

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

April 2021  
No. 251

## Arson

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of arson in the County and Supreme Courts of Victoria (the higher courts) from 2015–16 to 2019–20.<sup>2</sup> 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 arson and other offences is available on [Sentencing Advisory Council Statistics \(SACStat\)](#).

A person who intentionally and without lawful excuse destroys or damages any property belonging to another by setting it on fire is guilty of arson. A person is deemed to have destroyed or damaged the property intentionally if it was the person's purpose to do so or if the person was aware that their conduct was more likely than not to result in the damage or destruction of the property.<sup>3</sup> Arson is an indictable offence that carries a maximum penalty of 15 years' imprisonment and/or a fine of 2,400 penalty units.<sup>4</sup> It can be tried summarily in the Magistrates' Court if certain criteria are met.<sup>5</sup>

This Snapshot focuses on cases where arson was the principal offence, that is, cases where arson was the offence that received the most severe sentence.<sup>6</sup>

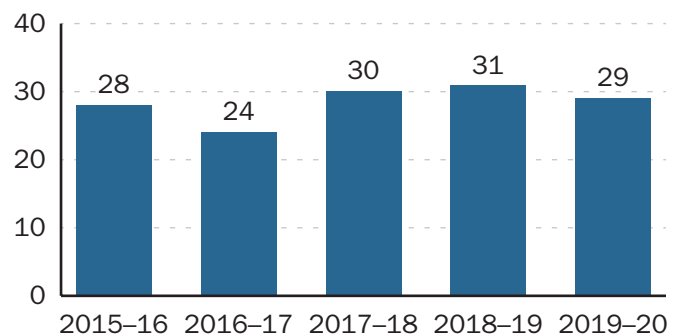
Arson was the principal offence in 1.6% of cases sentenced in the higher courts between 2015–16 and 2019–20.

### People sentenced

From 2015–16 to 2019–20, 142 people were sentenced in the higher courts for a principal offence of arson.

Figure 1 shows the number of people sentenced for the principal offence of arson by financial year. There were 29 people sentenced for this offence in 2019–20, down from 31 in the previous year. The number of people sentenced was highest in 2018–19 (31 people) and lowest in 2016–17 (24 people).

Figure 1: The number of people sentenced for arson by financial year



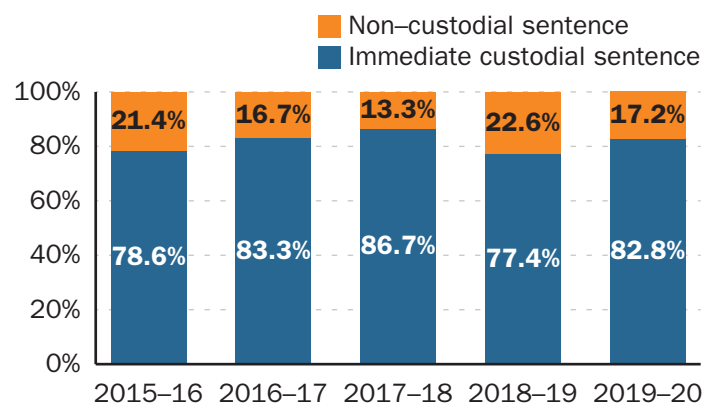
### Sentence types and trends

Figure 2 shows the proportion of people who received a custodial sentence and non-custodial sentence for the principal offence of arson.

A custodial sentence involves at least some element of immediate imprisonment or detention.<sup>7</sup> The rate of custodial sentences was lowest in 2018–19 (77.4%) and highest in 2017–18 (86.7%). Over the five-year period, 81.7% of people were given a custodial sentence.

Table 1 (page 2) shows the number of people sentenced for arson from 2015–16 to 2019–20 by the most serious type of sentence imposed.<sup>8</sup>

Figure 2: The percentage of people who received a custodial sentence and non-custodial sentence for arson by financial year



The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.<sup>9</sup> Changes to community correction orders may have also influenced the sentencing trends over the five years covered by this Snapshot.<sup>10</sup>

Over the five-year period, most people sentenced for arson received a principal sentence of imprisonment (78.9% or 112 of 142 people). The *principal sentence* is the sentence imposed for the charge that is the principal offence. The rate of imprisonment sentences was highest in 2017–18 (86.7%) and has decreased since then to 79.3% in 2019–20. The rate of community correction orders decreased from 17.9% in 2015–16 to 10.3% in 2019–20.

