaughter, by whether the offender had a prior criminal history



See Appendix Table 42

Of the 97 offenders sentenced to imprisonment for manslaughter, half (48 people) had a prior criminal history. As with murder, the existence of a prior criminal history appears to have had little influence on the length of imprisonment terms imposed for manslaughter: the average imprisonment term imposed for manslaughter where the offender had a prior criminal history was 7 years, compared to 6 years and 11 months for those with no prior criminal history. But, as with murder, a criminal history did influence sentence type, with all offenders sentenced for manslaughter who had a prior criminal history attracting either imprisonment or custody in a youth training centre.

10.2 Summary

The average length of imprisonment terms did not vary for offenders sentenced for **murder** or for **manslaughter** according to whether the offender had a prior criminal history. For both **murder and manslaughter**, however, the type of sentence varied according to whether the offender had a prior criminal history, as offenders with a prior criminal history were more likely to receive a sentence of imprisonment.

11. Multiple victims and offenders

A single homicide incident may involve multiple victims and/or offenders. The 208 homicide incidents examined in this report relate to 216 victims and 243 offenders. Homicides most commonly involve a single victim and offender:

- 83 per cent (172 incidents) involved a single victim and offender;
- 14 per cent (29 incidents) involved multiple offenders and a single victim;
- 2 per cent (five incidents) involved a single offender and multiple victims; and
- 1 per cent (two incidents) involved multiple victims and offenders.

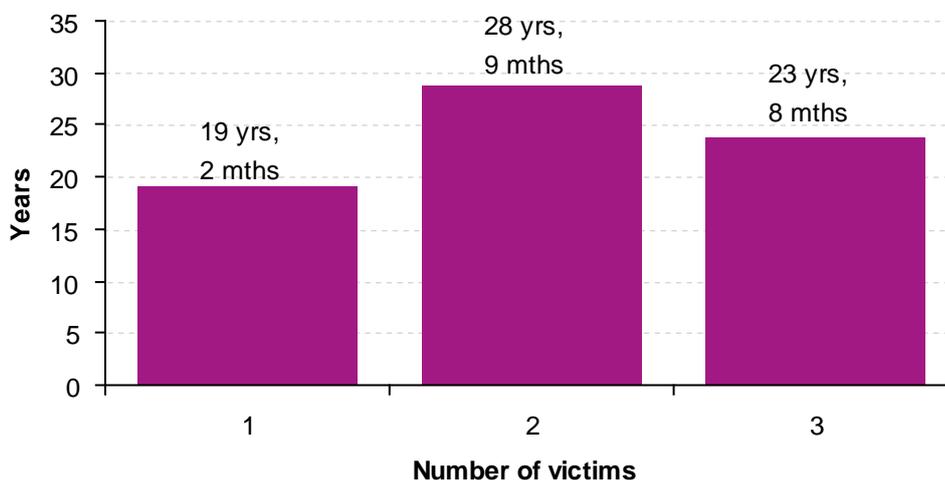
11.1 Sentencing outcomes for multiple victims

A total of 232 out of the 243 homicide offenders killed a single victim. Of the 11 offenders who killed more than one victim during the same homicide incident:⁹⁴

- seven killed two victims; and
- four killed three victims.

All homicide offenders who killed multiple victims were found guilty of **murder** and all were sentenced to a term of imprisonment. Length of imprisonment terms ranged from 16 years to life imprisonment. Three of the 11 offenders who killed multiple victims were sentenced to life imprisonment and all were eligible for parole. As shown in Figure 40, the average imprisonment term imposed for multiple murders (excluding three offenders sentenced to life imprisonment) was 26 years and 2 months – substantially longer than the average imprisonment term for murder generally (19 years and 1 month). The average non-parole period imposed was 23 years (including life imprisonment); again, this is much longer than the average non-parole period for murder generally (15 years and 4 months).

Figure 40: Average length of imprisonment term for murder, by number of victims



See Appendix Table 43

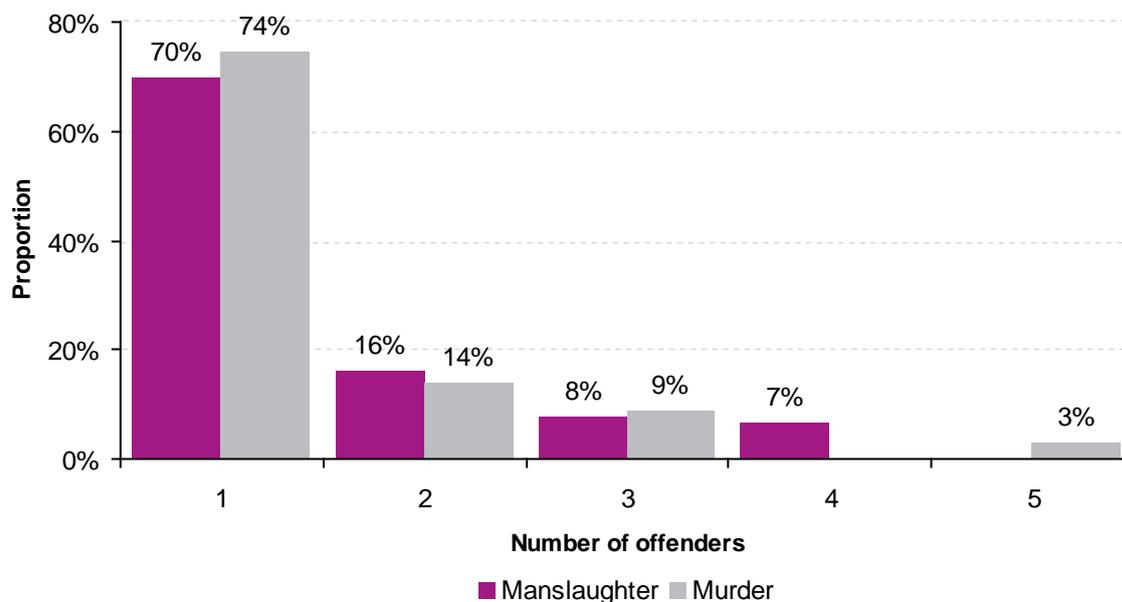
Offenders sentenced for homicide where there are multiple victims are more likely to attract a life sentence of imprisonment:

- 5 per cent of offenders sentenced for the murder of a single victim attracted life imprisonment; and
- 27 per cent of offenders sentenced for the murder of multiple victims attracted life imprisonment.

11.2 Sentencing outcomes for multiple offenders

Of the 243 homicide offenders, 67 committed the homicide in conjunction with at least one other offender (28 per cent). Figure 41 shows the proportion of offenders sentenced for murder and manslaughter according to the number of offenders involved in the incident.

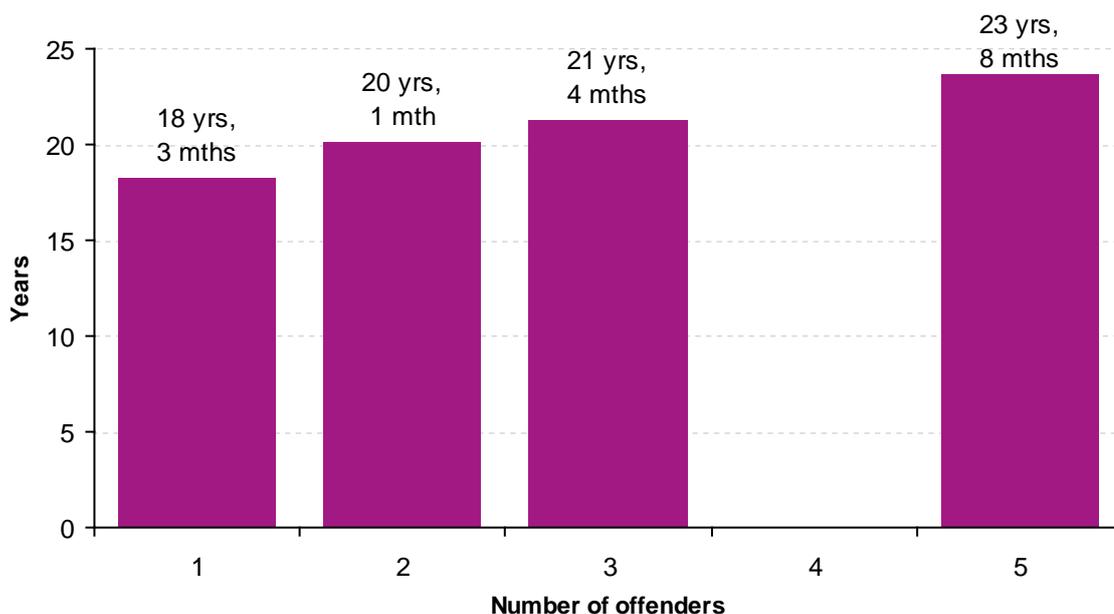
Figure 41: Offenders sentenced for homicide, by number of offenders involved in the incident and type of homicide



See Appendix Table 46

Every person sentenced for **murder** who committed the homicide with at least one co-offender was sentenced to a term of imprisonment. Figure 42 shows how the length of the imprisonment term imposed for **murder** varied according to the number of offenders involved in the incident (note that no person sentenced for murder committed the homicide with three co-accused). Overall, the average imprisonment term imposed where more than one offender was involved in the incident was 20 years and 11 months – longer than the average imprisonment term for murder generally (19 years and 1 month).

