

## Rape

### 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 rape 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 rape and other offences is also 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, category 1 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, rape was the offence that received the most severe sentence in the case.<sup>6</sup>

Rape was the principal offence in 3.1% 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

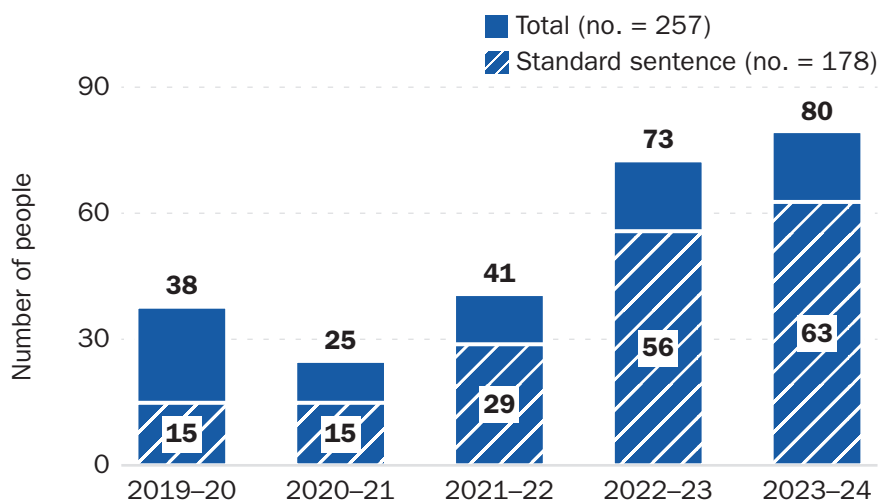
From 2019–20 to 2023–24, 257 people were sentenced in the higher courts for a principal offence of rape.

Figure 1 shows that the number of people sentenced for the principal offence of rape by financial year increased from a low of 25 people in 2020–21 to 80 people in 2023–24.

There were 178 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 rape during the five-year period.<sup>7</sup>

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

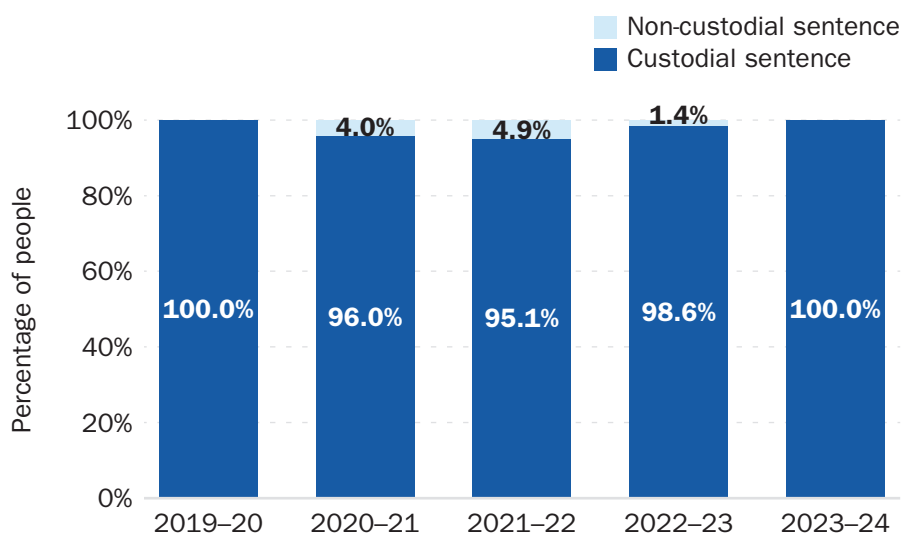


## Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or a non-custodial sentence for the principal offence of rape. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.<sup>8</sup> Over the five-year period, 98.4% of people were given an immediate custodial sentence.

Table 1 shows the principal sentence types imposed for rape from 2019–20 to 2023–24. The *principal sentence* is the most serious sentence imposed for the principal offence in a case.<sup>9</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 (95.3% or 245 of 257 people). The remaining people received a youth justice centre order (3.1% or 8 people), a community correction order (1.2% or 3 people)<sup>10</sup> or a wholly suspended sentence (0.4% or 1 person).

