

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2003–04 to 2007–08

June 2009
No. 87

Making a threat to kill

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of making a threat to kill and details the age and gender² of people sentenced for this offence in the County and Supreme Courts of Victoria between 2003–04 and 2007–08.³

A person who, without lawful excuse, threatens to kill another person is guilty of the offence of making a threat to kill. The person must intend or be reckless as to whether the other person would fear the threat would be carried out.⁴ Making a threat to kill is an indictable offence that carries a maximum penalty of 10 years' imprisonment⁵ and/or a fine of 1200 penalty units.⁶

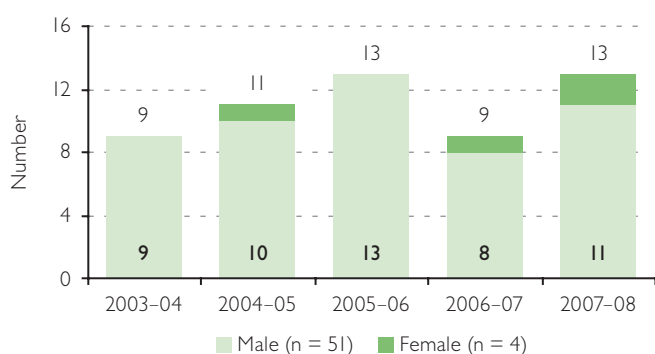
Making a threat to kill was the principal offence in 0.5% of cases sentenced in the higher courts between 2003–04 and 2007–08.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of making a threat to kill for the period 2003–04 to 2007–08. As shown, 55 people were sentenced for making a threat to kill over the five-year period. There were 13 people sentenced for this offence in 2007–08, up by 4 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (92.7% or 51 of 55 people), including 11 of the 13 people sentenced in 2007–08.

Figure 1: The number of people sentenced for making a threat to kill by gender, 2003–04 to 2007–08



Sentence types and trends

Figure 2 shows the total number of people sentenced for making a threat to kill 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.⁷ Over the five-year period, 51% of people were given an immediate custodial sentence. This peaked at 67% (6 of 9) in 2003–04 before decreasing to 38% (5 of 13) in 2005–06 and 2007–08.

Figure 2: The number of people sentenced for making a threat to kill and the number who received an immediate custodial sentence, 2003–04 to 2007–08



Table 1 shows the number of people sentenced for making a threat to kill from 2003–04 to 2007–08 by the types of sentences imposed.

Over the five-year period, around four in ten people sentenced for making a threat to kill received a period of imprisonment (42% or 23 of 55 people), while 24% received a wholly suspended sentence of imprisonment.⁸

The number and percentage of people who received imprisonment fluctuated each year ranging from a low of three people and 23% in 2007–08 to a high of seven people and 64% in 2004–05.

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for making a threat to kill grouped by their age⁹ between 2003–04 and 2007–08. The average age of people sentenced for making a threat to kill was thirty-three years and ten months. There were no juveniles sentenced over this period.

Figure 3: The number of people sentenced for making a threat to kill by gender and age, 2003–04 to 2007–08



Table 1: The number and percentage of people sentenced for making a threat to kill by sentence type, 2003–04 to 2007–08

| Sentence type | 2003–04 | 2004–05 | 2005–06 | 2006–07 | 2007–08 |
|--|----------|-----------|-----------|----------|-----------|
| Imprisonment | 4 (44%) | 7 (64%) | 4 (31%) | 5 (56%) | 3 (23%) |
| Wholly suspended sentence | 1 (11%) | 2 (18%) | 6 (46%) | 1 (11%) | 3 (23%) |
| Partially suspended sentence | 2 (22%) | 0 (–) | 1 (8%) | 0 (–) | 1 (8%) |
| Community-based order | 1 (11%) | 1 (9%) | 1 (8%) | 1 (11%) | 0 (–) |
| Adjourned undertaking with conviction | 1 (11%) | 0 (–) | 0 (–) | 1 (11%) | 2 (15%) |
| Fine | 0 (–) | 1 (9%) | 0 (–) | 1 (11%) | 1 (8%) |
| Residential treatment order | 0 (–) | 0 (–) | 0 (–) | 0 (–) | 1 (8%) |
| Mix (wholly suspended sentence and fine) | 0 (–) | 0 (–) | 1 (8%) | 0 (–) | 0 (–) |
| Aggregate wholly suspended sentence | 0 (–) | 0 (–) | 0 (–) | 0 (–) | 1 (8%) |
| Aggregate intensive correction order | 0 (–) | 0 (–) | 0 (–) | 0 (–) | 1 (8%) |
| People sentenced | 9 | 11 | 13 | 9 | 13 |

