

Sentencing trends in
the higher courts of
Victoria
2015–16 to 2019–20

April 2021
No. 250

Culpable driving causing death

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of culpable driving causing death in the County and Supreme Courts of Victoria (the higher courts) from 2015–16 to 2019–20.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2020 have been incorporated into the data in this Snapshot.

Detailed data on culpable driving causing death and other offences is available on [Sentencing Advisory Council Statistics \(SACStat\)](#).

This offence covers homicides caused by the culpable driving of a motor vehicle. This offence is committed when a person drives a motor vehicle negligently, recklessly or while under the influence of drugs or alcohol and causes the death of another person. 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.³

Culpable driving causing death is a Category 2 offence if it was committed on or after 28 October 2018.⁴ Courts must impose custodial sentences for Category 2 offences except in particular circumstances. Culpable driving causing death is also a standard sentence offence if it was committed on or after 1 February 2018. This means that courts must take into account that a prison sentence of 8 years represents the middle of the range of objective seriousness for this offence.⁵

This Snapshot focuses on cases where culpable driving causing death was the principal offence, that is, cases where culpable driving causing death was the offence that received the most severe sentence.⁶

Culpable driving causing death was the principal offence in 0.7% of cases sentenced in the higher courts between 2015–16 and 2019–20.

People sentenced

From 2015–16 to 2019–20, 66 people were sentenced in the higher courts for a principal offence of culpable driving causing death.

Figure 1 shows the number of people sentenced for the principal offence of culpable driving causing death by financial year. There were 12 people sentenced for this offence in 2019–20, down from 19 in the previous year. The number of people sentenced was highest in 2018–19 (19 people) and lowest in 2015–16 (6 people).

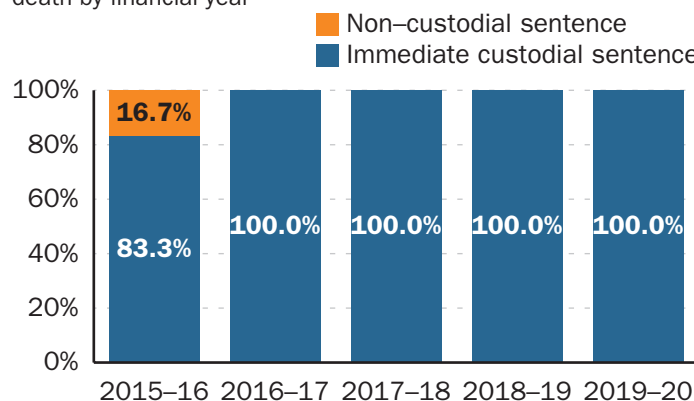
Sentence types and trends

Figure 2 shows the proportion of people who received a custodial sentence and non-custodial sentence for the principal offence of culpable driving causing death.

Figure 1: The number of people sentenced for culpable driving causing death by financial year



Figure 2: The percentage of people who received a custodial sentence and non-custodial sentence for culpable driving causing death by financial year



A custodial sentence involves at least some element of immediate imprisonment or detention.⁷ The rate of custodial sentences was lowest in 2015–16 (83.3%). Over the 4 financial years to 2019–20, all people sentenced for the principal offence of culpable driving causing death received a custodial sentence.

Table 1 shows the number of people sentenced for culpable driving causing death from 2015–16 to 2019–20 by the most serious type of sentence imposed.⁸ The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.⁹ Changes to community correction orders may have also influenced the sentencing trends over the five years covered by this Snapshot.¹⁰

Over the five-year period, most people sentenced for culpable driving causing death received a principal sentence of imprisonment (97.0% or 64 of 66 people). The *principal sentence* is the sentence imposed for the charge that is the principal offence. The proportion of imprisonment sentences was 100% for all years except 2015–16 and 2016–17.

