

Sentencing Snapshot

Sentencing trends in
the higher courts of
Victoria
2008–09 to 2012–13

August 2014
No. 160

Incest

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of incest and details the age and gender² of people sentenced for this offence in the County Court of Victoria between 2008–09 and 2012–13.³ Except where otherwise noted, the data represent sentences imposed at first instance.

A person who engages in an act of sexual penetration with a person whom he or she knows to be his or her child or other lineal descendant or his or her step-child is guilty of incest. Similarly, a person who takes part in an act of sexual penetration with a person under the age of 18 whom he or she knows to be the child or other lineal descendant (or the step-child) of his or her de facto spouse is guilty of incest.⁴ Incest is an indictable offence triable before a judge and jury in the County or Supreme Court. The maximum penalty for this offence is 25 years' imprisonment and/or 3,000 penalty units.

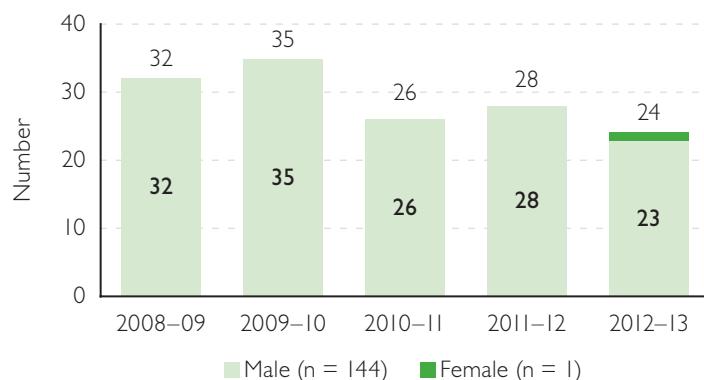
Incest was the principal offence⁵ in 1.5% of cases sentenced in the higher courts between 2008–09 and 2012–13.

People sentenced

From 2008–09 to 2012–13, 145 people were sentenced in the higher courts for a principal offence of incest. These people are the focus of this Snapshot.

Figure 1 shows the number of people sentenced for the principal offence of incest by gender. Over the five years depicted, the majority of those sentenced were men (99.3% or 144 of 145 people), with 1 woman sentenced in 2012–13.

Figure 1: The number of people sentenced for incest by gender, 2008–09 to 2012–13



Sentence types and trends

Figure 2 shows the total number of people sentenced for incest 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.⁶ Over the five-year period, 95.2% of people were given an immediate custodial sentence. This peaked at 100% (35 of 35) in 2009–10 before decreasing to 88% (21 of 24) in 2012–13.

Table 1 shows the number of people sentenced for incest from 2008–09 to 2012–13 by the types of sentences imposed.

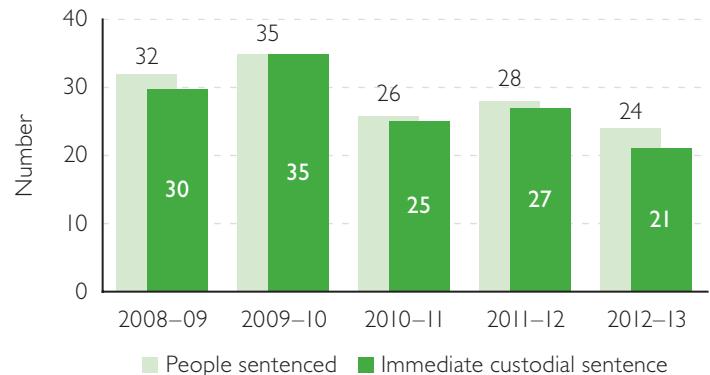
Over the five-year period, the majority of people sentenced for incest received a period of imprisonment (94% or 136 of 145 people).

The number and percentage of people receiving a sentence of imprisonment were lowest during 2012–13 (20 of 24 people or 83%) and highest during 2009–10 (35 of 35 people or 100%).

