

## Culpable driving causing death

Sentencing trends in the higher courts of Victoria 2019–20 to 2023–24

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### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of culpable driving causing death in the County and Supreme Courts of Victoria (the higher courts) from 2019–20 to 2023–24.<sup>2</sup> The data in this Snapshot incorporates adjustments made by the Court of Appeal to sentence or conviction as at June 2024. Detailed data on culpable driving causing death and other offences is also available on [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.<sup>3</sup>

Culpable driving causing death is a category 2 offence if it was committed on or after 28 October 2018.<sup>4</sup> This means that courts must impose a custodial sentence 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.<sup>5</sup>

This Snapshot focuses on cases where culpable driving causing death was the principal offence, that is, culpable driving causing death was the offence that received the most severe sentence in the case.<sup>6</sup>

Culpable driving causing death was the principal offence in 0.8% of cases sentenced in the higher courts between 2019–20 and 2023–24.

### Effect of COVID-19 on sentencing data

The data in this Snapshot is likely to have been affected by the COVID-19 pandemic, particularly in the 2020–21 and 2021–22 financial years. For instance:

- the number of people sentenced in the period after March 2020 may be lower than in other years because the pandemic caused delays in court proceedings
- court backlogs may have led to prioritisation of more serious cases in that period and therefore higher imprisonment rates than in other years
- prison sentences may be shorter during that period than in other 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

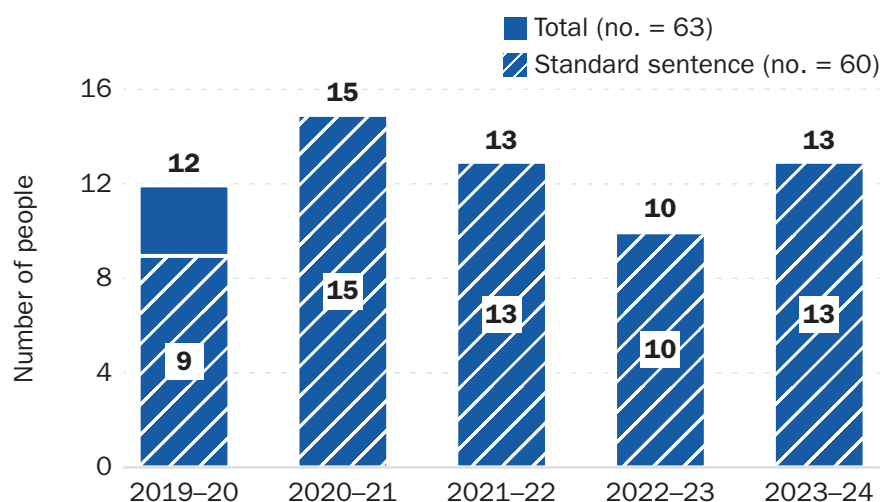
From 2019–20 to 2023–24, 63 people were sentenced in the higher courts for a principal offence of culpable driving causing death.

Figure 1 shows the number of people sentenced for the principal offence of culpable driving causing death by financial year. There were 13 people sentenced for this offence in 2023–24, up from 10 in the previous year. The number of people sentenced was highest in 2020–21 (15 people) and lowest in 2022–23 (10 people).

There were 60 people whose offending attracted standard sentence offence classification.

There were no people who received a custodial or non-custodial supervision order for the principal offence of culpable driving causing death during the five-year period.<sup>7</sup>

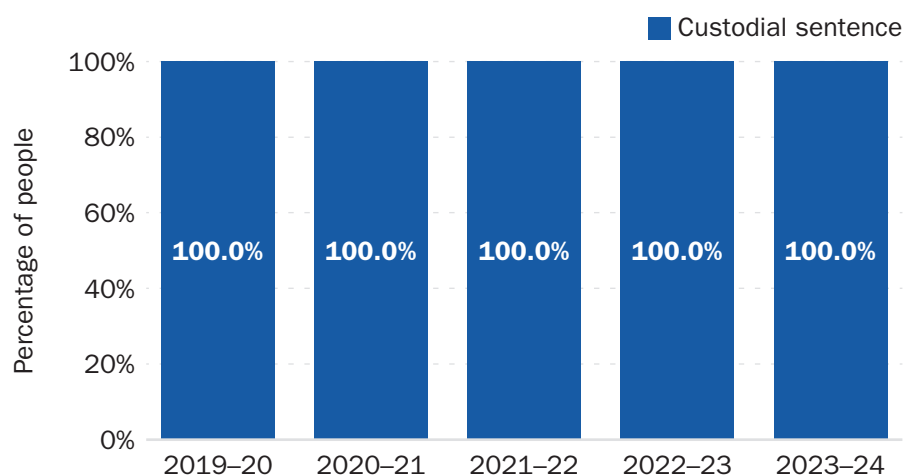
**Figure 1: The number of people sentenced for culpable driving causing death, by financial year**



## Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence for the principal offence of culpable driving causing death. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.<sup>8</sup> Over the five-year period, 100% of people were given an immediate custodial sentence: 62 custodial sentences were imprisonment, and 1 custodial sentence was a youth justice centre order.

**Figure 2: The percentage of people who received an immediate custodial sentence for culpable driving causing death, by financial year**



## Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the principal offence of culpable driving causing death from 2019–20 to 2023–24.

The *principal sentence* is the most serious sentence imposed for the principal offence in a case 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

All 62 people who received a principal sentence of imprisonment received a non-aggregate imprisonment term, that is, the imprisonment term was not part of an aggregate sentence.

The lengths of imprisonment terms for these people are shown in Figure 3. Imprisonment lengths ranged from 3 years to 12 years,<sup>9</sup> while the median imprisonment length was 8 years.

The most common range of imprisonment lengths was 8 to less than 9 years (17 principal sentences).

Imprisonment lengths for culpable driving causing death as a standard sentence offence are presented separately because courts sentencing standard sentence offences ‘must only have regard to sentences imposed for the offence as a standard sentence offence’.<sup>10</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 culpable driving causing death, by range of imprisonment lengths, 2019–20 to 2023–24**

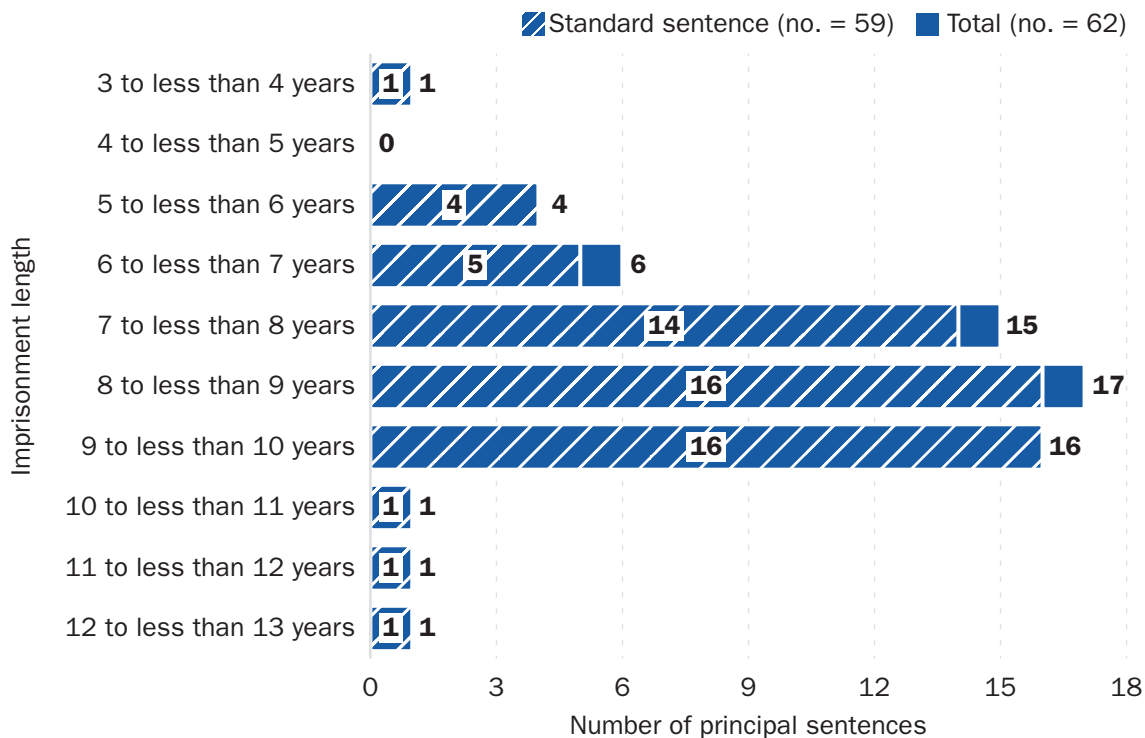
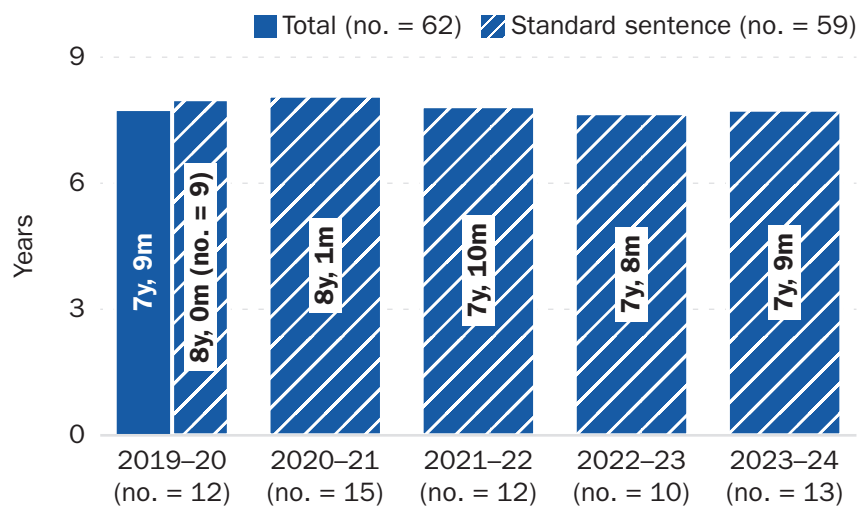


