

Sentencing trends in
the higher courts of
Victoria
2013–14 to 2017–18

April 2019
No. 225

Culpable driving causing death

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of culpable driving causing death in the County and Supreme Courts of Victoria from 2013–14 to 2017–18.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2018 have been incorporated into the data in this Snapshot.³

Detailed data on culpable driving causing death and other offences is available on [Sentencing Advisory Council Statistics Online \(SACStat\)](#).

This offence covers homicides caused by the culpable driving of a motor vehicle. This offence is committed when a person drives a motor vehicle negligently, recklessly or while under the influence of drugs or alcohol and causes the death of another person.⁴ Culpable driving causing death is an indictable offence that carries a maximum penalty of 20 years' imprisonment and/or a fine of 2,400 penalty units.⁵ Culpable driving causing death is a Category 2 offence, which means that a court cannot impose a non-custodial sentence except in particular circumstances.⁶ Sentence lengths for some offences, including culpable driving causing death, committed on or after 1 February 2018 are subject to further restrictions.⁷

Culpable driving causing death was the principal offence⁸ in 0.7% of cases sentenced in the higher courts between 2013–14 and 2017–18.

People sentenced

From 2013–14 to 2017–18, 59 people were sentenced in the higher courts for a principal offence of culpable driving causing death.

Figure 1 shows the number of people sentenced for the principal offence of culpable driving causing death, by financial year. There were 15 people sentenced for this offence in 2017–18, the same number as in the previous year. The number of people sentenced was highest in 2013–14 (16 people) and lowest in 2015–16 (6 people).

Sentence types and trends

Figure 2 shows the total number of people sentenced for culpable driving causing death and the number receiving an immediate custodial sentence. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁹ Over the five-year period, 97% of people were given an immediate custodial sentence.

Figure 1: The number of people sentenced for culpable driving causing death, by financial year, 2013–14 to 2017–18

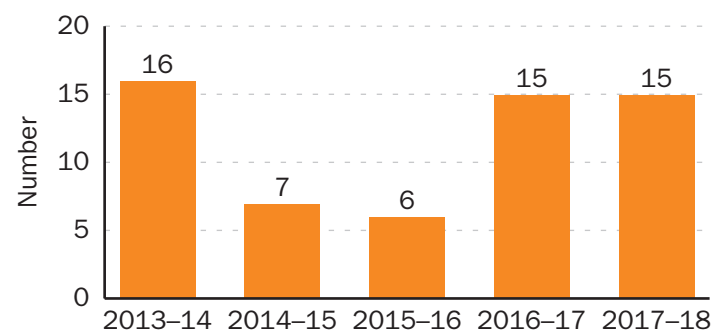


Figure 2: The number of people sentenced for culpable driving causing death and the number receiving an immediate custodial sentence, 2013–14 to 2017–18

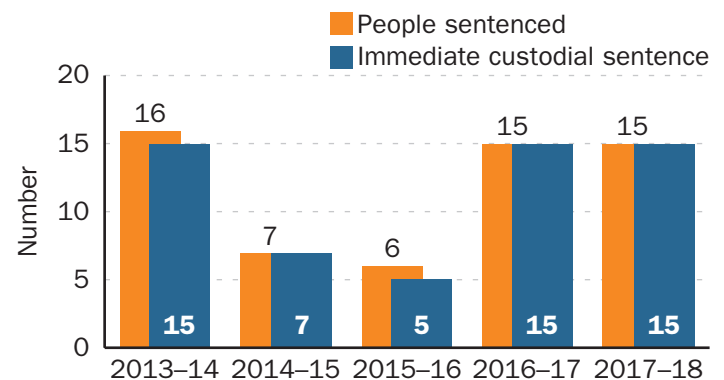


Table 1 shows the number of people sentenced for culpable driving causing death by the types of sentences imposed. The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.¹⁰

Over the five-year period, the majority of people sentenced for culpable driving causing death received a principal sentence of imprisonment (95% or 56 of 59 people). Of these, 54 people received a non-aggregate sentence of imprisonment and 2 people received an aggregate sentence of imprisonment. The *principal sentence* is the sentence imposed for the charge that is the principal offence.¹¹

The percentage of people receiving a principal sentence of imprisonment (including aggregate imprisonment) for culpable driving causing death remained steady at above 90% for each of the five years, aside from 2015–16. Overall, 92% of people received imprisonment alone and 3% received an aggregate sentence of imprisonment.