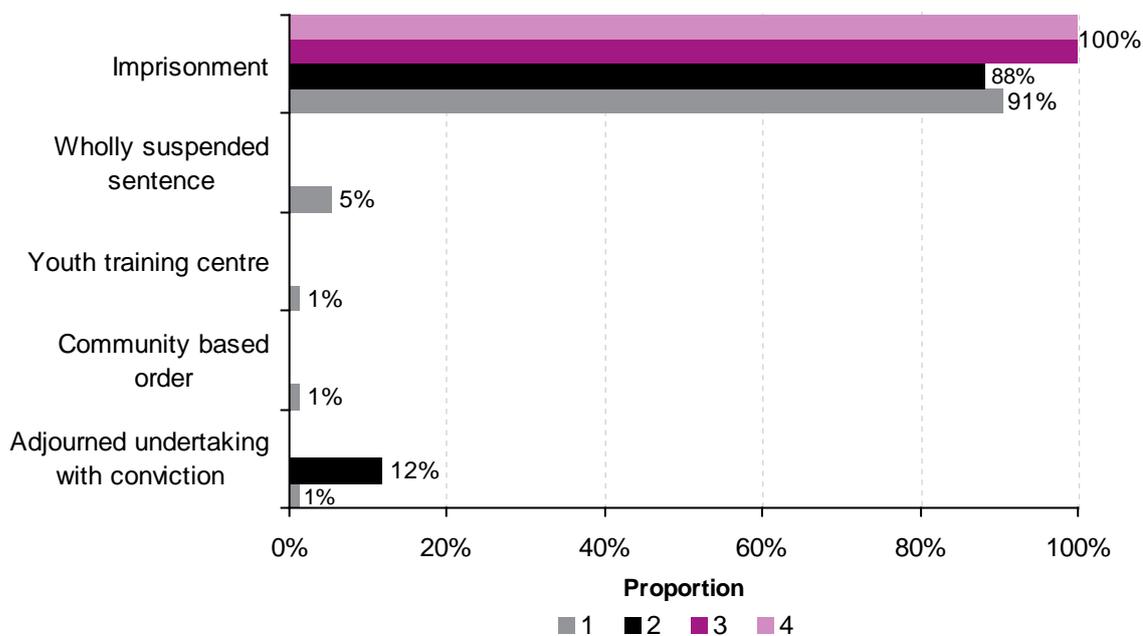
Figure 42: Average length of imprisonment term imposed for murder, by number of offenders involved in the homicide incident



See Appendix Table 44

Figure 43 shows the distribution of sentence types imposed for **manslaughter** according to the number of offenders involved in the incident. All offenders sentenced for manslaughter where the incident involved at least three co-offenders attracted a sentence of imprisonment.

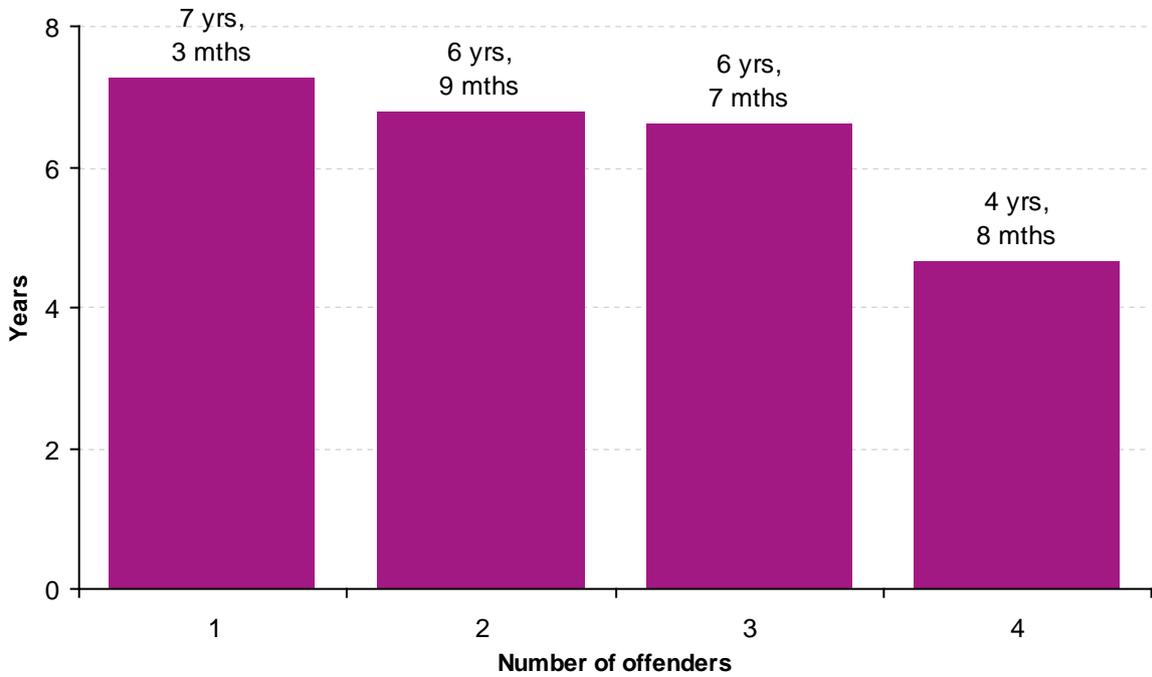
Figure 43: Sentence types imposed for manslaughter, by number of offenders involved in the homicide incident



See Appendix Table 46

Figure 44 shows how the average imprisonment term imposed for **manslaughter** varied according to the number of offenders involved in the incident. However, the effect of number of offenders is opposite to that found for murder, with lower average terms of imprisonment imposed on those offenders who were sentenced with more co-offenders.

Figure 44: Average length of imprisonment term imposed for manslaughter, by number of offenders involved in the homicide incident



See Appendix Table 44

11.3 Summary

Sentencing outcomes for **murder** varied according to the number of *offenders and victims* involved in the incident.

- All offenders who killed multiple victims were sentenced to imprisonment.
- Offenders who killed more than one victim were sentenced to longer terms of imprisonment than were those who killed a single victim.
- All offenders who acted with other offenders were sentenced to imprisonment.
- As the number of offenders involved in the incident increased so did the length of the imprisonment term imposed by the courts.

Sentencing outcomes for **manslaughter** also varied according to the number of *offenders* involved in the incident.

- All offenders who acted with more than one other offender were sentenced to imprisonment.
- The length of the imprisonment term imposed decreased as the number of offenders involved in the incident increased.

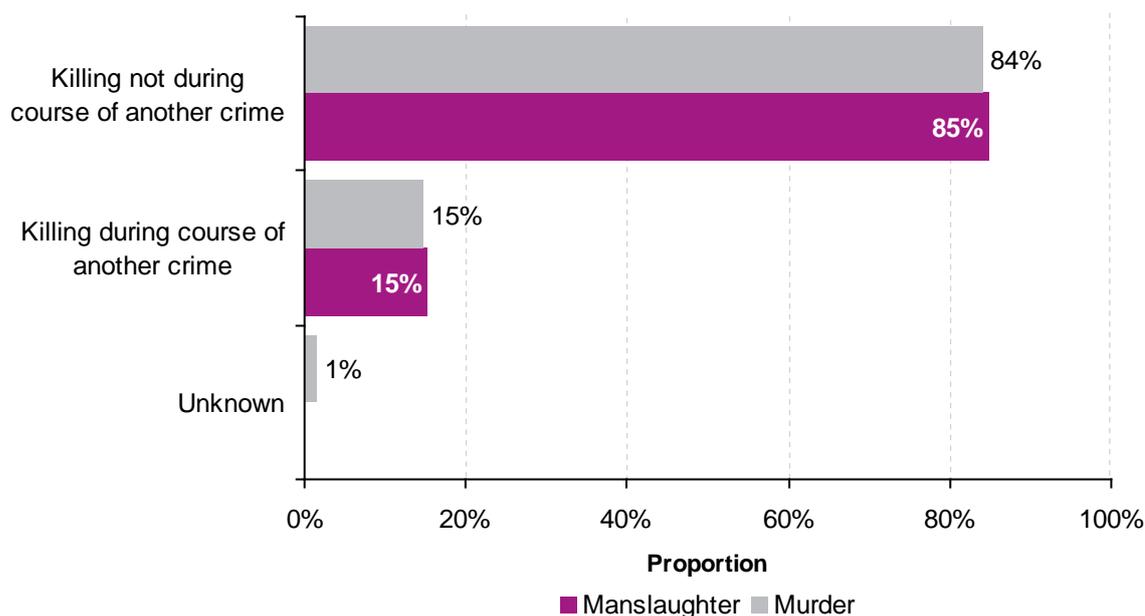
In summary, there was greater variation in the sentence length than in the sentence type according to the number of victims and offenders involved in the incident.

