

# Sentencing Snapshot

Sentencing trends in  
the higher courts of  
Victoria  
2007–08 to 2011–12

May 2013  
No. 142

## Culpable driving causing death

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of culpable driving causing death and details the age and gender<sup>2</sup> of people sentenced for this offence in the County and Supreme Courts of Victoria between 2007–08 and 2011–12.<sup>3</sup> Except where otherwise noted, the data represent sentences imposed at first instance.

This offence covers homicides caused by the culpable driving of a motor vehicle. This offence is committed where a person drives a motor vehicle negligently, recklessly or while under the influence of drugs or alcohol and causes the death of another person.<sup>4</sup> 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.<sup>5</sup>

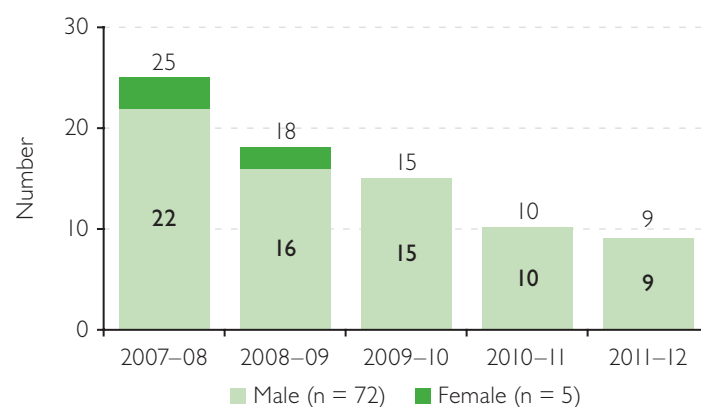
Culpable driving causing death was the principal offence<sup>6</sup> in 0.8% of cases sentenced in the higher courts between 2007–08 and 2011–12.

### People sentenced

From 2007–08 to 2011–12, 77 people were sentenced in the higher courts for a principal offence of culpable driving causing death. These people are the focus of this Snapshot. There were no people sentenced in cases that involved culpable driving causing death but where some other offence was the principal offence. In total, 77 people were sentenced in the higher courts for 86 charges of culpable driving causing death.

Figure 1 shows the number of people sentenced for the principal offence of culpable driving causing death by their gender. Over the five years depicted, the majority of those sentenced were men (93.5% or 72 of 77 people), including all of the 9 people sentenced in 2011–12.

Figure 1: The number of people sentenced for culpable driving causing death by gender, 2007–08 to 2011–12



## Sentence types and trends

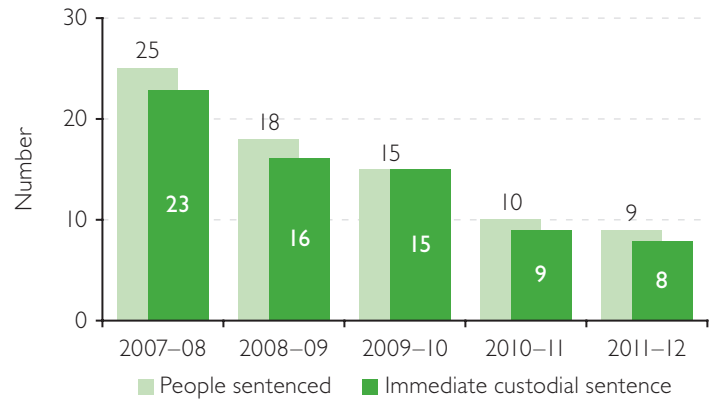
Figure 2 shows the total number of people sentenced for culpable driving causing death and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.<sup>7</sup> Over the five-year period, 92% of people were given an immediate custodial sentence. This peaked at 100% (15 of 15) in 2009–10 after a low of 89% in 2008–09 and 2011–12.

Table 1 shows the number of people sentenced for culpable driving causing death from 2007–08 to 2011–12 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for culpable driving causing death received a period of imprisonment (83% or 64 of 77 people).

The number of people given a sentence of imprisonment was lowest during 2011–12 (7 people) and highest during 2007–08 (19 people). The percentage of people given a sentence of imprisonment was lowest during 2007–08 (76%, or 19 of 25 people) and highest during 2009–10 (100%, or 15 of 15 people).

