

Sentencing trends in  
the higher courts of  
Victoria  
2011–12 to 2015–16

May 2017  
No. 207

## Rape

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of rape in the County and Supreme Courts of Victoria from 2011–12 to 2015–16.<sup>2</sup> Adjustments made by the Court of Appeal to sentence or conviction as at December 2016 have been incorporated into the data in this Snapshot.

Detailed data on rape and other offences is available on SACStat – Higher Courts.

A person who intentionally sexually penetrates another person without that person's consent is guilty of the offence of rape. Sexual penetration includes oral, anal, and vaginal penetration and may be committed by and against both men and women. However, rape is overwhelmingly committed by men against women.

Rape is an indictable offence that carries a maximum penalty of 25 years' imprisonment<sup>3</sup> and/or a fine of 3,000 penalty units.<sup>4</sup> Rape is a Category 1 offence, which means that a court must impose a custodial sentence for that offence.<sup>5</sup>

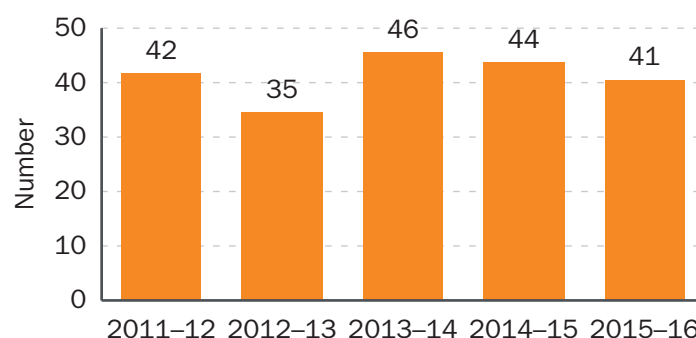
Rape was the principal offence<sup>6</sup> in 2.3% of cases sentenced in the higher courts from 2011–12 to 2015–16.

### People sentenced

From 2011–12 to 2015–16, 208 people were sentenced in the higher courts for a principal offence of rape.

Figure 1 shows the number of people sentenced for the principal offence of rape by financial year. There were 41 people sentenced for this offence in 2015–16, down by 3 people from the previous year. The number of people sentenced was highest in 2013–14 (46 people).

**Figure 1:** The number of people sentenced for rape by financial year, 2011–12 to 2015–16



### Sentence types and trends

Figure 2 shows the total number of people sentenced for rape and the number that received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate imprisonment or detention.<sup>7</sup> Over the five-year period, 91% of people were given an immediate custodial sentence.

**Figure 2:** The number of people sentenced for rape and the number that received an immediate custodial sentence, 2011–12 to 2015–16

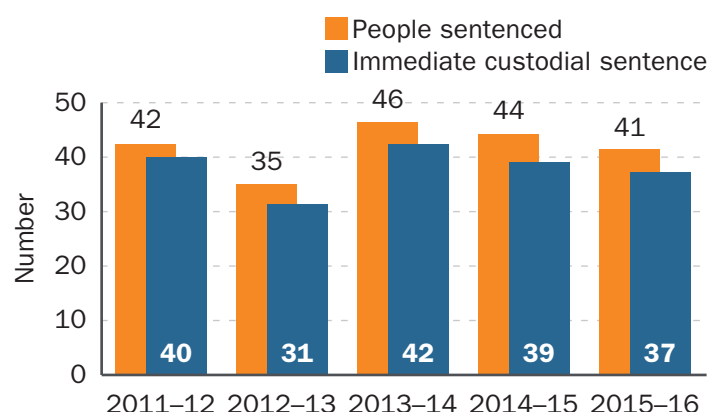


Table 1 shows the number of people sentenced for rape from 2011–12 to 2015–16 by the types of sentences imposed. The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.<sup>8</sup>

Over the five-year period, the majority of the people sentenced for rape received a period of imprisonment (89% or 185 of 208 people). Of these, 178 people received imprisonment, 6 people received a combined imprisonment and community correction order and 1 person received an aggregate sentence of imprisonment.

The percentage of people who received imprisonment for rape peaked at 93% in 2011–12, while the number was highest in 2013–14 (89% or 41 of 46 people). The percentage and number of people who received imprisonment for rape were lowest in 2012–13 (86% or 30 of 35 people).

