

Incest

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

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of incest² in the County and Supreme Courts of Victoria (the higher courts) from 2019–20 to 2023–24.³ The data in this Snapshot incorporates adjustments made by the Court of Appeal to sentence or conviction as at June 2024. Detailed data on incest and other offences is also 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.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, category 1 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, incest was the offence that received the most severe sentence in the case.⁷

Incest was the principal offence in 1.7% 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:
 - guilty pleas having an 'augmented mitigatory effect' (*Worboys v The Queen [2021] VSCA 169*) because they help to relieve the strain on the justice system and
 - the experience of prison being more burdensome due to increased stress on prisoners and their families and changes in custodial conditions.

People sentenced

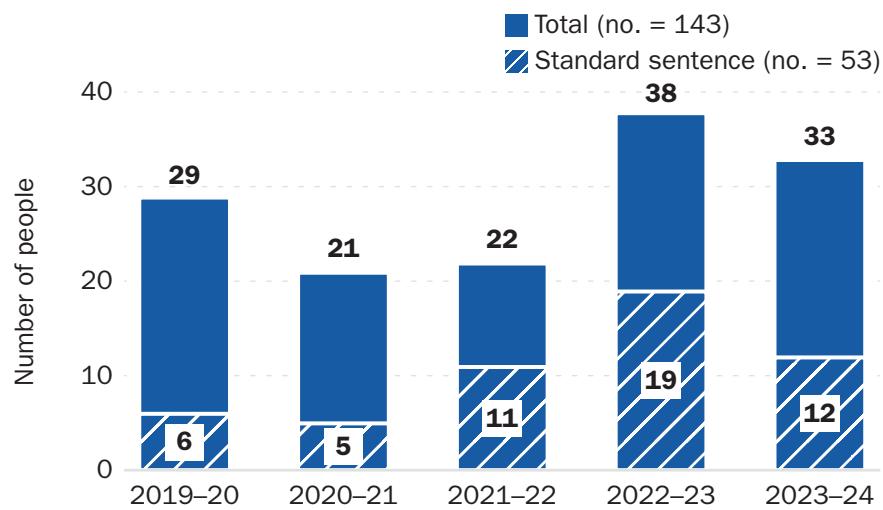
From 2019–20 to 2023–24, 143 people were sentenced in the higher courts for a principal offence of incest.

Figure 1 shows the number of people sentenced for the principal offence of incest by financial year. There were 33 people sentenced for this offence in 2023–24, down from 38 in the previous year. The number of people sentenced was highest in 2022–23 (38 people) and lowest in 2020–21 (21 people).

There were 53 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 incest during the five-year period.⁸

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

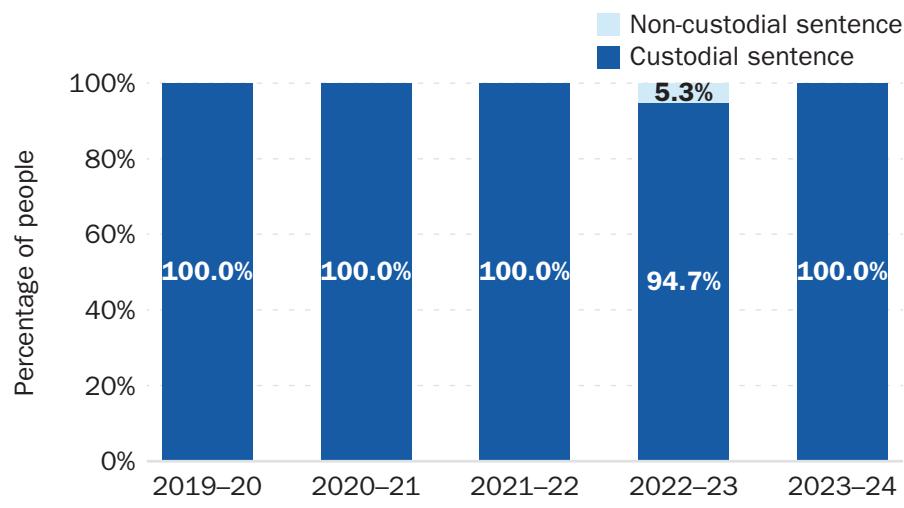


Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or a non-custodial sentence for the principal offence of incest. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁹ Over the five-year period, 98.6% of people were given an immediate custodial sentence.