Table 1: The number and percentage of people sentenced for culpable driving causing death by most serious principal sentence type and financial year

Sentence type	2015–16	2016–17	2017–18	2018–19	2019–20	Total
Imprisonment	5 (83.3%)	14 (93.3%)	14 (100.0%)	19 (100.0%)	12 (100.0%)	64 (97.0%)
Youth justice centre order	0 (0.0%)	1 (6.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.5%)
Wholly suspended sentence	1 (16.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.5%)
Total people sentenced	6	15	14	19	12	66

Principal and total effective sentences of imprisonment

The principal sentence describes sentences for the offence at a **charge** level (as described in the previous section). The total effective sentence describes sentences at a **case** level.

The total effective sentence in a case with multiple charges receiving imprisonment is the sentence that results from the court ordering the individual sentences of imprisonment to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other). The total effective sentence in a case with a single charge is the principal sentence.

Therefore, where a case involves multiple charges, the total effective sentence imposed on a person is sometimes 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 2015–16 to 2019–20.

Principal sentence of imprisonment

Table 2 shows that a total of 64 people received a principal sentence of imprisonment for culpable driving causing death. Of these, 63 (98.4%) received a non-aggregate term of imprisonment.¹¹ There was 1 person who received an aggregate term of imprisonment.

Table 2: The number and percentage of people sentenced to imprisonment for culpable driving causing death by sentence type and financial year

Type of imprisonment sentence	2015–16	2016–17	2017–18	2018–19	2019–20	Total
Imprisonment	5 (100.0%)	14 (100.0%)	13 (92.9%)	19 (100.0%)	12 (100.0%)	63 (98.4%)
Aggregate imprisonment	0 (0.0%)	0 (0.0%)	1 (7.1%)	0 (0.0%)	0 (0.0%)	1 (1.6%)
Total people sentenced to imprisonment	5	14	14	19	12	64

Figure 3 shows the length of imprisonment for the 63 people who received a non-aggregate term. Imprisonment terms ranged from 3 years to 10 years, while the median length of imprisonment was 7 years and 6 months (meaning that half of the imprisonment terms were below 7 years and 6 months and half were above).

The most common range of imprisonment term lengths was 8 to less than 9 years (14 people).

Figure 4 shows that the average length of imprisonment imposed on people sentenced for culpable driving causing death increased from 6 years and 1 month in 2015–16 to 7 years and 9 months in 2019–20. Over the five years, the average length of imprisonment for culpable driving causing death was 7 years.

Other offences finalised at the same hearing

Sometimes 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 that offenders were sentenced for alongside the principal offence of culpable driving causing death.

Figure 5 shows the number of people sentenced for the principal offence of culpable driving causing death by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 10, and the median was 3 offences. There were 19 people (28.8%) sentenced for the single offence of culpable driving causing death. The average number of offences per person was 2.86.

Figure 3: The number of people sentenced to imprisonment for culpable driving causing death by length of imprisonment term, 2015–16 to 2019–20

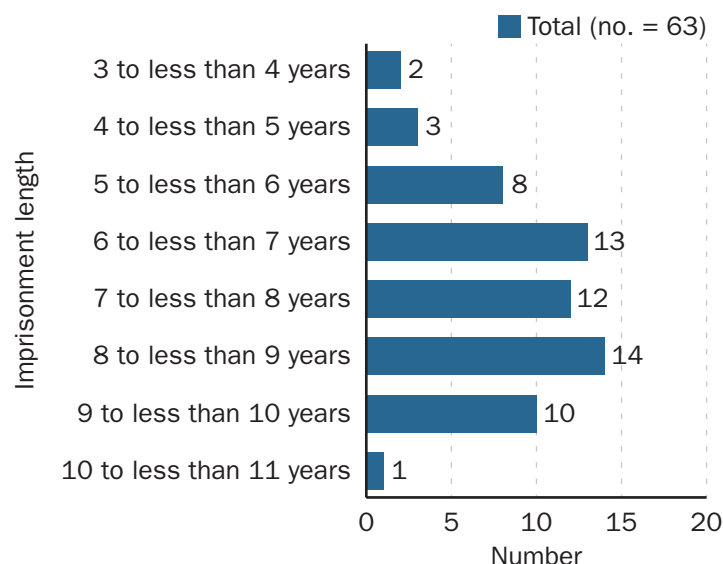


Figure 4: The average length of imprisonment imposed on people sentenced for culpable driving causing death, by financial year