Figure 4 shows the average imprisonment lengths for the offence of culpable driving causing death each financial year. The average imprisonment length ranged from 7 years and 8 months in 2022–23 to 8 years and 1 month in 2020–21. Over the five-year

period, the average imprisonment length was 7 years and 10 months for all principal offences of culpable driving causing death, and 7 years and 11 months when the standard sentence applied.

**Figure 4: The average imprisonment length imposed for culpable driving causing death, by financial year**

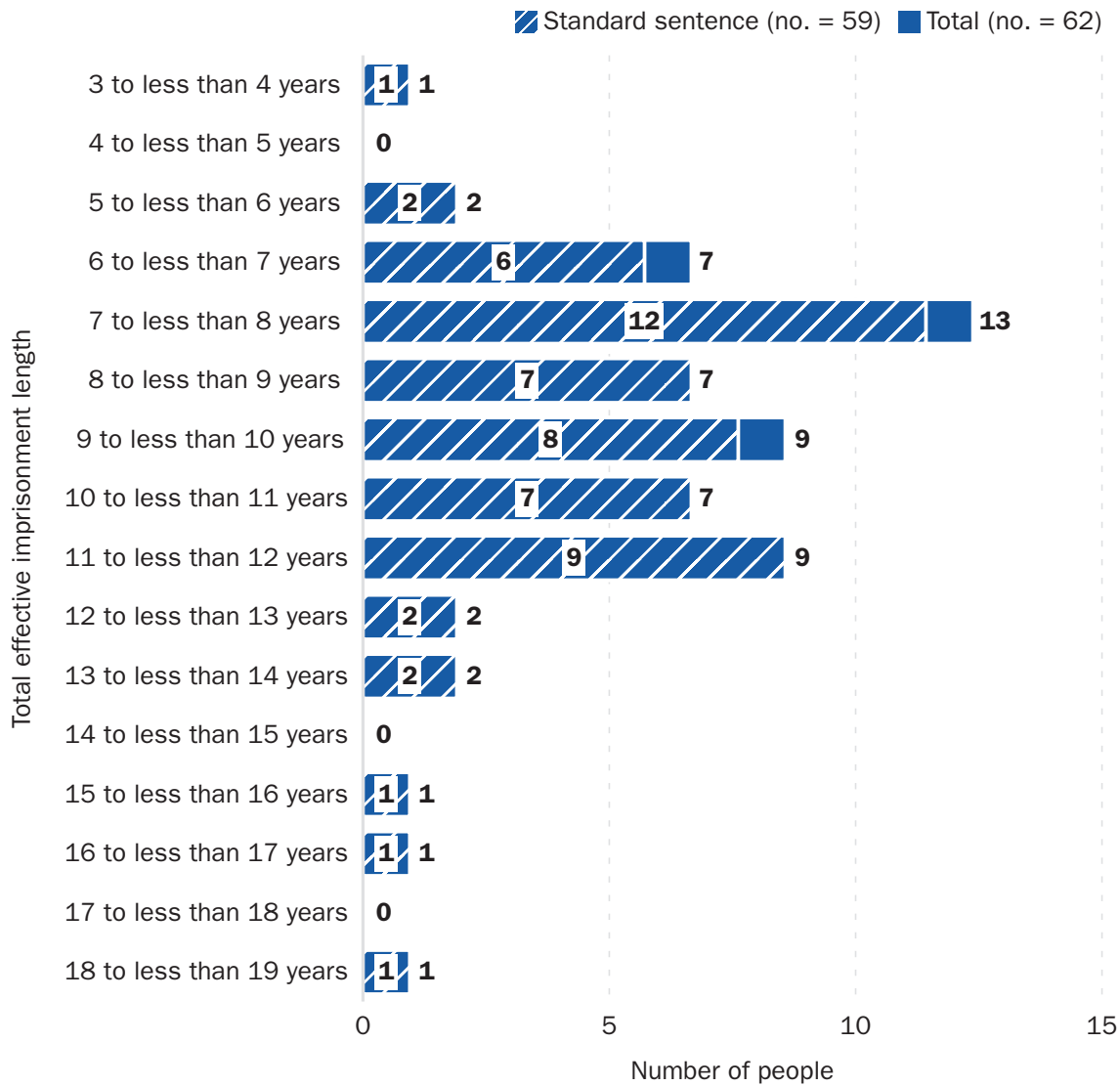


Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where culpable driving causing death was the principal offence. Total effective sentences ranged from 3 years to 18 years and 6 months,<sup>11</sup> while the median total effective sentence was 9 years.

The most common range of total effective sentences was 7 to less than 8 years (13 people).

Figure 5: The number of people sentenced to imprisonment for culpable driving causing death, by range of total effective sentences, 2019–20 to 2023–24