12. Homicides occurring during the course of another crime

Whether a homicide incident occurs during the course of another crime is an important factor that the court can take into account when sentencing an offender. In this section, we explore the prevalence of homicides that occurred during the course of another crime, the types of crimes during which a homicide was most likely to occur and the impact this had on sentencing outcomes.

Figure 45 shows the distribution of offenders sentenced for murder and manslaughter according to whether the homicide occurred during the course of another crime. Of the 243 offenders sentenced for homicide, 36 committed the homicide during the course of another crime (15 per cent). Of these 36 offenders, 20 were sentenced for murder (56 per cent) and 16 for manslaughter (44 per cent).

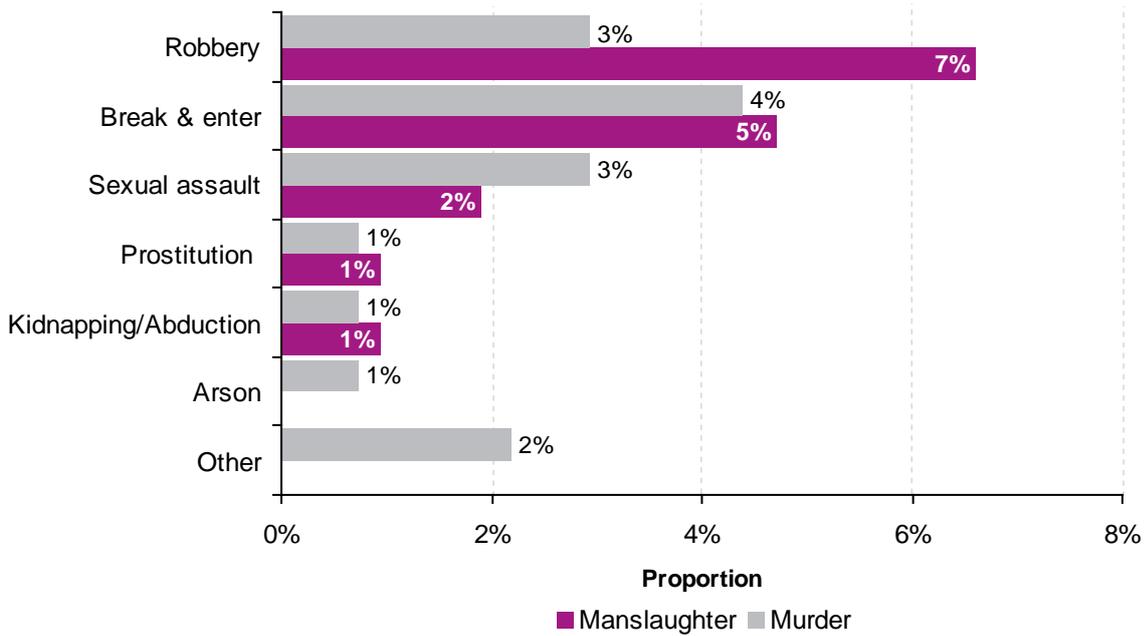
Figure 45: Offenders sentenced for homicide, by whether the killing occurred during the course of another crime and type of homicide



See Appendix Table 47

Figure 46 shows the distribution of offenders sentenced for murder and manslaughter where the killing occurred during the course of another crime, according to the type of crime that was committed. The most common type of crime during which manslaughters occurred was robbery (7 per cent) and for murder was break and enter (4 per cent).

Figure 46: Homicide offenders who killed during the course of another crime, by crime type and type of homicide



See Appendix Table 48

12.1 Sentencing outcomes

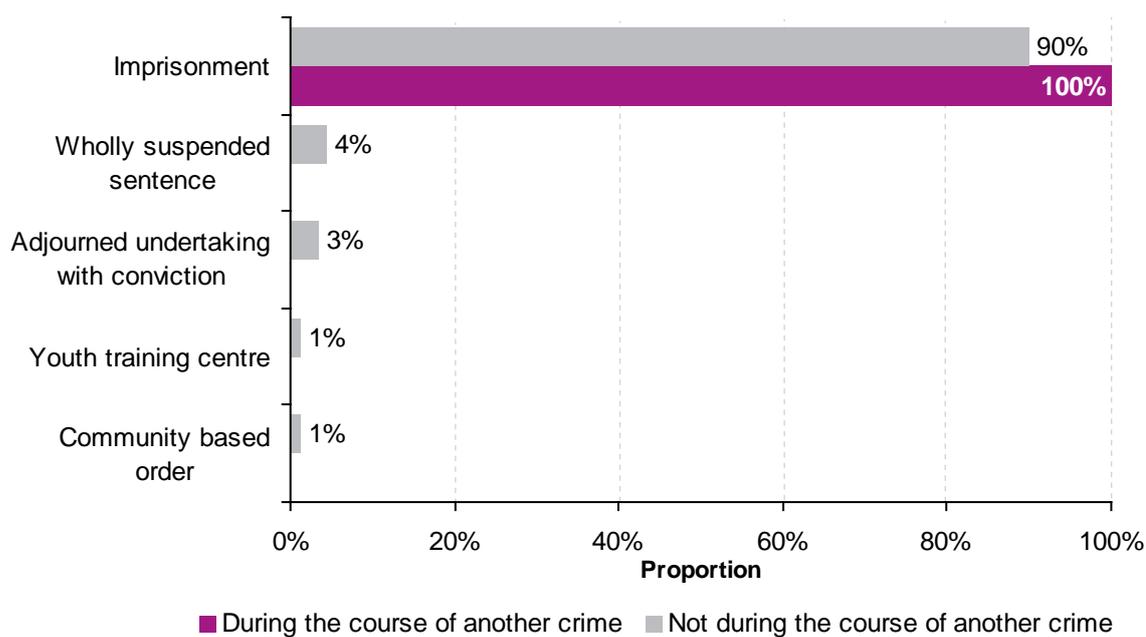
As almost all offenders sentenced for **murder** received a term of imprisonment (excluding some offenders with a mental condition sentenced to a custodial supervision order), a comparison of sentencing outcomes where the offence occurred during the course of another crime would not yield any further information. Rather, a comparison of length of imprisonment terms has been undertaken to identify the influence of killing during the course of another crime on sentencing outcomes.

The average imprisonment term imposed on offenders for murder where the offence occurred during the course of another crime was 18 years and 10 months, compared to 19 years and 1 month where the murder did not occur during the course of another crime. Although offenders sentenced for murder where the homicide occurred during the commission of another crime attracted shorter imprisonment terms on average, a greater proportion of these offenders was sentenced to life imprisonment:

- 11 per cent of offenders sentenced for murder where the homicide occurred during the course of another crime attracted life imprisonment; and
- 7 per cent of offenders sentenced for murder where the homicide did not occur during the course of another crime attracted life imprisonment.

Figure 47 shows the distribution of sentence types imposed for **manslaughter** according to whether the killing occurred during the course of another crime.

Figure 47: Offenders sentenced for manslaughter, by type of sentence imposed and whether the killing occurred during the course of another crime



See Appendix Table 49

All offenders sentenced for **manslaughter** where the killing occurred during the course of another crime received a sentence of imprisonment. Non-custodial options (adjourned undertakings, community based orders and wholly suspended sentences) were only imposed on offenders who did not commit the homicide during the course of another crime.

Although offenders sentenced for manslaughter where the offence occurred during the course of another crime were more likely to receive a sentence of imprisonment, on average their terms of imprisonment were shorter:

- the average imprisonment term imposed for manslaughter where the offence occurred during the course of another crime was 6 years and 6 months; and
- the average imprisonment term imposed for manslaughter where the offence did not occur during the course of another crime was 7 years.

12.2 Summary

In summary, the type of sentence imposed for **murder** did not vary according to whether the incident occurred during the course of another crime. However, the duration of prison terms imposed for murder did vary according to whether the incident occurred during the course of another crime: a sentence of life imprisonment was more likely to be imposed where the murder occurred during the course of another crime.

