

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2005–06 to 2009–10

May 2011
No. 109

Murder

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of murder and details the age and gender² of people sentenced for this offence in the Supreme Court of Victoria between 2005–06 and 2009–10.³

The offence of murder applies to the most serious homicides – when a person intentionally or recklessly kills another or inflicts severe injury on another person who dies as a result. Murder is an indictable offence and carries a maximum penalty of life imprisonment.⁴

Murder was the principal offence in 1.3% of cases sentenced in the higher courts between 2005–06 and 2009–10.

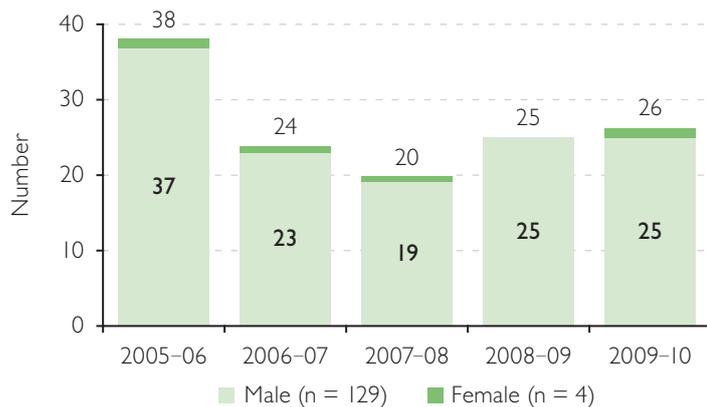
As with previous publications in this series, this report presents a snapshot of first instance sentences in the higher courts of Victoria. The Council is now collecting data on all sentence appeals. A section on appeals has been included immediately before the Summary section of this report. Information on sentences that have changed on appeal is also noted in other sections of the report. Unless otherwise noted, the data represent sentences imposed at first instance.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of murder for the period 2005–06 to 2009–10. As shown, 133 people were sentenced for murder over the five-year period. There were 26 people sentenced for this offence in 2009–10, up by 1 person from the previous year.

Over the five years depicted, the majority of those sentenced were men (97.0% or 129 of 133 people), including 25 of the 26 people sentenced in 2009–10.

Figure 1: The number of people sentenced for murder, by gender, 2005–06 to 2009–10



Sentence types and trends

Figure 2 shows the total number of people sentenced for murder and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.⁵ Over the five-year period, 100% of people were given an immediate custodial sentence.

Figure 2: The number of people sentenced for murder and the number who received an immediate custodial sentence, 2005–06 to 2009–10

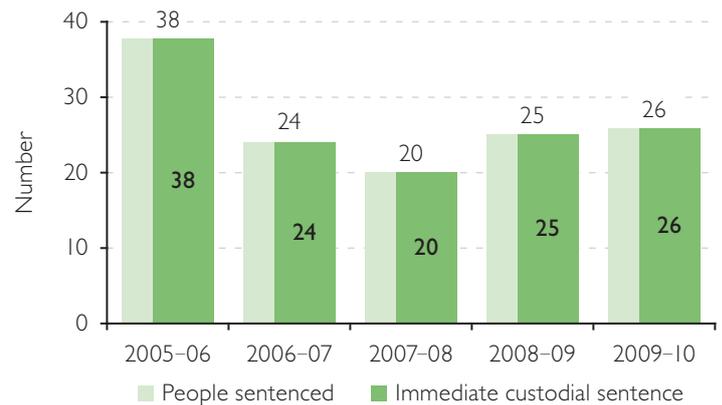


Table 1 shows the number of people sentenced for murder from 2005–06 to 2009–10 by the types of sentence imposed.

Over the five-year period, the majority of the people sentenced for murder received a period of imprisonment (93% or 124 of 133 people).

The number of people receiving a sentence of imprisonment was lowest during 2007–08 (20 people) and highest during 2005–06 (34 people). The percentage of people receiving a sentence of imprisonment was consistently high throughout the time period, ranging from 88% in 2006–07 to 100% in both 2007–08 and 2008–09.