Over the five-year period, most people sentenced for incest received a principal sentence of imprisonment (96.5% or 138 of 143 people). The remaining people received a partially suspended sentence (2.1% or 3 people) or a wholly suspended sentence (1.4% or 2 people).

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



Principal and total effective sentences of imprisonment

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

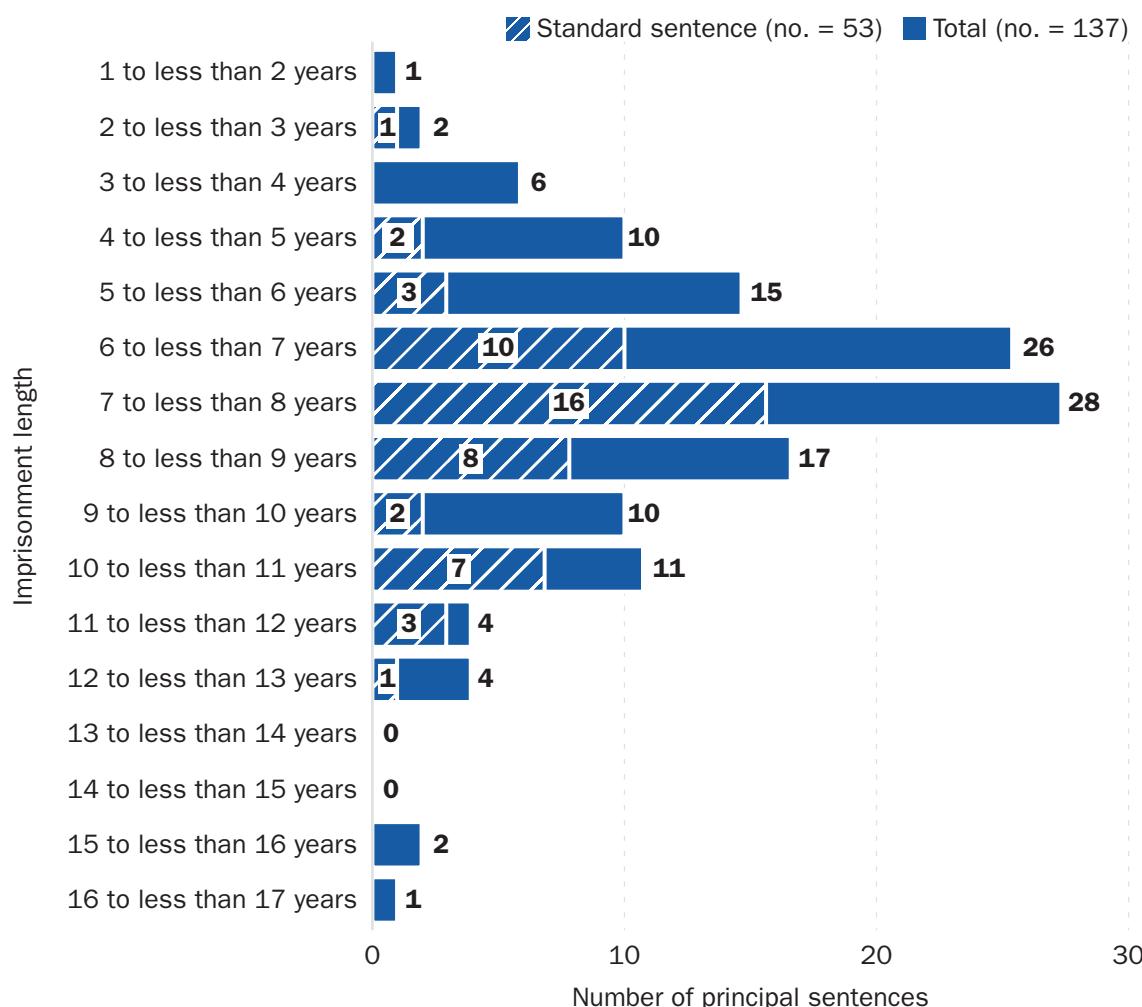
There were 138 principal sentences of imprisonment for the offence of incest. Of these,