Table 1: The number and percentage of people sentenced for incest by sentence type, 2008–09 to 2012–13

Sentence type	2008–09	2009–10	2010–11	2011–12	2012–13	Total
Imprisonment	29 (91%)	35 (100%)	25 (96%)	27 (96%)	20 (83%)	136 (94%)
Wholly suspended sentence	2 (6%)	0 (–)	0 (–)	1 (4%)	2 (8%)	5 (3%)
Non-custodial supervision order	0 (–)	0 (–)	1 (4%)	0 (–)	1 (4%)	2 (<1%)
Mix (imprisonment and community-based order)	1 (3%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
Partially suspended sentence	0 (–)	0 (–)	0 (–)	0 (–)	1 (4%)	1 (<1%)
People sentenced	32	35	26	28	24	145

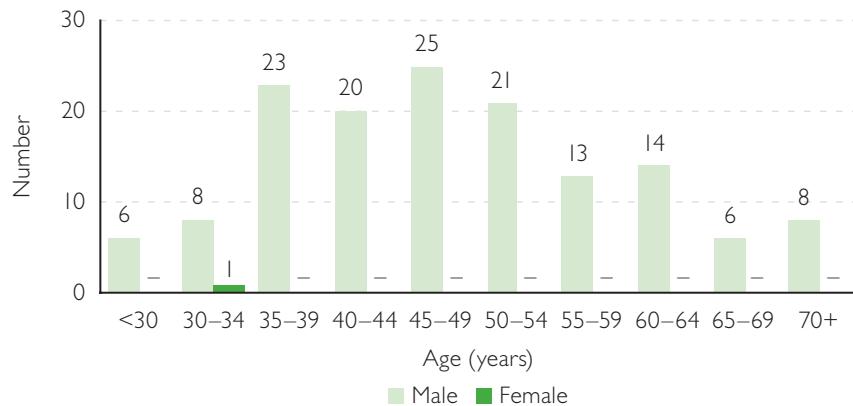
Figure 2: The number of people sentenced for incest and the number who received an immediate custodial sentence, 2008–09 to 2012–13



Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for incest grouped by age⁷ between 2008–09 and 2012–13. The average (mean) age of people sentenced for incest was 48 years and 6 months. There were no juveniles sentenced over this period.⁸

Figure 3: The number of people sentenced for incest by gender and age, 2008–09 to 2012–13



Sentence types by gender

Table 2 shows the types of sentences imposed for incest grouped by gender. The one woman sentenced for incest between 2008–09 and 2012–13 was given a partially suspended sentence of imprisonment, while none of the men sentenced in this period received a partially suspended sentence of imprisonment.

Table 2: The number and percentage of people sentenced for incest by sentence type and gender, 2008–09 to 2012–13

Sentence type	Male	Female
Imprisonment	136 (94%)	0 (–)
Wholly suspended sentence	5 (3%)	0 (–)
Non-custodial supervision order	2 (1%)	0 (–)
Mix (imprisonment and community-based order)	1 (<1%)	0 (–)
Partially suspended sentence	0 (–)	1 (100%)
People sentenced	144	1

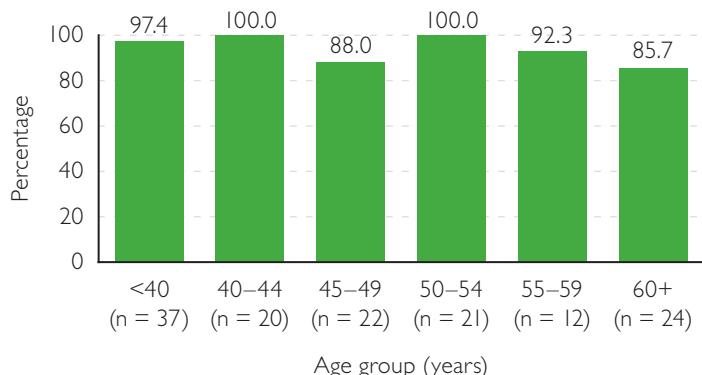
Sentence types by age

As shown in Table 1, the most common sentence type was imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

As shown in Figure 4, sentences of imprisonment were most common for all age groups, with all people aged 40–44 years and 50–54 years receiving a sentence of imprisonment.

Figure 4: The percentage of people who received a period of imprisonment for incest by age group, 2008–09 to 2012–13



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.⁹

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 incest must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of incest from 2008–09 to 2012–13.

Principal sentence of imprisonment

A total of 137 people received a principal sentence of imprisonment for incest between 2008–09 and 2012–13.

Figure 5 shows these people by length of imprisonment term. Imprisonment terms ranged from 3 months to 12 years (8 years when appeals are considered), while the median length of imprisonment was 4 years and 9 months (meaning that half of the imprisonment terms were shorter than 4 years and 9 months and half were longer).

The most common range of imprisonment length imposed was 5 to less than 6 years (36 people).

