

Sentencing trends in  
the higher courts of  
Victoria  
2017–18 to 2021–22

September 2023  
No. 279

## Rape

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of rape in the County and Supreme Courts of Victoria (the higher courts) from 2017–18 to 2021–22.<sup>2</sup> Adjustments made by the Court of Appeal to sentence or conviction as at December 2022 have been incorporated into the data in this Snapshot.

Detailed data on rape and other offences is available on [SACStat](#).

A person who intentionally sexually penetrates another person without that other 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>

Rape is a category 1 offence if it was committed on or after 20 March 2017. For this offence, this classification means that courts must always impose a custodial sentence.<sup>4</sup> Rape 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 10 years represents the middle of the range of objective seriousness for this offence.<sup>5</sup>

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

Rape was the principal offence in 2.4% of cases sentenced in the higher courts between 2017–18 and 2021–22.

### Effect of COVID-19 on sentencing data

The data in this Snapshot is likely to have been affected by the COVID-19 pandemic. For instance:

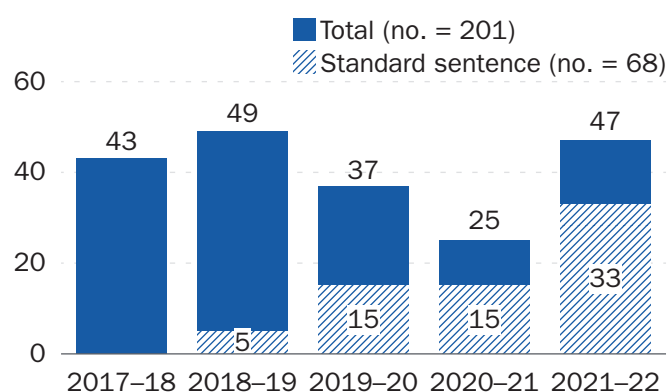
- the number of people sentenced since March 2020 may be lower than in previous years because the pandemic caused delays in court proceedings;
- court backlogs may have led to prioritisation of more serious cases and therefore higher imprisonment rates than in previous years;
- prison sentences may be shorter than in previous years to reflect the combined effect of:
  - a. guilty pleas having an 'augmented mitigatory effect' (*Worboyes v The Queen* [2021] VSCA 169) because they help to relieve the strain on the justice system; and
  - b. the experience of prison being more burdensome due to increased stress on prisoners and their families and changes in custodial conditions.

## People sentenced

From 2017–18 to 2021–22, 201 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 47 people sentenced for this offence in 2021–22, up from 25 in the previous year. The number of people sentenced was highest in 2018–19 (49 people) and lowest in 2020–21 (25 people). There were 68 people whose offending attracted standard sentence offence classification.

**Figure 1:** The number of people sentenced for rape, by financial year

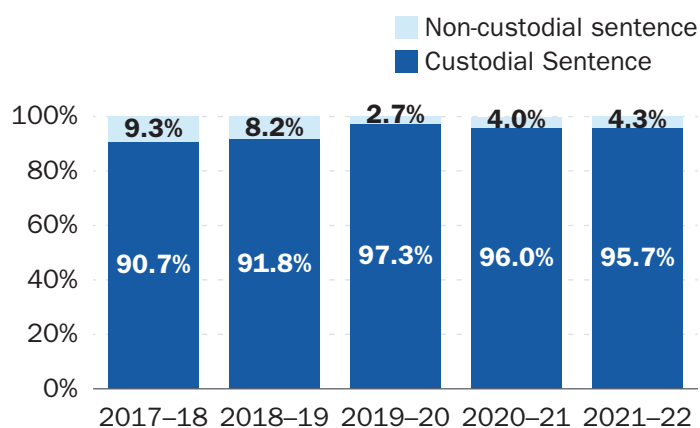


## Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or non-custodial sentence for the principal offence of rape. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.<sup>7</sup> The rate of immediate custodial sentences was lowest in 2017–18 (90.7%) and highest in 2019–20 (97.3%). Over the five-year period, 94.0% of people were given an immediate custodial sentence.