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

Sentence type	2019–20	2020–21	2021–22	2022–23	2023–24	Total
<b>Non-standard sentence</b>						
Imprisonment	23 (60.5%)	10 (40.0%)	10 (24.4%)	16 (21.9%)	17 (21.3%)	76 (29.6%)
Community correction order	0 (0.0%)	0 (0.0%)	2 (4.9%)	0 (0.0%)	0 (0.0%)	2 (0.8%)
Wholly suspended sentence	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.4%)	0 (0.0%)	1 (0.4%)
<b>Standard sentence</b>						
Imprisonment	12 (31.6%)	13 (52.0%)	27 (65.9%)	55 (75.3%)	62 (77.5%)	169 (65.8%)
Youth justice centre order	3 (7.9%)	1 (4.0%)	2 (4.9%)	1 (1.4%)	1 (1.3%)	8 (3.1%)
Community correction order	0 (0.0%)	1 (4.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.4%)
<b>Total people sentenced</b>	<b>38</b>	<b>25</b>	<b>41</b>	<b>73</b>	<b>80</b>	<b>257</b>

## Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the principal offence of rape 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

There were 245 principal sentences of imprisonment for the offence of rape. Of these, 243 (99.2%) were non-aggregate imprisonment terms, that is, the imprisonment terms were not part of an aggregate sentence, and 2 were aggregate imprisonment terms, that is, the imprisonment terms were part of an

aggregate sentence.<sup>11</sup> There were 4 people who also received a community correction order in addition to their imprisonment term.

Figure 3 (page 4) shows the imprisonment lengths for the 243 non-aggregate imprisonment terms for the offence of rape. Imprisonment lengths ranged from 39 days to 15 years,<sup>12</sup> while the median imprisonment length was 6 years.

The most common range of imprisonment lengths was 5 to less than 6 years (52 principal sentences).

Imprisonment lengths for rape 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>13</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, 2019–20 to 2023–24**