As shown in Figure 6, the average (mean) length of imprisonment term imposed on people sentenced for incest ranged from 4 years and 1 month in 2008–09 to 5 years and 5 months in 2009–10. Due to the very small number of women sentenced for incest (1), data on average imprisonment length by gender are not shown.

Figure 5: The number of people sentenced to imprisonment for incest by length of imprisonment term, 2008–09 to 2012–13

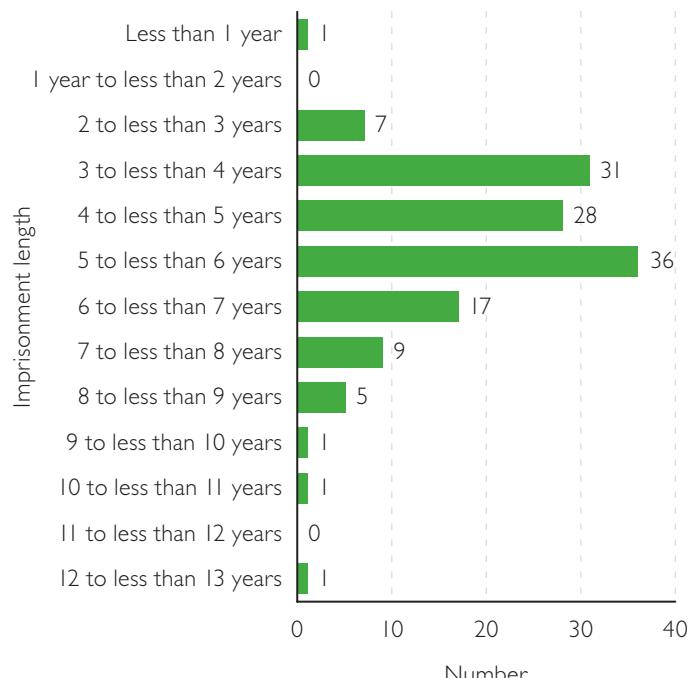
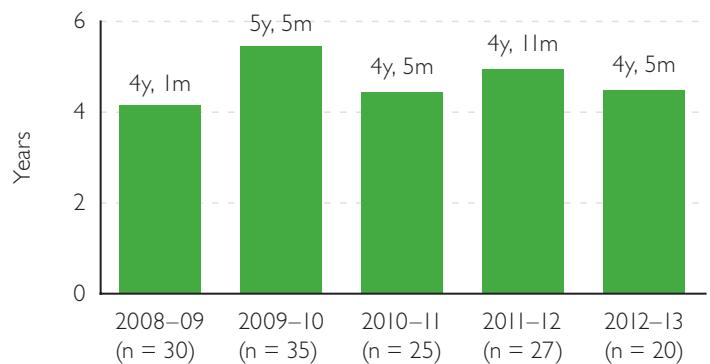


Figure 6: The average length of imprisonment term imposed on people sentenced for incest, 2008–09 to 2012–13



Other offences finalised at the same hearing

Often people prosecuted for incest 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 incest.

Figure 7 shows the number of people sentenced for the principal offence of incest by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 40, while the median was 6 offences. There were 10 people (6.9%) sentenced for the single offence of incest. The average (mean) number of offences per person sentenced for incest was 7.88.

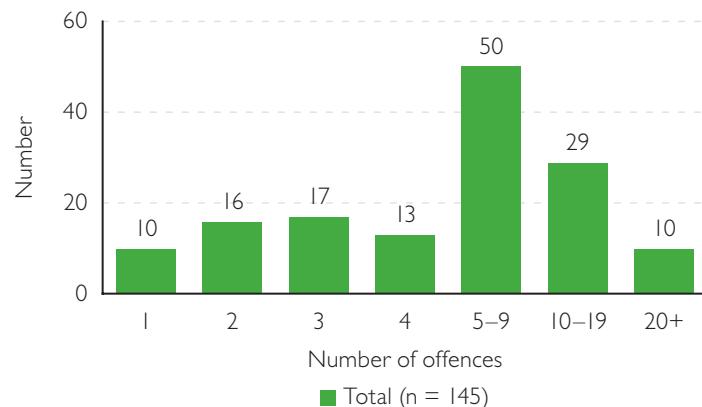
While Figure 7 presents the number of sentenced offences for those sentenced for incest, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences. The last column sets out the average (mean) number of offences sentenced per person. For example, 96 of the total 145 people (66.2%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 3.6 counts of indecent act with a child under 16.