Table 1: The number and percentage of people sentenced for culpable driving causing death, by sentence type, 2013–14 to 2017–18

| Sentence type | 2013–14 | 2014–15 | 2015–16 | 2016–17 | 2017–18 | Total |
|-------------------------------------|-----------|----------|----------|-----------|-----------|-----------|
| Imprisonment | 14 (88%) | 7 (100%) | 5 (83%) | 14 (93%) | 14 (93%) | 54 (92%) |
| Aggregate imprisonment | 1 (6%) | 0 (–) | 0 (–) | 0 (–) | 1 (7%) | 2 (3%) |
| Youth justice centre order | 0 (–) | 0 (–) | 0 (–) | 1 (7%) | 0 (–) | 1 (2%) |
| Aggregate wholly suspended sentence | 0 (–) | 0 (–) | 1 (17%) | 0 (–) | 0 (–) | 1 (2%) |
| Wholly suspended sentence | 1 (6%) | 0 (–) | 0 (–) | 0 (–) | 0 (–) | 1 (2%) |
| People sentenced | 16 | 7 | 6 | 15 | 15 | 59 |

Principal and total effective sentences

In this section, two methods are used to describe sentence types and lengths. One method relates to the principal sentence and describes sentences for the offence at a *charge* level. The other relates to the total effective sentence and describes sentences for the offence at a *case* level (the principal sentence is described above).

The total effective sentence in a case with a single charge is the principal sentence. The total effective sentence in a case with multiple charges is the sentence that results from the court ordering the individual sentences for each charge to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other).

Where a case involves multiple charges, the total effective sentence imposed on a person is sometimes longer than the principal sentence. Principal sentences for culpable driving causing death must be considered in this broader context.

The following sections analyse the use of imprisonment for the offence of culpable driving causing death from 2013–14 to 2017–18.

Principal sentence of imprisonment

A total of 56 people received a principal sentence of imprisonment for culpable driving causing death. Of the 56 people, 54 received a non-aggregate term of imprisonment and 2 people received an aggregate term.

Figure 3 shows the length of imprisonment for the people who received a non-aggregate term.¹² Imprisonment terms ranged from 4 years to 11 years, while the median length of imprisonment was 6 years (meaning that half of the imprisonment terms were below 6 years and half were above).

The most common lengths of imprisonment imposed were 5 to less than 6 years and 6 to less than 7 years (13 people each).

As shown in Figure 4, the average (mean) length of imprisonment imposed on people sentenced for culpable driving causing death ranged from 5 years and 11 months in 2013–14 to 7 years and 8 months in 2017–18. The average for 2017–18 reflects the highest average imprisonment length over the five years.

Other offences finalised at the same hearing

Sometimes people prosecuted for culpable driving causing death face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of culpable driving causing death. The section includes data on all people sentenced for a principal offence of culpable driving causing death, not just those who received imprisonment.

Figure 5 shows the number of people sentenced for the principal offence of culpable driving causing death by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 10, while the median was 2 offences. There were 17 people (28.8%) sentenced for the single offence of culpable driving causing death. The average number of offences per person was 2.88.

Figure 3: The number of people sentenced to imprisonment for culpable driving causing death, by length of imprisonment term, 2013–14 to 2017–18

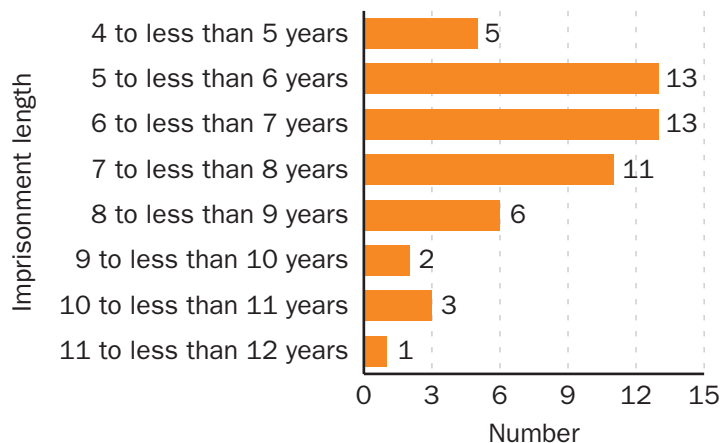


Figure 4: The average (mean) length of imprisonment imposed on people sentenced for culpable driving causing death, 2013–14 to 2017–18