Sentence types by gender

Table 2 shows the types of sentence imposed for making a threat to kill grouped by gender. As shown, men were more likely to receive a period of imprisonment (45%), a partially suspended sentence of imprisonment (8%) and a community based order (8%). Conversely, women were more likely to receive an adjourned undertaking with conviction (2 of the four women).

Table 2: The number and percentage breakdown by gender of people sentenced for making a threat to kill, 2003–04 to 2007–08

| Sentence type | Male | Female | Total |
|--|-----------|----------|-----------|
| Imprisonment | 23 (45%) | 0 (–) | 23 (42%) |
| Wholly suspended sentence | 12 (24%) | 1 (25%) | 13 (24%) |
| Partially suspended sentence | 4 (8%) | 0 (–) | 4 (7%) |
| Community-based order | 4 (8%) | 0 (–) | 4 (7%) |
| Adjourned undertaking with conviction | 2 (4%) | 2 (50%) | 4 (7%) |
| Fine | 2 (4%) | 1 (25%) | 3 (5%) |
| Residential treatment order | 1 (2%) | 0 (–) | 1 (2%) |
| Mix (wholly suspended sentence and fine) | 1 (2%) | 0 (–) | 1 (2%) |
| Aggregate wholly suspended sentence | 1 (2%) | 0 (–) | 1 (2%) |
| Aggregate intensive correction order | 1 (2%) | 0 (–) | 1 (2%) |
| People sentenced | 51 | 4 | 55 |

Sentence types by age

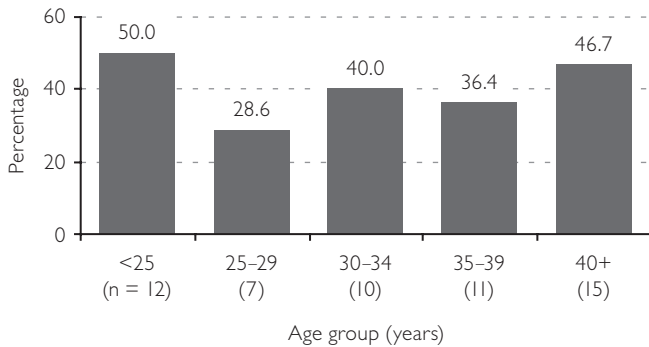
As shown in Table 2, the two most common sentence types were imprisonment and wholly suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged under 25 years (50% or 6 of the 12 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 25–29 years old (29% or 2 of the 7 people in this age group).

Figure 4: The percentage of people who received a period of imprisonment for making a threat to kill by age group, 2003–04 to 2007–08

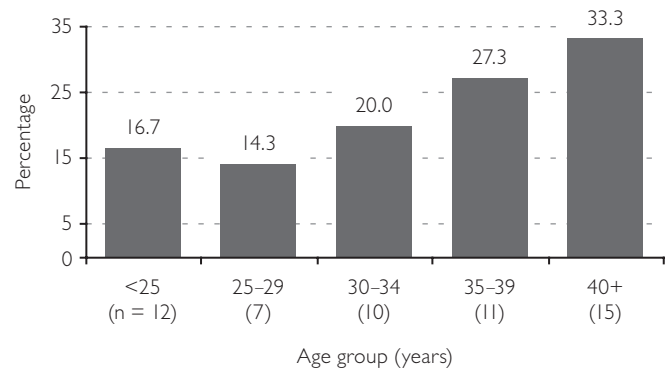


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 40 years and older (33% or 5 of the 15 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 25–29 years old (14% or one of the 7 people in this age group).