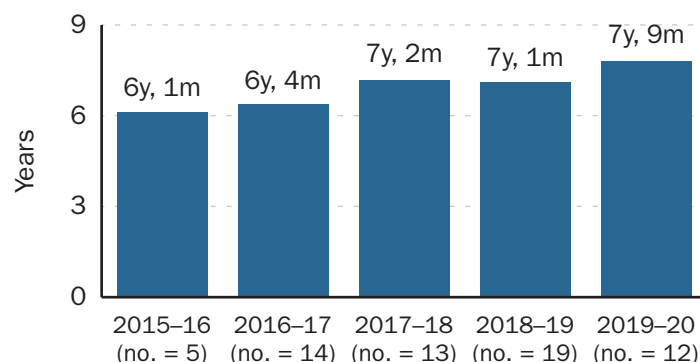


Figure 5: The number of people sentenced for the principal offence of culpable driving causing death by the number of sentenced offences per person, 2015–16 to 2019–20

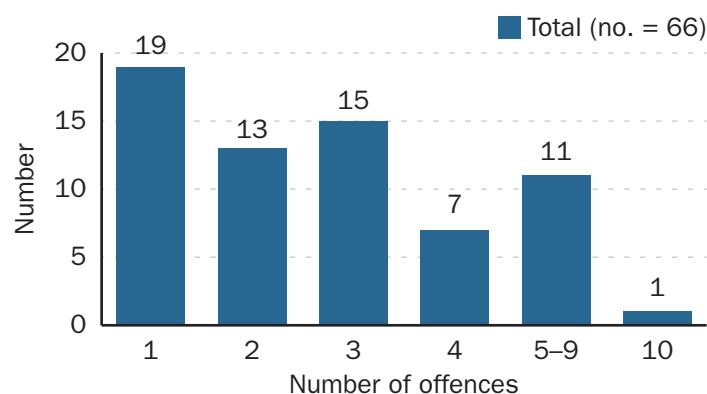


Table 3 shows the 10 most common offences, by number and percentage, for people sentenced for culpable driving causing death. The last column sets out the average number of offences sentenced per person. For example, 14 of the total 66 people (21.2%) also received sentences for causing serious injury negligently. On average, they were sentenced for 1.36 charges of causing serious injury negligently per case.

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, 2015–16 to 2019–20

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Culpable driving causing death	66	100.0%	1.20
2. Causing serious injury negligently	14	21.2%	1.36
3. Possess a drug of dependence	8	12.1%	1.38
4. Theft	8	12.1%	1.38
5. Unlicensed driving	8	12.1%	1.00
6. Reckless conduct endangering life	7	10.6%	1.29
7. Fail to stop or render assistance after a motor vehicle accident involving death or serious injury	7	10.6%	1.14
8. Drive while disqualified or suspended	7	10.6%	1.00
9. Use unregistered motor vehicle	4	6.1%	1.00
10. Fail to stop after a motor vehicle accident	3	4.5%	1.00
People sentenced	66	100.0%	2.86