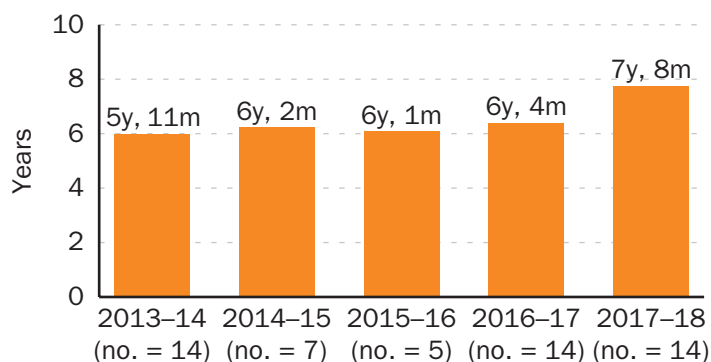


Figure 5: The number of people sentenced for the principal offence of culpable driving causing death, by the number of sentenced offences per person, 2013–14 to 2017–18

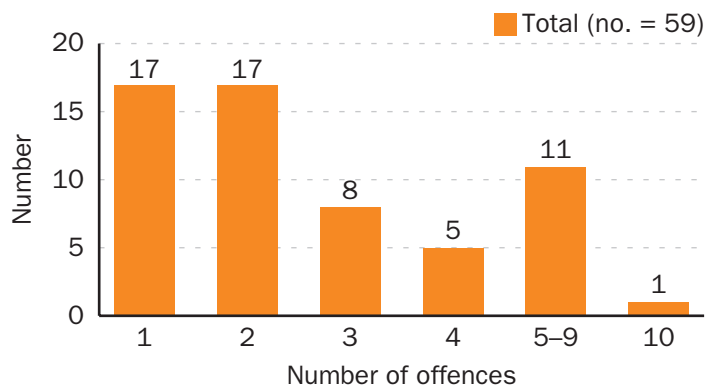


Table 2 shows the 10 most common offences, by number and percentage, for people sentenced for culpable driving causing death. The last column sets out the average number of offences sentenced per person. For example, 15 of the total 59 people (25.4%) also received sentences for negligently causing serious injury. On average, they were sentenced for 1.73 counts of negligently causing serious injury.

Table 2: The number and percentage of people sentenced for the principal offence of culpable driving causing death by the most common offences that were sentenced and the average number of those offences that were sentenced, 2013–14 to 2017–18

| Offence | Number of cases | Percentage of cases | Average number of proven offences per case |
|---|-----------------|---------------------|--|
| 1. Culpable driving causing death | 59 | 100% | 1.22 |
| 2. Negligently causing serious injury | 15 | 25.4% | 1.73 |
| 3. Drive while disqualified or suspended | 7 | 11.9% | 1.14 |
| 4. Unlicensed driving | 7 | 11.9% | 1.00 |
| 5. Theft | 6 | 10.2% | 1.33 |
| 6. Reckless conduct endangering persons | 6 | 10.2% | 1.33 |
| 7. Reckless conduct endangering life | 5 | 8.5% | 1.00 |
| 8. Fail to stop or provide assistance in motor vehicle accident involving death or serious injury | 4 | 6.8% | 1.00 |
| 9. Fail to stop or provide assistance after motor vehicle accident | 3 | 5.1% | 1.33 |
| 10. Possess a drug of dependence | 3 | 5.1% | 1.00 |
| People sentenced | 59 | 100% | 2.88 |

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for culpable driving causing death by length of total effective imprisonment term. The total effective imprisonment terms ranged from 4 years and 3 months to 16 years, while the median total effective imprisonment term was 7 years, 1 month and 15 days (meaning that half of the total effective imprisonment terms were below 7 years, 1 month and 15 days and half were above).