**Table 1:** The number and percentage of people sentenced for arson by most serious principal sentence type and financial year

Sentence type	2015–16	2016–17	2017–18	2018–19	2019–20	Total
Imprisonment	22 (78.6%)	19 (79.2%)	26 (86.7%)	22 (71.0%)	23 (79.3%)	112 (78.9%)
Youth justice centre order	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (6.5%)	0 (0.0%)	2 (1.4%)
Community correction order	5 (17.9%)	2 (8.3%)	3 (10.0%)	4 (12.9%)	3 (10.3%)	17 (12.0%)
Other	1 (3.6%)	3 (12.5%)	1 (3.3%)	3 (9.7%)	3 (10.3%)	11 (7.7%)
<b>Total people sentenced</b>	<b>28</b>	<b>24</b>	<b>30</b>	<b>31</b>	<b>29</b>	<b>142</b>

## 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 arson must be considered in this broader context.

The following sections analyse the use of imprisonment for the offence of arson from 2015–16 to 2019–20.

### Principal sentence of imprisonment

Table 2 shows that a total of 112 people received a principal sentence of imprisonment for arson. Of these, 101 (90.2%) received a non-aggregate term of imprisonment and 11 people received an aggregate term.<sup>11</sup> There were 41 people who received a community correction order in addition to their term of imprisonment.

**Table 2:** The number and percentage of people sentenced to imprisonment for arson by sentence type and financial year

Type of imprisonment sentence	2015–16	2016–17	2017–18	2018–19	2019–20	Total
Imprisonment	10 (45.5%)	13 (68.4%)	16 (61.5%)	15 (68.2%)	13 (56.5%)	67 (59.8%)
Imprisonment and community correction order (combined)	8 (36.4%)	5 (26.3%)	7 (26.9%)	6 (27.3%)	8 (34.8%)	34 (30.4%)
<b>Total non-aggregate imprisonment</b>	<b>18 (81.8%)</b>	<b>18 (94.7%)</b>	<b>23 (88.5%)</b>	<b>21 (95.5%)</b>	<b>21 (91.3%)</b>	<b>101 (90.2%)</b>
Aggregate imprisonment	2 (9.1%)	0 (0.0%)	1 (3.8%)	0 (0.0%)	1 (4.3%)	4 (3.6%)
Aggregate imprisonment and community correction order (combined)	2 (9.1%)	1 (5.3%)	2 (7.7%)	1 (4.5%)	1 (4.3%)	7 (6.3%)
<b>Total aggregate imprisonment</b>	<b>4 (18.2%)</b>	<b>1 (5.3%)</b>	<b>3 (11.5%)</b>	<b>1 (4.5%)</b>	<b>2 (8.7%)</b>	<b>11 (9.8%)</b>
<b>Total people sentenced to imprisonment</b>	<b>22</b>	<b>19</b>	<b>26</b>	<b>22</b>	<b>23</b>	<b>112</b>

Figure 3 shows the length of imprisonment for the 101 people who received a non-aggregate term. Imprisonment terms ranged from 11 days to 8 years, while the median length of imprisonment was 2 years (meaning that half of the imprisonment terms were below 2 years and half were above).

The most common ranges of imprisonment terms were 1 to less than 2 years and 2 to less than 3 years (23 people each).

