

Sentencing outcomes for theft in the Magistrates' Court in Victoria

Summary

This report provides an overview of the sentencing outcomes imposed for five different types of theft in the Magistrates' Court.

The Magistrates' Court sentenced 18,214 people for the principal offence of theft between 2004–05 and 2007–08. The most common type of theft that was sentenced was theft from a shop (8,296 people).

Over this period, the majority of those sentenced were men (12,645 people or 69.4%), while the median age was 29 years. People sentenced for theft from a shop had an older median age, while those sentenced for theft of a bicycle and theft from a motor vehicle had a younger median age.

Most people sentenced for theft received a non-custodial sentence (73.0%), including a fine (34.2%) and an adjourned undertaking (23.8%). Those sentenced for theft of a motor vehicle tended to receive more severe sentence types with nearly one third receiving an immediate custodial sentence. Conversely, less than one in ten of those sentenced for theft from a shop received an immediate custodial sentence.

Introduction

This report describes sentencing outcomes¹ for the offence of theft as a whole and compares the sentencing outcomes for five types of theft. It brings together the analyses presented in each of the five Sentencing Snapshots on theft in the Magistrates' Court.² The five types of theft are theft of a motor vehicle, theft from a motor vehicle, theft from a shop, theft of a bicycle and other theft.

A person who dishonestly takes any property belonging to another person with the intention of permanently depriving that person of the property is guilty of theft.³

Theft is an indictable offence⁴ which carries a maximum penalty of 10 years' imprisonment⁵ and/or a fine of 1200 penalty units.⁶ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

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

Of all people sentenced for the principal offence of theft, 83.0% had their cases heard in the Magistrates' Court. The remaining cases were heard in the Children's Court and higher courts. Theft was the principal offence in 6.6% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

Trends

In 2007–08, there were 3,933 people who were sentenced for the principal proven offence of theft.⁷ This has steadily decreased each year from 5,474 people in 2004–05.

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

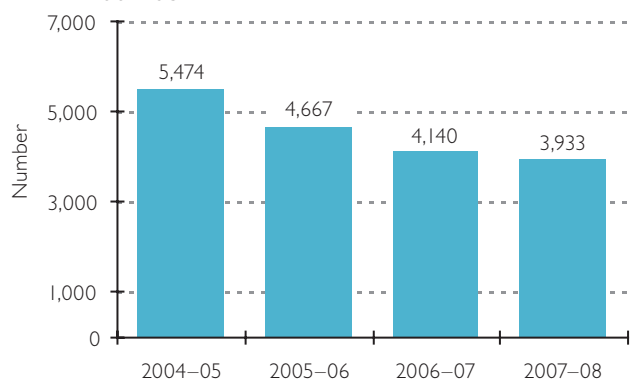


Figure 2 shows the trends in the number of people sentenced for each of the five types of theft over the four-year period. As shown, the number of people sentenced for theft of a motor vehicle and theft from a shop decreased in each of the four years, while those sentenced for other theft decreased over the first three years of the period before recording a slight increase in 2007–08. The number of people sentenced for theft from a motor vehicle and theft of a bicycle remained relatively stable over the period.

Figure 2: The number of people sentenced for theft by the type of theft, 2004–05 to 2007–08

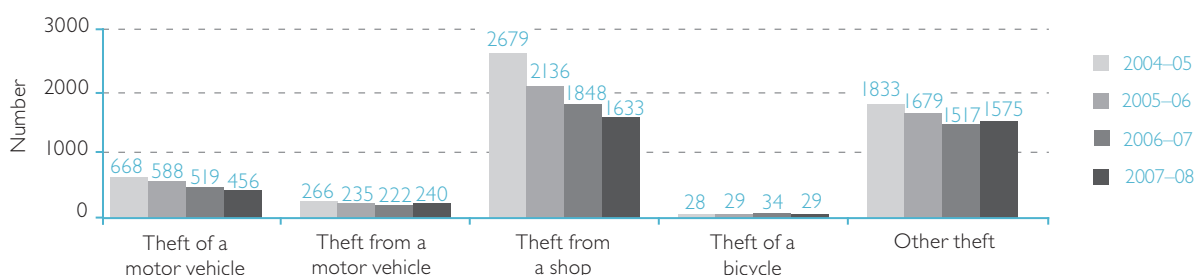


Table 1: The number and percentage of people sentenced for each type of theft by age and gender, 2004–05 to 2007–08