**Table 1:** The number and percentage of people sentenced for rape by sentence type, 2011–12 to 2015–16 (in descending numbers for 2015–16)

Sentence type	2011–12	2012–13	2013–14	2014–15	2015–16	Total
Imprisonment	39 (93%)	29 (83%)	41 (89%)	34 (77%)	35 (85%)	178 (86%)
Community correction order	0 (–)	1 (3%)	1 (2%)	3 (7%)	4 (10%)	9 (4%)
Imprisonment and community correction order (combined)	0 (–)	0 (–)	0 (–)	5 (11%)	1 (2%)	6 (3%)
Custodial supervision order	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)	1 (<1%)
Wholly suspended sentence	1 (2%)	1 (3%)	2 (4%)	2 (5%)	0 (–)	6 (3%)
Residential treatment order	0 (–)	1 (3%)	1 (2%)	0 (–)	0 (–)	2 (<1%)
Non-custodial supervision order	0 (–)	2 (6%)	0 (–)	0 (–)	0 (–)	2 (<1%)
Aggregate imprisonment	0 (–)	1 (3%)	0 (–)	0 (–)	0 (–)	1 (<1%)
Youth justice centre order	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
Community-based order	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
Unconditional release	0 (–)	0 (–)	1 (2%)	0 (–)	0 (–)	1 (<1%)
<b>People sentenced</b>	<b>42</b>	<b>35</b>	<b>46</b>	<b>44</b>	<b>41</b>	<b>208</b>

## Age and gender of people sentenced

Data on the age and gender of people sentenced for [rape](#) is available on SACStat – Higher Courts.

## 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 sentence imposed for the charge that is the principal offence.<sup>9</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 is longer than the principal sentence. Principal sentences for rape must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of rape from 2011–12 to 2015–16.

### Principal sentence of imprisonment

A total of 185 people received a principal sentence of imprisonment for rape from 2011–12 to 2015–16.<sup>10</sup>

Figure 3 shows these people by the length of their imprisonment term.<sup>11</sup> Imprisonment terms ranged from 3 months (with a 2 year and 6 month community correction order) to 11 years, while the median length of imprisonment was 5 years (meaning that half of the imprisonment terms were shorter than 5 years and half were longer).

The most common length of imprisonment imposed was 4 to less than 5 years (48 people).

As shown in Figure 4, the average (mean) length of imprisonment imposed on people sentenced for rape ranged from 4 years and 9 months in 2011–12 to 5 years and 3 months in 2015–16.

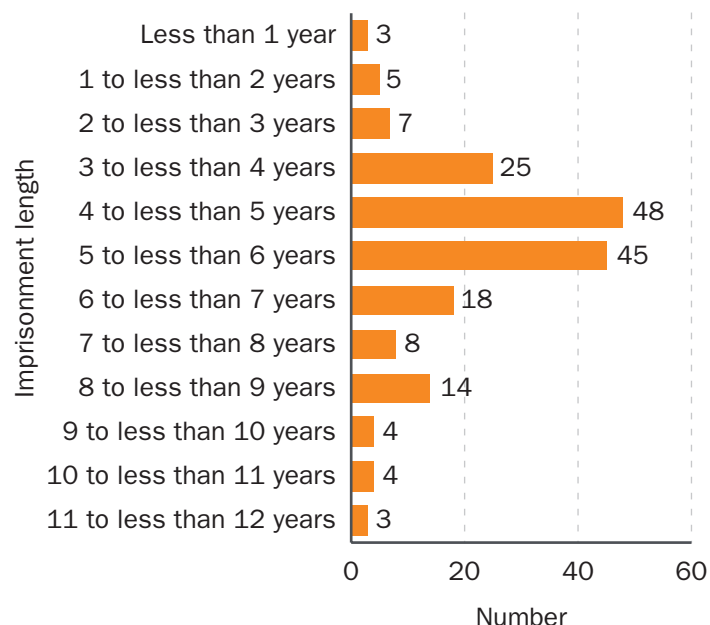
### Other offences finalised at the same hearing

Often people prosecuted for rape 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 rape.