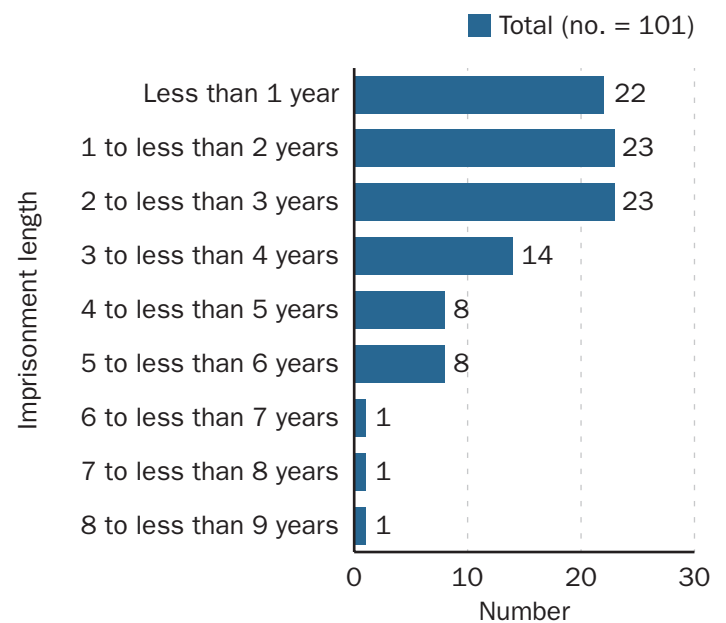
Figure 4 shows that the average length of imprisonment imposed on people sentenced for arson ranged from 1 year and 8 months in 2015–16 to 3 years and 1 month in 2018–19. Over the five years, the average length of imprisonment for arson was 2 years and 4 months.

### Other offences finalised at the same hearing

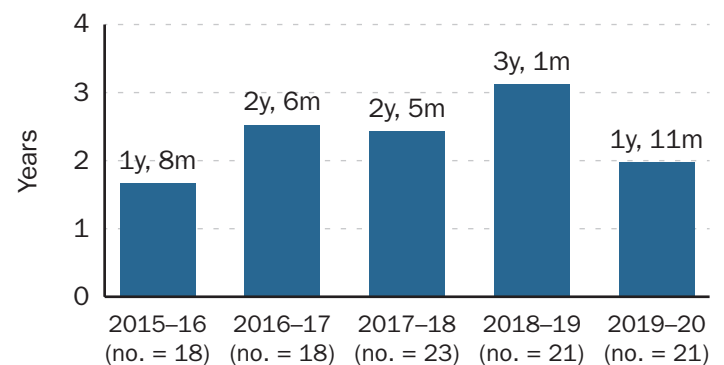
Sometimes people prosecuted for arson face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of arson.

Figure 5 shows the number of people sentenced for the principal offence of arson by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 24, and the median was 2 offences. There were 43 people (30.3%) sentenced for the single offence of arson. The average number of offences per person was 3.99.

**Figure 3:** The number of people sentenced to imprisonment for arson by length of imprisonment term, 2015–16 to 2019–20



**Figure 4:** The average length of imprisonment imposed on people sentenced for arson, by financial year



**Figure 5:** The number of people sentenced for the principal offence of arson by the number of sentenced offences per person, 2015–16 to 2019–20

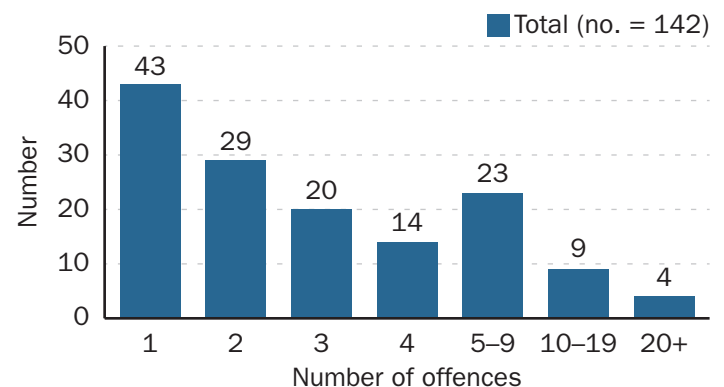


Table 3 shows the 10 most common offences, by number and percentage, for people sentenced for arson. The last column sets out the average number of offences sentenced per person. For example, 27 of the total 142 people (19.0%) also received sentences for theft. On average, they were sentenced for 1.89 charges of theft per case.