**Figure 2:** The number of people sentenced for culpable driving causing death and the number who received an immediate custodial sentence, 2007–08 to 2011–12



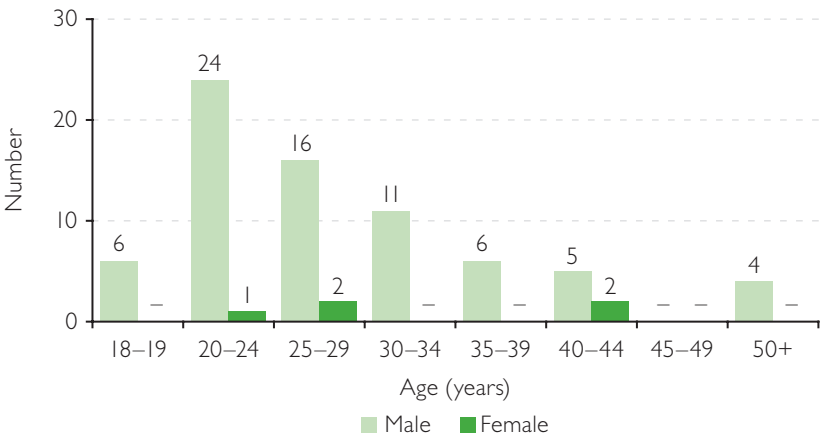
**Table 1:** The number and percentage of people sentenced for culpable driving causing death by sentence type, 2007–08 to 2011–12

Sentence type	2007–08	2008–09	2009–10	2010–11	2011–12	Total
Imprisonment	19 (76%)	15 (83%)	15 (100%)	8 (80%)	7 (78%)	64 (83%)
Youth justice centre order	3 (12%)	0 (–)	0 (–)	1 (10%)	1 (11%)	5 (6%)
Wholly suspended sentence	1 (4%)	2 (11%)	0 (–)	1 (10%)	1 (11%)	5 (6%)
Partially suspended sentence	1 (4%)	1 (6%)	0 (–)	0 (–)	0 (–)	2 (3%)
Non-custodial supervision order	1 (4%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (1%)
<b>People sentenced</b>	<b>25</b>	<b>18</b>	<b>15</b>	<b>10</b>	<b>9</b>	<b>77</b>

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for culpable driving causing death grouped by their age<sup>8</sup> between 2007–08 and 2011–12. The average age of people sentenced for culpable driving causing death was 29 years and 1 month. There were no juveniles sentenced over this period.<sup>9</sup>

Figure 3: The number of people sentenced for culpable driving causing death by gender and age, 2007–08 to 2011–12



Sentence types by gender

Table 2 shows the types of sentences imposed for culpable driving causing death grouped by gender. As shown, a higher percentage of men received a youth justice centre order (6.9% compared with no women) and a wholly suspended sentence of imprisonment (6.9% compared with no women). Conversely, a higher percentage of women received a period of imprisonment (100.0% compared with 81.9% of men).

Table 2: The number and percentage of people sentenced for culpable driving causing death by sentence type and gender, 2007–08 to 2011–12

Sentence type	Male	Female
Imprisonment	59 (82%)	5 (100%)
Youth justice centre order	5 (7%)	0 (–)
Wholly suspended sentence	5 (7%)	0 (–)
Partially-suspended sentence	2 (3%)	0 (–)
Non-custodial supervision order	1 (1%)	0 (–)
Total	72	5

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 offender's age group.

Figure 4: The percentage of people who received a period of imprisonment for culpable driving causing death by age group, 2007–08 to 2011–12

Imprisonment

As shown in Figure 4, sentences of imprisonment were most likely to be given to people aged 30–34 years (100% or 11 of the 11 people in this age group). Conversely, sentences of imprisonment were least common for people aged younger than 25 years (74% or 23 of the 31 people in this age group).



## Principal and total effective sentences

Two methods for describing sentence types and lengths are examined in this section. One relates to the principal sentence and examines sentences for the offence at a charge level. The other relates to the total effective sentence and examines sentences for the offence at a case level.

The principal sentence is the individual sentence imposed for the charge that is the principal offence.<sup>10</sup>

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).

In many cases, the total effective sentence imposed on a person will be 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 2007–08 to 2011–12.

### Principal sentence of imprisonment

A total of 64 people received a principal sentence of imprisonment for culpable driving causing death between 2007–08 and 2011–12.

