

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

September 2023
No. 284

Incest

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of incest² in the County and Supreme Courts of Victoria (the higher courts) from 2017–18 to 2021–22.³ 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 incest and other offences is available on [SACStat](#).

A person who engages in an act of sexual penetration with a person whom they know to be their child, step-child or lineal descendant is guilty of incest. Similarly, a person who takes part in an act of sexual penetration with a person whom they know to be the child, step-child or lineal descendant of their spouse or domestic partner is also guilty of incest.

Incest is an indictable offence that carries a maximum penalty of 25 years' imprisonment and/or 3,000 penalty units.⁴

Incest is a category 1 offence if it was committed on or after 20 March 2017 and the victim was under 18 years old. For this offence, this classification means that courts must always impose a custodial sentence.⁵ Incest is also a standard sentence offence if it was committed on or after 1 February 2018 and the victim was under 18 years old. 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.⁶

This Snapshot focuses on cases where incest was the principal offence, that is, cases where incest was the offence that received the most severe sentence.⁷

Incest was the principal offence in 1.4% 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, 117 people were sentenced in the higher courts for a principal offence of incest.

Figure 1 shows the number of people sentenced for the principal offence of incest by financial year. There were 24 people sentenced for this offence in 2021–22, up from 22 in the previous year. The number of people sentenced was highest in 2019–20 (30 people) and lowest in 2018–19 (17 people). There were 22 people whose offending attracted standard sentence offence classification.

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 incest.

An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁸ The rate of immediate custodial sentences was 100% in all years except 2018–19 (94.1%) and 2020–21 (95.5%). Over the five-year period, 98.3% of people were given an immediate custodial sentence.

Table 1 shows the principal sentence types imposed for incest from 2017–18 to 2021–22. The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.⁹

Over the five-year period, most people sentenced for incest received a principal sentence of imprisonment (96.6% or 113 of 117 people). The rate of imprisonment was highest in 2017–18 and 2019–20 (100.0%) and lowest in 2021–22 (91.7%). One person received a community correction order. All offences attracting standard sentence offence classification received imprisonment. *Other* sentences were 2 partially suspended sentences and 1 unconditional release order.¹⁰

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

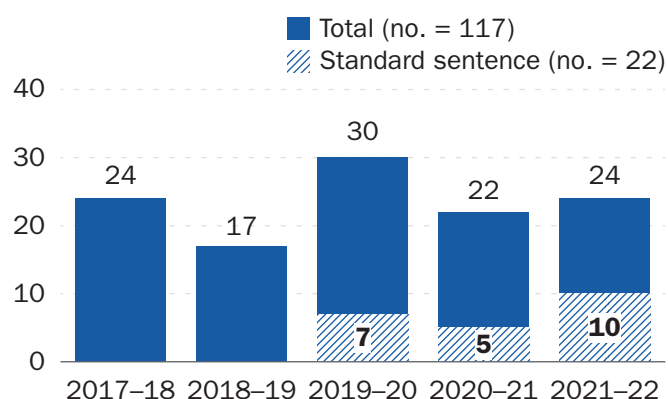


Figure 2: The percentage of people who received an immediate custodial sentence or non-custodial sentence for incest, by financial year

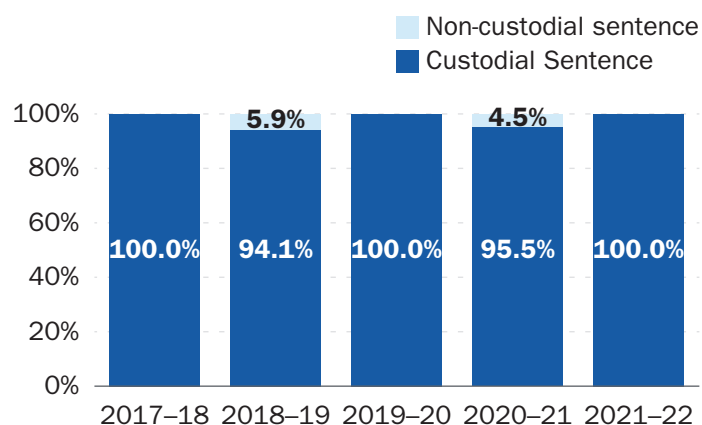


Table 1: The number and percentage of people sentenced for incest, by principal sentence type, standard sentence offence classification and financial year