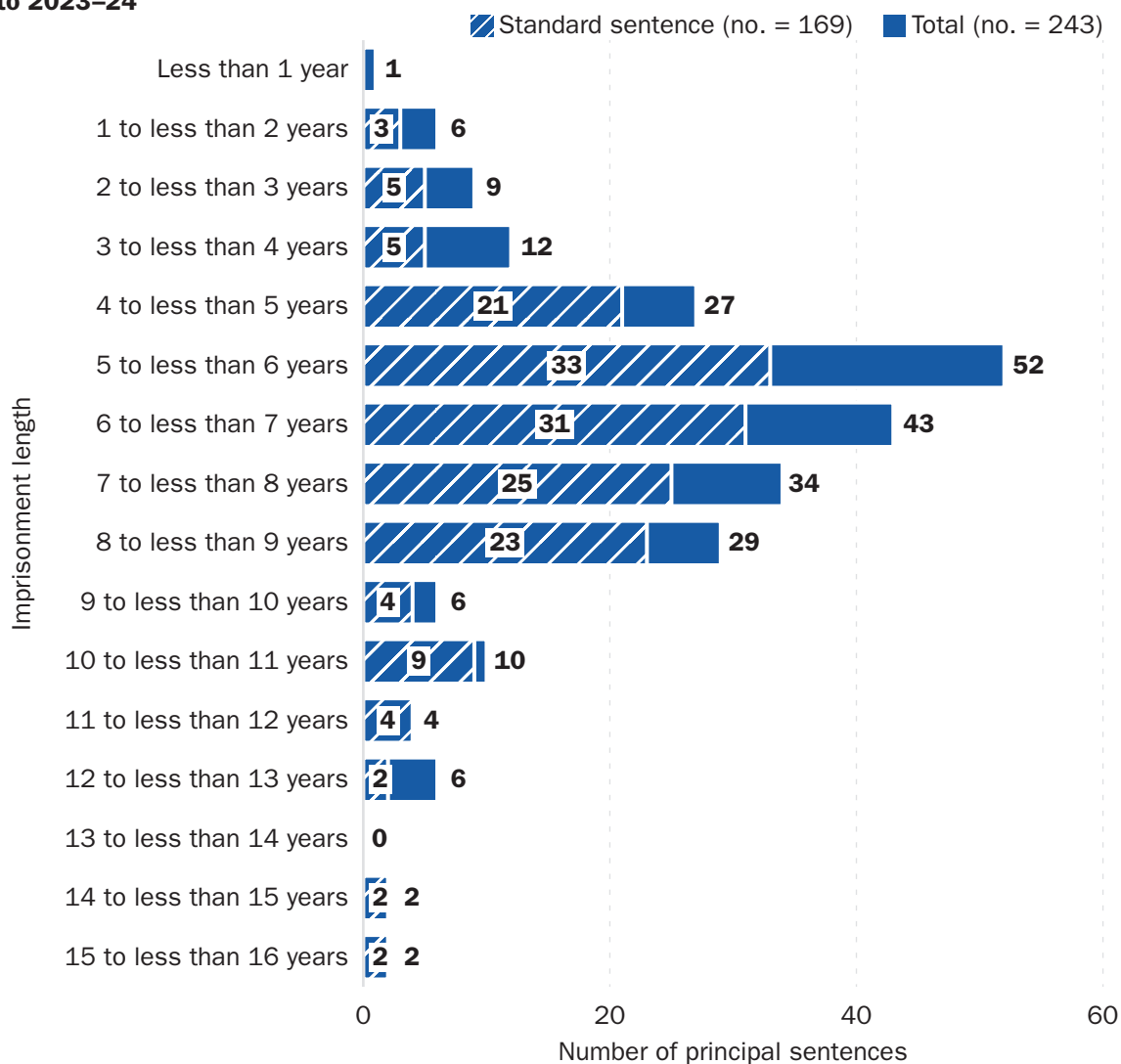
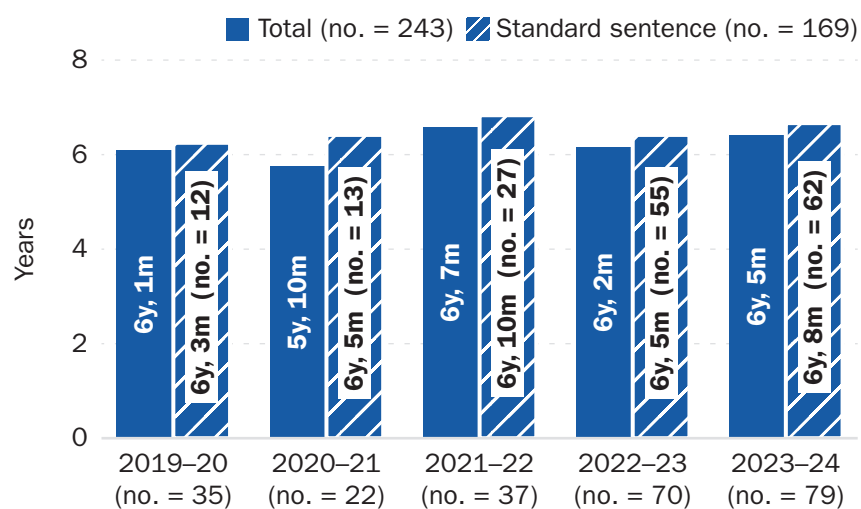


Figure 4 shows that the average imprisonment length for the offence of rape ranged from 5 years and 10 months in 2020–21 to 6 years and 7 months in 2021–22. Over the five-year period, the average imprisonment length was 6 years and 3 months for all principal offences of rape, and 6 years and 7 months when the standard sentence applied.