Table 3: The number and percentage of people sentenced for the principal offence of incest by the most common offences that were sentenced and the average number of those offences that were sentenced, 2008–09 to 2012–13

Offence	Number	%	Average
1 Incest	145	100.0	3.88*
2 Indecent act with/in the presence of a child under 16	96	66.2	3.60
3 Indecent assault	24	16.6	3.83
4 Gross indecency	11	7.6	2.00
5 Make/produce child pornography	9	6.2	1.56
6 Attempt to commit indictable offence	9	6.2	1.11
7 Knowingly possess child pornography	9	6.2	1.11
8 Attempted incest	7	4.8	1.57
9 Common law assault	7	4.8	1.29
10 Make threat to kill	6	4.1	1.50
People sentenced	145	100.0	7.88

*May also include non-principal proven offences of incest under sections 44(3) and 44(4) of the *Crimes Act 1958* (Vic).

Figure 7: The number of people sentenced for the principal offence of incest by the number of sentenced offences per person, 2008–09 to 2012–13

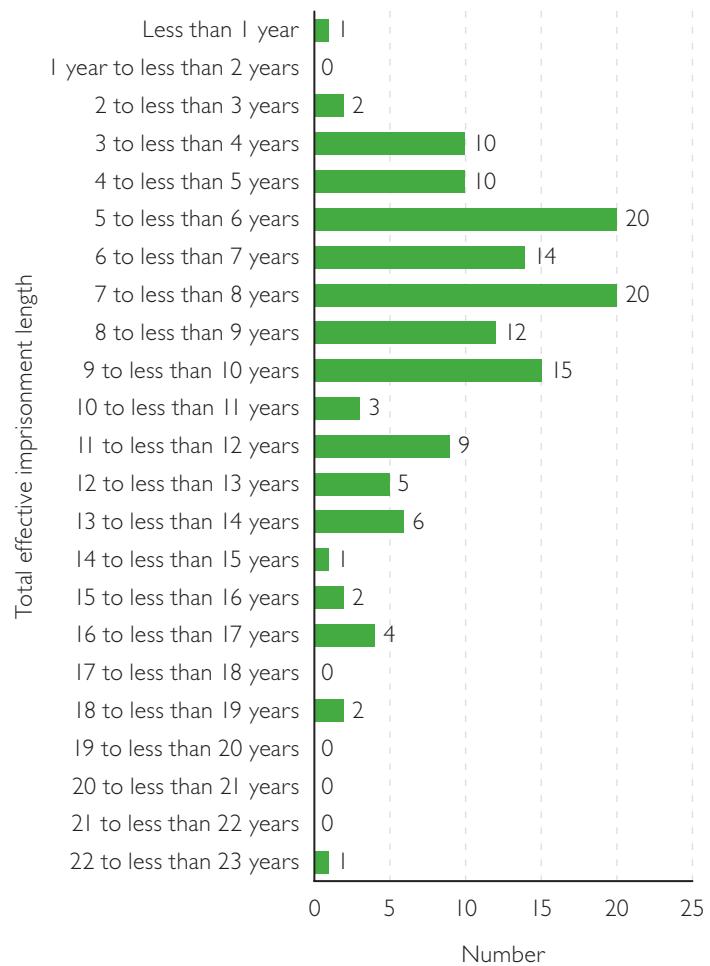


Total effective sentence of imprisonment

There were 137 people given a total effective sentence of imprisonment.¹⁰ Figure 8 shows the number of people sentenced to imprisonment for incest between 2008–09 and 2012–13 by length of total effective sentence. The length of total effective sentences ranged from 3 months to 22 years and 5 months, while the median total effective length of imprisonment was 7 years and 6 months (meaning that half of the total effective sentence lengths were below 7 years and 6 months and half were above).

The most common ranges of total effective imprisonment length were 5 to less than 6 years and 7 to less than 8 years (20 people each).

Figure 8: The number of people sentenced to imprisonment for incest by length of total effective imprisonment term, 2008–09 to 2012–13



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 incest. Sentences and non-parole periods must be considered in this broader context.

Of the 137 people who were sentenced to imprisonment for incest, 136 were eligible to have a non-parole period fixed.¹¹ Of these people, 135 were given a non-parole period (99%).¹² Figure 9 shows the number of people sentenced to imprisonment for incest between 2008–09 and 2012–13 by length of non-parole period. Non-parole periods ranged from 1 year and 3 months to 18 years, while the median length of the non-parole period was 5 years (meaning that half of the non-parole periods were below 5 years and half were above).