## Non-parole periods

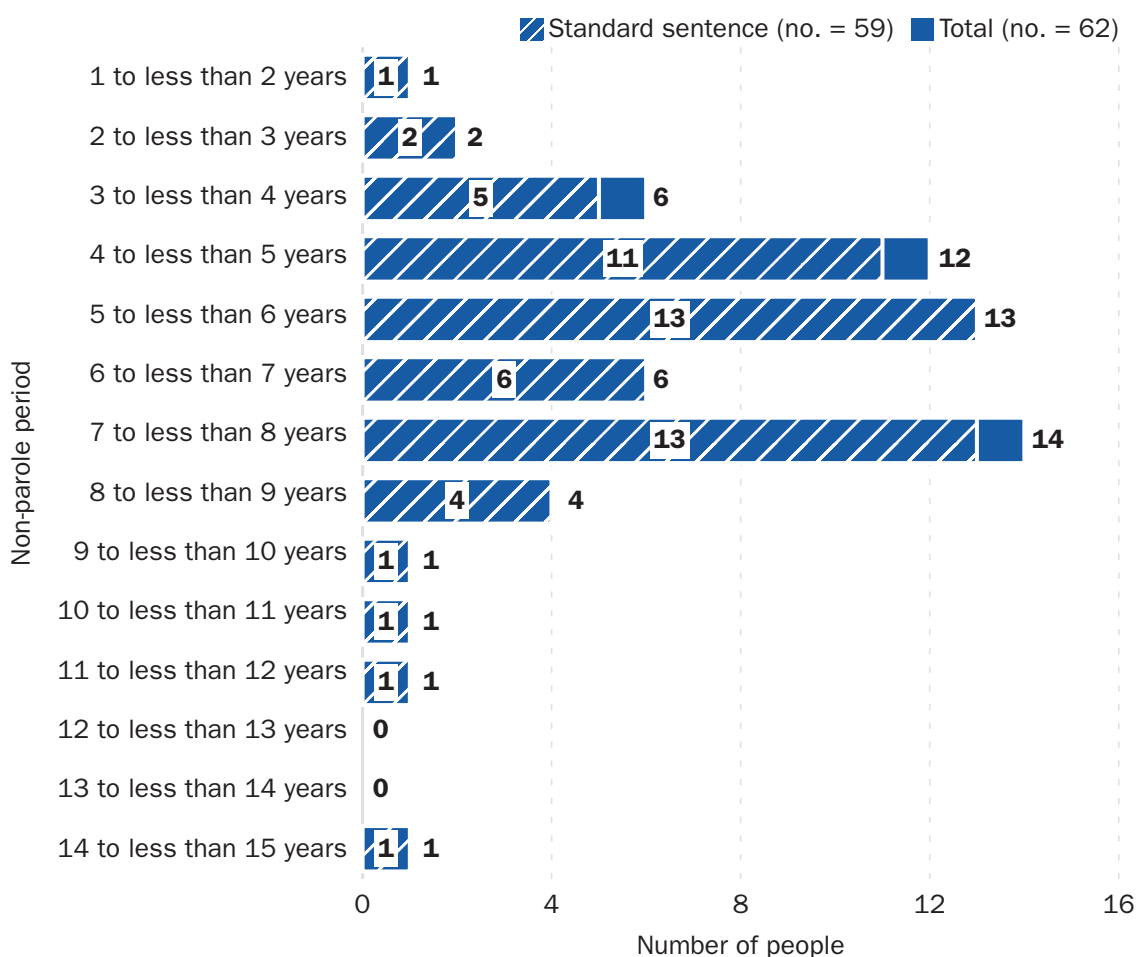
If a person is sentenced to an imprisonment term of less than 1 year, the court cannot impose a non-parole period. For imprisonment terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For imprisonment terms of 2 years or more, the court must impose a non-parole 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.

All 62 people who were sentenced to imprisonment for the principal offence of culpable driving causing death were eligible to have a non-parole period fixed, and all were given a non-parole period.

Figure 6 shows the lengths of these non-parole periods. Non-parole periods ranged from 1 year to 14 years and 6 months, while the median non-parole period was 5 years and 8 months.

The most common range of non-parole periods was 7 to less than 8 years (14 people).

**Figure 6: The number of people sentenced to imprisonment for culpable driving causing death, by range of non-parole periods, 2019–20 to 2023–24**



Average total effective sentences of imprisonment and non-parole periods

Figure 7 presents the average total effective sentences and average non-parole periods each year for the 62 people who were sentenced to imprisonment for the principal offence of culpable driving causing death and who received a non-parole period.

The average total effective sentence ranged from 8 years and 9 months in 2019–20 and 2023–24 to 10 years and 2 months in 2020–21. Over the same period, the average non-parole period ranged from 5 years and 6 months in 2021–22 and 2023–24 to 6 years and 8 months in 2020–21.

Similarly, Figure 8 represents the average total effective sentences and average non-parole periods for the 59 people who were sentenced to imprisonment and received a non-parole period for the principal offence of culpable driving causing death as a standard sentence offence. The average total effective sentence ranged from 8 years and 9 months in 2023–24 to 10 years and 2 months in 2020–21. The average non-parole period ranged from 5 years and 6 months in 2021–22 and 2023–24 to 6 years and 8 months in 2020–21.

Figure 7: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for culpable driving causing death, by financial year