Figure 5: The percentage of people who received a wholly suspended sentence of imprisonment for making a threat to kill by age group, 2003–04 to 2007–08



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.

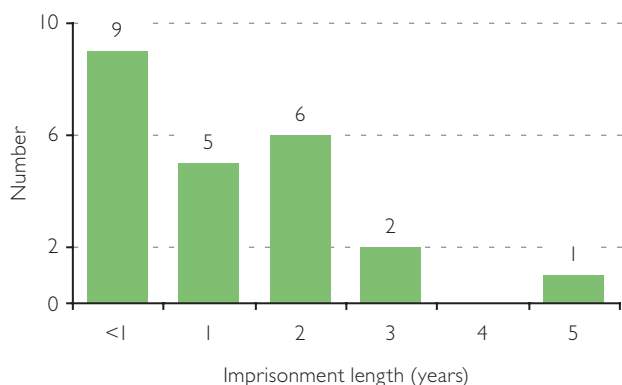
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for making a threat to kill must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of making a threat to kill over 2003–04 to 2007–08.

Principal sentence of imprisonment

Figure 6 shows the number of people sentenced to imprisonment for making a threat to kill between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from twenty two days to five years, while the median length of imprisonment was one year and two months (meaning that half of the imprisonment terms were shorter than one year and two months and half were longer).

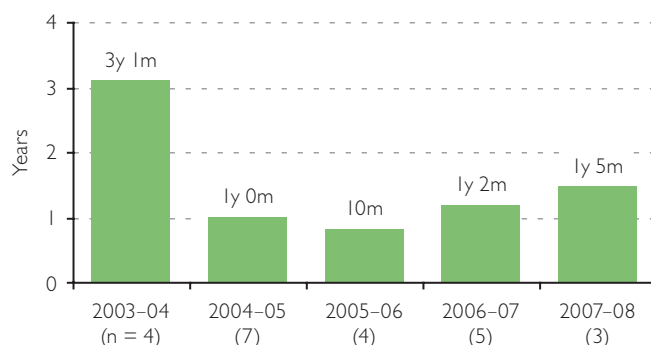
The most common length of imprisonment imposed was less than one year (9 people).

Figure 6: The number of people sentenced to imprisonment for making a threat to kill by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 7, the average length of imprisonment term imposed on people sentenced for making a threat to kill ranged from ten months in 2005–06 to three years and one month in 2003–04.

Figure 7: The average length of imprisonment term imposed on people sentenced for making a threat to kill, 2003–04 to 2007–08

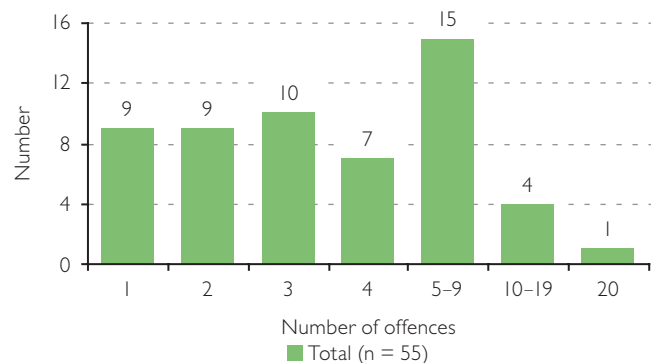


Other offences finalised at the same hearing

Often people prosecuted for making a threat to kill 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 making a threat to kill.

Figure 8 shows the number of people sentenced for the principal offence of making a threat to kill by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 20, while the median was 3 offences. There were 9 people (16.4%) sentenced for the single offence of making a threat to kill alone. The average number of offences per person sentenced for making a threat to kill was 4.69.

Figure 8: The number of people sentenced for the principal offence of making a threat to kill by the number of sentenced offences per person, 2003–04 to 2007–08



While Figure 8 presents the number of sentenced offences for those sentenced for making a threat to kill, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 20 of the total 55 people (36.4%) also received sentences for intentionally destroy/damage property (criminal damage). On average, they were sentenced for 1.35 counts of intentionally destroy/damage property (criminal damage).