**Table 3:** The number and percentage of people sentenced for the principal offence of arson 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. Arson	142	100.0%	1.66
2. Theft	27	19.0%	1.89
3. Burglary	25	17.6%	1.40
4. Commit an indictable offence while on bail	14	9.9%	1.07
5. Criminal damage	13	9.2%	1.77
6. Drive while disqualified or suspended	10	7.0%	1.80
7. Contravene a family violence intervention order	9	6.3%	1.44
8. Common law assault	7	4.9%	1.14
9. Reckless conduct endangering persons	6	4.2%	1.67
10. Possess a drug of dependence	5	3.5%	1.40
<b>People sentenced</b>	<b>142</b>	<b>100.0%</b>	<b>3.99</b>

### Total effective imprisonment terms

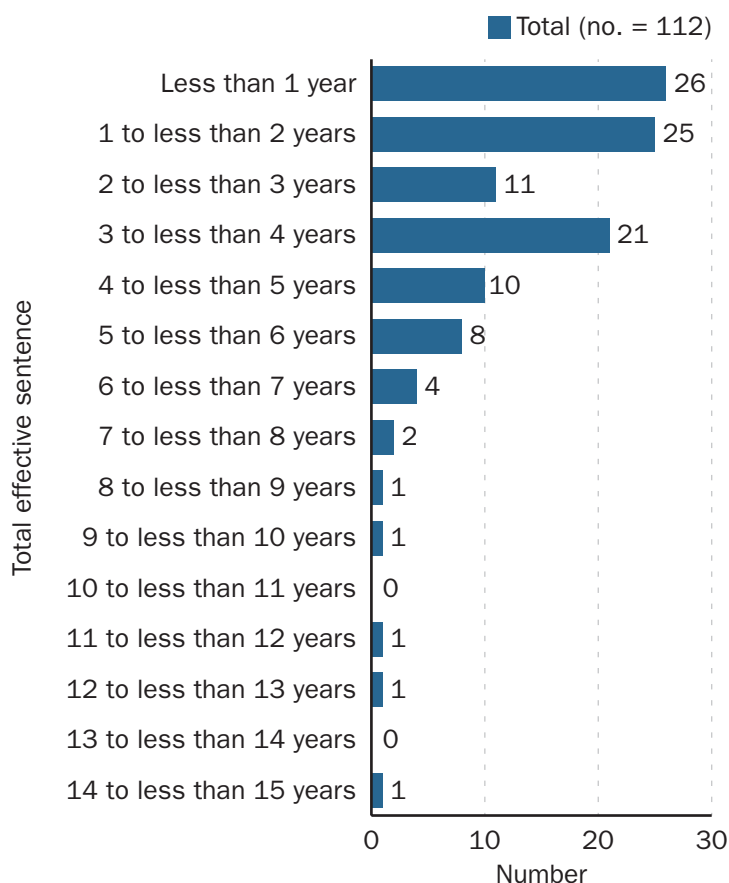
Figure 6 shows the number of people sentenced to imprisonment for arson by length of their total effective sentence. Total effective sentences ranged from 11 days to 14 years, while the median total effective sentence was 2 years, 3 months and 15 days (meaning that half of the total effective sentences were below 2 years, 3 months and 15 days and half were above).

The most common range of total effective sentence was less than 1 year (26 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 arson by length of total effective sentence, 2015–16 to 2019–20



Of the 112 people who were sentenced to imprisonment for arson, 86 (76.8%) were eligible to have a non-parole period fixed.<sup>12</sup> Of these people, 60 were given a non-parole period (69.8%).<sup>13</sup>

Figure 7 shows the number of people sentenced to imprisonment for arson, by length of non-parole period. Non-parole periods ranged from 4 months to 10 years and 3 months, while the median non-parole period was 2 years and 4 months (meaning that half of the non-parole periods were below 2 years and 4 months and half were above).

The most common range of non-parole period was 2 to less than 3 years (23 people).

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

Figure 8 represents the 60 people who were sentenced to imprisonment for arson 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.<sup>14</sup>

From 2015–16 to 2019–20, the average total effective sentence ranged from 3 years and 5 months in 2019–20 to 6 years and 4 months in 2016–17. Over the same period, the average non-parole period ranged from 2 years and 1 months in 2015–16 and 2019–20 to 4 years and 2 months in 2016–17.