		Theft of a motor vehicle	Theft from a motor vehicle	Theft from a shop	Theft of a bicycle	Other theft	Total
All people	number sentenced	2,231	963	8,296	120	6,604	18,214
	median age	25 years	24 years	32 years	23 years	28 years	29 years
Males	number sentenced	1,949	889	4,783	115	4,909	12,645
	percentage	87.4%	92.3%	57.7%	95.8%	74.3%	69.4%
	median age	25 years	24 years	31 years	23 years	28 years	28 years
Females	number sentenced	282	74	3,513	5	1,695	5,569
	percentage	12.6%	7.7%	42.3%	4.2%	25.7%	30.6%
	median age	26 years	25y, 6m	34 years	33 years	31 years	33 years

People sentenced

Over the four-year period, the majority of those sentenced were men (12,645 people or 69.4%).⁸ The age of people sentenced for theft ranged from 15 years to 88 years, while the median age was 29 years (meaning that half of the people were aged 29 years or younger and half were 29 years or older). Women sentenced were much older than men (a median age of 33 years compared to 28 years).

Table 1 shows the number of people sentenced for each type of theft by age and gender. While women made up less than half of all people sentenced for each type of theft, they were most common amongst those sentenced for theft from a shop (42.3%). Men were most common amongst those people sentenced for theft of a bicycle (95.8%) and least common for those sentenced for theft from a shop (57.7%).

For each of the five types of theft the median age of women sentenced was older than that of men. Also, people sentenced for theft from a shop tended to be older with a median age of 32 years while people sentenced for theft of a bicycle (23 years) and theft from a motor vehicle (24 years) tended to be younger.

Sentencing outcomes

Table 2 shows the sentencing outcomes for people sentenced for each type of theft during 2004–05 to 2007–08. Over the four-year period, the majority of those sentenced for theft received a non-custodial sentence (13,298 people or 73.0%), including 6,228 people who received a fine (34.2%), 4,326 people who received an adjourned undertaking (23.8%) and 2,546 people who received a community-based order (14.0%).

The sentences imposed differed according to the type of theft. As shown, nearly one third (32.1%) of people sentenced for theft of a motor vehicle received an immediate custodial sentence, including 25.2% who were sentenced to imprisonment. The median length of imprisonment for these people was three months. Less than one in ten of those sentenced for theft from a shop received an immediate custodial sentence.

Non-custodial sentences were most common for those who were sentenced for theft from a shop (80.4%), theft of a bicycle (74.2%) and other theft (74.3%). Less than half of those sentenced for theft of a motor vehicle received a non-custodial sentence (45.5%).

There were also 2,486 people who received a non-immediate custodial sentence (13.6%), including 2,012 people who received a wholly suspended sentence (11.0%). A higher percentage of those sentenced for theft of a motor vehicle received a non-immediate custodial sentence, including 17.4% who received a wholly suspended sentence of imprisonment. Those least likely to receive a non-immediate custodial sentence included those sentenced for theft from a shop (10.9%) and those sentenced for theft of a bicycle (11.7%).

An additional 4,119 people participated in the criminal justice diversion program.⁹ The use of this diversion program differed according to the type of theft. The diversion program was used more frequently for other theft (1,941 of the 8,545 dispositions) and for theft from a shop (1,747 of the 10,043 dispositions).

In some circumstances, when sentencing an offender the court may decide whether to record a conviction.¹⁰ Of the people sentenced for theft in 2006–07 and 2007–08,¹¹ 69.4% had a conviction recorded (5,604 people). This was highest for those sentenced for theft of a motor vehicle (78.8%) and lowest for those sentenced for other theft (65.9%).