Table 3: The number and percentage of people sentenced for the principal offence of making a threat to kill by the most common offences that were sentenced and the average number of those offences that were sentenced, 2003–04 to 2007–08

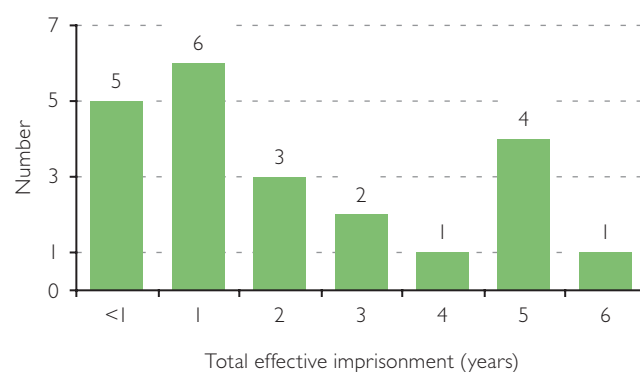
| Offence | No. | % | Avg. |
|---|-----------|--------------|-------------|
| 1 making a threat to kill | 55 | 100.0 | 1.27 |
| 2 intentionally destroy/damage property (criminal damage) | 20 | 36.4 | 1.35 |
| 3 common law assault | 10 | 18.2 | 1.20 |
| 4 aggravated burglary | 10 | 18.2 | 1.00 |
| 5 causing injury | 9 | 16.4 | 1.33 |
| 6 theft | 7 | 12.7 | 1.43 |
| 7 false imprisonment | 6 | 10.9 | 1.67 |
| 8 prohibited person in possession of a firearm | 5 | 9.1 | 1.00 |
| 9 prohibited person possess unregistered firearm | 4 | 7.3 | 2.00 |
| 10 make threat to inflict serious injury | 4 | 7.3 | 1.00 |
| People sentenced | 55 | 100.0 | 4.69 |

Total effective sentence of imprisonment

There were 22 people given a total effective sentence of imprisonment.¹⁰ Figure 9 shows the number of people sentenced to imprisonment for making a threat to kill between 2003–04 and 2007–08 by the length of their total effective sentence. The length of total effective sentences ranged from twenty two days to six years, while the median total effective length of imprisonment was one year, eleven months and fifteen days (meaning that half of the total effective sentence lengths were below one year, eleven months and fifteen days and half were above).

The most common total effective imprisonment length was one year (6 people).

Figure 9: The number of people sentenced to imprisonment for making a threat to kill by total effective length of imprisonment term, 2003–04 to 2007–08



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 making a threat to kill. Sentences and non-parole periods must be considered in this broader context.

Of the 22 people who were sentenced to imprisonment for making a threat to kill, 17 were eligible to have a non-parole period fixed.¹¹ Of these people, 16 were given a non-parole period (94%).¹² Figure 10 shows the number of people sentenced to imprisonment for making a threat to kill between 2003–04 and 2007–08 by the length of their non-parole period. Non-parole periods ranged from four months and fifteen days to four years and six months, while the median length of the non-parole period was one year and five months (meaning that half of the non-parole periods were below one year and five months and half were above).

The most common non-parole period imposed was less than one year (7 people).

Figure 10: The number of people sentenced to imprisonment for making a threat to kill by length of non-parole period, 2003–04 to 2007–08



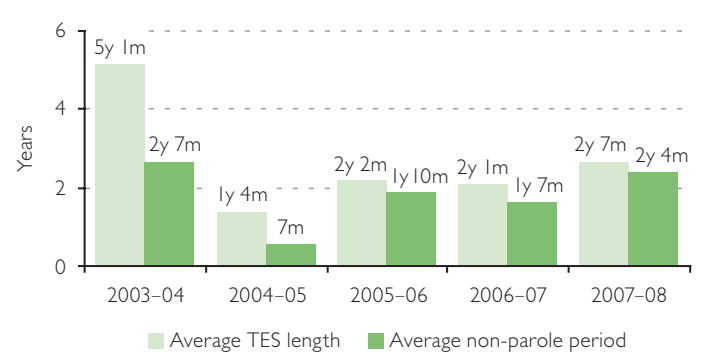
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Total effective sentences of imprisonment and non-parole periods