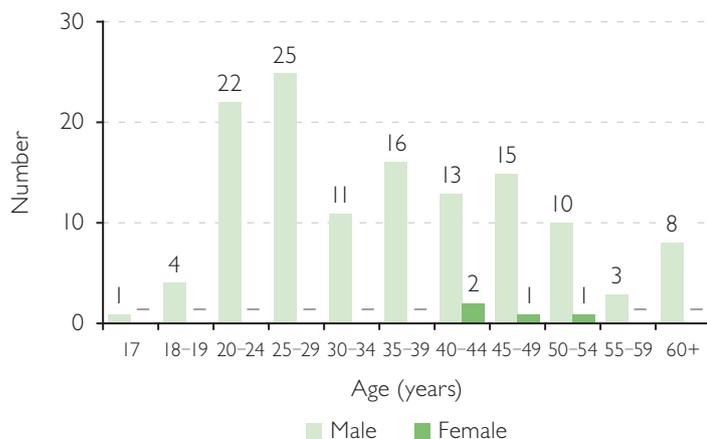
Table 1: The number and percentage of people sentenced for murder, by sentence type, 2005–06 to 2009–10

Sentence type	2005–06	2006–07	2007–08	2008–09	2009–10
Imprisonment	34 (89%)	21 (88%)	20 (100%)	25 (100%)	24 (92%)
Custodial supervision order	4 (11%)	3 (13%)	0 (–)	0 (–)	2 (8%)
People sentenced	38	24	20	25	26

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for murder grouped by their age⁶ between 2005–06 and 2009–10. The average age of people sentenced for murder was 36 years and 9 months. One male juvenile was sentenced over this period.⁷

Figure 3: The number of people sentenced for murder, by gender and age, 2005–06 to 2009–10



Sentence types by gender

Figure 4 and Table 2 show the types of sentence imposed for murder grouped by gender. As shown, a higher percentage of men received a period of imprisonment (93.8% compared to 75.0% of women). Conversely, a higher percentage of women received a custodial supervision order (25.0% compared to 6.2% of men).

Figure 4: The percentage of people sentenced for murder, by sentence type and gender, 2005–06 to 2009–10

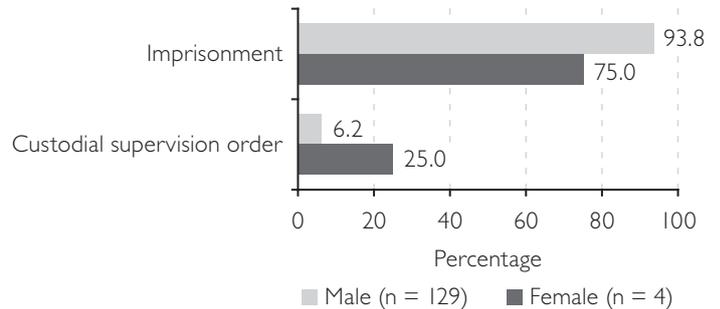


Table 2: The number and percentage of people sentenced for murder, by gender, 2005–06 to 2009–10

Sentence type	Male	Female	Total
Imprisonment	121 (94%)	3 (75%)	124 (93%)
Custodial supervision order	8 (6%)	1 (25%)	9 (7%)
People sentenced	129	4	133

Sentence types by age

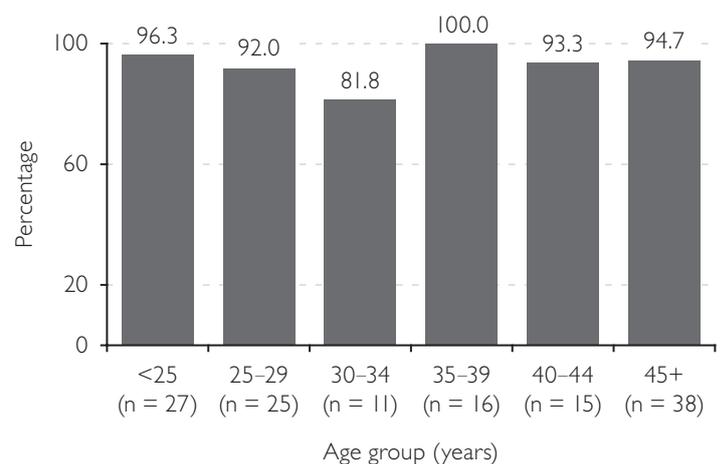
As shown in Table 2, the most common sentence type was imprisonment. The following analysis examines this sentence type by the offenders' age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 35–39 years (100% or 16 of the 16 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 30–34 years (82% or 9 of the 11 people in this age group).