Both sentencing outcomes and lengths of imprisonment terms for **manslaughter** varied according to whether the offence occurred during the course of another crime:

- A custodial sentence was imposed on all offenders who committed the killing during the course of another crime.
- On average, imprisonment terms were shorter where the killing occurred during the course of another crime.



13. Other types of homicides

13.1 Contract killing

A contract killing is a murder in which the killer is hired by another person to kill for material reward, usually money. A person who carries out a contract killing is sometimes known as a contract killer or hit man. Both a 'hit man' and his customer can be found guilty of homicide.⁹⁵

A total of 10 of the 243 offenders sentenced for homicide were involved in contract killings (4 per cent) and all were sentenced for murder. Offenders sentenced for a contract related killing attracted more severe sentencing outcomes:

- All 10 offenders were sentenced to immediate imprisonment.
- The average length of imprisonment term was 22 years and 8 months (excluding life sentences of imprisonment), compared to an average of 19 years and 1 month for murder generally.
- 20 per cent of contract killers were sentenced to life imprisonment (two of the 10 offenders), compared to 7 per cent of offenders sentenced for murder generally (10 of the 137 offenders).

All contract killers were eligible for parole and non-parole periods ranged from 10 to 25 years. The average non-parole period imposed on contract killers was 18 years and 4 months, substantially longer than the average non-parole period for offenders sentenced to imprisonment for murder generally (15 years and 4 months).

Offenders sentenced for 'contract killings' were generally known to their victim:

- four were acquaintances with the victim (40 per cent);
- four were strangers with the victim (40 per cent);
- one was the victim's spouse (10 per cent); and
- one was in some other kind of relationship with the victim (10 per cent).

Of the 10 offenders sentenced for contract related killings:

- eight were male and two were female;
- four were gang related homicides (40 per cent);
- none had consumed alcohol or drugs at the time of the incident; and
- three were identified by police as suffering from depression (33 per cent).

Weapons were used by all 10 offenders in contract related killings:

- seven used a firearm; only one offender used a firearm registered and legally owned by the offender;
- two used a blunt instrument; and
- one used some other type of weapon.

Six of the 10 contract killers had a prior criminal history (60 per cent) and the types of prior criminal history were diverse, including:

- other offences (two offenders);
- sexual assault (one offender);
- other assault (one offender);
- robbery (one offender); and
- drug offences (one offender).

13.2 Gang related homicides

Of the 243 offenders sentenced for homicide, six were sentenced for gang related homicides (2 per cent). The six offenders related to three individual homicide incidents, each involving two co-accused and a single victim. All victims and offenders were male. Four of these offenders were sentenced for murder and two for manslaughter. All six offenders were sentenced to imprisonment and were eligible for parole.

Of the four offenders sentenced for a gang related **murder**, two were sentenced to life imprisonment and the other two were sentenced to 18 and 20 years' imprisonment. Of the four offenders sentenced for a gang related murder:

- two were acquaintances with the victim and two were strangers with the victim;
- none was identified by police as suffering from a mental condition;
- all four used a firearm(s) to commit the murder;
- none had consumed drugs or alcohol at the time of the incident;
- three had a prior criminal history (one for robbery and two for other offences); and
- all were contract related killings.

The two offenders sentenced for gang related **manslaughter** attracted imprisonment terms of 5 years and 6 years and 9 months – both below the average for manslaughter generally (6 years and 11 months). Of the two offenders sentenced for a gang related manslaughter:

- neither suffered from a mental condition;
- both had consumed marijuana and alcohol;
- both had a prior criminal history (both for 'other offences');
- both were gang members as was the victim; and
- both used an 'other' weapon.

13.3 Serial killing

Serial killings may not be identified as a serial crime at the time of NHMP data collection if the cases were unsolved, or if further victims had not yet been detected. Only one of the 243 homicide offenders examined in this report was considered to be a 'serial killer'. The 55 year old man had two prior convictions for murder and sixteen prior convictions involving acts of sexual violence between 1972 and 1994. The man was sentenced to life imprisonment for murder and was not eligible for parole.⁹⁶ The female victim, who did not know her attacker, was 28 years old at the time of the killing. The offender committed the homicide during a sexual assault on the victim, during which time he was apparently not suffering from a mental condition. Neither the victim nor the offender had consumed alcohol or drugs at the time of the incident. Although the offender was classed as a 'serial killer', he was not under bail, probation, parole or a community order at the time of the offence.

14. Overall summary of findings

The findings presented in this report show that sentencing outcomes for homicide vary according to the characteristics of the homicide incident, the offender and the victim. There are a number of other relevant factors that may influence sentencing outcomes for homicide that were not available for analysis in this report, such as whether the victim used violence against third parties (for example the offender's spouse) or whether the offender was the victim or perpetrator of domestic violence.

For the offence of **murder**, the evidence shows that both the *type and length* of sentence imposed varied depending on the characteristics of the incident, the offender and the victim.

The *type* of sentence imposed for murder varied on the basis of several factors:

- The offender's gender (women were less likely to be sentenced to a term of imprisonment).
- The relationship between the victim and offender (offenders were more likely to be sentenced to a term of imprisonment if they killed a friend/acquaintance or a stranger and less likely to be imprisoned if they killed a family member).
- Whether there was a history of domestic violence in an intimate relationship (offenders were less likely to be imprisoned and more likely to receive a custodial supervision order if there was a history of domestic violence).
- The offender's mental condition (offenders identified by police as suffering from a mental condition were more likely to avoid immediate imprisonment and receive an order providing treatment for their condition).
- The offender's prior criminal record (offenders with a prior criminal record were more likely to be sentenced to a term of imprisonment).
- The number of victims and offenders involved in the incident (all those who killed more than one victim or who acted with another offender were sentenced to imprisonment).

In addition, women suffering from a mental condition were more likely to avoid prison than were men. Offenders sentenced for the murder of a family member or intimate partner were more likely to suffer from a mental condition and therefore were more likely to receive an order providing treatment for their condition.

The analysis of sentencing outcomes for murder revealed that the *length* of imprisonment terms imposed also varied. The following factors affected the length of imprisonment terms:

- The offender's gender (women attracted shorter imprisonment terms).
- The offender's age (older and younger offenders attracted shorter prison terms).
- The relationship between the victim and offender (slightly shorter prison terms were imposed on offenders sentenced for the murder of an intimate partner or a family member while slightly longer imprisonment terms were imposed on offenders sentenced for the murder of a stranger).
- Whether there was a history of domestic violence (longer prison terms were imposed where there was a history of domestic violence).
- The offender's mental condition (imprisonment terms were longer for those identified by police as suffering from a mental condition).
- Whether alcohol and/or drugs had been consumed (shorter terms of imprisonment were imposed on offenders who had consumed alcohol or a combination of alcohol and drugs at the time of the incident).
- The type of weapon used to commit the murder (longer imprisonment terms were imposed where firearms were used).
- The number of homicide victims and offenders involved in the incident (longer prison terms were imposed where multiple victims or multiple offenders were involved in the incident).
- Whether the murder occurred during the course of another crime (these offenders were more likely to be sentenced to life imprisonment).
- Whether the offender was a 'contract' killer (contract killers attracted longer prison terms).
- Whether the offender was a 'serial' killer (serial killers attracted longer prison terms).

For the offence of **manslaughter**, the evidence shows that both the *type and length* of sentence imposed also varied depending on the characteristics of the incident, the offender and the victim.

The *type* of sentence imposed for manslaughter varied on the basis of several factors:

- The offender's gender (women were less likely to be sentenced to imprisonment).
- The offender's age (older and younger offenders were more likely to avoid prison).
- The relationship between the victim and offender (all offenders sentenced for the manslaughter of a stranger were sentenced to imprisonment while offenders who were sentenced for the manslaughter of a family member were less likely to be imprisoned).
- Whether the victim had used violence against the offender during the incident (offenders were more likely to avoid prison if the victim had used violence against them), and women sentenced for manslaughter were more likely to have been subjected to violence by their victim.
- Whether there was a history of domestic violence in an intimate relationship (offenders were more likely to avoid prison if there was a history of domestic violence).
- The offender's mental condition (offenders identified by police as suffering from a mental condition were less likely to be sentenced to a term of imprisonment).
- Whether the offender had consumed drugs and alcohol (offenders who had consumed drugs or drugs and alcohol combined were more likely to receive a prison sentence).
- The type of weapon used (all offenders who had used firearms or fire were sentenced to a term of imprisonment).
- The offender's prior criminal record (offenders with a prior criminal record were more likely to receive a prison sentence).
- The number of offenders involved in the incident (offenders were more likely to be sentenced to imprisonment if multiple offenders were involved).
- Whether the killing occurred during the course of another crime (all offenders who killed during the course of another crime were sentenced to imprisonment).