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

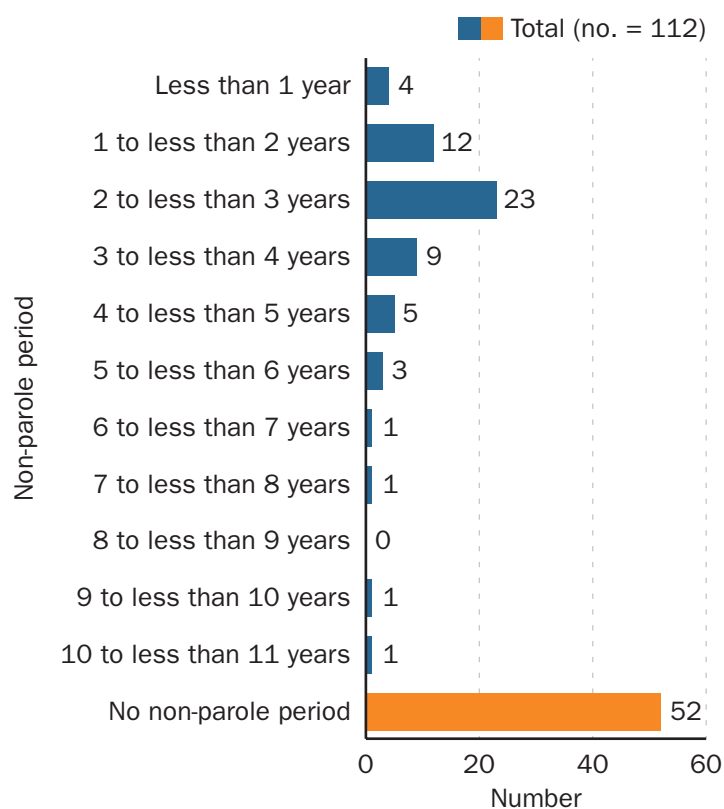
## Summary

From 2015–16 to 2019–20, 142 people were sentenced for arson in the higher courts. Of these people, 112 (78.9%) were given a principal sentence of imprisonment.

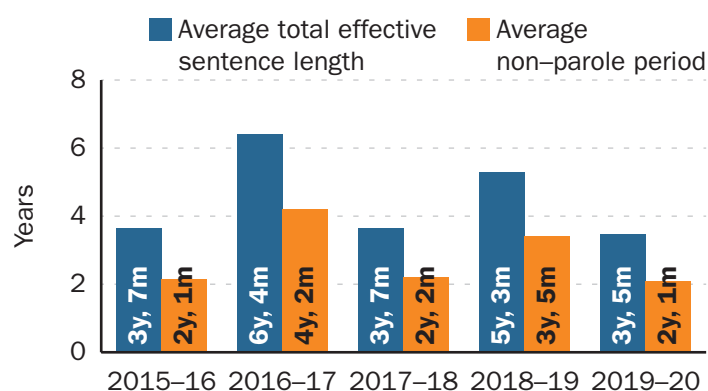
The number and range of offences for which people with a principal offence of arson were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective sentence was 2 years, 3 months and 15 days, while the median principal imprisonment length was 2 years. On average, people sentenced for arson were found guilty of 3.99 offences each, with a maximum of 24 offences.

Total effective sentences ranged from 11 days to 14 years and non-parole periods ranged from 4 months to 10 years and 3 months.

**Figure 7:** The number of people sentenced to imprisonment for arson 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 arson by financial year



## Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 226, which describes sentencing trends for arson 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. This Snapshot excludes the offence of arson causing death, which is defined in section 197A of the *Crimes Act 1958* (Vic). Arson causing death is a Category 2 offence under the *Sentencing Act 1991* (Vic) s 3(e) (definition of *Category 2 offence*) and carries a maximum penalty of 25 years' imprisonment.
4. *Crimes Act 1958* (Vic) s 197(6). The value of a penalty unit changes each year and can be found in the [Victorian Government Gazette](#) and on the [Victorian legislation website](#).
5. *Criminal Procedure Act 2009* (Vic) s 28, sch 2 cl 4.22.
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 arson, custodial sentences included imprisonment, youth justice centre orders and custodial supervision orders. 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 in which 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.
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 on 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.
12. A total of 26 people were not eligible to have a non-parole period fixed because they were given a total effective sentence length of less than 1 year.
13. A non-parole period was not set for 26 people who were eligible for a non-parole period.
14. Figure 8 only includes cases where the total effective sentence is an imprisonment term and a non-parole period is applied.

## SACStat – Higher Courts Arson

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

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