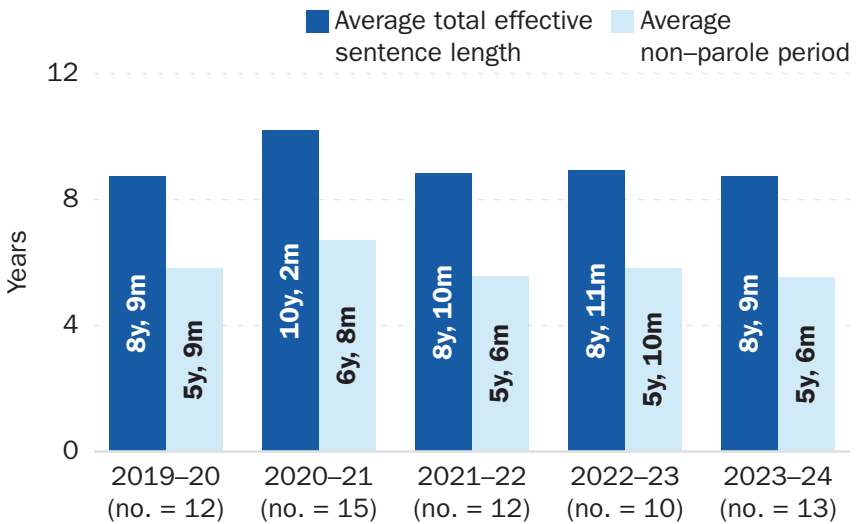
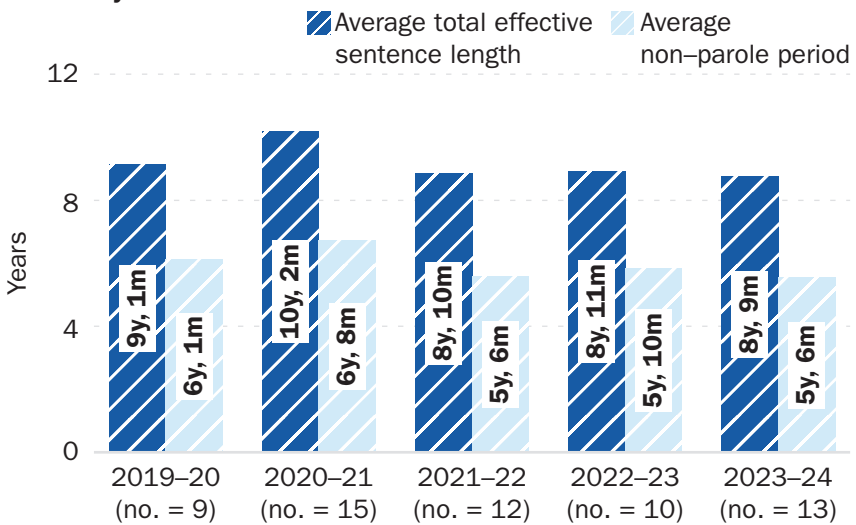


Figure 8: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for culpable driving causing death as a standard sentence offence, by financial year



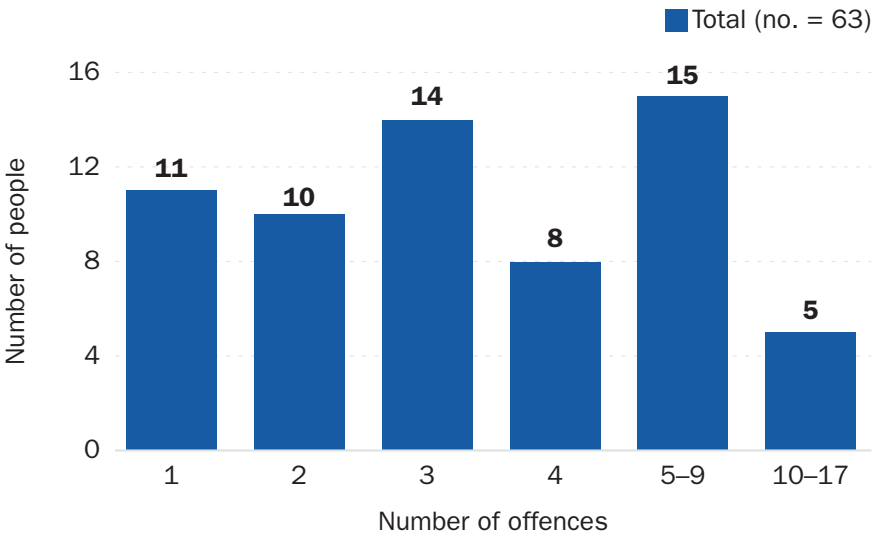
Other offences finalised at the same hearing

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 9 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 17, and the median was 3 offences. There were 11 people (17.5%) sentenced for the single offence of culpable driving causing death. The average number of offences per person was 3.9.

Table 1 shows the 10 most common offences co-sentenced alongside culpable driving causing death.