Figure 5 shows these people by the length of their imprisonment term. Imprisonment terms ranged from 2 years and 6 months to 10 years and 6 months, while the median length of imprisonment was 5 years and 6 months (meaning that half of the imprisonment terms were shorter than 5 years and 6 months and half were longer).

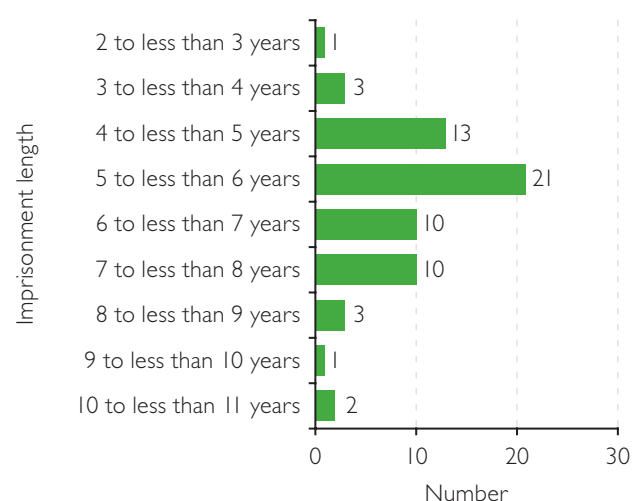
The most common length of imprisonment imposed was 5 years to less than 6 years (21 people).

Expanding the analysis from principal sentences of imprisonment to all charges that received imprisonment, there were 72 charges of culpable driving causing death sentenced to imprisonment between 2007–08 and 2011–12. Imprisonment lengths for culpable driving causing death ranged from 2 years to 10 years and 6 months while the median was 5 years and 6 months and the most common length was 5 years to less than 6 years (24 of 72 charges, or 33.3%).

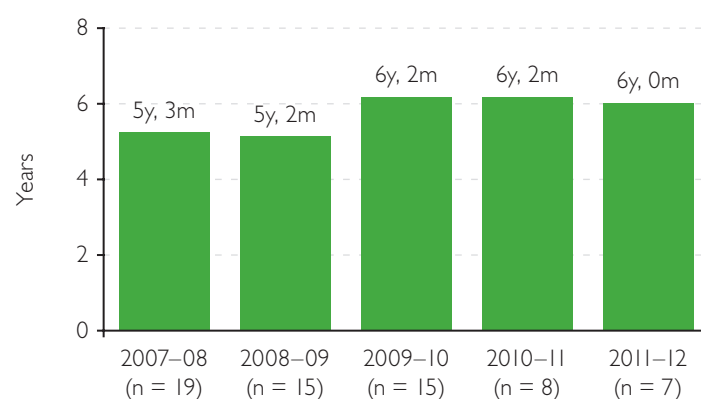
Returning to principal sentences of imprisonment, as shown in Figure 6, the average length of imprisonment term imposed on people sentenced for culpable driving causing death ranged from 5 years and 2 months in 2008–09 to 6 years and 2 months in 2009–10 and 2010–11.

From 2007–08 to 2011–12, the majority of people who received a term of imprisonment for culpable driving causing death were men (59 people or 92.2%). Over the five-year period, men received a longer average term of imprisonment (5 years and 8 months compared with 5 years and 4 months for women).

**Figure 5:** The number of people sentenced to imprisonment for culpable driving causing death by length of imprisonment term, 2007–08 to 2011–12



**Figure 6:** The average length of imprisonment term imposed on people sentenced for culpable driving causing death, 2007–08 to 2011–12

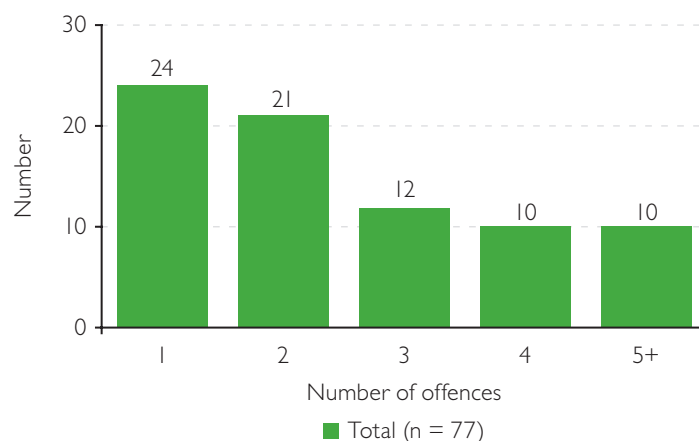


## Other offences finalised at the same hearing

Often 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 for which offenders have been sentenced at the same time as being sentenced for the principal offence of culpable driving causing death.