Sentence type	2017–18	2018–19	2019–20	2020–21	2021–22	Total
Non-standard sentence						
Imprisonment	24 (100.0%)	16 (94.1%)	23 (76.7%)	16 (72.7%)	12 (50.0%)	91 (77.8%)
Community correction order	0 (0.0%)	1 (5.9%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.9%)
Other	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (4.5%)	2 (8.3%)	3 (2.6%)
Standard sentence						
Imprisonment	0 (0.0%)	0 (0.0%)	7 (23.3%)	5 (22.7%)	10 (41.7%)	22 (18.8%)
Total people sentenced	24	17	30	22	24	117

Principal and total effective sentences of imprisonment

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

The principal sentence describes sentences for the 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

Of the 113 principal sentences of imprisonment for incest, 112 were non-aggregate imprisonment terms, that is, the imprisonment terms were not part of an aggregate sentence.¹¹

Figure 3 shows the imprisonment lengths for those 112 non-aggregate imprisonment terms. Imprisonment lengths ranged from 3 years to 15 years,¹² while the median imprisonment length was 6 years.

The most common range of imprisonment lengths was 6 to less than 7 years (28 principal sentences).

Figure 4 shows the average imprisonment lengths for the principal offence of incest. The average imprisonment length ranged from 5 years and 9 months in 2017–18 to 7 years and 2 months in 2020–21. Over the five years, the average imprisonment length for incest was 6 years and 7 months. For the 22 charges subject to the standard sentence, the average imprisonment length was 7 years and 3 months.

The imprisonment lengths for incest 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’.¹³ 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 incest, by range of imprisonment lengths, 2017–18 to 2021–22

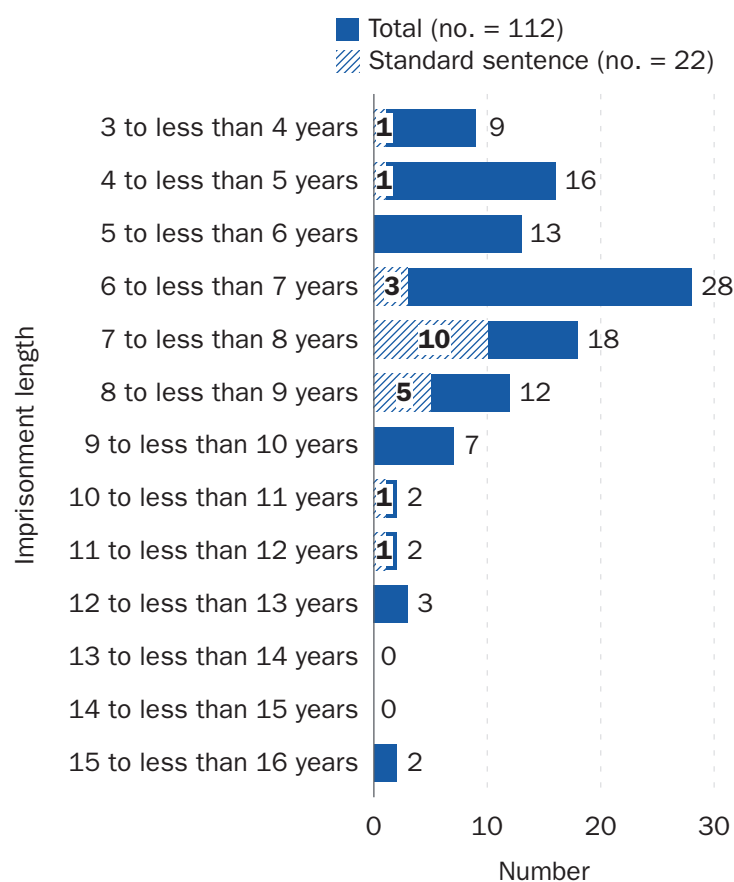
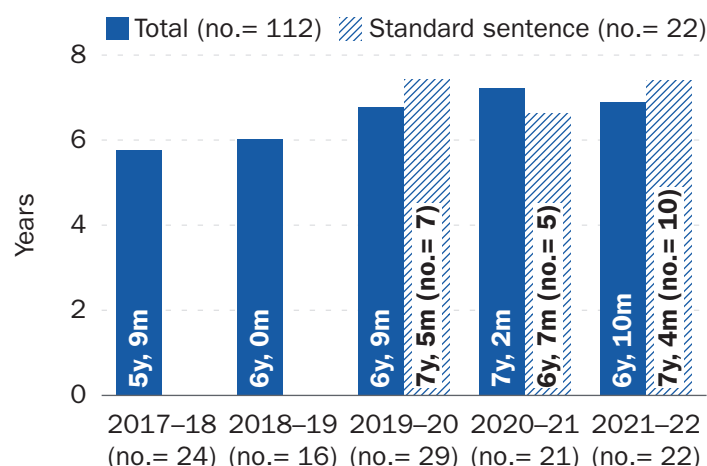