Table 1 shows the principal sentence types imposed for rape from 2017–18 to 2021–22. The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.<sup>8</sup>

**Figure 2:** The percentage of people who received an immediate custodial sentence or non-custodial sentence for rape, by financial year



Over the five-year period, most people sentenced for rape received a principal sentence of imprisonment (89.1% or 179 of 201 people). The remaining people received a community correction order (4.5% or 9 people), a youth justice centre order (5.0% or 10 people) or a non-custodial supervision order (1.5% or 3 people).

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

Sentence type	2017–18	2018–19	2019–20	2020–21	2021–22	Total
<b>Non-standard sentence</b>						
Imprisonment	38 (88.4%)	38 (77.6%)	21 (56.8%)	10 (40.0%)	12 (25.5%)	119 (59.2%)
Community correction order	2 (4.7%)	4 (8.2%)	0 (0.0%)	0 (0.0%)	2 (4.3%)	8 (4.0%)
Youth justice centre order	1 (2.3%)	2 (4.1%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (1.5%)
Non-custodial supervision order	2 (4.7%)	0 (0.0%)	1 (2.7%)	0 (0.0%)	0 (0.0%)	3 (1.5%)
<b>Standard sentence</b>						
Imprisonment	0 (0.0%)	4 (8.2%)	12 (32.4%)	13 (52.0%)	31 (66.0%)	60 (29.9%)
Community correction order	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (4.0%)	0 (0.0%)	1 (0.5%)
Youth justice centre order	0 (0.0%)	1 (2.0%)	3 (8.1%)	1 (4.0%)	2 (4.3%)	7 (3.5%)
<b>Total people sentenced</b>	<b>43</b>	<b>49</b>	<b>37</b>	<b>25</b>	<b>47</b>	<b>201</b>

## Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the offence of rape from 2017–18 to 2021–22.

The principal sentence applies to a single offence at a *charge* level.

The total effective sentence is the sentence imposed for all charges in a case and applies at a case level. Where a case involves multiple charges, the total effective sentence will be either the same as or longer than the principal sentence.

### Principal sentences of imprisonment

There were 179 principal sentences of imprisonment for rape. Of these, 178 (99.4%) were non-aggregate imprisonment terms, that is, the imprisonment terms were not part of an aggregate sentence, and 1 was an aggregate imprisonment term.<sup>9</sup> There were 2 people who received a community correction order in addition to their imprisonment term.

Figure 3 shows the imprisonment lengths for the 178 non-aggregate imprisonment terms for the offence of rape. Imprisonment lengths ranged from 39 days to 12 years,<sup>10</sup> while the median imprisonment length was 6 years.

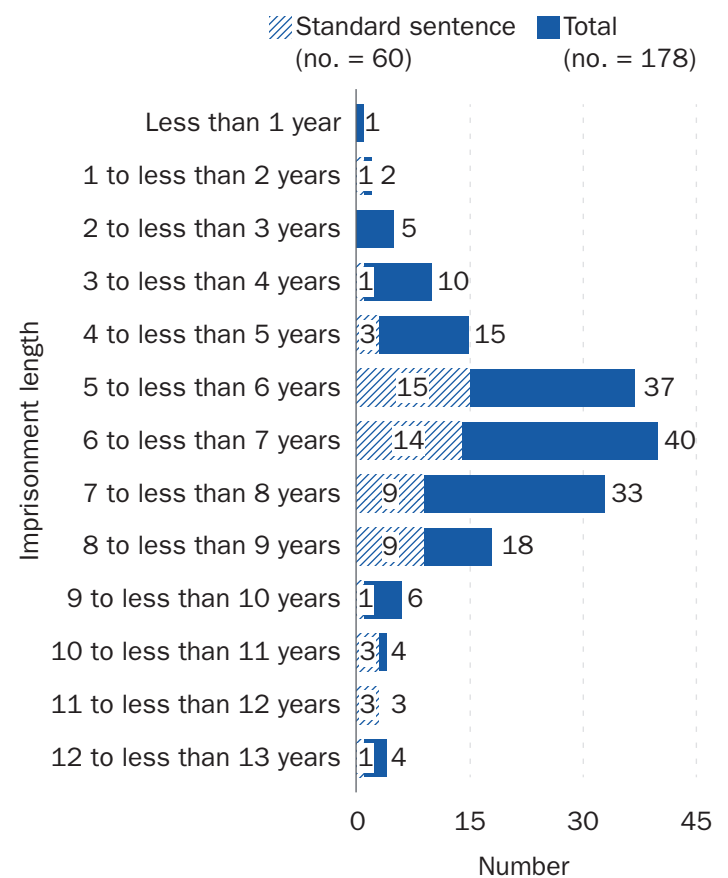
The most common range of imprisonment lengths was 6 to less than 7 years (40 principal sentences).