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

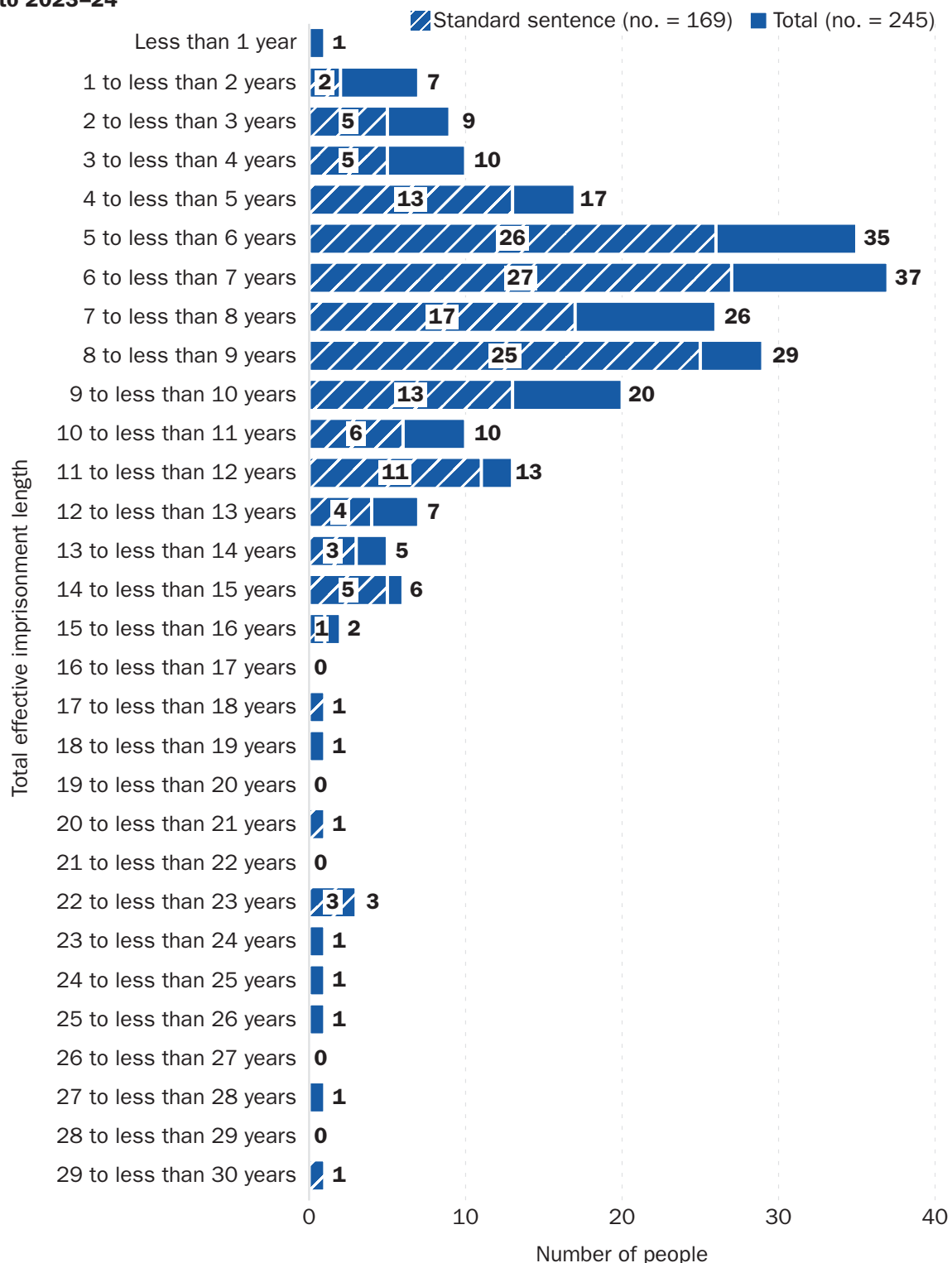


## Total effective sentences of imprisonment

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 29 years,<sup>14</sup> while the median total effective sentence was 7 years.

The most common range of total effective sentences was 6 to less than 7 years (37 people).

**Figure 5: The number of people sentenced to imprisonment for rape, by range of total effective sentences, 2019–20 to 2023–24**