Table 2: The number and percentage of people sentenced for each type of theft by sentence type, 2004–05 to 2007–08

	Theft of a motor vehicle		Theft from a motor vehicle		Theft from a shop		Theft of a bicycle		Other theft		Total	
Immediate custodial	717	32.1%	174	18.1%	723	8.7%	17	14.2%	799	12.1%	2,430	13.3%
Imprisonment	563	25.2%	148	15.4%	633	7.6%	14	11.7%	669	10.1%	2,027	11.1%
Partially suspended sentence	101	4.5%	12	1.2%	78	0.9%	2	1.7%	99	1.5%	292	1.6%
Combined custody and treatment order	7	0.3%	2	0.2%	4	0.0%	0	0.0%	2	0.0%	15	0.1%
Youth justice centre order	46	2.1%	12	1.2%	8	0.1%	1	0.8%	29	0.4%	96	0.5%
Other custodial	499	22.4%	173	18.0%	901	10.9%	14	11.7%	899	13.6%	2,486	13.6%
Drug treatment order	10	0.4%	3	0.3%	33	0.4%	0	0.0%	11	0.2%	57	0.3%
Wholly suspended sentence	388	17.4%	142	14.7%	767	9.2%	11	9.2%	704	10.7%	2,012	11.0%
Intensive correction order	101	4.5%	28	2.9%	101	1.2%	3	2.5%	184	2.8%	417	2.3%
Non-custodial	1,015	45.5%	616	64.0%	6,672	80.4%	89	74.2%	4,906	74.3%	13,298	73.0%
Community-based order	431	19.3%	160	16.6%	903	10.9%	21	17.5%	1,031	15.6%	2,546	14.0%
Fine	314	14.1%	263	27.3%	3,423	41.3%	37	30.8%	2,191	33.2%	6,228	34.2%
Adjourned undertaking	263	11.8%	188	19.5%	2,196	26.5%	31	25.8%	1,648	25.0%	4,326	23.8%
Convicted and discharged (s. 73 SA)	5	0.2%	4	0.4%	110	1.3%	0	0.0%	23	0.3%	142	0.8%
Dismissed (s. 76 SA)	2	0.1%	1	0.1%	40	0.5%	0	0.0%	13	0.2%	56	0.3%
People sentenced	2,231	100.0%	963	100.0%	8,296	100.0%	120	100.0%	6,604	100.0%	18,214	100.0%
Criminal justice diversion program	203		179		1,747		49		1,941		4,119	
Total dispositions	2,434		1,142		10,043		169		8,545		22,333	

Endnotes

¹ The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision.

This report presents sentencing outcomes for people sentenced for the principal offence of theft in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for theft who received a more serious sentence for another offence on the same charge sheet.

² See Sentencing Snapshots No. 52 to No. 56. These snapshots cover the offences of theft of a motor vehicle, theft from a motor vehicle, theft from a shop, theft of a bicycle and other theft.

³ *Crimes Act 1958 (Vic)* s 72.

⁴ If the value of the property stolen was less than \$25,000 or the property was a motor vehicle, an offence under this section may be dealt with in the Magistrates' Court. From 1 July 2007, this amount was raised to \$100,000 (see *Magistrates' Court Act 1989 (Vic)* s 53(1) and Sch 4 cl.16). The change applies after this date regardless of when the offence is alleged to have been committed or when the proceeding commenced (see Sch 8 cl.37(1) *Magistrates' Court Act 1989 (Vic)*).

⁵ *Crimes Act 1958 (Vic)* s 74.

⁶ The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website www.ocpc.vic.gov.au. During the period 2004–05 to 2007–08, the value of the penalty unit increased from \$102.25 to \$110.12.

⁷ The number of people sentenced excludes those who participated in the criminal justice diversion program.

Only the people who had charges that were dismissed in 2006–07 and 2007–08 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (s 360(1)(a) *Children, Youth and Families Act 2005 (Vic)*) or 'dismissed' (s 76 *Sentencing Act 1991 (Vic)*). The charges that were dismissed in 2004–05 and 2005–06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the four-year period could be an under-representation. In 2007–08, 25 people had charges that were dismissed pursuant to this legislation. This made up 0.6% of people sentenced in that year.

⁸ The age was unknown for 31 men and 22 women sentenced for theft (0.3%). These people are excluded from all age analyses in this report.

⁹ The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and a diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.

¹⁰ *Sentencing Act 1991 (Vic)* s 7 and s 8.

In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social well being or on his or her employment prospects (*Sentencing Act 1991 (Vic)* s 8(1)).

¹¹ Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004–05 and 2005–06.