Imprisonment lengths for principal offences of rape subject to the standard sentence ranged from 1 year and 8 months<sup>11</sup> to 12 years, with a median imprisonment length of 6 years and 6 months.

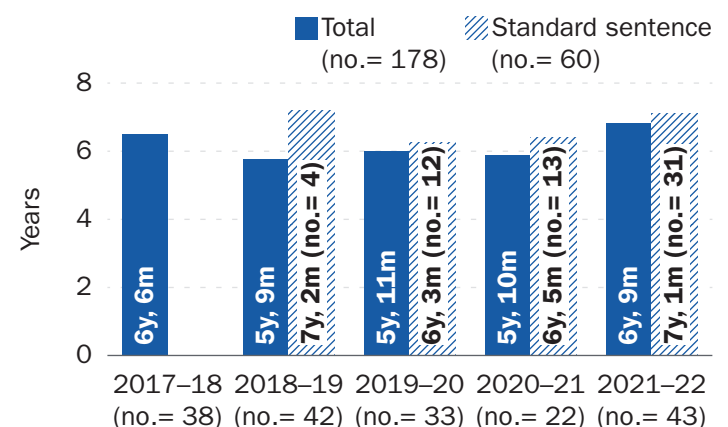
Figure 4 shows the average imprisonment length imposed on people sentenced for the offence of rape. For all 178 people who received non-aggregate imprisonment terms, the average imprisonment length ranged from 5 years and 9 months in 2018–19 to 6 years and 9 months in 2021–22. Over the five-year period, the average imprisonment length for rape was 6 years and 3 months. The average imprisonment length for rape as a standard sentence offence was 6 years and 4 months.

The imprisonment lengths for rape as a standard sentence offence are presented separately because courts sentencing standard sentence offences ‘must only have regard to sentences previously imposed for the offence as a standard sentence offence’.<sup>12</sup> Courts sentencing non-standard sentence offences must have regard to sentences imposed when the offence both was and was not a standard sentence offence.

**Figure 3:** The number of principal sentences of imprisonment for rape, by range of imprisonment lengths, 2017–18 to 2021–22