The most common range of non-parole period imposed was 5 to less than 6 years (20 people).

Total effective sentences of imprisonment and non-parole periods

Figure 10 presents the average (mean) length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people.

From 2008–09 to 2012–13, the average length of total effective sentences for all people ranged from 6 years and 6 months in 2008–09 to 9 years and 8 months in 2009–10. Over the same period, the average length of non-parole periods ranged from 4 years and 3 months in 2008–09 to 7 years in 2009–10.

Due to the very small number of women sentenced for incest (!), data on average imprisonment length and average non-parole period by gender are not shown.

Figure 9: The number of people sentenced to imprisonment for incest by length of non-parole period, 2008–09 to 2012–13

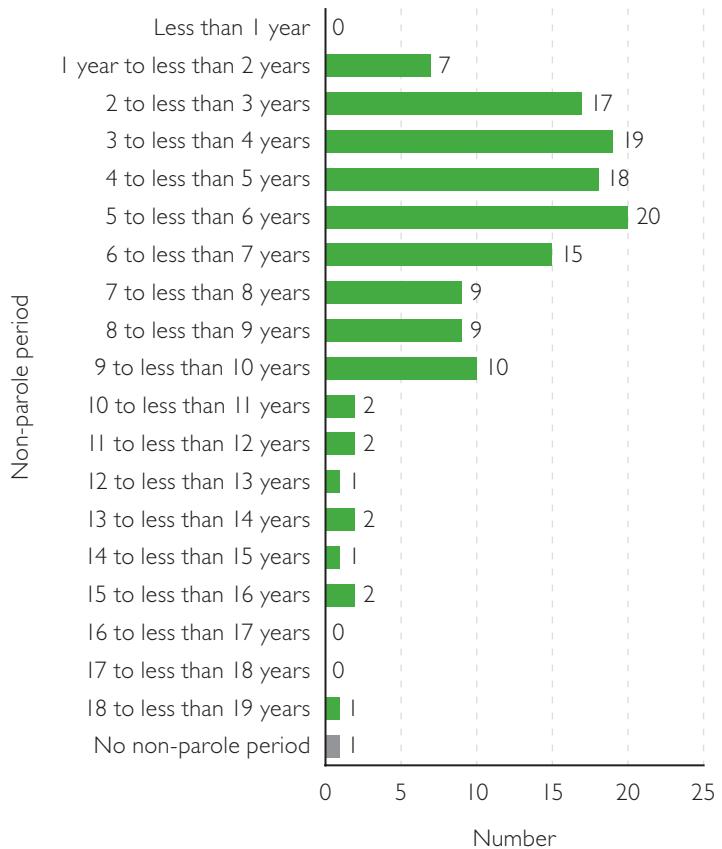
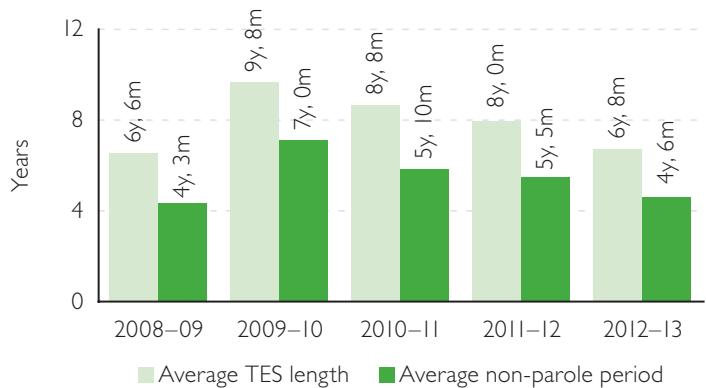


Figure 10: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for incest, 2008–09 to 2012–13