Figure 7 shows the number of people sentenced for the principal offence of culpable driving causing death by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 9, while the median was 2 offences. There were 23 people (31.2%) sentenced for the single offence of culpable driving causing death. The average number of offences per person sentenced for culpable driving causing death was 2.65.

**Figure 7:** The number of people sentenced for the principal offence of culpable driving causing death by the number of sentenced offences per person, 2007–08 to 2011–12



While Figure 7 presents the number of sentenced offences for those sentenced for culpable driving causing death, 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, 24 of the total 77 people (31.2%) also received sentences for negligently causing serious injury. On average, they were sentenced for 1.67 counts of negligently causing serious injury.

**Table 3:** 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, 2007–08 to 2011–12

Offence	No.	%	Avg.
1 Culpable driving causing death	77	100.0	1.12
2 Negligently causing serious injury	24	31.2	1.67
3 Reckless conduct endangering life	9	11.7	1.78
4 At/exceed prescribed concentration of alcohol in breath within 3 hours of driving	9	11.7	1.00
5 Unlicensed driving	6	7.8	1.00
6 Drive while authorisation suspended	5	6.5	1.00
7 Fail to render assistance after accident	3	3.9	1.00
8 Theft	2	2.6	2.50
9 Reckless conduct endangering serious injury	2	2.6	2.00
10 Refuse to undergo breath test	2	2.6	1.50
People sentenced	77	100.0	2.65

### Total effective sentence of imprisonment

There were 64 people given a total effective sentence of imprisonment.<sup>11</sup> Figure 8 shows the number of people sentenced to imprisonment for culpable driving causing death between 2007–08 and 2011–12 by length of total effective sentence. The length of total effective sentences ranged from 3 years and 6 months to 13 years,<sup>12</sup> while the median total effective length of imprisonment was 6 years (meaning that half of the total effective sentence lengths were below 6 years and half were above).

The most common total effective imprisonment length was 6 years to less than 7 years (17 people).

### 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 culpable driving causing death. Sentences and non-parole periods must be considered in this broader context.

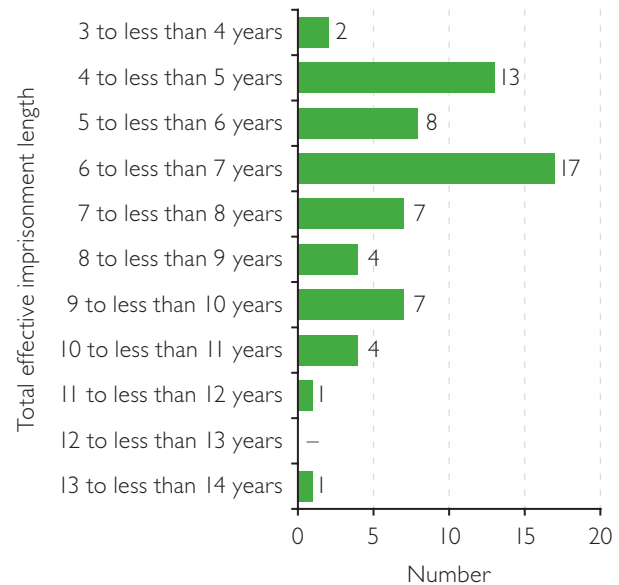
Of the 64 people who were sentenced to imprisonment for culpable driving causing death, all were given a non-parole period. Figure 9 shows the number of people sentenced to imprisonment for culpable driving causing death between 2007–08 and 2011–12 by length of non-parole period. Non-parole periods ranged from 1 year and 3 months to 10 years,<sup>13</sup> while the median length of the non-parole period was 4 years (meaning that half of the non-parole periods were below 4 years and half were above).

The most common non-parole period imposed was 4 years to less than 5 years (14 people).