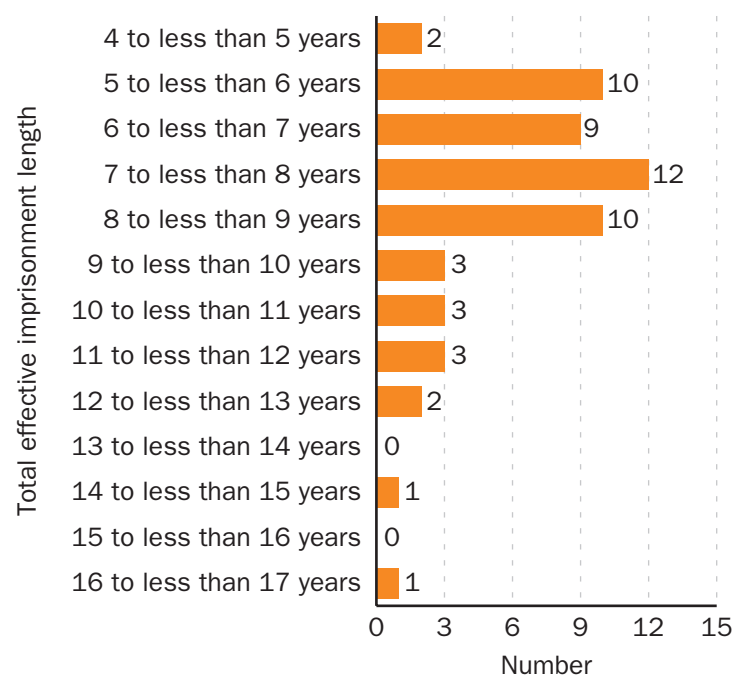
The most common total effective imprisonment term was 7 to less than 8 years (12 people).

Non-parole period

If a person is sentenced to a term of immediate imprisonment of less than 1 year, the court cannot impose a non-parole period. For terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For terms of imprisonment of 2 years or more, the court must impose a non-parole period in most circumstances. If

the court fixes a non-parole period, the person must serve that period before becoming eligible for parole. If the court does not set a non-parole period, the person must serve the entirety of their imprisonment term in custody.

Figure 6: The number of people sentenced to imprisonment for culpable driving causing death, by length of total effective imprisonment term, 2013–14 to 2017–18



All 56 people who were sentenced to imprisonment for culpable driving causing death were given a non-parole period. Figure 7 shows the number of people sentenced to imprisonment for culpable driving causing death by length of non-parole period. Non-parole periods ranged from 2 years and 3 months to 11 years, while the median non-parole period was 4 years, 10 months and 15 days (meaning that half of the non-parole periods were below 4 years, 10 months and 15 days and half were above).

The most common non-parole period imposed was 4 to less than 5 years (13 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 compares the average length of total effective sentences of imprisonment with the average length of non-parole periods.

From 2013–14 to 2017–18, the average length of total effective sentences for all people ranged from 6 years and 10 months in 2013–14 to 8 years and 9 months in 2017–18. Over the same period, the average length of non-parole periods ranged from 4 years and 3 months in 2013–14 to 5 years and 8 months in 2015–16.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for culpable driving causing death is available on [SACStat](#).

Summary

From 2013–14 to 2017–18, 59 people were sentenced for culpable driving causing death in the higher courts. Of these people, 56 (95%) were given a principal sentence of imprisonment.

People with a principal offence of culpable driving causing death were sometimes sentenced for other offences. The number and range of those offences help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 7 years, 1 month and 15 days, while the median principal imprisonment length was 6 years.

Total effective imprisonment lengths ranged from 4 years and 3 months to 16 years, and non-parole periods ranged from 2 years and 3 months to 11 years.

Endnotes

1. This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders as they are imposed in cases where the accused is found to be unfit to stand trial or not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot no. 200, which describes sentencing trends for culpable driving causing death between 2011–12 and 2015–16.