Figure 9: The number of people sentenced for the principal offence of culpable driving causing death, by the number of sentenced offences per person, 2019–20 to 2023–24



The last column sets out the average number of offences sentenced per case. For example, 18 of the total 63 people (28.6%) were also sentenced for negligently causing serious injury. On average, those 18 people were sentenced for 1 charge of negligently causing serious injury per case.

Table 1: The number and percentage of people sentenced for the principal offence of culpable driving causing death, by the most common offences that were sentenced alongside culpable driving causing death, 2019–20 to 2023–24

Offence	Number of cases	Percentage of cases	Average number of proven offences per person
Culpable driving causing death	63	100.0%	1.1
Negligently causing serious injury	18	28.6%	1.0
Reckless conduct endangering life	11	17.5%	2.0
Driving while disqualified	7	11.1%	1.5
Commit an indictable offence whilst on bail	7	11.1%	1.0
Unlicensed driving	7	11.1%	1.0
Use an unregistered motor vehicle on a highway	7	11.1%	1.0
Reckless conduct endangering serious injury	5	7.9%	1.0
Possess a drug of dependence	4	6.3%	1.0
Driving while authorisation suspended	4	6.3%	1.0
Total	63	100.0%	3.9



## Summary

From 2019–20 to 2023–24, 63 people were sentenced in the higher courts for the principal offence of culpable driving causing death. Of those people, 62 (98.4%) received a principal sentence of imprisonment and 1 person received a youth justice centre order.

Total effective sentences of imprisonment ranged from 3 years to 18 years and 6 months, and non-parole periods ranged from 1 year to 14 years and

6 months. The median total effective sentence was 9 years, while the median non-parole period was 5 years and 8 months.

On average, people sentenced for the principal offence of culpable driving causing death were sentenced for 3.9 offences each, with a maximum of 17 offences.

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

## Endnotes

- 1 This Sentencing Snapshot is an update of [Sentencing Snapshot no. 275](#), which describes sentencing trends for culpable driving causing death between 2017–18 and 2021–22.
- 2 Data on first-instance sentencing outcomes presented in this Snapshot was obtained from the Data and Insights 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 318(1).
- 4 *Sentencing Act 1991* (Vic) ss 3(1)(ea) (definition of category 2 offence), 5(2H)–(2I).
- 5 *Crimes Act 1958* (Vic) s 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, that offence is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence that attracted the most serious sentence according to the sentencing hierarchy.
- 7 Custodial and non-custodial supervision orders are not sentencing orders as they are imposed in cases where the accused is found unfit to stand trial or not guilty because of mental impairment. However, custodial and non-custodial supervision orders are mentioned in this Snapshot as they are an important form of disposition of criminal charges.
- 8 Immediate custodial sentences for culpable driving causing death included imprisonment and youth justice centre orders.
- 9 *DPP v Hennessy* [2022] VCC 1600.
- 10 *Sentencing Act 1991* (Vic) s 5B(2)(b).
- 11 *Singh v The Queen* [2022] VSCA 178, reduced on appeal from *R v Singh* [2021] VSC 182.

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia

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ISSN 1836-6384 (Online)

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## Annexure

# The role of statistics in sentencing

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### Why are statistics relevant to sentencing?

Courts apply an **instinctive synthesis** approach to sentencing, meaning that they take a range of considerations into account in deciding an appropriate sentence in a case.<sup>1</sup>

One of the factors that courts must consider is **current sentencing practices**, the aim being to achieve consistency and promote the principle of equality before the law.<sup>2</sup>

The Court of Appeal has said that current sentencing practices will usually involve consideration of both ‘relevant **sentencing statistics** ... and ... sentencing decisions in comparable cases’.<sup>3</sup>

### How should statistics be treated as a sentencing factor?

Sentencing statistics can be used in a myriad of ways to inform the sentencing exercise. As just some examples, sentencing statistics can highlight the range of recent sentences for an offence,<sup>4</sup> the median imprisonment length for an offence,<sup>5</sup> changes

in sentencing practices over time,<sup>6</sup> the apparent clustering of sentencing outcomes for an offence based on particular factors in a case,<sup>7</sup> and – especially for sentence appeals – recent outlier sentences, that is, the least and most severe sentences for an offence.<sup>8</sup>