## Non-parole periods

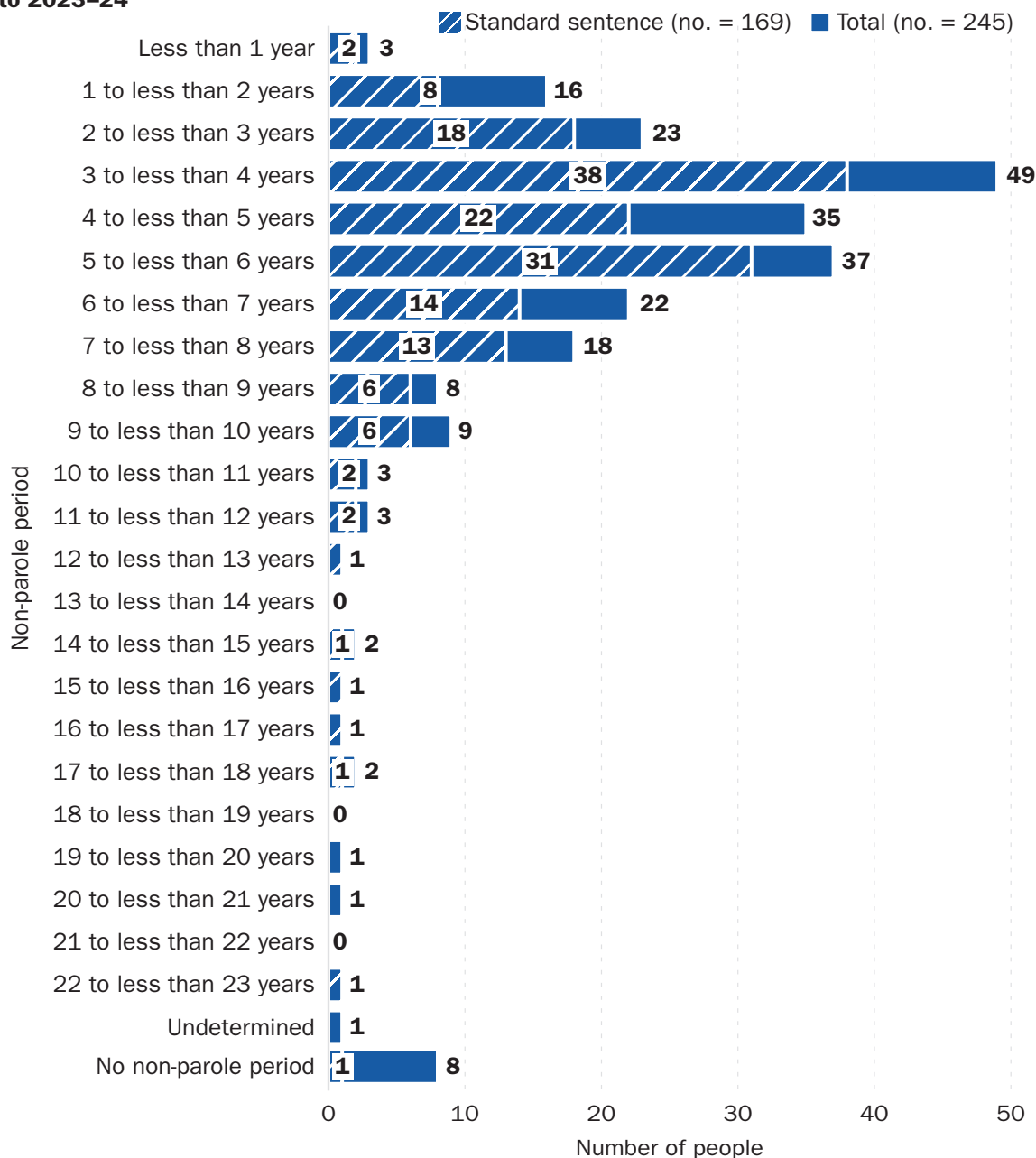
If a person is sentenced to an imprisonment term of less than 1 year, the court cannot impose a non-parole period. For imprisonment terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For imprisonment terms of 2 years or more, the court must impose a non-parole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

Of the 245 people who were sentenced to imprisonment for rape, 244 were eligible to have a non-parole period fixed.<sup>15</sup> Of these people, 236 were given a non-parole period (96.3%).<sup>16</sup> It was not possible to determine the non-parole period for 1 person.<sup>17</sup>

Figure 6 shows the lengths of the non-parole periods for people sentenced to imprisonment for the principal offence of rape. Non-parole periods ranged from 8 months to 22 years, while the median non-parole period was 4 years and 6 months.

The most common range of non-parole periods was 3 to less than 4 years (49 people).

**Figure 6: The number of people sentenced to imprisonment for rape, 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 236 people who were sentenced to imprisonment for the principal offence of rape and who received a non-parole period that could be determined.

The average total effective sentence ranged from 6 years and 11 months in 2020–21 to 8 years and 7 months in 2021–22. The average non-parole period ranged from 4 years and 5 months in 2020–21 to 5 years and 8 months in 2021–22.

Similarly, Figure 8 presents the average total effective sentence and average non-parole period for the 168 people who were sentenced to imprisonment for the principal offence of rape as a standard sentence offence and received a non-parole period that could be determined.

The average total effective sentence ranged from 6 years and 7 months in 2019–20 to 8 years and 3 months in 2021–22. The average non-parole period ranged from 4 years and 3 months in 2019–20 to 5 years and 4 months in 2021–22.