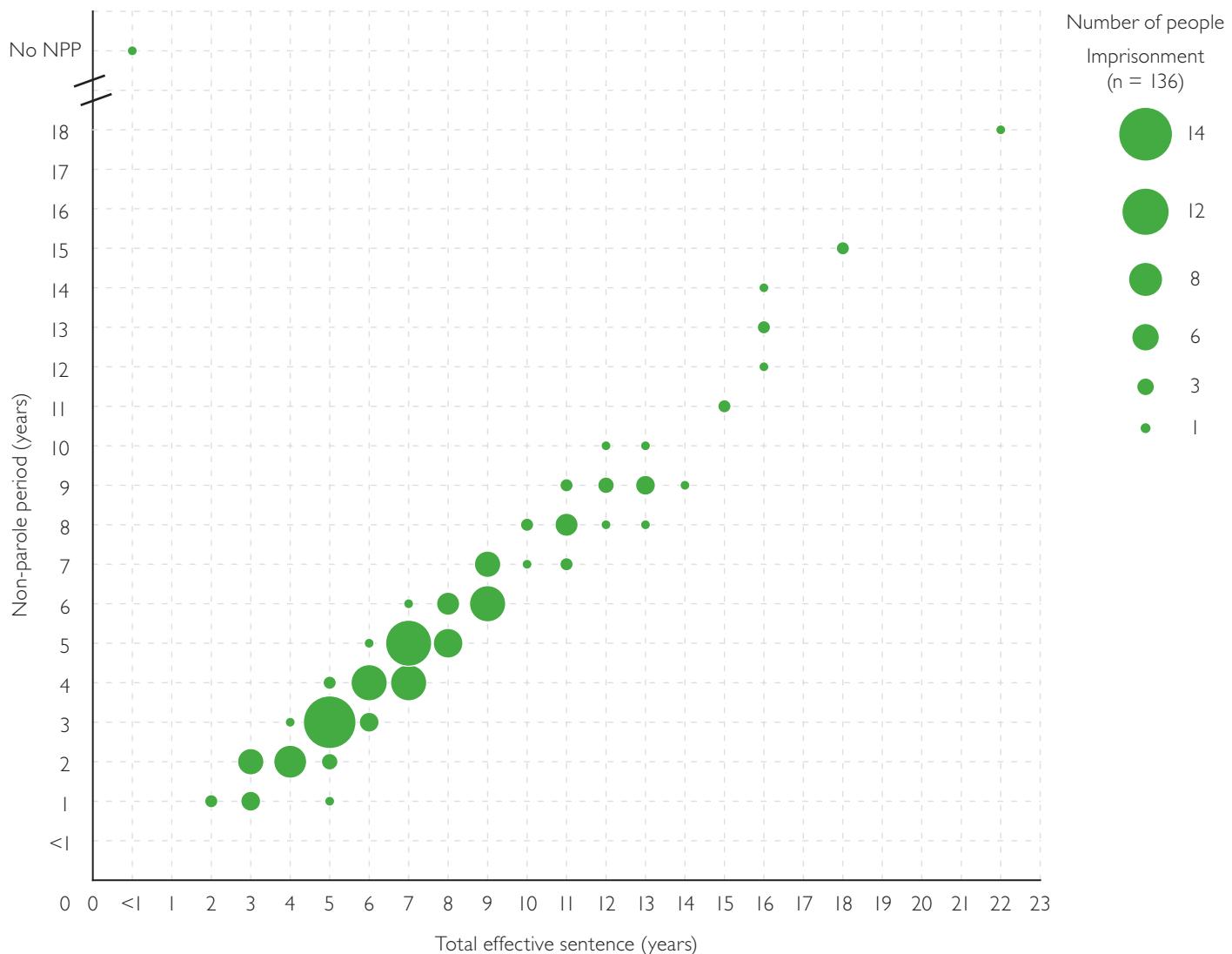
Total effective sentence of imprisonment by non-parole period

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 incest 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 5 years with a non-parole period of 3 years (14 people – as represented by the largest bubble on the chart). The length of imprisonment ranged from 3 months with no non-parole period to 22 years and 5 months with a non-parole period of 18 years.

Figure 11: The number of people sentenced to imprisonment for incest by the total effective sentence and the non-parole period imposed, 2008–09 to 2012–13



Note: No NPP refers to no non-parole period.