The analysis of sentencing outcomes for manslaughter revealed that the *length* of imprisonment terms imposed for manslaughter also varied. The following factors affected the length of imprisonment terms:

- The offender's gender (women attracted shorter prison terms).
- The offender's age (shorter prison terms were imposed for older and younger offenders).
- The relationship between the victim and offender (offenders sentenced for the manslaughter of a stranger or a family member attracted longer prison terms; offenders sentenced for the manslaughter of an intimate partner attracted slightly shorter prison terms).
- Whether the victim initiated the use of violence against the offender (shorter prison terms were imposed where the victim had initiated the use of violence).
- Whether there was a history of domestic violence (longer prison terms were imposed where there was a history of domestic violence).
- Whether provocation was successfully raised (longer terms of imprisonment were imposed for provocation manslaughter than for manslaughter generally).
- The offender's mental condition (imprisonment terms were longer for those identified by police as suffering from a mental condition).
- Whether the offender had consumed alcohol and/or drugs (slightly shorter prison terms were imposed where the offender had consumed either alcohol or alcohol and drugs combined during the incident, but slightly longer terms were imposed for offenders who had consumed drugs).
- The type of weapon used by the offender (offenders who used a blunt instrument attracted shorter prison terms).
- The number of offenders involved in the incident (shorter prison terms were imposed where more than one offender was involved in the incident).
- Whether the killing occurred during course of another crime (shorter prison terms were imposed where the incident occurred during the course of another crime).
- Whether the incident was gang related (slightly shorter prison terms were imposed for gang related manslaughters).

Offenders who killed a *family member* were less likely to be sentenced to a term of imprisonment than were those who killed a stranger. Slightly shorter prison terms were imposed on offenders sentenced for the murder of a family member or an intimate partner, and for the manslaughter of an intimate partner. Longer terms were imposed for the murder or manslaughter of a stranger and for the manslaughter of a family member.

Where there was a *history of domestic violence* in an intimate relationship, homicide offenders were less likely to be imprisoned. However, where a prison sentence was imposed, offenders with a history of domestic violence received longer terms on average.

Provocation was most likely to be successfully raised as a defence by offenders in an intimate relationship with their victims (either as a spouse or a separated spouse), followed by offenders sentenced for the homicide of a family member. The type of sentence imposed for manslaughter did not vary according to whether provocation was successfully raised, however the duration of prison terms imposed for manslaughter did: the average imprisonment term imposed for provocation manslaughter was longer than that imposed for manslaughter generally. In addition, for homicides where the victim had used violence against the offender, homicide offenders were less likely to be imprisoned and received shorter prison terms when they were.

Around one in ten homicide offenders was identified by police as suffering from a *mental condition*, however the existence of a mental condition did not necessarily mean that the offender did not receive a term of imprisonment. While offenders identified as suffering from a mental condition were less likely to be sentenced to a term of imprisonment, for those who were sentenced to prison, imprisonment terms were on average longer. Offenders suffering from a mental condition and sentenced for murder were more likely to receive an order providing treatment for their condition than those sentenced for manslaughter.

This report demonstrates how sentencing outcomes for homicide varied on the basis of the characteristics of the incident, the offender and the victim. Although not every variable considered by the court was available for analysis, it is clear that a number of factors had an important influence on sentencing outcomes for homicide, including:

- the offender's age, gender and mental condition;
- the relationship between the victim and the offender;
- whether there was a history of domestic violence;
- whether the victim used violence against the offender;
- whether drugs and/or alcohol were consumed at the time of the incident;
- the type of weapon used; and
- the number of victims and offenders involved in the incident.

These factors seemed to have a greater effect on the length of the imprisonment sentence imposed than on the type of sentence imposed in the first instance.

Variation in sentencing outcomes for homicide according to these factors may reflect correlation as opposed to causation. For example, shorter prison terms imposed on women may reflect the difference circumstances in which women kill and these factors may not be fully reflected in the VHMP. For example, a mother killing her husband upon discovering he was sexually abusing their daughter; no information on the extenuating circumstances of this homicide would be captured in the VHMP (for example, this would not be captured under the categories of 'use of violence by the victim' or 'history of domestic violence' and furthermore provocation may not have been successfully raised). Although it would be preferable to undertake a multivariate regression analysis to distinguish which variables analysed have a casual relationship with sentencing outcomes, the data quality is not currently sufficient to undertake this process.



Appendix

Table 7: Homicide victims and offenders, by gender and type of homicide

		Men	Women	Total
Murder	Victims	71	60	131
	Offenders	122	15	137
Manslaughter	Victims	60	25	85
	Offenders	90	16	106

Table 8: Homicide victims and offenders, by age bracket and type of homicide

	Murder	Manslaughter	Murder	Manslaughter
	Offenders		Victims	
Less than 1			2%	6%
1 to 9			2%	7%
10 to 14	1%	1%		
15 to 17	1%	13%	2%	4%
18 to 24	19%	22%	9%	16%
25 to 34	31%	31%	32%	20%
35 to 49	34%	24%	32%	27%
50 to 64	11%	7%	11%	12%
65 plus	3%	3%	11%	8%
Total	100%	100%	100%	100%

Table 9: Sentence types imposed for homicide, by gender of offender and type of homicide

Offence	Sentence	Men	Women	Total
Murder	Custodial supervision order	9	3	12
	Hospital security order	1		1
	Imprisonment	112	12	124
	<i>Sub total</i>	<i>122</i>	<i>15</i>	<i>137</i>
Manslaughter	Adjourned undertaking with conviction		3	3
	Community based order		1	1
	Imprisonment	87	10	97
	Wholly suspended sentence	3	1	4
	Youth training centre		1	1
	<i>Sub total</i>	<i>90</i>	<i>16</i>	<i>106</i>
Grand Total		212	31	243

Table 10: Offenders sentenced to imprisonment for murder, by gender and length of imprisonment term

Length of imprisonment term (years)	Men	Women
10 – 14	7	2
15 – 19	57	7
20 – 24	27	3
25 plus	11	0
Life	10	0
Total	112	12

Table 11: Offenders sentenced to imprisonment for manslaughter, by gender and length of imprisonment term

Length of imprisonment term (years)	Men	Women
0 – 4	7	4
5 – 9	72	6
10 – 14	6	0
15	2	0
Total	87	10

Table 12: Average length of imprisonment term imposed for murder, by age of offender (excluding life sentences of imprisonment)

Age bracket	Number	Average length of imprisonment term (years)
10 – 14	1	14.00
15 – 17	2	19.00
18 – 24	21	18.62
25 – 34	39	20.35
35 – 49	37	18.85
50 – 64	10	17.70
65 plus	4	14.88
Total	114	

Table 13: Average length of imprisonment term imposed for manslaughter, by age of offender

Age bracket	Number	Average length of imprisonment term (years)
15 – 17	12	5.9
18 – 24	23	6.0
25 – 34	32	8.0
35 – 49	23	7.4
50 plus	7	5.8
Total	97	

Table 14: Categories of relationship types

Relationship type	Category
Spouse	Intimates
Separated Spouse	Intimates
Divorced Spouse	Intimates
De-Facto	Intimates
Ex De-Facto	Intimates
Extra-marital Lover / Former Lover	Intimates
Girlfriend / Boyfriend	Intimates
Former Girlfriend / Boyfriend	Intimates
Homosexual Relationship	Intimates
Custodial Parent-Child	Family
Step Parent-Child	Family
Grandparent-Grandchild	Family
Sibling	Family
Step-Sibling	Family
Other Family	Family
Close Friend	Friend/acquaintance
Acquaintance - Neighbour	Friend/acquaintance
Acquaintance	Friend/acquaintance
Acquaintance (less than 24 hrs)	Stranger
Gang Member	Gang member
Stranger	Stranger
Other Relationship	Other relationship
Not stated	Unknown
Unknown	Unknown

Table 15: Relationship between victim and offender, by type of homicide

Relationship type	Murder	Manslaughter	Total
Friend/acquaintance	53	41	94
Intimates	35	16	51
Stranger	22	21	43
Family	15	18	33
Other relationship	7	6	13
Unknown	5	2	7
Gang member	0	2	2
Total	137	106	243

Table 16: Imprisonment rates for murder and manslaughter, by type of relationship between victim and offender

Relationship type	Murder		Manslaughter	
	Total offenders sentenced	Total sentenced to imprisonment	Total offenders sentenced	Total sentenced to imprisonment
Family	15	9	18	14
Intimates	35	32	16	14
Friend/acquaintance	53	51	41	38
Stranger	22	21	21	21
Gang member	0	0	2	2
Other relationship	7	6	6	6
Unknown	5	5	2	2
Total	137	124	106	97