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

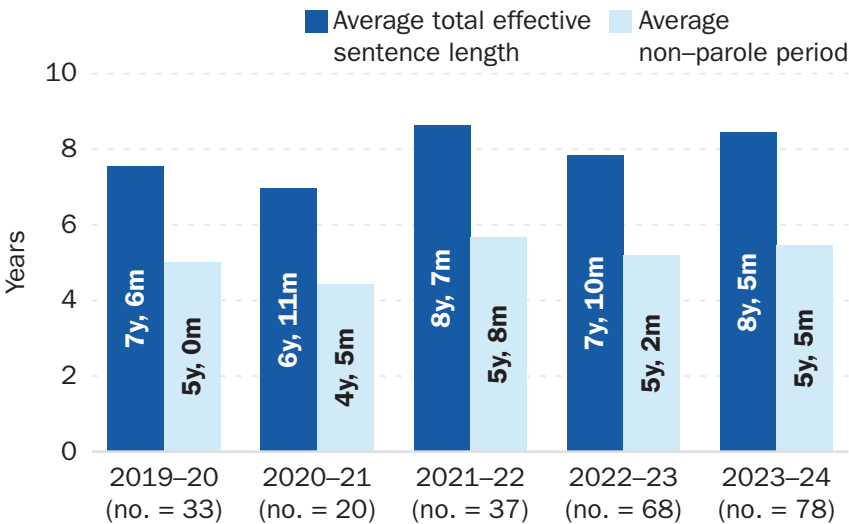
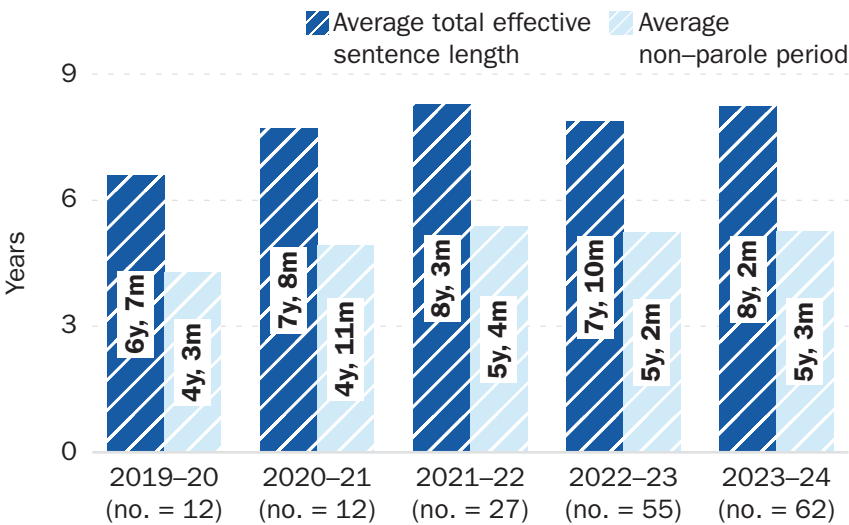


Figure 8: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for rape as a standard sentence offence, by financial year



Other offences finalised at the same hearing

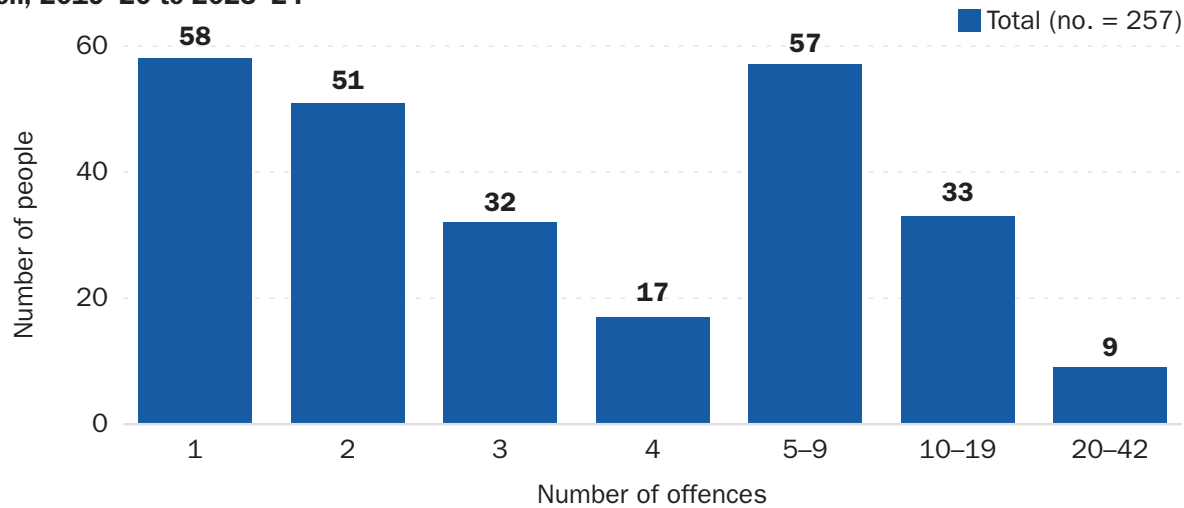
Sometimes people prosecuted for rape face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of rape.