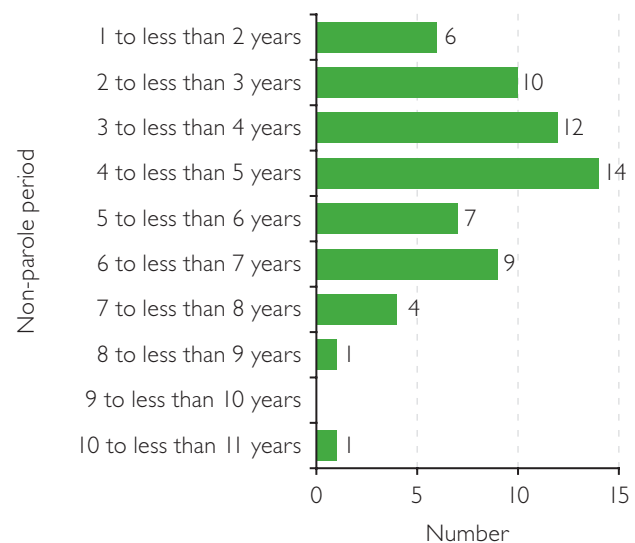
### Total effective sentences of imprisonment and non-parole periods

Figure 10 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people from 2007–08 to 2011–12.

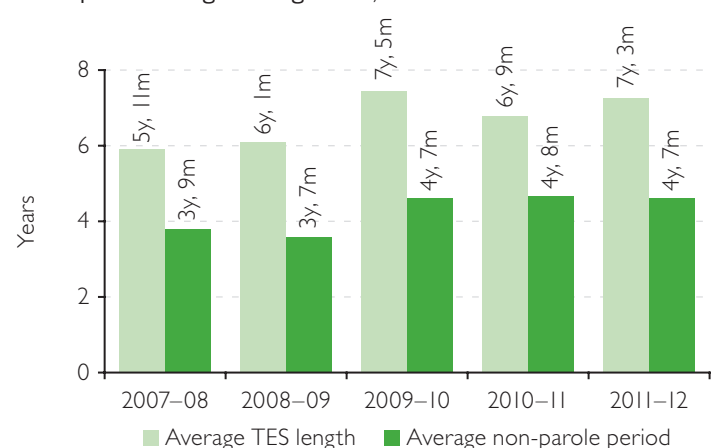
**Figure 8:** The number of people sentenced to imprisonment for culpable driving causing death by length of total effective imprisonment term, 2007–08 to 2011–12



**Figure 9:** The number of people sentenced to imprisonment for culpable driving causing death by length of non-parole period, 2007–08 to 2011–12



**Figure 10:** The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for culpable driving causing death, 2007–08 to 2011–12



From 2007–08 to 2011–12, the average length of total effective sentences for all people ranged from 5 years and 11 months in 2007–08 to 7 years and 5 months in 2009–10. Over the same period, the average length of non-parole periods ranged from 3 years and 7 months in 2008–09 to 4 years and 8 months in 2010–11.