In using statistics in sentencing, there are a number of important principles:

1. Sentencing statistics primarily offer a ‘rough cross-check’.<sup>9</sup>
2. Sentencing statistics are just one consideration among many, not a ‘controlling factor’.<sup>10</sup>
3. Sentencing statistics ‘do not set the metes and bounds’ of what a permissible sentence is.<sup>11</sup>
4. Sentencing statistics are most useful when coupled with comparable cases.<sup>12</sup>

### The ‘inherent limitations’ of sentencing statistics and comparable cases

Courts have often said that sentencing statistics have ‘inherent limitations’,<sup>13</sup> because ‘the many details which would explain the reasons for a particular sentence are omitted from the data’.<sup>14</sup>

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1 *Markarian v The Queen* [2005] HCA 25.

2 *Sentencing Act 1991* (Vic) s 5(2)(b); *Wong v The Queen* [2001] HCA 64 [65], [89].

3 *DPP v CPD* [2009] VSCA 114 [78] (emphasis added).

4 See, for example, *ED v The Queen* [2011] VSCA 397 [90]; *DPP v Sismanoglou* [2016] VSCA 87 [46].

5 See, for example, *WCB v The Queen* [2010] VSCA 230 [63].

6 See, for example, *R v Lucas* [2021] VSC 81 [212]–[214].

7 See, for example, *Nguyen v The Queen* [2016] VSCA 198 [83]–[86].

8 See, for example, *Ashdown v the Queen* [2011] VSCA 408 [12]–[16].

9 *Russell v The Queen* [2011] VSCA 147 [61]; *Short v The Queen* [2016] VSCA 210 [59].

10 *DPP v Dalgliesh (a pseudonym)* [2017] HCA 41 [68]. See also *Hardwick (a pseudonym) v The Queen* [2021] VSCA 67 [44].

11 *Hardwick (a pseudonym) v The Queen* [2021] VSCA 67 [43]–[44]; *DPP v OJA* [2007] VSCA 129 [30].

12 *Davy v The Queen* [2011] VSCA 98 [42]; *Baroch & Anor v The Queen* [2022] VSCA 90 [32].

13 See, for example, *R v Bangard* [2005] VSCA 313 [39]; *R v AB (No 2)* [2008] VSCA 39 [42].

14 *DPP v Dawes* [2023] VCC 2378 [91].

‘A new feature of that [culpable driving] Snapshot is the ability to see some representation of the sentences imposed for examples of the offence covered by the standard sentence scheme’

***DPP v Livingston* [2023] VCC 1168**

Statistics cannot tell the court whether the offenders in the data pleaded guilty, had prior criminal histories, assisted authorities, used a weapon, or other important factual circumstances.

However, trying to rely exclusively on comparable cases also has limitations.<sup>15</sup> The cases reviewed may not be truly representative of broader sentencing practices, whereas sentencing statistics more exhaustively represent the entire range of sentencing practices. Comparable cases are also rarely available in the summary jurisdiction, meaning that Magistrates’ Court data is usually the only source of information about current sentencing practices in that jurisdiction.

## Where can you find sentencing statistics?

One of the Council’s statutory functions is ‘to provide statistical information on sentencing’.<sup>16</sup>

- our **Sentencing Snapshots** provide five years of higher courts data on the types and lengths of sentences for 18 common or high-profile principal offences<sup>17</sup>
- our **SACStat** database of sentencing statistics provides five years of higher courts data and three years of Magistrates’ Court data on the types and lengths of sentences imposed for hundreds of distinct offences<sup>18</sup>
- our **statistical reports** include in-depth analyses of sentencing practices.<sup>19</sup>

15 *Hudson v The Queen* [2010] VSCA 332, [29]–[31] (“‘Like’ cases can only, at best, provide a general guide or impression as to the appropriate range of sentences ... [and] can only provide limited assistance to this Court’). See also *Russell v The Queen* [2011] VSCA 147 [4].

16 *Sentencing Act 1991* (Vic) s 108C(1)(b).

17 Sentencing Snapshots are available at <https://www.sentencingcouncil.vic.gov.au/snapshots-by-date>.

18 SACStat is available at <https://www.sacstat.vic.gov.au>.

19 See, for example, our various [statistical profiles](#) and reports on [current sentencing practices](#).