Total effective imprisonment terms

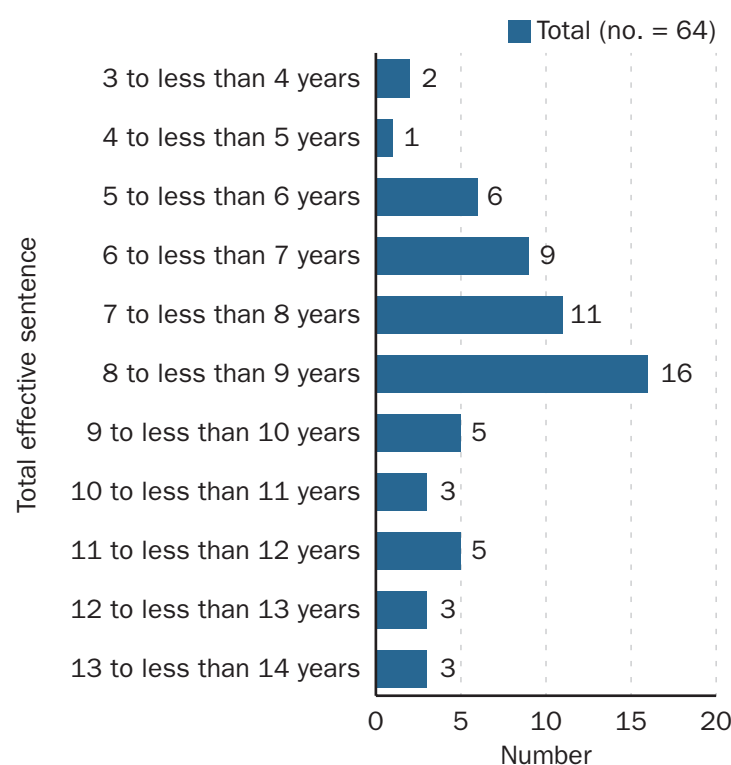
Figure 6 shows the number of people sentenced to imprisonment for culpable driving causing death by length of their total effective sentence. Total effective sentences ranged from 3 years to 13 years, while the median total effective sentence was 8 years (meaning that half of the total effective sentences were below 8 years and half were above).

The most common range of total effective sentence was 8 to less than 9 years (16 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. If the court fixes a non-parole period, the person must serve that period before becoming eligible for parole. If the court does not set a non-parole period, the person must serve the entirety of their imprisonment term in custody.

Figure 6: The number of people sentenced to imprisonment for culpable driving causing death by length of total effective sentence, 2015–16 to 2019–20



Of the 64 people who were sentenced to imprisonment for culpable driving causing death, all were eligible for a non-parole period and all were given a non-parole period.

Figure 7 shows the number of people sentenced to imprisonment for culpable driving causing death, by length of non-parole period. Non-parole periods ranged from 1 year to 9 years, while the median 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 for non-parole periods was 4 to less than 5 years (15 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 64 people who were sentenced to imprisonment for culpable driving causing death and received a non-parole period. Figure 8 compares the average length of total effective sentences with the average length of non-parole periods for these people by financial year.

From 2015–16 to 2019–20, the average total effective sentence ranged from 7 years and 3 months in 2016–17 to 8 years and 10 months in 2019–20. Over the same period, the average non-parole period ranged from 4 years and 8 months in 2016–17 to 5 years and 11 months in 2019–20.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for culpable driving causing death is available on [SACStat](#).

Summary

From 2015–16 to 2019–20, 66 people were sentenced for culpable driving causing death in the higher courts. Of these people, all but 1 were given a custodial sentence and 64 (97.0%) were given a principal sentence of imprisonment.

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 sentence was 8 years, while the median principal imprisonment length was 7 years and 6 months. On average, people sentenced for culpable driving causing death were found guilty of 2.86 offences each, with a maximum of 10 offences.

Total effective sentences ranged from 3 years to 13 years, and non-parole periods ranged from 1 year to 9 years.