Figure 5: The percentage of people who received a period of imprisonment for murder, by age group, 2005–06 to 2009–10



Principal and total effective sentences

There are two methods for describing sentence types and lengths – the principal sentence and the total effective sentence.

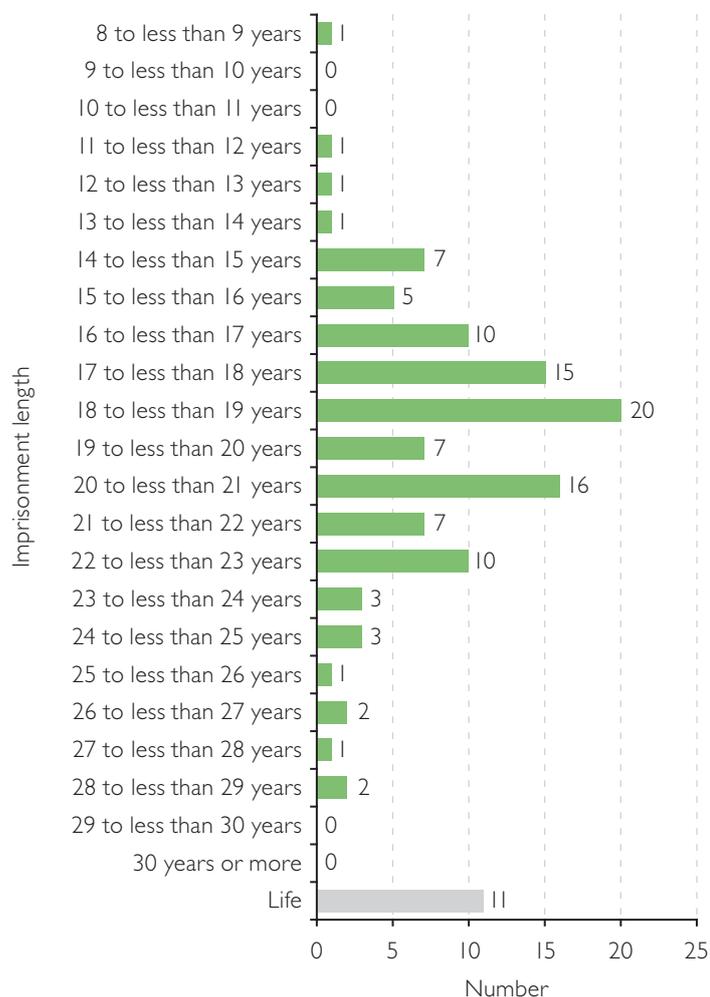
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a *total effective sentence*. The total effective sentence aggregates the principal sentence handed down for each charge and takes into account whether sentences are ordered by the court to be served concurrently (at the same time) or cumulatively.

In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for murder must be considered in this broader context. The following sections analyse the use of imprisonment for murder from 2005–06 to 2009–10.

Principal sentence of imprisonment

Figure 6 shows the number of people sentenced to imprisonment for murder between 2005–06 and 2009–10 by the length of the imprisonment term.

Figure 6: The number of people sentenced to imprisonment for murder, by length of imprisonment term, 2005–06 to 2009–10



Imprisonment terms ranged from 8 years to life. The median length of imprisonment (apart from people who received life sentences) was 18 years (meaning that half of the non-life imprisonment terms were shorter than 18 years and half were longer). The most common length of imprisonment imposed was 18 years (20 people). Life sentences were given to 11 people.

As shown in Figure 7, the average length of imprisonment term given to people sentenced for murder, excluding people who received life sentences, ranged from 18 years in 2006–07 to 20 years and 5 months in 2007–08.