137 (99.3%) were non-aggregate imprisonment terms, that is, the imprisonment terms were not part of an aggregate sentence.¹⁰ None of these imprisonment terms were combined with a community correction order.

Figure 3 shows the imprisonment lengths for the 137 non-aggregate imprisonment terms for the offence of incest. Imprisonment lengths ranged from 1 year and 2 months to 16 years,¹¹ while the median imprisonment length was 7 years.

The most common range of imprisonment lengths was 7 to less than 8 years (28 principal sentences).

Figure 3: The number of principal sentences of imprisonment for incest, by range of imprisonment lengths, 2019–20 to 2023–24



The imprisonment lengths imposed when incest was 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'.¹² 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 4: The average imprisonment length imposed for incest, by financial year

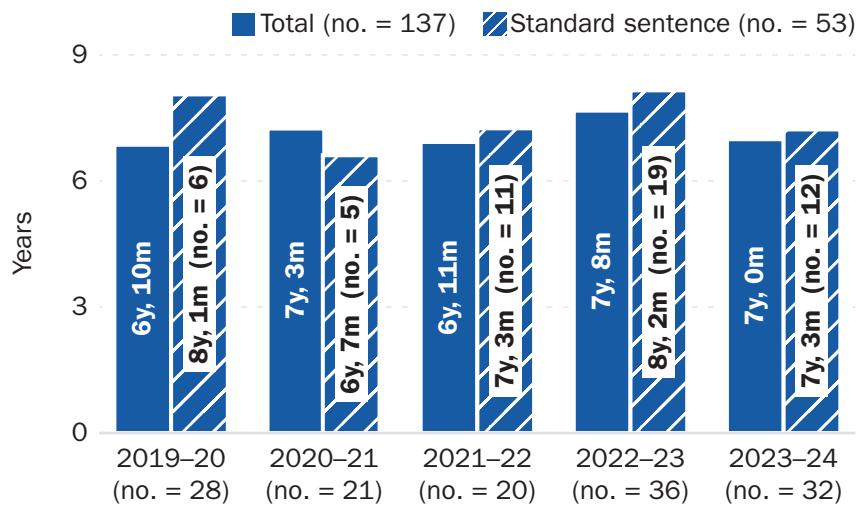


Figure 4 shows that the average imprisonment lengths for the offence of incest ranged from 6 years and 10 months in 2019–20 to 7 years and 8 months in 2022–23. Over the five-year period, the average imprisonment length was 7 years and 2 months for all principal offences of incest, and 7 years and 7 months when the standard sentence applied.