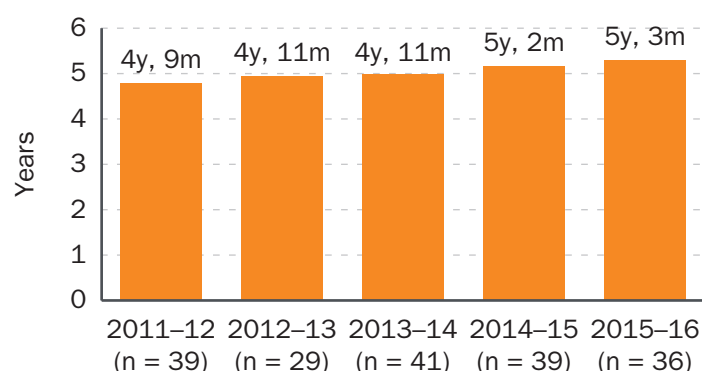
Figure 5 shows the number of people sentenced for the principal offence of rape by the total number of offences for which sentences were imposed. The number of sentenced offences per person ranged from 1 to 87, while the median was 3 offences. There were 48 people (23.1%) sentenced for the single offence of rape. The average number of offences per person sentenced for rape was 5.26.

Table 2 shows the 10 most common offences for people sentenced for rape, by number and percentage. The last column sets out the average number of offences sentenced per person. For example, 60 of the total 208 people (28.8%) also received sentences for indecent assault. On average, they were sentenced for 2.43 counts of indecent assault.

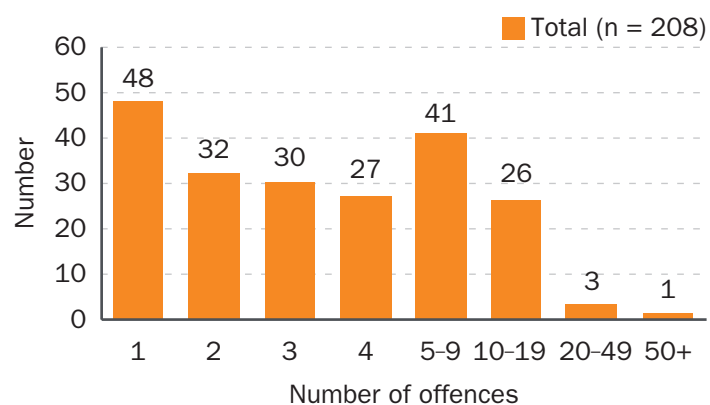
**Figure 3:** The number of people sentenced to imprisonment for rape by length of imprisonment term, 2011–12 to 2015–16



**Figure 4:** The average (mean) length of imprisonment imposed on people sentenced for rape, 2011–12 to 2015–16



**Figure 5:** The number of people sentenced for the principal offence of rape by the number of sentenced offences per person, 2011–12 to 2015–16



**Table 2:** The number and percentage of people sentenced for the principal offence of rape by the most common offences that were sentenced and the average number of those offences that were sentenced, 2011–12 to 2015–16

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Rape	208	100.0	2.05
2. Indecent assault	60	28.8	2.43
3. Common law assault	25	12.0	2.04
4. False imprisonment	22	10.6	1.27
5. Causing injury intentionally	18	8.7	1.67
6. Indecent act with a child under 16	17	8.2	2.76
7. Causing injury recklessly	14	6.7	1.21
8. Aggravated burglary	14	6.7	1.07
9. Theft	13	6.3	1.62
10. Making a threat to kill	11	5.3	1.45
<b>People sentenced</b>	<b>208</b>	<b>100.0</b>	<b>5.26</b>