Figure 4: The average imprisonment length imposed for incest, by financial year

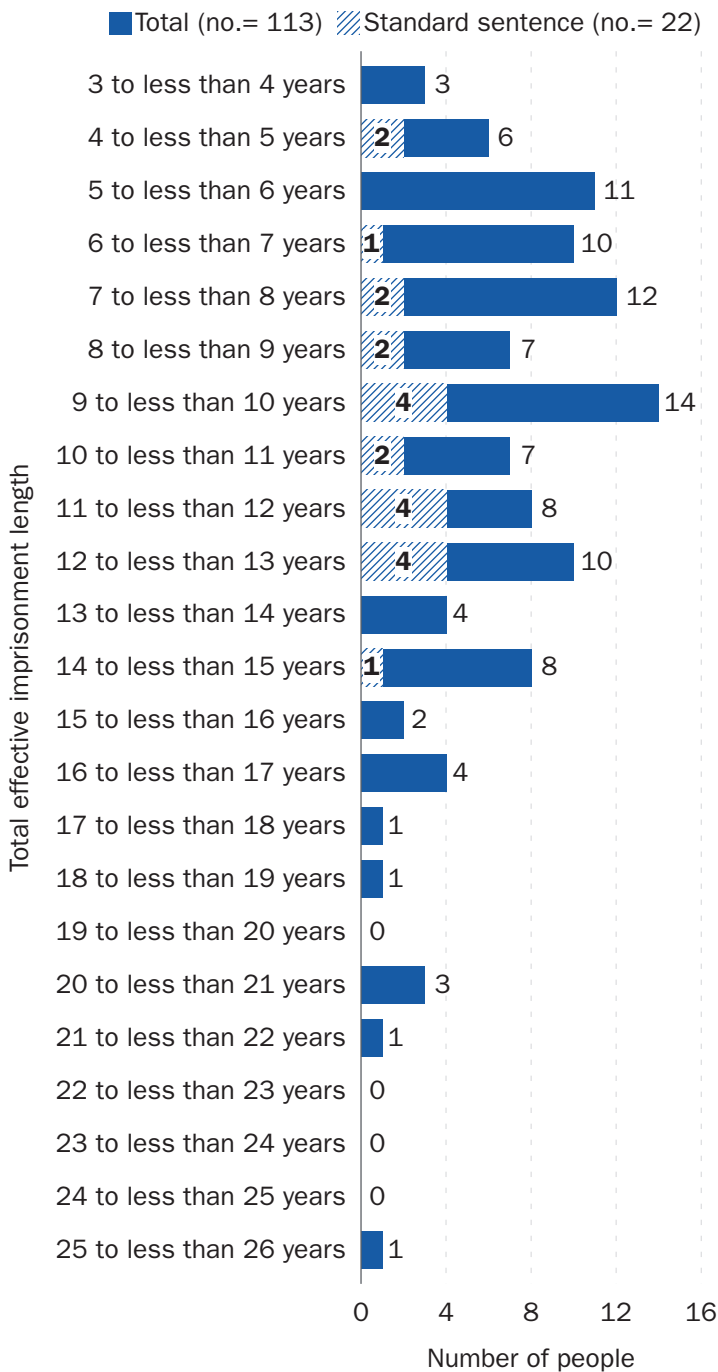


Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment for incest. Total effective sentences ranged from 3 years to 25 years,¹⁴ while the median total effective sentence was 9 years.