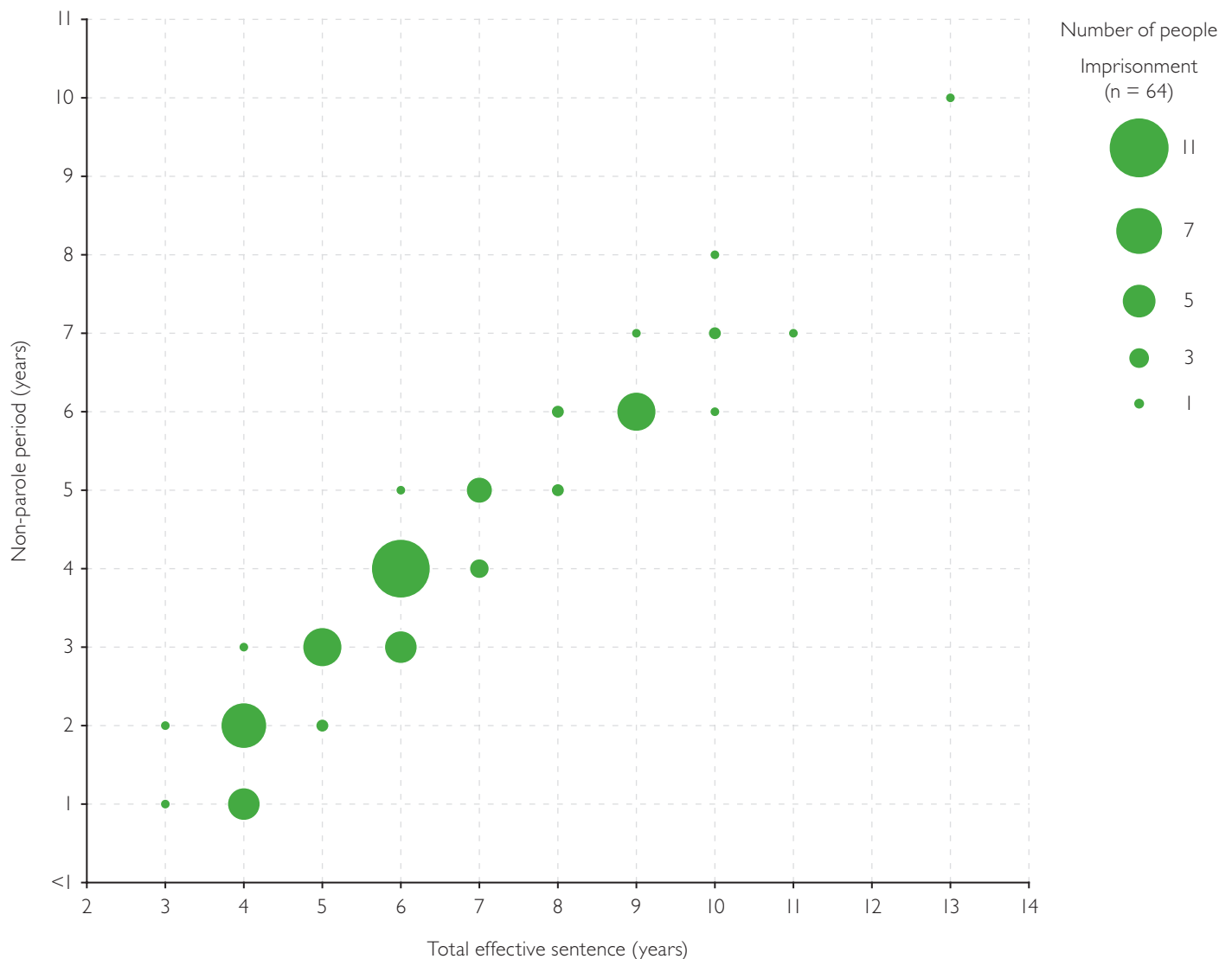
### Total effective sentence of imprisonment by non-parole period

While Figures 8 and 9 present the lengths of the total effective sentences and non-parole periods separately, Figure 11 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for culpable driving causing death for each individual person.

The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the bubble reflects the number of people who received that particular combination. Sentence lengths and non-parole periods that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths and non-parole periods of less than one year are grouped into the '<1 year' category. For example, a sentence length of 2 years and 6 months would be included as a sentence length of 2 years for the purposes of Figure 11.

As shown, the most common combination of imprisonment length and non-parole period imposed was 6 years with a non-parole period of 4 years (11 people – as represented by the largest bubble on the chart). The length of imprisonment ranged from 3 years and 6 months with a non-parole period of 2 years to 13 years with a non-parole period of 10 years.<sup>14</sup>

**Figure 11:** The number of people sentenced to imprisonment for culpable driving causing death by the total effective sentence and the non-parole period imposed, 2007–08 to 2011–12