Figure 11 presents the average length of total effective sentences of imprisonment compared to the average length of non-parole periods for all people from 2003–04 to 2007–08.¹³

From 2003–04 to 2007–08, the average length of total effective sentences for all people ranged from one year and four months in 2004–05 to five years and one month in 2003–04. Over the same period, the average length of non-parole periods ranged from seven months in 2004–05 to two years and seven months in 2003–04.

Figure 11: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for making a threat to kill, 2003–04 to 2007–08

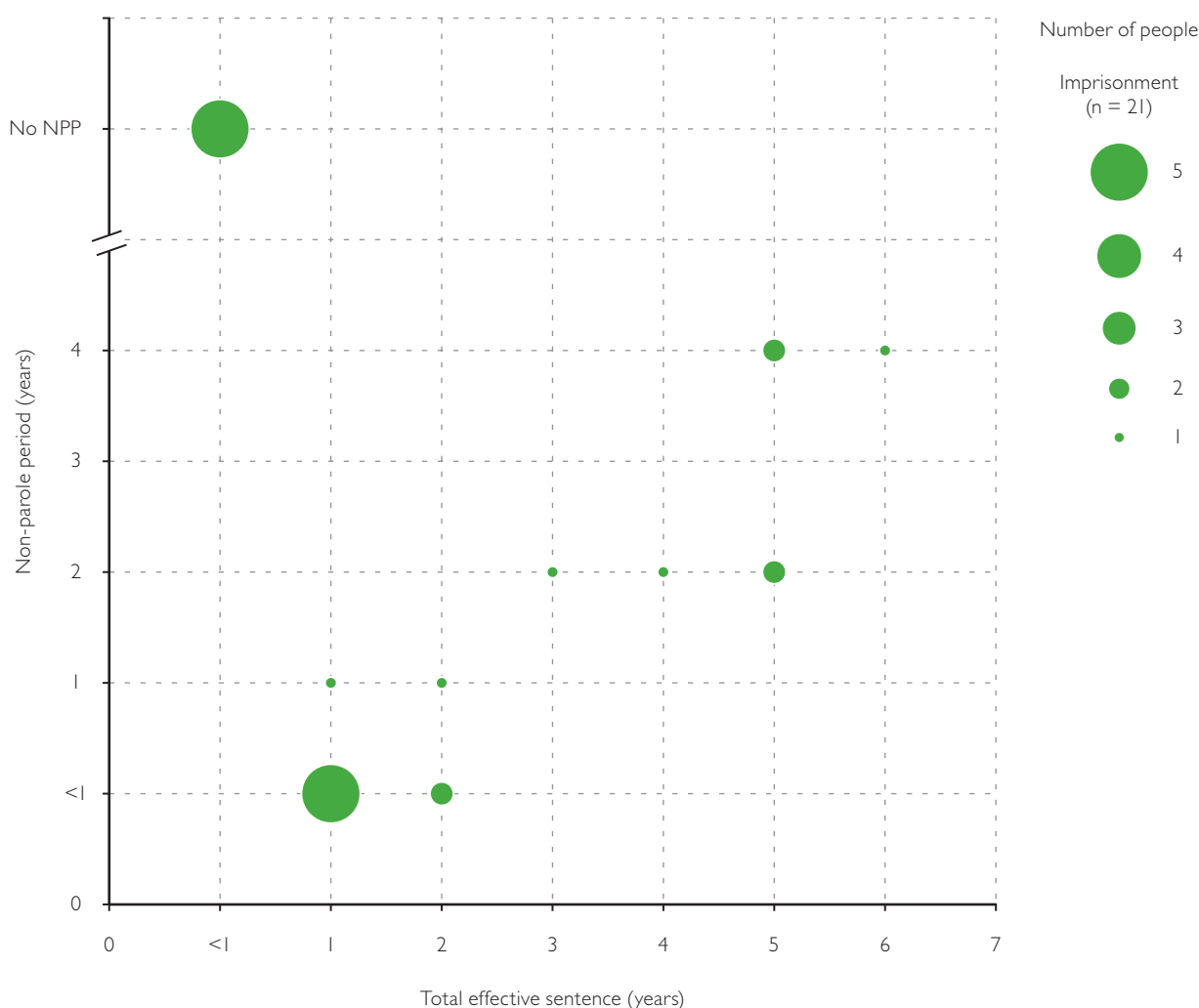


Total effective sentence of imprisonment by non-parole period