The most common range of total effective sentences was 9 to less than 10 years (14 people).

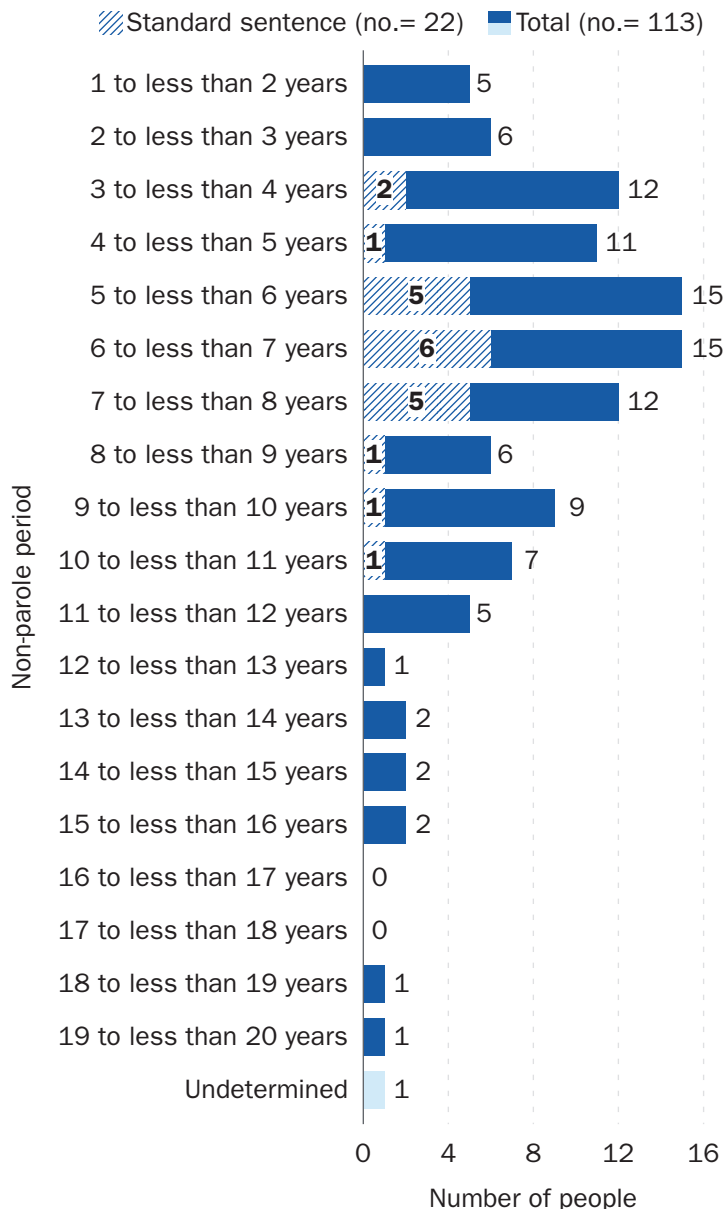
Figure 5: The number of people sentenced to imprisonment for incest, by length of total effective sentence, 2017–18 to 2021–22



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 incest, by length of non-parole period, 2017–18 to 2021–22



Of the 113 people who were sentenced to imprisonment for incest, all were eligible to have a non-parole period fixed and all received one. The length of non-parole period could not be determined for 1 person.¹⁵ Figure 6 (page 4) shows the lengths of non-parole periods for the other 112 people. Non-parole periods ranged from 1 year to 19 years, while the median non-parole period was 6 years.

The most common ranges of non-parole periods were 5 to less than 6 years and 6 to less than 7 years (15 people each).