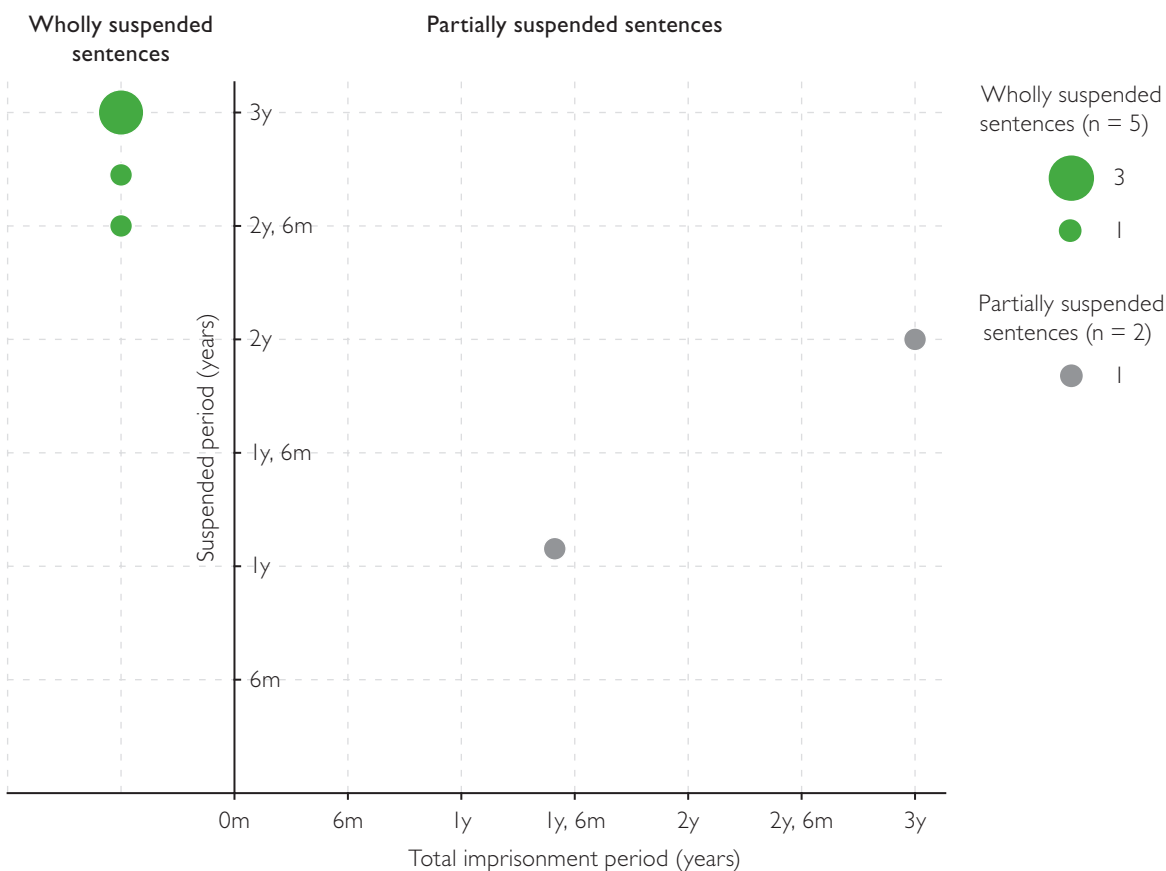
## Suspended sentences of imprisonment

There were 7 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 5 people had their prison sentence wholly suspended and 2 received a partially suspended sentence of imprisonment. Figure 12 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the suspended sentence type and length of sentence. The green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the grey bubbles to the right of the vertical axis show the combination of total imprisonment length and the suspended period for those sentenced to a partially suspended sentence. The size of the bubble reflects the number of people who received either the wholly or the partially suspended prison term. Imprisonment lengths and suspended periods that end part way through a month are rounded down to the nearest complete month. For example, a wholly suspended sentence of 6 months and 12 days would be included as a sentence length of 6 months for the purposes of Figure 12.

Wholly suspended sentence lengths ranged from 2 years and 6 months to 3 years. The most common wholly suspended sentence length was 3 years (3 people – as represented by the largest green bubble on the chart).

Partially suspended sentences ranged from 1 year and 4 months' imprisonment with 1 year and 1 months suspended to 3 years' imprisonment with 2 years suspended. Each combination of imprisonment and suspension period was equally distributed (1 person each).

**Figure 12:** The number of people given a wholly or partially suspended sentence of imprisonment for culpable driving causing death by sentence type and length, 2007–08 to 2011–12





## Fines

This analysis includes all fines that were imposed for cases where culpable driving causing death was the principal offence. Fines were imposed on 12 people.

The fine amount imposed ranged from \$50 to \$1,500, with a median of \$500 (meaning that half of the values fell below \$500 and half of the values were above \$500).

The average fine amount was \$617. The average fine amount imposed against the 11 males was \$632, much higher than the average fine for the 1 female (\$450).

## Appeals

A sentence imposed on a person may be appealed<sup>15</sup> 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 2012, 2 people sentenced for a principal offence of culpable driving causing death in the period 2007–08 to 2011–12 successfully appealed their convictions. Of these, 1 person was granted an acquittal while the other was granted a retrial. Thus, the number of people sentenced from 2007–08 to 2011–12 for a principal offence of culpable driving causing death was reduced to 75 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 3 people. Two 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 8 years with a non-parole period of 5 years, which decreased to 7 years and 3 months' imprisonment with a non-parole period of 4 years and 4 months.