**Figure 4:** The average imprisonment length imposed for rape, by financial year

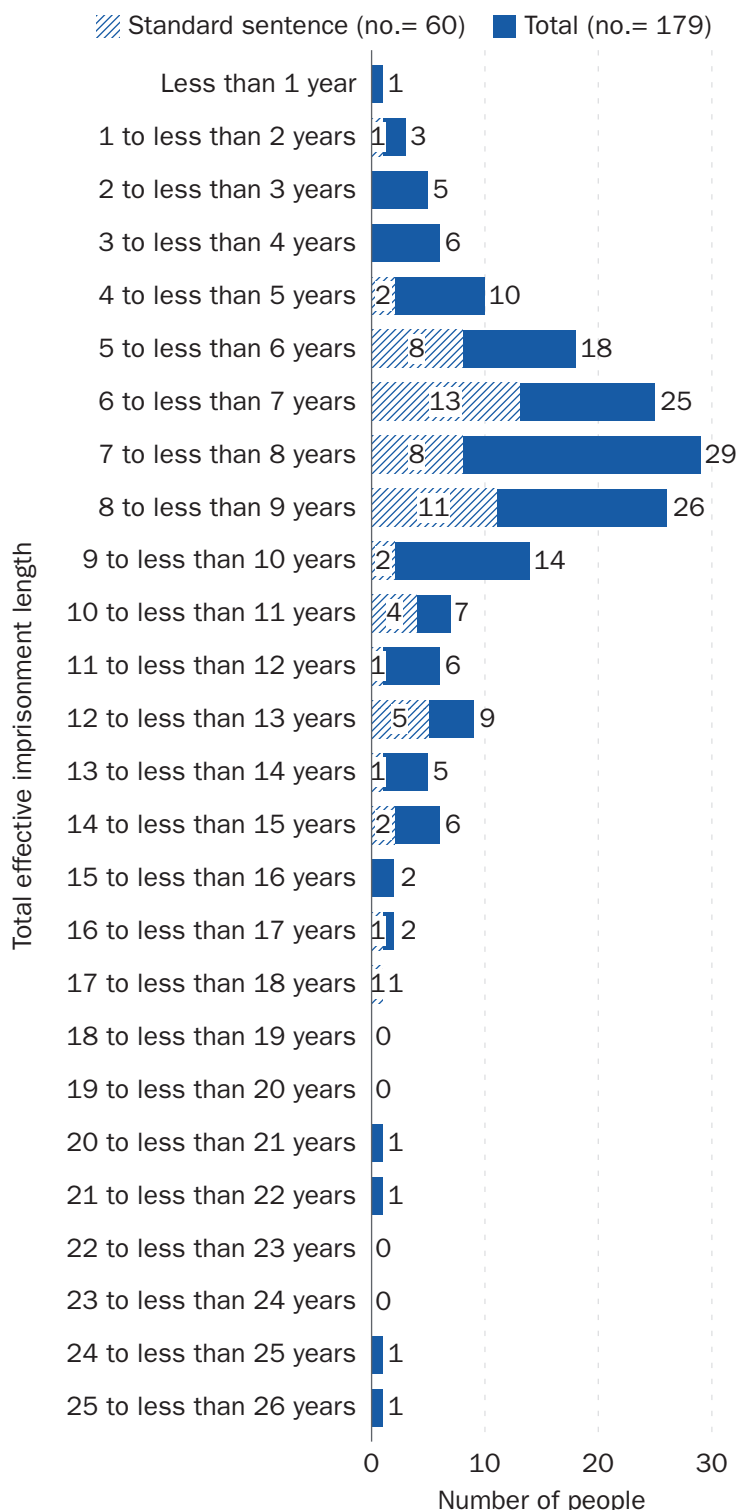


### Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where rape was the principal offence. Total effective sentences ranged from 39 days to 25 years and 5 months,<sup>13</sup> while the median total effective sentence was 7 years and 6 months.

The most common range of total effective sentences was 7 to less than 8 years (29 people).