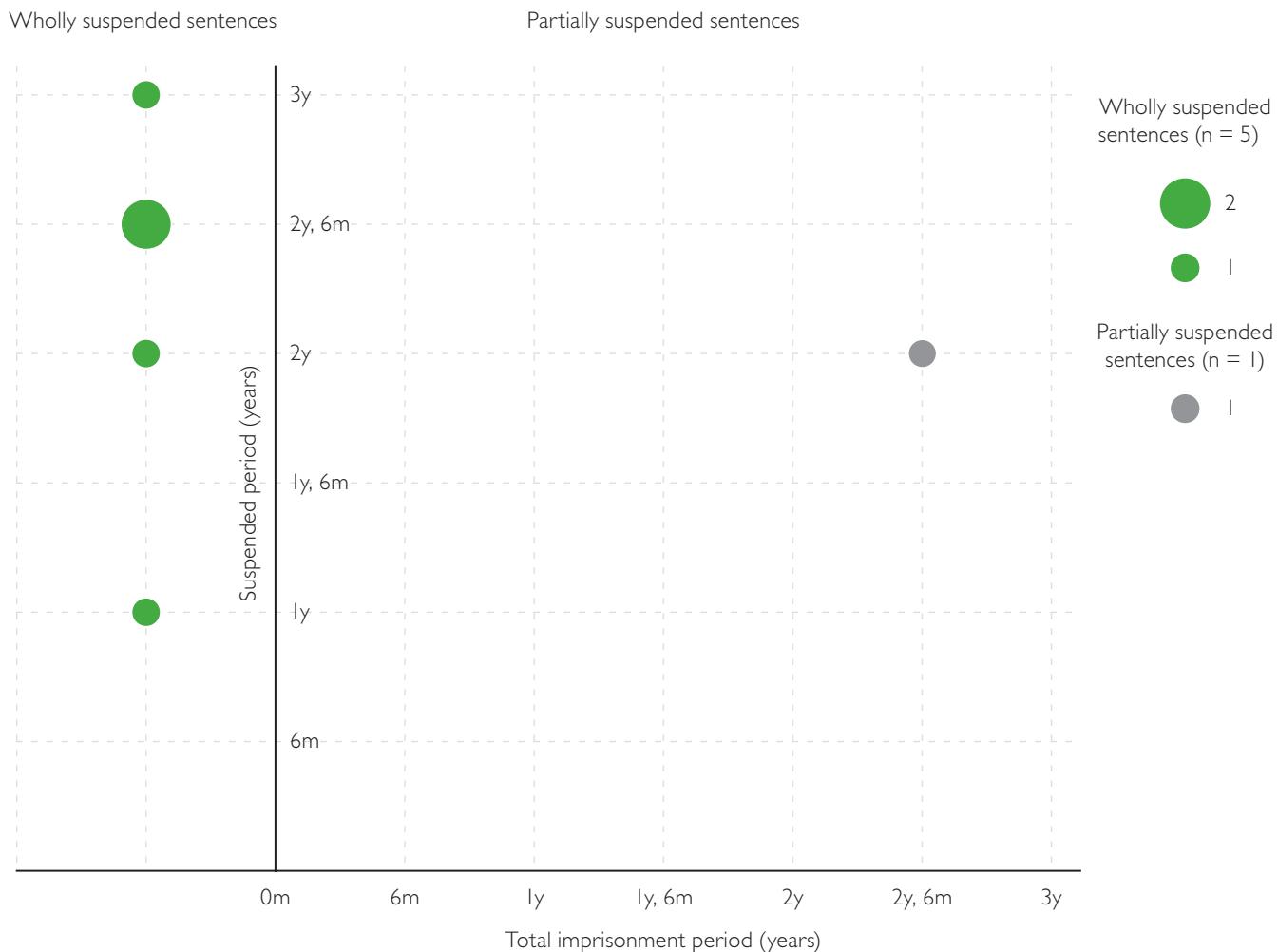
Suspended sentences of imprisonment

There were 6 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 5 people had their prison sentence wholly suspended and 1 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 1 year to 3 years. The most common wholly suspended sentence length was 2 years and 6 months (2 people – as represented by the largest green bubble on the chart).

One person was given an imprisonment length of 2 years and 6 months, of which 2 years were suspended.

Figure 12: The number of people given a wholly or partially suspended sentence of imprisonment for incest by sentence type and length, 2008–09 to 2012–13



Appeals

A sentence imposed on a person may be appealed¹³ 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.

To June 2013, 3 people sentenced for a principal offence of incest in the period 2008–09 to 2012–13 successfully appealed their conviction. These people received a retrial in relation to all charges including the principal offence. Thus the number of people sentenced from 2008–09 to 2012–13 for a principal offence of incest is reduced to 142 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 11 people. Ten 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 16 years, which decreased to 12 years. One successful appeal was made by the Crown from 2008–09 to 2012–13, which resulted in a total effective sentence of imprisonment increasing from 7 years and 6 months to 9 years and 6 months.