One successful appeal was made by the Crown and resulted in an increase in the severity of sentence: from 3 years in a youth justice centre to 6 years' imprisonment in an adult prison with a non-parole period of 3 years and 6 months.

The principal sentence changed for 3 people as a result of a successful appeal. The longest principal sentence of imprisonment reduced was 7 years, which decreased to 6 years and 6 months on appeal. The only principal sentence to increase was a sentence of 3 years in a youth justice centre, which changed to 4 years' imprisonment in an adult facility.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term was unchanged at 13 years with a non-parole period of 10 years while the longest principal sentence of imprisonment was also unchanged at 10 years and 6 months.

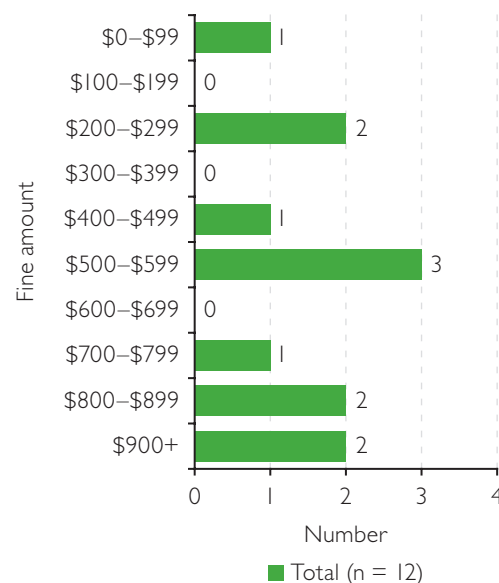
## Summary

Between 2007–08 and 2011–12, 77 people were sentenced for culpable driving causing death in the higher courts. Over this period, the majority of people sentenced were men (94%), while 70% were aged between 20 and 34 years. The majority of the people sentenced for culpable driving causing death received a period of imprisonment (83%).

Men were more likely than women to be sentenced to a youth justice centre order or a wholly suspended sentence of imprisonment. Conversely, women were more likely to be sentenced to a period of imprisonment. Imprisonment was more common for those aged between 30 and 34 years.

Each of the 77 people was sentenced for an average of 2.65 offences, including 1.12 offences of culpable driving causing death. The most common offence finalised in conjunction with culpable driving causing death was negligently causing serious injury (31.2% of all cases). The number and range of offences for which people with a principal offence of culpable driving causing death 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 was 6 years, while the median principal imprisonment length was 5 years and 6 months.

**Figure 13:** The number of people who received a fine for culpable driving causing death by fine amount, 2007–08 to 2011–12



Total effective imprisonment lengths ranged from 3 years and 6 months with a non-parole period of 2 years to 13 years with a non-parole period of 10 years. The most common sentence of imprisonment was 6 years with a non-parole period of 4 years.

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 total effective imprisonment lengths and principal imprisonment sentence lengths remains unchanged.

## 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 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. 111, which describes sentencing trends for culpable driving causing death between 2005–06 and 2009–10.
2. The information source for sentencing outcomes for culpable driving causing death only contains information on age and gender characteristics. No other demographic analysis is possible using this data source.
3. The source data for the statistical information presented in this Snapshot were provided by the Business Intelligence area of the Courts and Tribunals unit within the 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 318.
5. 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](http://www.ocpc.vic.gov.au)>.
6. 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.
7. Immediate custodial sentence includes imprisonment, youth justice centre order and partially suspended sentence.
8. Age is at the time of sentencing.
9. Defendants who were under the age of 18 at the time of committing the alleged offence and who were 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 culpable driving causing death.
10. Refer to endnote 6.
11. All of the 64 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
12. In 2009–10, a 32 year-old man was given a total effective sentence of imprisonment for 13 years with a minimum non-parole period of 10 years for a series of driving offences, including culpable driving causing death. The judge remarked that the 'offending in relation to the culpable driving count is high on the calendar of criminality for such an offence. For that reason the sentence that I shall impose is one half of the maximum sentence available to the court for that offending.'
13. See endnote 12.
14. See endnote 12.
15. 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](http://www.austlii.gov.au)>.

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