From 2005–06 to 2009–10, the majority of those people who received a term of imprisonment for murder were men (121 people or 97.6%). Over the five-year period, men who had not received life sentences had a longer average term of imprisonment (18 years and 9 months) compared to women (16 years and 8 months). Male offenders were the only ones to receive life sentences of imprisonment.

Figure 7: The average length of imprisonment term imposed on people sentenced for murder, 2005–06 to 2009–10

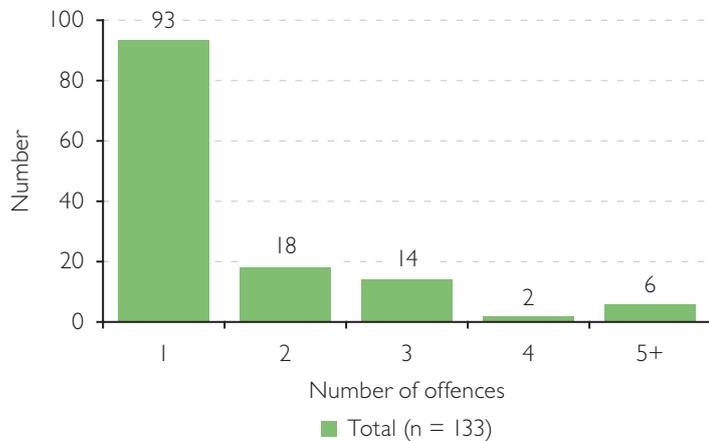


Other offences finalised at the same hearing

Often people prosecuted for murder face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of murder.

Figure 8 shows the number of people sentenced for the principal offence of murder by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 8, while the median was 1 offence. There were 93 people (69.9%) sentenced for the single offence of murder. The average number of offences per person sentenced for murder was 1.60.

Figure 8: The number of people sentenced for the principal offence of murder, by the number of sentenced offences per person, 2005–06 to 2009–10



While Figure 8 presents the number of sentenced offences for those sentenced for murder, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences. The last column sets out the average number of offences sentenced per person. For example, 6 of the total 133 people (4.5%) also received sentences for causing serious injury intentionally. On average, they were sentenced for 1.17 counts of causing serious injury intentionally.

Table 3: The number and percentage of people sentenced for the principal offence of murder, by the most common offences that were sentenced and the average number of those offences that were sentenced, 2005–06 to 2009–10

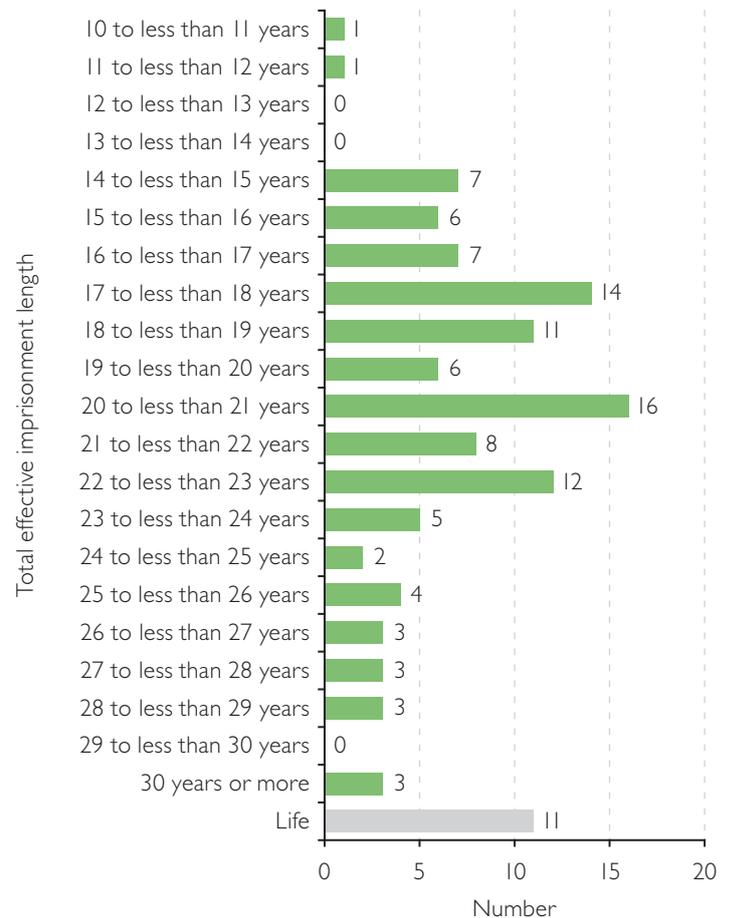
Offence	No.	%	Avg.
1 Murder	133	100.0	1.11
2 Causing serious injury intentionally	6	4.5	1.17
3 Theft	4	3.0	1.50
4 Attempted murder	4	3.0	1.50
5 Arson	4	3.0	1.50
6 Kidnapping (common law)	3	2.3	1.00
7 False imprisonment	3	2.3	1.00
8 Robbery	2	1.5	2.00
9 Armed robbery	2	1.5	1.50
10 Aggravated burglary	2	1.5	1.00
People sentenced	133	100.0	1.60