While Figures 9 and 10 present the lengths of the total effective sentences and non-parole periods separately, Figure 12 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for making a threat to kill 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.¹⁴ As shown, the most common combination of imprisonment length and non-parole period imposed was one year with a non-parole period of less than one year (5 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from twenty-two days with no non-parole period to six years with a non-parole period of four years and six months.

Figure 12: The number of people sentenced to imprisonment for making a threat to kill by the total effective sentence and the non-parole period imposed, 2003–04 to 2007–08¹⁵



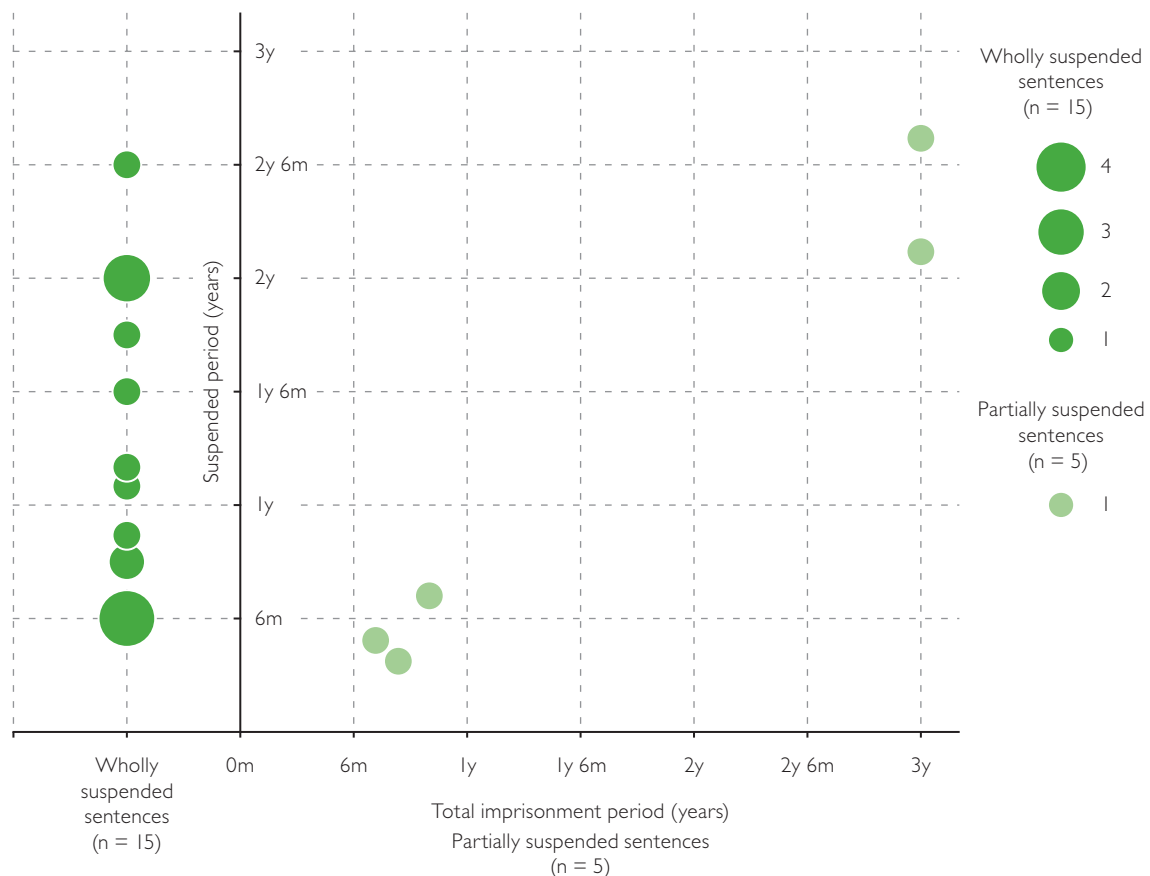
Note: No NPP refers to no non-parole period.