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 42, and the median was 3 offences. There were 58 people

(22.6%) sentenced for the single offence of rape. The average number of offences per person was 4.3.

Table 2 shows the 10 most common offences co-sentenced alongside rape. The last column sets out the average number of offences sentenced per case. For example, 50 of the total 257 people (19.5%) were also sentenced for sexual assault. On average, those 50 people were sentenced for 1.6 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, 2019–20 to 2023–24**



**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, 2019–20 to 2023–24**

Offence	Number of cases	Percentage of cases	Average number of proven offences per person
Rape	257	100.0%	1.8
Sexual assault	50	19.5%	1.6
Common law assault	43	16.7%	1.8
Intentionally causing injury	22	8.6%	2.0
Make threat to kill	21	8.2%	1.6
False imprisonment	20	7.8%	1.2
Commit an indictable offence while on bail	16	6.2%	1.1
Recklessly causing injury	15	5.8%	1.6
Persistent contravention of a family violence intervention order or safety notice	14	5.4%	1.7
Contravene a conduct condition of bail	11	4.3%	1.3
Total	257	100.0%	4.3



## Summary

From 2019–20 to 2023–24, 257 people were sentenced in the higher courts for the principal offence of rape. Of those 257 people, 245 (95.3%) received a principal sentence of imprisonment. The remaining people received a youth justice centre order (8 people), a community correction order (3 people) or a wholly suspended sentence (1 person).

Total effective sentences of imprisonment ranged from 39 days to 29 years, and non-parole periods ranged from 8 months to 22 years. The median total effective sentence was 7 years, while the median non-parole period was 4 years and 6 months. On average, people sentenced for the principal offence

of rape were sentenced for 4.3 offences each, with a maximum of 42 offences.

Of the 178 principal offences of rape subject to the standard sentence of 10 years, 169 received imprisonment, 8 received a youth justice centre order, and 1 received a community correction order. The average imprisonment term for the 169 principal offences that received imprisonment was 6 years and 7 months, which is longer than the overall average of 6 years and 3 months for the total 243 principal offences that received imprisonment during this period.

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

## Endnotes

- 1 This Sentencing Snapshot is an update of Sentencing Snapshot no. 279, which describes sentencing trends for rape between 2017–18 and 2021–22.
- 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, 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 rape included imprisonment and youth justice centre 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 Cases receiving a community correction order included *DPP v Thompson (a pseudonym)* [2020] VCC 1178 and *DPP v Borrett* [2021] VCC 1325.
- 11 A court may impose an aggregate sentence of imprisonment on multiple charges sentenced at the same time. An aggregate sentence is a single imprisonment term, but the sentences imposed on the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
- 12 *DPP v Wilson* [2022] VCC 1150 (15 years' imprisonment for the principal offence of rape).
- 13 *Sentencing Act 1991* (Vic) s 5B(2)(b).
- 14 *DPP v Hu* [2023] VCC 739 (29-year total effective sentence, upheld on appeal in *Hu v The King* [2025] VSCA 60).
- 15 There was 1 person who was not eligible to have a non-parole period fixed because they were given a total effective sentence of less than 1 year.
- 16 There were 8 people who were eligible for a non-parole period but did not receive one: 7 people received a sentence between 1 and less than 2 years, and 1 person was sentenced while serving imprisonment without parole.
- 17 There was 1 person who 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.

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**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 is accurate at the time of publishing.

## Annexure

# The role of statistics in sentencing

## 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>

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].

‘during the period from 2017–18 to 2021–22, the head sentence imposed for rape has generally been no lower than four years. Of the 60 sentences ... only two of the sentences were lower than four years’

***Chapman v The King* [2024] VSCA 205**

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](#).