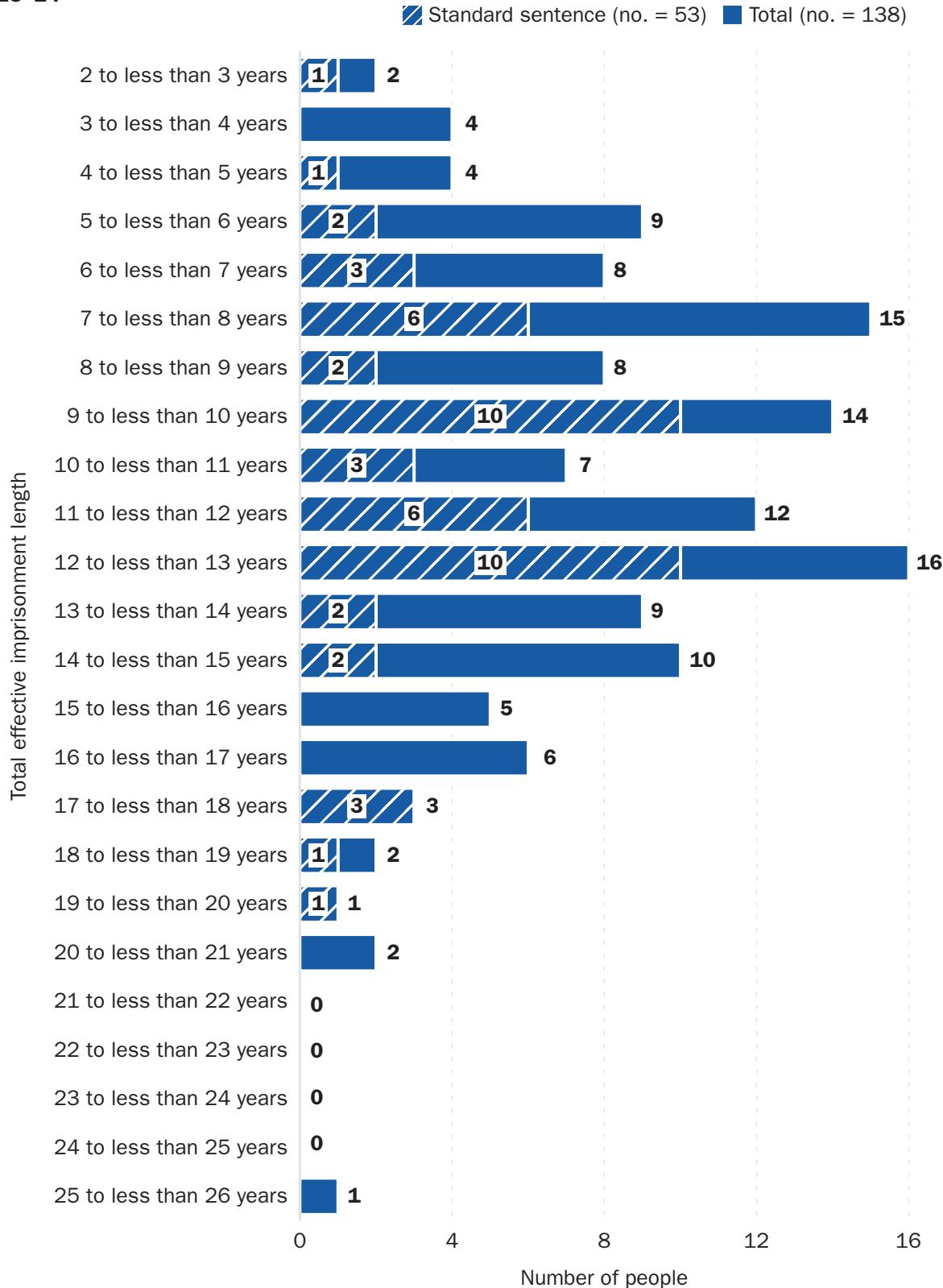
Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where incest was the principal offence. Total effective sentences ranged from 2 years and 6 months¹³ to 25 years,¹⁴

while the median total effective sentence was 10 years and 6 months.

The most common range of total effective sentences was 12 to less than 13 years (16 people).