Average total effective sentence of imprisonment and non-parole period

Figure 7 shows the average total effective sentence and average non-parole period for the 112 people who were sentenced to imprisonment and received a non-parole period for incest. From 2017–18 to 2021–22, the average total effective sentence ranged from 9 years and 1 month in 2018–19 to 10 years and 11 months in 2019–20. Over the same period, the average non-parole period ranged from 6 years in 2020–21 to 7 years and 7 months in 2019–20.

Figure 8 represents the average total effective sentence and average non-parole period for the 22 people who were sentenced to imprisonment and received a non-parole period for incest as a standard sentence offence. The average total effective sentence ranged from 8 years and 4 months in 2020–21 to 9 years and 11 months in 2019–20. The average non-parole period ranged from 5 years and 3 months in 2020–21 to 6 years and 8 months in 2021–22.

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

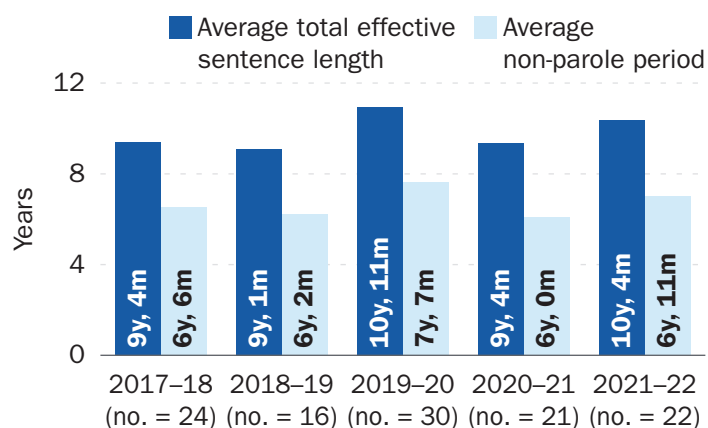
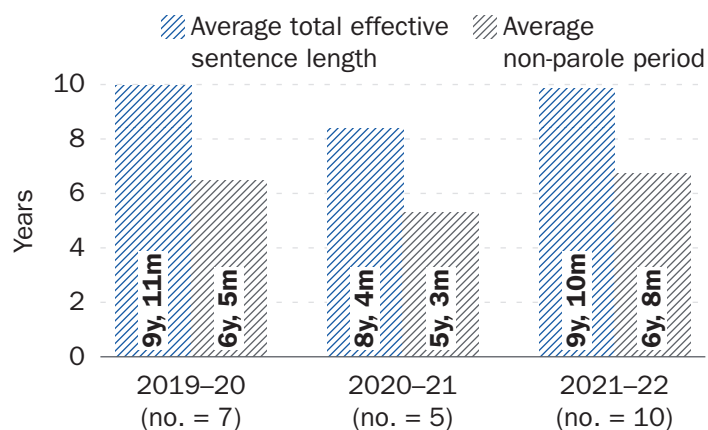


Figure 8: The average total effective sentence and non-parole period imposed on people sentenced to imprisonment for incest as a standard sentence offence, 2017–18 to 2021–22



Other offences finalised at the same hearing

Sometimes people prosecuted for incest 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 incest.

Figure 9 shows the number of people sentenced for the principal offence of incest by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 26, and the median was 5 offences. There were 10 people (8.5%) sentenced for the single offence of incest. The average number of offences per person was 6.4.

Table 2 shows the 10 most common offences co-sentenced alongside incest. The last column sets out the average number of offences sentenced per person. For example, 71 of the total 117 people (60.7%) also received sentences for indecent act with or in the presence of a child under 16. On average, those 71 people were sentenced for 3.1 charges of indecent act with or in the presence of a child under 16 per case.