Suspended sentences of imprisonment

There were 20 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 15 people had their prison sentence wholly suspended and 5 received a partially suspended sentence of imprisonment. Figure 13 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 dark green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the light green '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 partially suspended prison term.

Wholly suspended sentence lengths ranged from six months to two years and six months. The most common wholly suspended sentence length was six months (4 people – as represented by the largest dark green 'bubble' on the chart).

Figure 13: The number of people given a wholly or partially suspended sentence of imprisonment for making a threat to kill by sentence type and length, 2003–04 to 2007–08



Summary

Between 2003–04 and 2007–08, 55 people were sentenced for making a threat to kill in the higher courts. Over this period, the majority of those sentenced were men (93%), while 73% were between the age of 19 and 40 years.

Around four in ten people sentenced for making a threat to kill received a period of imprisonment (42%), while 24% received a wholly suspended sentence of imprisonment.

Imprisonment was more common for those younger than 25 years of age and wholly suspended sentences of imprisonment were more common for those older than 40 years of age.

Each of the 55 people was sentenced for an average of 4.69 offences, including 1.27 offences of making a threat to kill. The most common offence finalised in conjunction with making a threat to kill was intentionally destroy/damage property (criminal damage) (36.4% of all cases). The number and range of offences for which people with a principal offence of making a threat to kill were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was one year, eleven months and fifteen days, while the median principal imprisonment length was one year and two months.

Total effective imprisonment lengths ranged from twenty-two days with no non-parole period to six years with a non-parole period of four years and six months. The most common sentence of imprisonment was one year with a non-parole period of less than one year.

The most common wholly suspended sentence length was six months.

1. This report presents sentencing outcomes for people sentenced for the principal offence of making a threat to kill in the County and Supreme Courts 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 making a threat to kill who received a more serious sentence for another offence forming part of the same presentment. There were 365 people sentenced from 2003–04 to 2007–08 for 496 offences of making a threat to kill. Making a threat to kill was the principal proven offence for 55 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. 30, which described sentencing trends for making a threat to kill between 2001–02 and 2005–06.

2. The information source for sentencing outcomes for making a threat to kill only contains information on age and gender characteristics. No other demographic analysis is possible.
3. The statistical information presented here was provided by Court Services, Department of Justice (Vic). 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 20.
5. *Crimes Act 1958* (Vic) s 20.
6. 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>.
7. Immediate custodial sentence includes imprisonment, partially suspended sentence and residential treatment order.
8. The *Sentencing (Suspended Sentences) Act 2006* (Vic) s 4(2) amended the *Sentencing Act 1991* (Vic) s 26(2B) to restrict the use of wholly suspended sentences for serious offences to cases involving exceptional circumstances. This legislation commenced on 1 November 2006. There were five individuals who received a wholly suspended sentence for the principal proven offence of making a threat to kill in 2006–07 and 2007–08. All of these offenders committed the offences prior to this legislative change.
9. Age is as at the time of sentencing.
10. Of the 23 people who were given a principal sentence of imprisonment, 22 were also given a total effective sentence of imprisonment. There was one person who was given imprisonment as the principal sentence for making a threat to kill and a partially suspended sentence as a total effective sentence.
11. A total of five people were not eligible for parole because they were given a total effective sentence length of less than one 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. There were no women imprisoned with a non-parole period over the reference period.
14. Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
15. This graph includes the 21 people who were given a total effective sentence and a non-parole period that related to this case only.

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

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- 40 Causing serious injury recklessly
- 39 Causing serious injury intentionally
- 38 Aggravated burglary
- 37 Burglary
- 36 Attempted armed robbery
- 35 Armed robbery
- 34 Robbery

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