Total effective sentence of imprisonment

There were 123 people given a total effective sentence of imprisonment.⁸ Figure 9 shows the number of people sentenced to imprisonment for murder between 2005–06 and 2009–10 by length of total effective sentence. The lengths of total effective sentences ranged from 10 years and 6 months to life. The median total effective length of imprisonment for offenders who did not receive life sentences was 20 years (meaning that half of the total effective sentence lengths for non-life imprisonment were below 20 years and half were above). Adjusted for appeals the median total effective imprisonment was 19 years.

The most common total effective imprisonment length was 20 years (16 people).

Figure 9: The number of people sentenced to imprisonment for murder, by total effective length of imprisonment term, 2005–06 to 2009–10

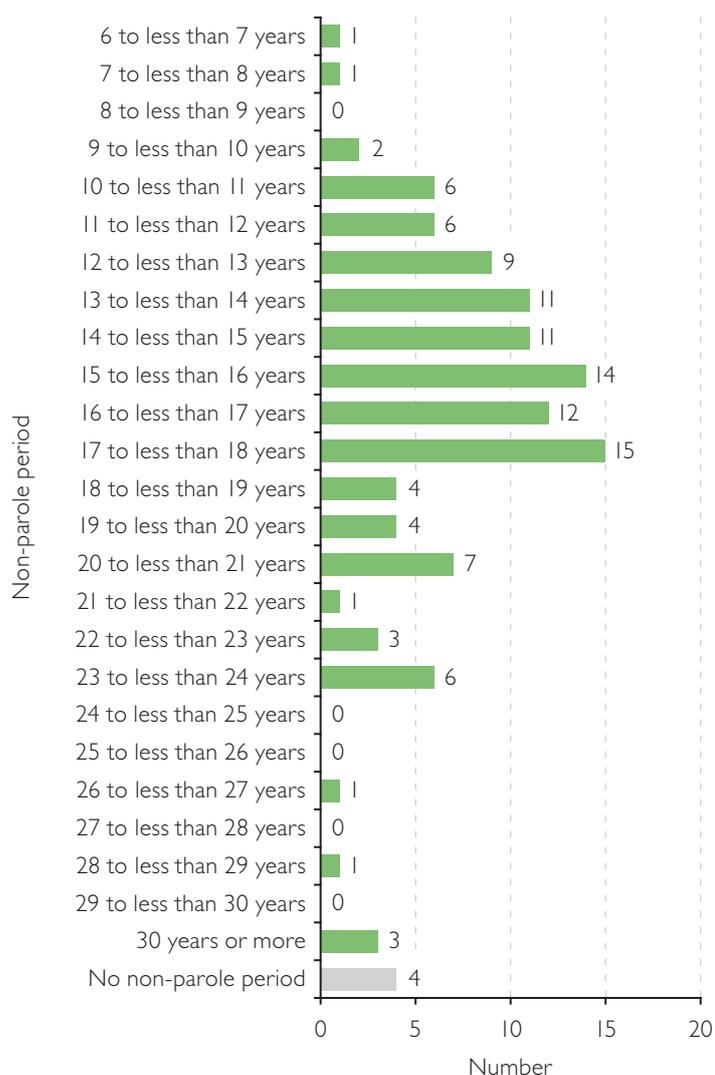


Non-parole period

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

Under section 11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be longer than the individual principal sentence for murder. Sentences and non-parole periods must be considered in this broader context.