Figure 7: The number of people sentenced to imprisonment for culpable driving causing death by length of non-parole period, 2015–16 to 2019–20

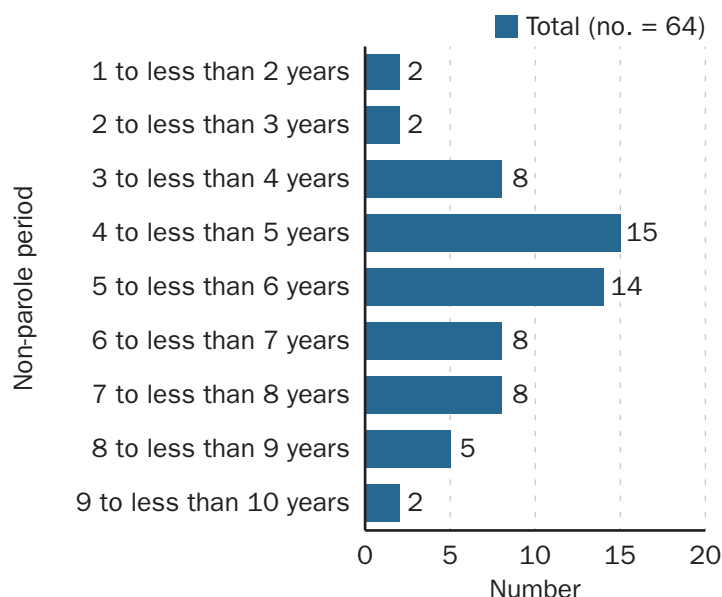
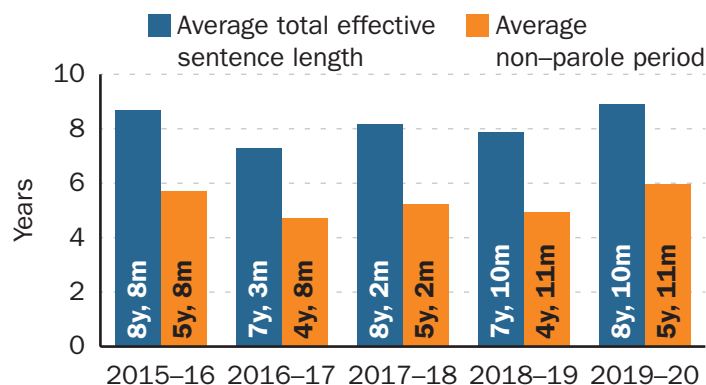


Figure 8: The average total effective sentence and the average non-parole period for people sentenced to imprisonment with a non-parole period for culpable driving causing death by financial year



Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 225, which describes sentencing trends for culpable driving causing death between 2013–14 and 2017–18.
2. Data on first-instance sentence outcomes presented in this Snapshot were 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 was also 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 318(1). The value of a penalty unit changes each year and can be found in the **Victorian Government Gazette** and on the **Victorian legislation website**.
4. *Sentencing Act 1991* (Vic) ss 3(ea) (definition of *Category 2 offence*), 5(2H)–(2I).
5. *Crimes Act 1958* (Vic) 318(1A); *Sentencing Act 1991* (Vic) ss 5(2)(ab), 5A–5B.
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. For the principal offence of culpable driving causing death, custodial sentences included imprisonment and a youth justice centre order.
8. For example, if the principal offence has a sentence that includes imprisonment combined with a community correction order, imprisonment is the most serious sentence type.
9. 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.
10. For example, initially the maximum term of imprisonment that could be combined with a community correction order was set at 3 months, but it was increased to 2 years in September 2014 and reduced to 1 year in March 2017.
11. A court may impose an *aggregate* sentence of imprisonment upon multiple charges sentenced at the same time. These sentences are a single term of imprisonment in which the parts of the term attributable to the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.

SACStat – Higher Courts Culpable driving causing death

<http://www.sentencingcouncil.vic.gov.au/sacstat/home.html>

Authored by Zsombor Bathy, Sentencing Advisory Council.

Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

© Copyright State of Victoria, Sentencing Advisory Council, 2021

ISSN 1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen Street, Melbourne.

Disclaimer:

The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots are accurate at the time of publishing.