Figure 7: The number of people sentenced to imprisonment for culpable driving causing death by length of non-parole period, 2013–14 to 2017–18

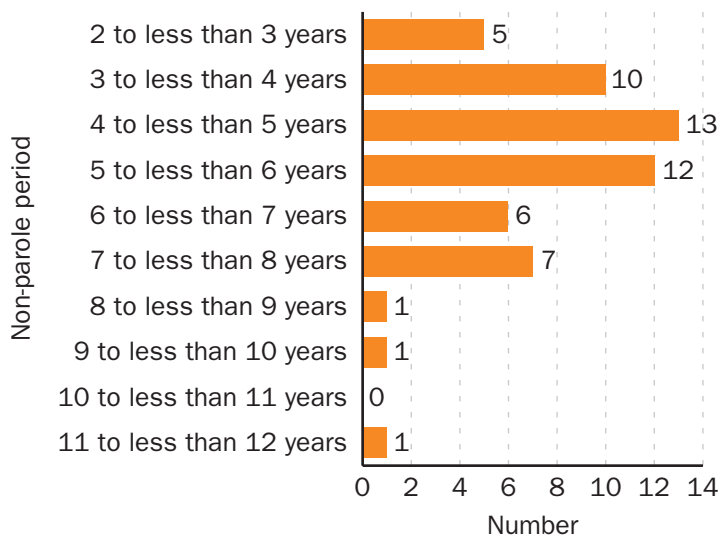
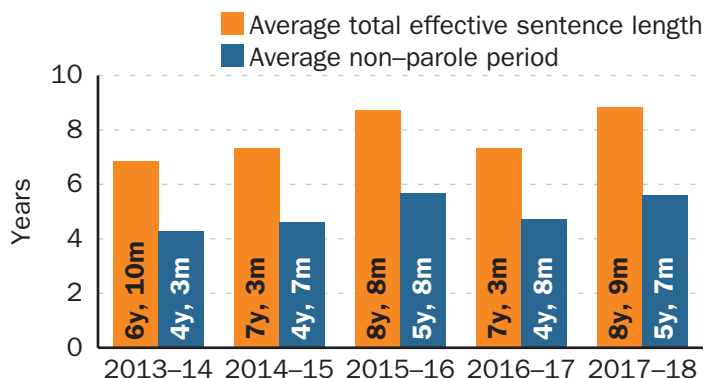


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for culpable driving causing death, 2013–14 to 2017–18



2. Data on first-instance sentencing outcomes in this Snapshot was obtained from the Strategic Analysis and Review Team at Court Services Victoria. Data on appeal outcomes was collected by the Sentencing Advisory Council from the **Australasian Legal Information Institute**, and was also provided by the Victorian Court of Appeal. The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this report is accurate, the data is subject to revision.
3. In October 2017, the High Court delivered its judgment in *Director of Public Prosecutions v Dalgliesh (A Pseudonym)* [2017] HCA 41, in which it made two important findings about sentencing in Victoria. First, Victorian courts had been giving too much weight to *current sentencing practices*, which is just one of the factors courts are required to take into account when imposing a sentence. Second, where current sentencing practices are shown to be in error (for example, when they fail to adequately reflect community expectations) courts should change their practices immediately, not incrementally.

Although the High Court's decision only occurred during the last financial year of this Snapshot, it may result in considerable changes to sentencing patterns for future editions of the Snapshots.

4. *Crimes Act 1958* (Vic) s 318.
5. The value of a penalty unit changes each year and can be found in the **Victorian Government Gazette** and on the **Victorian Legislation and Parliamentary Documents website**.
6. *Sentencing Act 1991* (Vic) s 5(2H) requires a custodial sentence (imprisonment or another form of custody) to be imposed for this offence when committed on or after 28 October 2018, unless special reasons exist. If special reasons do not apply, then the court is not allowed to impose an order of imprisonment combined with a community correction order or another non-custodial order such as a community correction order or a fine.
All of the offences included in this Snapshot were committed prior to the commencement of this legislation.
7. Under section 5(2)(ab) of the *Sentencing Act 1991* (Vic), a court must take into account the standard sentence when sentencing certain offences, including culpable driving causing death, if the offence was committed on or after 1 February 2018.
8. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
9. An *immediate custodial sentence* includes imprisonment, aggregate imprisonment and a youth justice centre order.
10. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
11. Refer to Endnote 8.
12. Data presented in this section does not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Sentence lengths for aggregate sentences of imprisonment apply to the whole case, while Figures 3 and 4 only deal with sentences of imprisonment for the principal offence of culpable driving causing death.

SACStat – Higher Courts Culpable driving causing death

https://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_318_1.html

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

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ISSN 1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen Street, Melbourne.

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