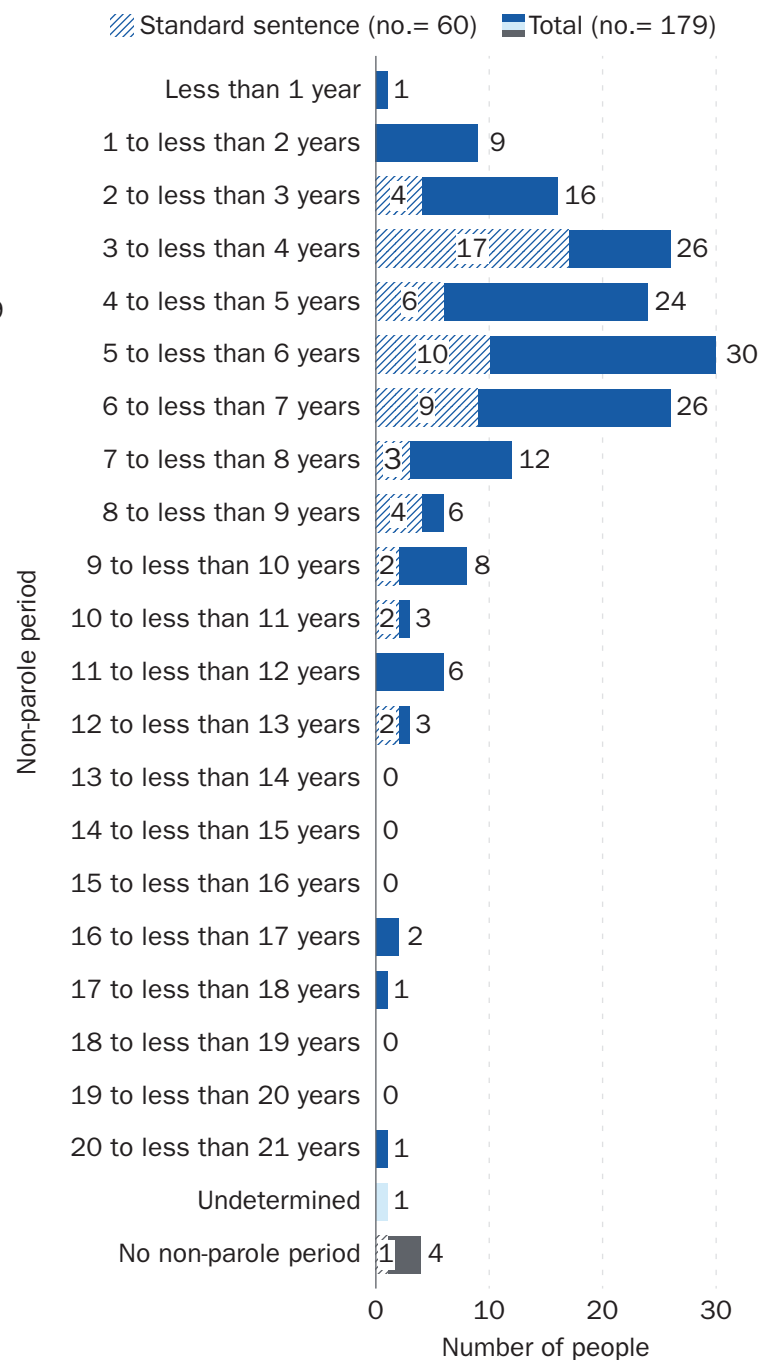
**Figure 5:** The number of people sentenced to imprisonment for rape, by length of total effective sentence, 2017–18 to 2021–22



### Non-parole periods

If a person is sentenced to an imprisonment term of less than 1 year, the court cannot impose a non-parole period. For imprisonment terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For imprisonment terms 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 rape, by length of non-parole period, 2017–18 to 2021–22



Of the 179 people who were sentenced to imprisonment for rape, 178 were eligible to have a non-parole period fixed.<sup>14</sup> Of these people, 175 were given a non-parole period (97.8%).<sup>15</sup> Note that it was not possible to determine the non-parole period for 1 person.<sup>16</sup>

Figure 6 (page 4) shows the lengths of non-parole periods for people sentenced to imprisonment for rape. Non-parole periods ranged from 10 months to 20 years and 10 months, while the median non-parole period was 5 years.

The most common range of non-parole periods was 5 to less than 6 years (30 people).

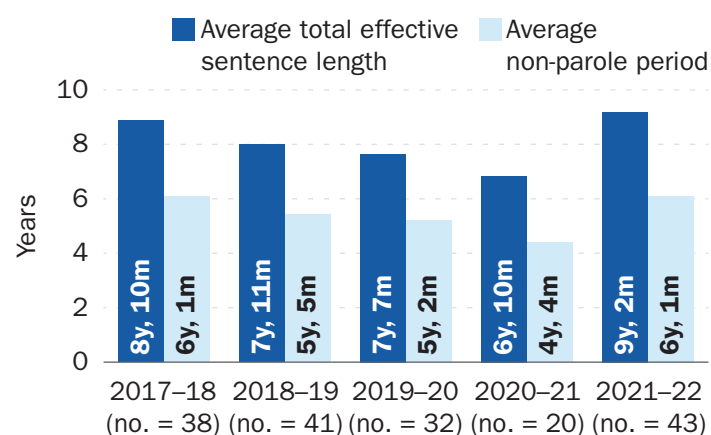
### Average total effective sentence of imprisonment and non-parole period

Figure 7 represents the average total effective sentence and average non-parole period each year for the 174 people who were sentenced to imprisonment for rape and received a non-parole period that could be determined.