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



Non-parole periods

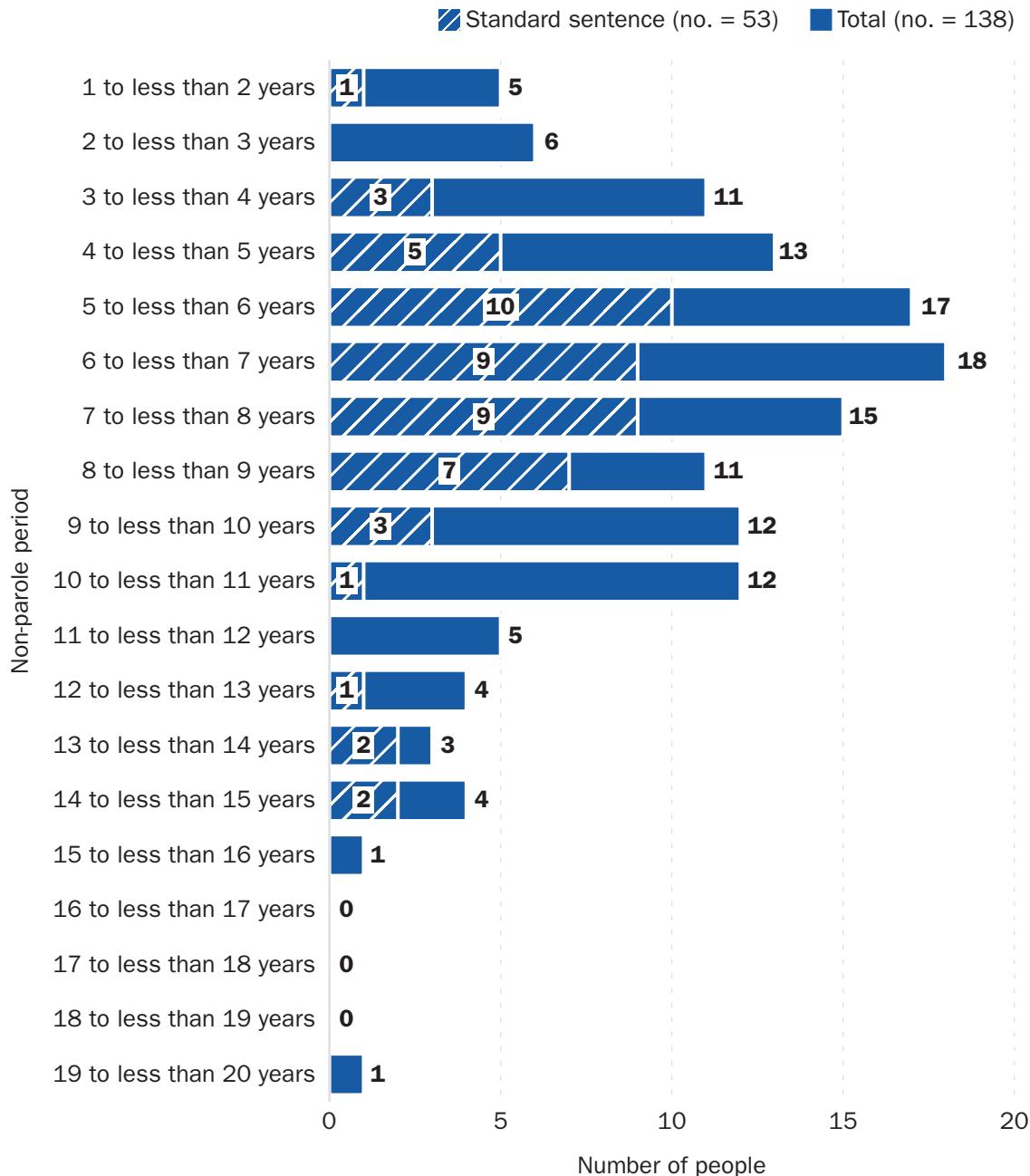
If a person is sentenced to an imprisonment term of less than 1 year, the court cannot impose a non-parole period. For imprisonment terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For imprisonment terms of 2 years or more, the court must impose a non-parole 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 138 people who were sentenced to imprisonment for incest, all were eligible to have a non-parole period fixed and all received one.

Figure 6 shows the lengths of the non-parole periods for people sentenced to imprisonment for the principal offence of incest. Non-parole periods ranged from 1 year to 19 years, while the median non-parole period was 6 years and 9 months.

The most common range of non-parole periods was 6 to less than 7 years (18 people).

Figure 6: The number of people sentenced to imprisonment for incest, 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 138 people who were sentenced to imprisonment for the principal offence of incest and who received a non-parole period.

The average total effective sentence ranged from 9 years and 4 months in 2020–21 to 11 years and 3 months in 2022–23. The average non-parole period ranged from 6 years in 2020–21 to 7 years and 8 months in 2019–20 and 2022–23.