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

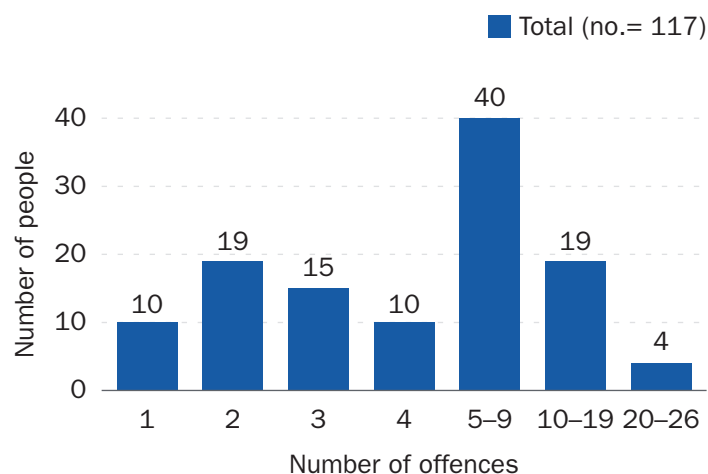


Table 2: The number and percentage of people sentenced for the principal offence of incest, by the most common offences that were sentenced alongside incest, 2017–18 to 2021–22

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Incest	117	100.0%	3.2
2. Indecent act with or in the presence of a child under 16	71	60.7%	3.1
3. Sexual assault of a child under 16	11	9.4%	1.8
4. Common law assault	7	6.0%	2.7
5. Make or produce child pornography	6	5.1%	2.0
6. Sexual assault	6	5.1%	1.5
7. Knowingly possess child pornography	5	4.3%	1.0
8. Contravene a family violence intervention order	4	3.4%	1.8
9. Knowingly possess child abuse material	4	3.4%	1.0
10. Make threat to kill	3	2.6%	1.3
Total	117	100.0%	6.4

Summary

From 2017–18 to 2021–22, 117 people were sentenced in the higher courts for incest. Of these people, 113 (96.6%) were given a principal sentence of imprisonment. The remainder received a community correction order, 2 partially suspended sentences and an unconditional release order.

Total effective sentences ranged from 3 years to 25 years, and non-parole periods ranged from 1 year to 19 years. The median total effective sentence was 9 years, while the median principal sentence of imprisonment was 6 years.

On average, people sentenced for incest were found guilty of 6.4 offences each, with a maximum of 26 offences.

Of the 22 principal offences of incest subject to the standard sentence in this period, all received an imprisonment term. The average imprisonment length for those 22 principal offences was 7 years and 3 months, which is higher than the overall average of 6 years and 7 months for the 112 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. 242, which describes sentencing trends for incest between 2014–15 and 2018–19.
2. This includes offences of incest under the repealed sections 44(1) and 44(2) of the *Crimes Act 1958* (Vic), and offences of incest under the new sections 50C and 50D, which replaced the sections 44(1) and 44(2) offences from 1 July 2017. This Snapshot is limited to offences of incest with a child, step-child or lineal descendant, and does not include the offences of incest with a parent, step-parent, lineal ancestor, sibling or half-sibling in sections 50E and 50F of the *Crimes Act 1958* (Vic), all of which have a 5-year maximum penalty.
3. 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.
4. The value of a penalty unit changes each year and can be found on the [Council's website](#). Penalty units are set annually and published in the [Victorian Government Gazette](#).
5. *Sentencing Act 1991* (Vic) ss 3(f) (definition of *category 1 offence*), 5(2G).
6. *Crimes Act 1958* (Vic) ss 50C(3), 50D(3); *Sentencing Act 1991* (Vic) s 5(2)(ab).
7. If a person is sentenced for a case with a single charge, 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.
8. 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.
9. 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.
10. *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic) s 23(b). As in endnote 9, unconditional release orders are not sentencing orders as they are imposed in cases in which the accused is found unfit to stand trial or not guilty because of mental impairment.
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, but the sentences imposed on individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
12. *DPP v Shelton (a pseudonym)* [2020] VCC 1073; *DPP v Tullipan (a pseudonym)* [2021] VSCA 191.

13. *Sentencing Act 1991* (Vic) s 5B(2)(b).
14. *Trangle (a pseudonym) v The Queen* [2021] VSCA 210. Other cases with long total effective sentences included *DPP v Rowan (a pseudonym)* [2020] VCC 360 (20 years and 7 months), *DPP v Kestler* [2017] VCC 2027 (20 years and 3 months) and *DPP v Randall (a pseudonym)* [2022] VCC 74 (20 years).
15. 1 person was given a non-parole period that related to more than one 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 Incest

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

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