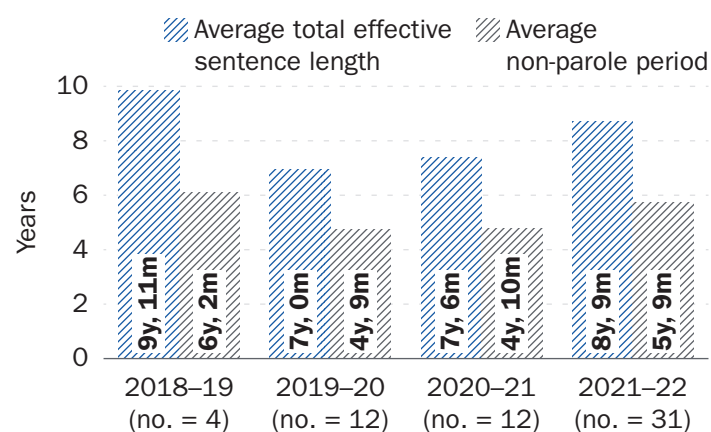
From 2017–18 to 2021–22, the average total effective sentence ranged from 6 years and 10 months in 2020–21 to 9 years and 2 months in 2021–22. Over the same period, the average non-parole period ranged from 4 years and 4 months in 2020–21 to 6 years and 1 month in 2017–18 and 2021–22.

Figure 8 shows the average total effective sentence and average non-parole period for the 59 people who were sentenced to imprisonment and received a non-parole period for rape as a standard sentence offence. The average total effective sentence ranged from 7 years in 2019–20 to 9 years and 11 months in 2018–19. The average non-parole period ranged from 4 years and 9 months in 2019–20 to 6 years and 2 months in 2018–19.

**Figure 7:** The average total effective sentence and non-parole period for people sentenced to imprisonment with a non-parole period for rape, by financial year



**Figure 8:** The average total effective sentence and non-parole period for people sentenced to imprisonment for rape as a standard sentence offence, 2017–18 to 2021–22



### Other offences finalised at the same hearing

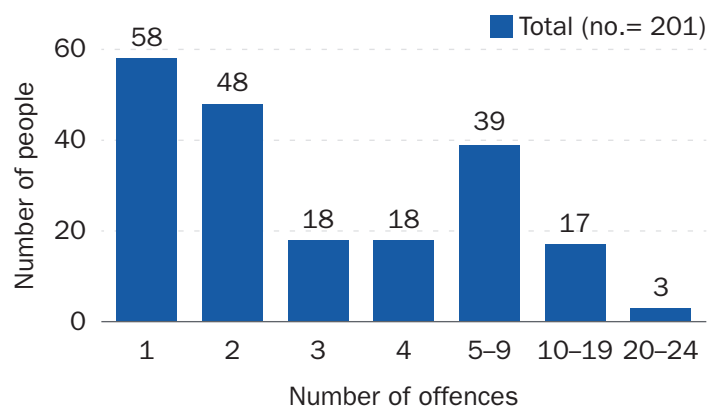
Sometimes people prosecuted for rape face multiple charges, which are finalised at the same hearing.

This section looks at the range of offences that offenders were sentenced for alongside the principal offence of rape.

Figure 9 shows the number of people sentenced for the principal offence of rape 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 58 people (28.9%) sentenced for the single offence of rape. The average number of offences per person was 4.0.

Table 2 shows the 10 most common offences co-sentenced alongside rape. The last column sets out the average number of offences sentenced per person. For example, 43 of the total 201 people (21.4%) were also sentenced for sexual assault. On average, those 43 people were sentenced for 1.5 charges of sexual assault per case.