### Total effective imprisonment terms

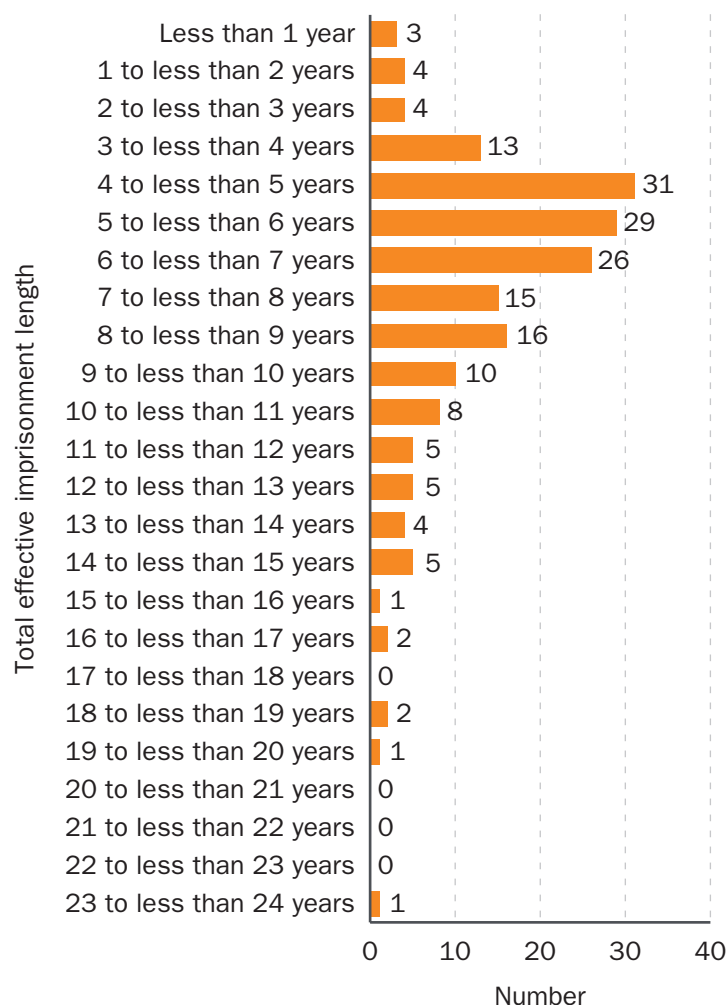
Figure 6 shows the number of people sentenced to imprisonment for rape from 2011–12 to 2015–16 by length of total effective imprisonment term. The total effective imprisonment terms ranged from 3 months (with a 2 year and 6 month community correction order) to 23 years, while the median total effective imprisonment term was 6 years (meaning that half of the total effective imprisonment terms were below 6 years and half were above).

The most common total effective imprisonment term was 4 to less than 5 years (31 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. Where a non-parole period is fixed, the person must serve that period before becoming eligible to have a non-parole period fixed. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term in custody.

**Figure 6:** The number of people sentenced to imprisonment for rape by length of total effective imprisonment term, 2011–12 to 2015–16



Of the 185 people who were sentenced to imprisonment for rape, 182 were eligible to have a non-parole period fixed.<sup>12</sup> Of these people, 172 were given a non-parole period (95%).<sup>13</sup> Figure 7 shows the number of people sentenced to imprisonment for rape from 2011–12 to 2015–16 by length of non-parole period. Non-parole periods ranged from 9 months to 17 years, 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 3 to less than 4 years (40 people).

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

Figure 8 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods from 2011–12 to 2015–16.

From 2011–12 to 2015–16, the average length of total effective sentences for all people ranged from 6 years and 5 months in 2012–13 to 7 years and 7 months in 2014–15. Over the same period, the average length of non-parole periods ranged from 4 years in 2012–13 to 5 years and 11 months in 2014–15.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for [rape](#) is available on SACStat – Higher Courts.

### Non-imprisonment sentences

Data on the length of non-imprisonment sentence types, such as community correction orders, suspended sentences and fines, for [rape](#) is available on SACStat – Higher Courts.