Table 17: Proportion of offenders sentenced for homicide who suffer from a mental condition, by type of homicide and relationship between victim and offender

	Friend/ acquaintance	Intimates	Stranger	Family	Other
Murder	9%	14%	14%	40%	8%
Manslaughter	0%	0%	5%	17%	0%

Table 18: Homicide offenders who were friends/acquaintances with the primary victim, by sentence imposed and type of homicide

Sentence type	Offence	
	Manslaughter	Murder
Adjourned undertaking with conviction	2%	0%
Wholly suspended sentence	2%	0%
Youth training centre	2%	0%
Custodial supervision order	0%	4%
Imprisonment	93%	96%
Total	100%	100%

Table 19: Sentence types imposed for intimate homicides, by type of homicide

Sentence type	Murder	Manslaughter
Adjourned undertaking with conviction	0%	6%
Wholly suspended sentence	0%	6%
Custodial supervision order	9%	0%
Imprisonment	91%	88%
Total	100%	100%

Table 20: Offenders sentenced for the murder of an intimate partner, by sentence type and whether there was a history of domestic violence

Sentence type	Was there a history of domestic violence?	
	Yes	No
Custodial supervision order	17%	4%
Imprisonment	83%	96%
Total	100%	100%

Table 21: Offenders sentenced for the manslaughter of an intimate partner, by sentence type and whether there was a history of domestic violence

Sentence type	Was there a history of domestic violence?	
	Yes	No
Adjourned undertaking	20%	0%
Wholly suspended sentence	0%	9%
Imprisonment	80%	91%
Total	100%	100%

Table 22: Homicide offenders who were strangers to their victim, by sentence type imposed and type of homicide

Sentence type	Offence type		Total
	Murder	Manslaughter	
Hospital security order	1		1
Imprisonment	21	21	42
Total	22	21	43

Table 23: Homicide incidents between strangers, by length of imprisonment term and type of homicide

Length of imprisonment term (years)	Murder	Manslaughter
0 - 5	0	5
5 - 10	0	15
10 - 15	2	1
15 - 20	11	0
20 plus	5	0
Life	3	0
Total	21	21

Table 24: Offenders sentenced for the homicide of a family member, by sentence type and type of homicide

Sentence type	Murder	Manslaughter	Total
Adjourned undertaking with conviction		1	1
Community based order		1	1
Custodial supervision order	6		6
Imprisonment	9	14	23
Wholly suspended sentence		2	2
Total	15	18	33

Table 25: Homicide offenders, by whether provocation was successfully raised

Provocation successfully raised?	Number	Proportion
No	233	96%
Yes	10	4%
Total	243	100%

Table 26: Provocation manslaughter homicides, by relationship between victim and offender and sentence imposed

Relationship between victim and offender	Sentence type		Total
	Imprisonment	Wholly suspended sentence	
Spouse	2		2
Separated spouse	2		2
Custodial parent/child	2	1	3
Acquaintance	1		1
Stranger	1		1
Other relationship	1		1
Total	9	1	10

Table 27: Homicide offenders who successfully raised provocation, by motive for the killing

Type of relationship	Motive				Total
	Jealousy	Termination of relationship	Argument of domestic nature	Other argument	
Spouse	0	0	2	0	2
Separated spouse	0	2	0	0	2
Custodial parent/child	0	0	2	1	3
Acquaintance	0	0	0	1	1
Stranger	1	0	0	0	1
Other relationship	0	0	0	1	1
Total	1	2	4	3	10

Table 28: Offenders sentenced for homicide, by sentence imposed and whether provocation was successfully raised

Sentence type	Provocation successfully raised?		Total
	No	Yes	
Adjourned undertaking with conviction	3	0	3
Community based order	1	0	1
Custodial supervision order	12	0	12
Hospital security order	1	0	1
Imprisonment	212	9	221
Wholly suspended sentence	3	1	4
Youth training centre	1	0	1
Total	233	10	243

Table 29: Offenders sentenced for homicide, by mental condition of the offender

Mental condition of offender	Murder	Manslaughter	Total
Intellectual disability	4		4
Depression	3	1	4
Mental illness	13	3	16
Unknown/Not applicable	117	102	219
Total	137	106	243

Table 30: Offenders sentenced for murder, by mental condition and type of sentence

Sentence type	Mental condition	No mental condition
Custodial supervision order	10	2
Hospital security order	1	0
Imprisonment	9	115
Total	20	117

Table 31: Offenders sentenced for manslaughter, by mental condition and type of sentence

Sentence type	Mental condition	No mental condition
Adjourned undertaking with conviction	0	3
Community based order	1	
Imprisonment	3	94
Wholly suspended sentence	0	4
Youth training centre	0	1
Total	4	102

Table 32: Offenders sentenced for homicide who had consumed drugs, by drug type

Drug type	Number	Proportion
Other	3	6%
Heroin	6	13%
Prescription	6	13%
Marijuana	8	17%
Unknown	24	51%
Total	47	100%

Table 33: Offenders sentenced for homicide, by type of homicide, sentence imposed and whether offender had consumed drugs

Did offender consume drugs?	Sentence type	Murder	Manslaughter	Total
Yes	Custodial supervision order	2		2
	Imprisonment	24	20	44
	Wholly suspended sentence		1	1
	<i>Sub total</i>	26	21	47
No	Adjourned undertaking with conviction		3	3
	Community based order		1	1
	Custodial supervision order	9		9
	Hospital security order	1		1
	Imprisonment	92	72	164
	Wholly suspended sentence		3	3
	Youth training centre		1	1
	<i>Sub total</i>	102	80	182
Unknown	Custodial supervision order	1		1
	Imprisonment	8	5	12
	<i>Sub total</i>	9	5	13
Grand Total		137	106	243

Table 34: Offenders sentenced for homicide, by type of homicide, sentence imposed and whether offender had consumed alcohol

Did offender consume alcohol?	Sentence type	Murder	Manslaughter	Total
Yes	Custodial supervision order	1		1
	Hospital security order	1		1
	Imprisonment	23	30	53
	Wholly suspended sentence		2	2
	Youth training centre		1	1
<i>Sub total</i>	25	33	58	
No	Adjourned undertaking with conviction		3	3
	Community based order		1	1
	Custodial supervision order	10		10
	Imprisonment	84	62	146
	Wholly suspended sentence		2	2
	<i>Sub total</i>	94	68	162
Unknown	Custodial supervision order	1		1
	Imprisonment	17	5	22
<i>Sub total</i>	18	5	23	
Grand Total		137	106	243

Table 35: Offenders sentenced for homicide, by type of weapon used and type of homicide

Type of weapon	Murder	Manslaughter	Total
Knife/other sharp instrument	63	38	101
Hands, feet	15	30	45
Blunt instrument	24	16	40
Firearm	23	8	31
Other	3	8	11
Fire	5	4	9
Unknown	4	2	6
Total	137	106	243

Table 36: Sentencing outcomes for murder, by type of weapon used

Type of weapon	Imprisonment	Custodial Supervision order	Hospital security order
Knife/other sharp instrument	87%	11%	2%
Hands, feet	87%	13%	0%
Blunt instrument	88%	13%	0%
Firearm	100%	0%	0%
Other	100%	0%	0%
Fire	100%	0%	0%

Table 37: Offenders sentenced to imprisonment for murder, by average length of imprisonment term and type of weapon used

Type of weapon	Average imprisonment term
Other	18 years
Blunt instrument	18 years, 2 months
Knife/other sharp instrument	18 years, 2 months
Hands, feet	18 years, 9 months
Fire	20 years
Firearm	21 years, 5 months

Table 38: Sentencing outcomes for manslaughter, by type of weapon used

Type of weapon	Imprisonment	Wholly suspended sentence	Adjourned undertaking with conviction	Community based order	Youth training centre
Fire	100%	0%	0%	0%	0%
Firearm	100%	0%	0%	0%	0%
Hands, feet	93%	3%	0%	3%	0%
Knife/other sharp instrument	89%	3%	5%	0%	3%
Other	88%	13%	0%	0%	0%
Blunt instrument	88%	6%	6%	0%	0%

Table 39: Offenders sentenced to imprisonment for manslaughter, by average length of imprisonment term and type of weapon used

Type of weapon	Average imprisonment term
Blunt instrument	6 years
Fire	6 years, 3 months
Firearm	6 years, 6 months
Knife/other sharp instrument	7 years
Other	7 years, 6 months
Hands, feet	7 years, 6 months

Table 40: Offenders sentenced for homicide, by whether they had a prior criminal history and type of homicide