Figure 10: The number of people sentenced to imprisonment for murder, by length of non-parole period, 2005–06 to 2009–10



All of the 123 people who were sentenced to imprisonment for murder were eligible to have a non-parole period fixed. Of these people, 118 were given a non-parole period (96%).⁹ Figure 10 shows the number of people sentenced to imprisonment for murder between 2005–06 and 2009–10 by length of non-parole period. Non-parole periods ranged from 6 years to 33 years, while the median length of the non-parole period was 15 years and 3 months (meaning that half of the non-parole periods were below 15 years and 3 months and half were above). Adjusted for appeals, the median non-parole period was 15 years.

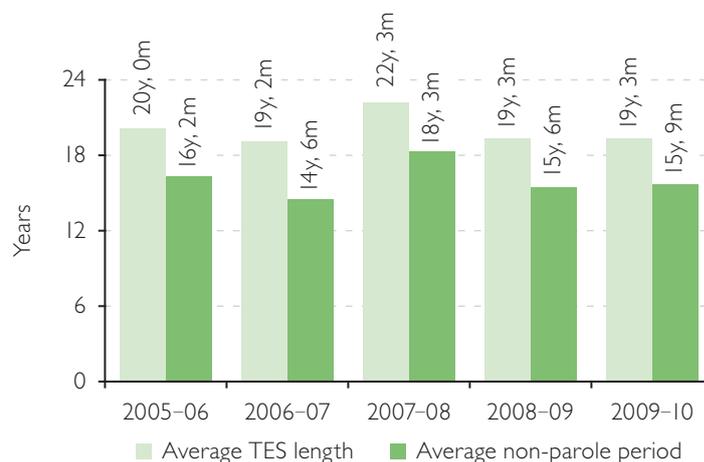
The most common non-parole period imposed was 17 years (15 people).

Total effective sentences of imprisonment and non-parole periods

Figure 11 presents the average lengths of total effective sentences of imprisonment compared to the average lengths of non-parole periods for all people from 2005–06 to 2009–10.

From 2005–06 to 2009–10, the average lengths of total effective sentences for all people ranged from 19 years and 2 months in 2006–07 to 22 years and 3 months in 2007–08. Over the same period, the average lengths of non-parole periods ranged from 14 years and 6 months in 2006–07 to 18 years and 3 months in 2007–08.

Figure 11: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for murder, 2005–06 to 2009–10



Sentences of life imprisonment

Between 2005–06 and 2009–10, there were 11 people sentenced to life imprisonment for murder. Of the 11 people who were sentenced to life imprisonment, 7 were eligible to apply for parole (63.6%).

Non-parole periods ranged from 19 years to 33 years with an average of 26 years and 10 months. Life sentences of imprisonment accounted for 8.3% of all sentences handed down for murder.

Appeals

A sentence imposed on a person may be appealed¹² by that person or by the Crown. A person sentenced may also appeal against their conviction. All appeals made in relation to people sentenced in the higher courts are determined by the Court of Appeal.

Up to June 2010, 7 people sentenced for a principal offence of murder in the period 2005–06 to 2009–10 successfully appealed their conviction (a retrial was ordered for all of these people). The longest total effective imprisonment for these successful conviction appeals was life. Thus, the number of people sentenced from 2005–06 to 2009–10 for a principal offence of murder was reduced to 126 people once appeals are considered.

As a result of successful appeals against sentence, the total effective sentence and/or the non-parole period changed for 6 people. All of these appeals were made by the person sentenced and resulted in a sentence reduction. The longest total effective imprisonment term to be reduced was a sentence of 27 years, which decreased to 23 years.

The principal sentence changed for 5 people as a result of a successful appeal. The longest principal sentence of imprisonment reduced was 27 years, which decreased to 23 years.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term remained life and the adjusted median length was 19 years (previously 20 years). The adjusted longest non-parole period remained 33 years while the median was 15 years (previously 15 years and 3 months).