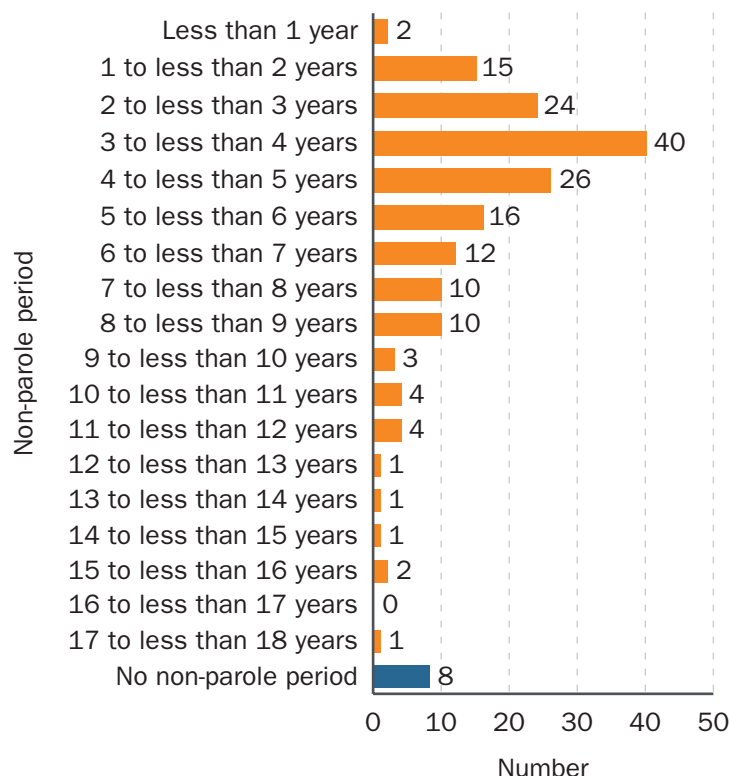
## Summary

From 2011–12 to 2015–16, 208 people were sentenced for rape in the higher courts. Of these people, 185 (89%) were given a principal sentence of imprisonment.

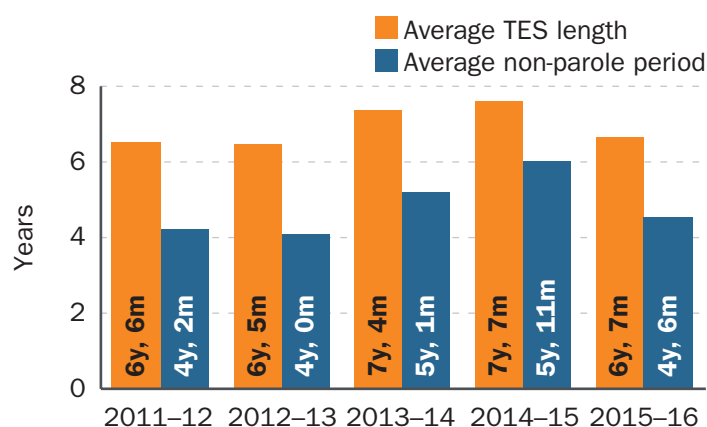
The number and range of offences for which people with a principal offence of rape were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 6 years, while the median principal imprisonment length was 5 years.

Total effective imprisonment lengths ranged from 3 months (with a 2 year and 6 month community correction order) to 23 years, and non-parole periods (where imposed) ranged from 9 months to 17 years.

**Figure 7:** The number of people sentenced to imprisonment for rape by length of non-parole period, 2011–12 to 2015–16



**Figure 8:** The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for rape, 2011–12 to 2015–16



## 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. 176, which describes sentencing trends for rape from 2009–10 to 2013–14.
2. Data on first-instance sentence outcomes presented 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 also was 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. *Crimes Act 1958* (Vic) s 38.
4. 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.
5. *Sentencing Act 1991* (Vic) s 5(2G) requires a custodial sentence (that is, not a sentence of imprisonment combined with a community correction order) to be imposed for this offence when committed after 20 March 2017.
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, imprisonment combined with a community correction order, custodial supervision orders, residential treatment orders, aggregate imprisonment and youth justice centre orders.
8. 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.
9. Refer to Endnote 6.
10. This total includes the people in Table 1 who received a sentence of imprisonment, imprisonment combined with a community correction order and aggregated imprisonment.
11. 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 Figure 3 only deals with sentences of imprisonment for the principal proven offence of rape. In the 2011–12 to 2015–16 period, 1 person received an aggregate form of imprisonment.
12. A total of 3 people were not eligible for parole because they were given a total effective sentence length of less than 1 year.
13. Five people were 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 these cases, and these people are excluded from the analysis. A non-parole period was not set for an additional 5 people who were eligible for a non-parole period.

## SACStat – Higher Courts Rape

[https://www.sentencingcouncil.vic.gov.au/sacstat/higher\\_courts/HC\\_6231\\_38\\_1.html](https://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_38_1.html)

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