Did offender have a prior criminal history?	Murder	Manslaughter
Unknown	18%	12%
No	39%	42%
Yes	42%	46%
Total	100%	100%

Table 41: Offenders sentenced for homicide, by type of homicide, sentence imposed and offender's prior criminal record

Offender's prior criminal record	Murder	Manslaughter	Total
Sexual assault	2		2
Other assault	11	4	15
Robbery	2		2
Drug offences	3	8	11
Property offences	8	10	18
Other offences	32	26	61
No prior criminal record	79	58	137
Total	137	106	243

Table 42: Sentencing outcomes for homicide, by whether the offender had a criminal history

Did offender have a criminal history?	Sentence type	Murder	Manslaughter	Total
Yes	Custodial supervision order	3		3
	Imprisonment	55	48	103
	Youth training centre		1	1
	<i>Sub total</i>	<i>58</i>	<i>49</i>	<i>107</i>
No	Adjourned undertaking with conviction		3	3
	Community based order		1	1
	Custodial supervision order	7		7
	Imprisonment	47	37	84
	Wholly suspended sentence		3	3
	<i>Sub total</i>	<i>54</i>	<i>44</i>	<i>98</i>
Unknown	Custodial supervision order	2		2
	Hospital security order	1		1
	Imprisonment	22	12	34
	Wholly suspended sentence		1	1
	<i>Sub total</i>	<i>25</i>	<i>13</i>	<i>38</i>
Grand Total		137	106	243

Table 43: Average length of imprisonment term for murder, by number of victims

Number of victims	1	2	3
Average imprisonment term	19 years, 2 months	28 years, 9 months	23 years, 8 months

Table 44: Average length of imprisonment term for homicide, by number of offenders involved in the incident and type of homicide

Number of offenders	Murder	Manslaughter
1	18 years, 3 months	7 years, 3 months
2	20 years, 1 month	6 years, 9 months
3	21 years, 4 months	6 years, 7 months
4	na	4 years, 8 months
5	23 years, 8 months	na

Table 45: Sentencing outcomes for homicide, by number of victims and type of homicide

Number of victims	Sentence type	Murder	Manslaughter	Total
1	Adjourned undertaking with conviction	0	3	3
	Community based order	0	1	1
	Custodial supervision order	12	0	12
	Hospital security order	1	0	1
	Imprisonment	113	97	210
	Wholly suspended sentence	0	4	4
	Youth training centre	0	1	1
	<i>Sub total</i>	126	106	232
2	Imprisonment	7	0	7
	<i>Sub total</i>	7	0	7
3	Imprisonment	4	0	4
	<i>Sub total</i>	4	0	4
Grand Total		137	106	243

Table 46: Sentencing outcomes for homicide, by number of offenders and type of homicide

Number of offenders	Sentence type	Murder	Manslaughter	Total
1	Adjourned undertaking with conviction		1	1
	Community based order		1	1
	Custodial supervision order	12		12
	Hospital security order	1		1
	Imprisonment	89	67	156
	Wholly suspended sentence		4	4
	Youth training centre		1	1
	<i>Sub total</i>	102	74	176
2	Adjourned undertaking with conviction		2	2
	Imprisonment	19	15	34
	<i>Sub total</i>	19	17	36
3	Imprisonment	12	8	20
	<i>Sub total</i>	12	8	20
4	Imprisonment		7	7
	<i>Sub total</i>		7	7
5	Imprisonment	4		4
	<i>Sub total</i>	4		4
Grand Total		137	106	243

Table 47: Offenders sentenced for homicide, by whether the killing occurred in the course of another crime

	Murder	Manslaughter
Unknown	1%	0%
Yes	15%	15%
No	84%	85%
Total	100%	100%

Table 48: Offenders sentenced for homicides that occurred during the course of another crime, by crime type and type of homicide

Crime type	Murder	Manslaughter	Total
Sexual assault	4	2	6
Kidnapping/Abduction	1	1	2
Robbery	4	7	11
Arson	3		3
Break & enter	6	5	11
Prostitution	1	1	2
Other	1		1
Total	20	16	36

Table 49: Sentencing outcomes for homicide, by whether the killing occurred during the course of another crime and type of homicide

	Sentence type	Murder	Manslaughter	Total
		Yes		
Did homicide occur during the course of another crime?	Custodial supervision order	2		2
	Imprisonment	18	16	34
	<i>Sub total</i>	20	16	36
	No			
	Adjourned undertaking with conviction		3	3
	Community based order		1	1
	Custodial supervision order	10		10
	Hospital security order	1		1
	Imprisonment	104	81	185
	Wholly suspended sentence		4	4
	Youth training centre		1	1
	<i>Sub total</i>	115	90	205
Unknown	Imprisonment	2		2
Grand Total		137	106	243



End notes

- 1 At the time of the report, provocation was a partial defence which, when accepted by the jury, reduced murder to manslaughter.
- 2 See the Sentencing Advisory Council's website at <www.sentencingcouncil.vic.gov.au> for copies of these and all other reports in the Sentencing Snapshots series.
- 3 The term 'mental condition' is used in this report in order to be consistent with the terminology used by the VLRC in its recommendations. In its annual report on the National Homicide Monitoring Program, the Australian Institute of Criminology uses the term 'mentally disordered offender' to describe cases where it was believed that the offender suffered from a mental disorder immediately before or at the time of the incident, where noted in police documents (which may not be comprehensive). The categorisation of offenders as 'mentally disordered' or 'suffering from a mental condition' is thus based on police identification of a disorder, rather than on medical diagnosis. See J. Mouzos and T. Houliaras (2006) *Homicide in Australia: 2004-05 National Homicide Monitoring Program (NHMP) annual report*, Australian Institute of Criminology Research and Public Policy Series No. 72 p 46.
- 4 K. Polk (1994) *When Men Kill: Scenarios of Masculine Violence*. Cambridge: Cambridge University Press p 4.
- 5 Ibid p 23.
- 6 J. Morgan (2002) *Who Kills Whom and Why: Looking beyond Legal Categories*. Melbourne: Victorian Law Reform Commission.
- 7 Ibid p 30.
- 8 J. Mouzos and T. Houliaras above n 3 pp 3-4. Please note that the NHMP is supplemented by information derived from press clippings where required.
- 9 The Council further liaised with the primary data provider, Victoria Police, who granted permission for the Council to use information provided to the Australian Institute of Criminology for the purposes of the NHMP.
- 10 For further information on the NHMP, see J. Mouzos and T. Houliaras above n 3. Technical information on the NHMP can be found at <www.aic.gov.au>.
- 11 Ibid.
- 12 For further information on the quality control processes used by the AIC, identified inconsistencies in the data base and data entry processes, see J. Mouzos (2002) *Quality Control in the National Homicide Monitoring Program (NHMP)*, Technical and background paper series No.2, Australian Institute of Criminology.
- 13 *Crimes Act 1958 (Vic)* s 3.
- 14 For terms of imprisonment between one and two years, the court has the discretion to fix a non-parole period.
- 15 *Sentencing Act 1991 (Vic)* s 11(1).
- 16 *R v Dupas* [2000] VSC 356 [44].
- 17 In this report, the term 'sentenced for murder' includes persons who plead guilty, those sentenced after a trial and people dealt with by the court after a finding of not guilty due to mental impairment. Under s 20 (2) and s 23 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)*, if the defence of mental impairment is established the person must be found not guilty because of mental impairment and the court must declare the defendant liable to supervision under Part 5 (i.e. custodial supervision order). A custodial supervision order is an order committing the defendant to custody in an appropriate place or in a prison under supervision for an indefinite term, with a nominal period specified by statute (25 years for murder).
- 18 *Sentencing Act 1991 (Vic)* s 5(1).
- 19 *R v PDJ* (2002) 7 VR 612; *Veen v R [No 2]* (1987) 164 CLR 465.
- 20 *R v Lowe* (1997) 2 VR 465; *R v Denyer* (1995) 1 VR 186; *R v Coulston* (1997) 2 VR 446.
- 21 *Von Einem v R* (1985) 38 SASR 207.
- 22 *R v Martin* (1973) VR 854.
- 23 *R v PP* (2003) 142 A Crim R 369.
- 24 *R v PDJ* (2002) 7 VR 612; *R v Giles* [1999] VSCA 208.
- 25 *R v PP* (2003) 142 A Crim R 369.