The adjusted longest principal sentence of imprisonment was unchanged at life imprisonment and the adjusted median imprisonment term remained 18 years.

Summary

Between 2005–06 and 2009–10, 133 people were sentenced for murder in the higher courts. Over this period, the majority of those sentenced were men (97%). Fifty-six percent of the people sentenced were between the ages of 20 and 39 years.

The majority of the people sentenced for murder received a period of imprisonment (93%) with the remaining 7% receiving a custodial supervision order.

Imprisonment was the most common sentence for offenders aged between 35 and 39 years and least common for offenders aged 30 to 34 years. However, for all age groups, imprisonment was used in a vast majority of cases.

Each of the 133 people was sentenced for an average of 1.60 offences, including 1.11 offences of murder. The most common offence finalised in conjunction with murder was causing serious injury intentionally (4.5% of all cases). The number and range of offences for which people with a principal offence of murder were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length for offenders on non-life sentences was 20 years, while the median principal imprisonment length was 18 years. In addition to these, a total of 11 people were sentenced to life imprisonment.

Total effective imprisonment lengths ranged from 10 years and 6 months with a non-parole period of 6 years to life with no non-parole period. The most common sentence of imprisonment was 22 years with a 17 year non-parole period.

A small number of people were able to successfully appeal against their sentences. When the results of the appeal outcomes are incorporated into the original sentencing data, the range of both total effective imprisonment lengths and principal imprisonment sentence lengths was unchanged.

Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of murder in the Supreme Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for murder who received a more serious sentence for another offence forming part of the same presentment or indictment. There were 133 people sentenced from 2005–06 to 2009–10 for 148 offences of murder. Murder was the principal proven offence for all of these people.

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 defendant is 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. 84, which described sentencing trends for murder between 2003–04 and 2007–08.

2. The information source for sentencing outcomes for murder only contains information on age and gender characteristics. No other demographic analysis is possible.
3. The source data for the statistical information presented in this Snapshot were provided by Court Statistical Services, Department of Justice (Vic). 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 are accurate, the data are subject to revision.
4. *Crimes Act 1958* (Vic) s 3.
5. Immediate custodial sentence includes imprisonment and custodial supervision order.
6. Age is at the time of sentencing. One person was excluded from the graph because their age was unknown.
7. Defendants who are under the age of 18 at the time of committing the alleged offence and who are not 19 years or older at the time proceedings commenced usually have their cases dealt with in the Children's Court of Victoria. However, the Children's Court is not able to hear any cases involving murder.
8. All of the 124 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence. However, one person was excluded from the analysis of both total effective imprisonment lengths and non-parole periods, as his sentence also related to offences in a separate case.
9. One person was not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to this case. The non-parole period for this person is excluded from the analysis. This is in addition to the person excluded as described in fn 8. A non-parole period was not set for 4 people who were eligible for a non-parole period.
10. Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment.
11. One person in 2009–10 received a total effective sentence of 10 years and 6 months with a non-parole period of 6 years. The judge remarked that '[a]t 16 years of age ... you could not be expected to be as mature as someone four or five years older ... And because of your youth, the community has a particular interest in your rehabilitation'. The judge also mentioned that '[t]he Director of Public Prosecutions chose not to allege an intention either to kill or to cause really serious injury ... it has the result that you must be sentenced on the basis that you did not intend [the victim's] death'. In a separate case, another offender received a total effective sentence of 11 years with a non-parole period of 7 years in 2008–09. The judge stated that 'I accept that an act of violence by you is totally out of character and that there is no prospect of you re-offending in the future'. However, the judge also pointed out '[w]hilst I accept that the primary motivation for you to kill your wife was your belief that you would relieve her of her pain, this needs to be placed in context ... Whilst your actions were affected by your depression due to the deceased's condition and your belief that you were assisting her, she was not in such a state that one could characterise your actions as a mercy killing.'
12. Appeals data were collected by the Sentencing Advisory Council from transcripts of sentencing remarks of criminal appeals on the Australasian Legal Information Institute's website <www.austlii.gov.au>.

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