The principal sentence changed for 10 people as a result of a successful appeal. The longest principal sentence of imprisonment to be reduced was 12 years, which decreased to 8 years. The only principal sentence to increase was an imprisonment length of 4 years, which changed to 4 years and 3 months.

With the original sentencing data revised to incorporate appeal outcomes, the longest total effective imprisonment term and longest non-parole period were unchanged at 22 years and 5 months and 18 years respectively.

The adjusted longest principal sentence of imprisonment was changed to 8 years.

Summary

Between 2008–09 and 2012–13, 145 people were sentenced for the principal offence of incest in the higher courts. Over this period, the majority of people sentenced were men (99%), while 90% were aged between 30 and 70 years.

The majority of people sentenced for incest received a period of imprisonment (94%), which was the most common sentence across all age groups.

Each of the 145 people was sentenced for an average of 7.88 offences, including 3.88 offences of incest. The most common offence finalised in conjunction with incest was indecent act with a child under 16 (66% of all cases). The number and range of offences for which people with a principal offence of incest 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 7 years and 6 months, while the median principal imprisonment length was 4 years and 9 months.

Total effective imprisonment lengths ranged from 3 months with no non-parole period to 22 years and 5 months with a non-parole period of 18 years. The most common sentence of imprisonment was 5 years with a non-parole period of 3 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 was unchanged and the range of principal imprisonment sentence lengths changed from 3 months to 12 years to 3 months to 8 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 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. 134, which describes sentencing trends for incest between 2006–07 and 2010–11.
2. The information source for sentencing outcomes for incest 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. This Snapshot discusses the offence of incest under sections 44(1) and 44(2) of the *Crimes Act 1958* (Vic). The offences under sections 44(3) and 44(4) are different types of incest and have a statutory maximum penalty of 5 years' imprisonment. Those offences are excluded from this report. The sentencing database used for this analysis was compiled using conviction returns. Due to some inaccuracies found on incest conviction returns in relation to the specific type of incest, an exercise was undertaken to verify the offence on the conviction return against the offence stated in sentencing remarks. Of the 161 conviction returns that had an incest offence as the principal proven offence in the five-year period, 128 sentencing remarks were located. For these cases, the sentencing remarks enabled the classification of incest into the subsections of the Act. For the remaining incest cases where no sentencing remarks were located (33), the offence stated on the conviction return was used to define the specific incest offence. As a result of this exercise, 145 cases had a principal proven offence that corresponded to sections 44(1) and 44(2) of the *Crimes Act 1958* (Vic), while the remaining 16 cases had a principal proven offence corresponding to sections 44(3) and 44(4) – these are not included in this Snapshot.
5. 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.
6. Immediate custodial sentence includes imprisonment, mix (imprisonment and community-based order), and partially suspended sentences of imprisonment.
7. Age is at the time of sentencing.
8. Some 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 may have been dealt with in the Children's Court of Victoria.
9. Refer to footnote 5.
10. All 137 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
11. One person was not eligible for parole because they were given a total effective sentence length of less than 1 year.
12. 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.
13. 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.edu.au>.

Sentencing Snapshots is a series presenting summary information on sentencing trends in Victoria

Sentencing trends in the higher courts, 2008–09 to 2012–13

- I66 Affray
- I65 Cultivating a commercial quantity of narcotic plants
- I64 Cultivating a non-commercial quantity of narcotic plants
- I63 Trafficking in a large commercial quantity of drugs
- I62 Trafficking in a commercial quantity of drugs
- I61 Trafficking in a non-commercial quantity of drugs
- I60 Incest
- I59 Causing injury recklessly
- I58 Causing injury intentionally
- I57 Causing serious injury recklessly
- I56 Causing serious injury intentionally
- I55 Aggravated burglary
- I54 Burglary
- I53 Armed Robbery
- I52 Robbery

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

- I51 Sexual penetration of a child under care
- I50 Sexual penetration of a child aged between 12 and 16
- I49 Sexual penetration of a child aged under 12
- I48 Persistent sexual abuse of a child under 16
- I47 Indecent act with a child under 16
- I46 Indecent assault
- I45 Rape
- I44 Arson
- I43 Making a threat to kill
- I42 Culpable driving causing death
- I41 Manslaughter
- I40 Murder
- I39 Obtaining property by deception
- I38 Obtaining a financial advantage by deception
- I37 Theft
- I36 Handling stolen goods

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