- 26 *Sentencing Act 1991* (Vic) s 32(2).
- 27 *R v Lowe* (1997) 2 VR 465; *R v Denyer* (1995) 1 VR 186; *R v Coulston* (1997) 2 VR 446.
- 28 *R v Goodall* [2000] VSCA 106.
- 29 *Crowley & Garner v R* (1991) 55 A Crim R 201; *R v Gregory* [2000] VSCA 212.
- 30 *R v Bazley* (1993) 65 A Crim R 154; *R v Gregory* [2000] VSCA 212.
- 31 *Towns* 21/9/1992 CCA Vic 7.
- 32 *R v Ramage* [2004] VSC 508.
- 33 *DPP v Moran* [1989] VSCA (Unreported, Murphy, O'Brien and Hampel JJ, 28 February 1989).
- 34 *DPP v Williamson* [2000] VSC 115.
- 35 *R v PDJ* (2002) 7 VR 612.
- 36 *R v Mizon* [2002] VSC 115.
- 37 *R v Dumas* [1988] VR 65.
- 38 *Redenbach v R* (1991) 52 A Crim R 95.
- 39 *DPP v Kien* (2000) 116 A Crim R 339; *R v Kasulaitis* [1998] 4 VR 224. See generally *R v Verdins*, *R v Buckley*, *R v Yo* [2007] VSCA 102.
- 40 *Redenbach v R* (1991) 52 A Crim R 95.
- 41 *R v McCullagh* (2003) 141 A Crim R 150.
- 42 *R v Gemmill* [2004] VSC 30.
- 43 *R v Dupas* [2000] VSC 356.
- 44 *R v Edmunds* [1994] VSCA (Unreported, Crockett, Hampel and Hansen JJ, 24 November 1994).
- 45 *R v Coulston* (1997) 2 VR 446.
- 46 *R v Denyer* (1995) 1 VR 186.
- 47 *Masciantonio v The Queen* (1995) 183 CLR 58, 66.
- 48 Unlawful dangerous act manslaughter arises where an offender intentionally commits an unlawful and dangerous act, and any reasonable person in the same circumstances would have realised that he or she was exposing others to the risk of serious injury.
- 49 Manslaughter by omission arises in circumstances where a person fails to take steps to preserve life despite having a legal duty to do so. Inadvertence is insufficient for this offence: an offender must be indifferent to the risk of death or serious bodily harm, or must have decided to accept the risk regardless of the consequences. This form of involuntary manslaughter is relatively rare.
- 50 In circumstances where an offender intends to perform an act, yet in doing so is negligent to such a gross degree as to attract criminal liability, the offender may be found guilty of negligent manslaughter.
- 51 *Crimes Act 1958* (Vic) s 5.
- 52 *Sentencing Act 1991* (Vic) s 11(1).
- 53 In this report, the term 'persons sentenced for manslaughter' includes persons who plead guilty, those sentenced after a trial and people dealt with by the court after a finding of not guilty due to mental impairment Under s 20 (2) and s 23 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic), if the defence of mental impairment is established the person must be found not guilty because of mental impairment and the court must declare the defendant liable to supervision under Part 5 (i.e. custodial supervision order). A custodial supervision order is an order committing the defendant to custody in an appropriate place or in a prison under supervision for an indefinite term, with a nominal period specified by statute (20 years for manslaughter).
- 54 *Sentencing Act 1991* (Vic) s 5(1).
- 55 *R v Stavreski* (2004) 145 A Crim R 44.
- 56 *DPP v SJK & GAS* [2002] VSCA 131.
- 57 *DPP v SJK & GAS* [2002] VSCA 131.
- 58 *R v Gazdovic* [2002] VSC 588.

- 59 *R v Teeken* [2000] VSC 295.
- 60 *R v KMW & RJB* [2002] VSC 93.
- 61 *R v Talj* [2003] VSCA 87.
- 62 *R v Kelso* [1982] NSWCA (Unreported, Glass JA, Maxwell and Cantor JJ, 4 June 1982).
- 63 *R v Lefau* [2004] VSC 48; *R v Kesic* [2001] VSCA 17.
- 64 *R v Goral, Goral & Akkay* [2001] VSC 208.
- 65 *R v Mohammed* [2004] VSC 423; *R v Bellingham & Fenton* [2002] VSCA 35.
- 66 *R v Johns* [2003] VSC 415, [21]-[22].
- 67 *R v Lennon* [2001] VSCA 233.
- 68 *Veen v R [No 2]* (1987) 164 CLR 465.
- 69 *R v Palmer* [1996] VSCA (Unreported, Winneke ACJ, Charles and Callaway JJA, 13 September 1996).
- 70 This refers to the principal proven offence. Therefore, where a person is sentenced for a murder and manslaughter offence relating to the same homicide incident, the murder offence is recorded as the principal proven offence.
- 71 Under s 26(2)(a) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) a supervision order may be made for forensic patients to be committed to custody in an appropriate place (an approved mental health service or a residential service) or in a prison (if no other facilities are available).
- 72 Pursuant to ss 27 – 28 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) a custodial supervision order is for an indefinite term and where the person is convicted of murder the court must fix a nominal term of 25 years.
- 73 The ‘other’ offences for the prior criminal history codes are not based on national offence codes but usually refer to minor offences not captured by other categories in the prior offence hierarchy. This category includes offences such as (but not limited to) drink-driving offences, traffic offences, drunk and disorderly offences and possession of weapons offences.
- 74 See J. Morgan above n 6 p 30.
- 75 Ibid.
- 76 See *Children and Young Persons Act 1989* (Vic) s 188(1).
- 77 As there was only a single offender sentenced for manslaughter who was aged 65 years and older, data are presented here for the seven offenders aged 50 and above. The manslaughter graph is therefore slightly different to the murder graph, in which data are presented separately for the four offenders aged 65 years and older and the 13 offenders aged 50 to 64 years.
- 78 ‘Other’ relationship includes business associates, tour guide/tourist, employee/employer, boarding house manager/boarder and colleagues. See J. Mouzos and T. Houliaras above n 3 p 60.
- 79 The classification of intellectual disability as a mental disorder or mental condition occurs in the original Australian Institute of Criminology database. This does not reflect a belief on the part of the author or the Sentencing Advisory Council that intellectual disability should be so construed.
- 80 Three out of 36 offenders guilty of murdering an intimate partner received a custodial supervision order. Two of the custodial supervision orders were imposed on female offenders suffering from mental illness who killed their male intimate partners, and the other order was imposed on a male offender suffering from mental illness who killed his intimate female partner.
- 81 The data do not allow for the distinction of domestic violence on the part of the victim from domestic violence on the part of the offender. The Australian Institute of Criminology classifies an incident as exhibiting a history of domestic violence where either the victim or the offender had a history as a perpetrator of domestic violence. See J. Mouzos and T. Houliaras above n 3 p 60.
- 82 See J. Mouzos and T. Houliaras above n 3 p 60.
- 83 A ‘serial killer’ is a person who kills three or more victims in separate incidents.
- 84 *Crimes (Homicide) Bill 2005* (Vic).
- 85 *Masciantonio v The Queen* (1995) 183 CLR 58, 66.
- 86 Victorian Law Reform Commission (VLRC), *Defences to Homicide: Final Report* (2004), 58 (Recommendation 1).

- 87 Ibid p 293 (Recommendations 50 and 51).
- 88 The Australian Institute of Criminology report uses the term 'mentally disordered offender'. In this report, the term used instead is 'offender suffering from a mental condition'. See further above n 3.
- 89 The classification of intellectual disability as a mental disorder or mental condition occurs in the original Australian Institute of Criminology database. This does not reflect a belief on the part of the author or the Sentencing Advisory Council that intellectual disability should be so construed.
- 90 Note that percentages do not add to 100 due to rounding.
- 91 'Other' drug refers to any other drug not previously listed, such as opiates other than heroin.
- 92 'Other' weapon refers to explosives, poison, drugs, vehicles and other weapons. See J. Mouzos and T. Houliaras above n 3 p 48.
- 93 The 'other' offences for the prior criminal history codes are not based on national offence codes but usually refer to minor offences not captured by other categories in the prior offence hierarchy. This category includes offences such as (but not limited to) drink-driving offences, traffic offences, drunk and disorderly offences and possession of weapons offences. For a review of the literature on the versatility of recidivist offenders, see K. Gelb (2007) *Recidivism of Sex Offenders*. Melbourne: Sentencing Advisory Council.
- 94 The data contain one serial offender who killed multiple victims but on separate occasions (that is, in separate incidents).
- 95 For more information on contract killings, see J. Mouzos and J. Venditto (2003) *Contract Killings in Australia*. Australian Institute of Criminology Research and Public Policy Series No. 53. Available at: <http://www.aic.gov.au/publications/rpp/53/index.html>.
- 96 It must be noted that the Australian Institute of Criminology considers this offender to be a serial killer because at the time the data were extracted the offender had been convicted of two murders and had been charged with another. However, the sentence of life imprisonment described here relates to the sentencing outcome for the second murder and not the third because at the time of publication the offender had not yet been sentenced for the third offence.

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