**Figure 9:** The number of people sentenced for the principal offence of rape, by the number of sentenced offences per person, 2017–18 to 2021–22



**Table 2:** The number and percentage of people sentenced for the principal offence of rape, by the most common offences that were sentenced alongside rape, 2017–18 to 2021–22

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Rape	201	100.0%	1.9
2. Sexual assault	43	21.4%	1.5
3. Common law assault	29	14.4%	2.1
4. Make threat to kill	20	10.0%	1.5
5. Causing injury intentionally	16	8.0%	2.4
6. False imprisonment	14	7.0%	1.1
7. Theft	12	6.0%	1.3
8. Attempted rape	9	4.5%	1.2
9. Causing injury recklessly	9	4.5%	1.2
10. Commit an indictable offence whilst on bail	7	3.5%	1.0
<b>Total</b>	<b>201</b>	<b>100.0%</b>	<b>4.0</b>

## Summary

From 2017–18 to 2021–22, 201 people were sentenced in the higher courts for the principal offence of rape. Of those 201 people, 179 (89.1%) received a principal sentence of imprisonment.

Total effective sentences of imprisonment ranged from 39 days to 25 years and 5 months, and non-parole periods ranged from 10 months to 20 years and 10 months. The median total effective sentence was 7 years and 6 months, while the median non-parole period was 5 years. On average, people sentenced for rape were sentenced for 4.0 offences each, with a maximum of 24 offences.

Of the 68 principal offences of rape subject to the standard sentence in this period, 60 received imprisonment (88.2%), 7 received a youth justice centre order (10.3%) and 1 received a community correction order (1.5%). The average imprisonment length for the 60 charges that received imprisonment was 6 years and 4 months, which is higher than the overall average of 6 years and 3 months for the 178 principal offences that received a non-aggregate imprisonment term during this period.

Further data on this offence is available on [SACStat](#).

## Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 255, which describes sentencing trends for rape between 2015–16 and 2019–20.
2. Data on first-instance sentencing 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 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 Snapshot is accurate, the data is subject to revision.
3. *Crimes Act 1958* (Vic) s 38(2).
4. *Sentencing Act 1991* (Vic) ss 3(d) (definition of *category 1 offence*), 5(2G).
5. *Crimes Act 1958* (Vic) s 38(3); *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. Immediate custodial sentences are mostly imprisonment, but they can also include partially suspended sentences, youth justice centre orders, hospital security orders, residential treatment orders, custodial supervision orders, and combined custody and treatment orders.
8. For example, if the principal offence receives a combined order of imprisonment and a community correction order pursuant to section 44 of the *Sentencing Act 1991* (Vic), imprisonment is recorded as the principal sentence.
9. A court may impose an *aggregate* sentence of imprisonment on multiple charges sentenced at the same time. These sentences are a single imprisonment term but the sentences imposed on individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
10. Cases with prison sentences of 12 years for the offence of rape: *DPP v Bolton* [2018] VCC 385; *DPP v Dempsey* [2018] VCC 959; *DPP v Mitchell* [2019] VCC 305; *DPP v Matovic* [2020] VCC 371.
11. *DPP v Powers (a pseudonym)* [2020] VCC 1727.
12. *Sentencing Act 1991* (Vic) s 5B(2)(b).
13. *DPP v Avalos (a pseudonym)* [2022] VCC 722. The next longest total effective sentences were in the cases of *DPP v Hahne* [2017] VCC 1796 (24 years and 1 month), *DPP v Bolton* [2018] VCC 385 (21 years) and *DPP v Matovic* [2020] VCC 371 (20 years and 6 months).
14. 1 person was not eligible to have a non-parole period fixed because they were given a total effective sentence of less than 1 year.
15. 3 people were eligible for a non-parole period but did not receive one, meaning they received a sentence of between 1 and less than 2 years.
16. 1 person was given a non-parole period that related to more than 1 case (for example, they may have already been serving a prison sentence at the time). It was not possible to separately determine the non-parole periods that related to each individual case.

## SACStat Rape

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

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