Similarly, Figure 8 presents the average total effective sentence and average non-parole period for the 53 people who were sentenced to imprisonment for the principal offence of incest as a standard sentence offence and who received a non-parole period.

The average total effective sentence ranged from 8 years and 4 months in 2020–21 to 11 years and 6 months in 2022–23. The average non-parole period ranged from 5 years and 3 months in 2020–21 to 7 years and 9 months in 2022–23.

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

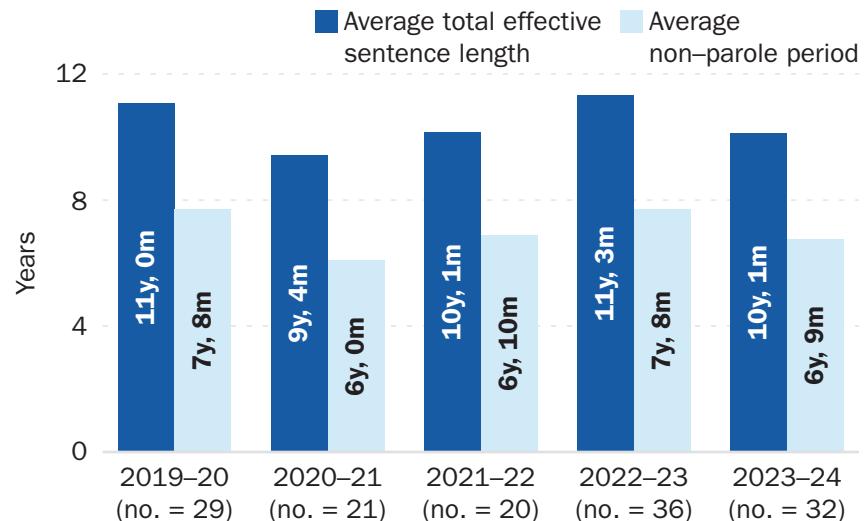
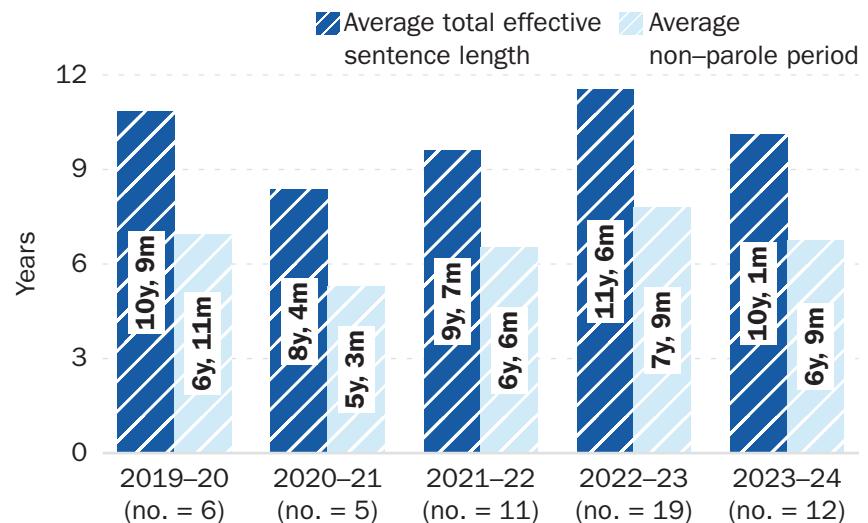


Figure 8: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for incest as a standard sentence offence, by financial year



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 37, and the median was 5 offences. There were 10 people (7.0%) sentenced for the single offence

of incest. The average number of offences per person was 6.3.

Table 1 shows the 10 most common offences co-sentenced alongside incest. The last column sets out the average number of offences sentenced per case. For example, 61 of the total 143 people (42.7%) were also sentenced for indecent act with or in the presence of a child aged under 16. On average, those 61 people were sentenced for 3.1 charges of indecent act with or in the presence of a child aged 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, 2019–20 to 2023–24

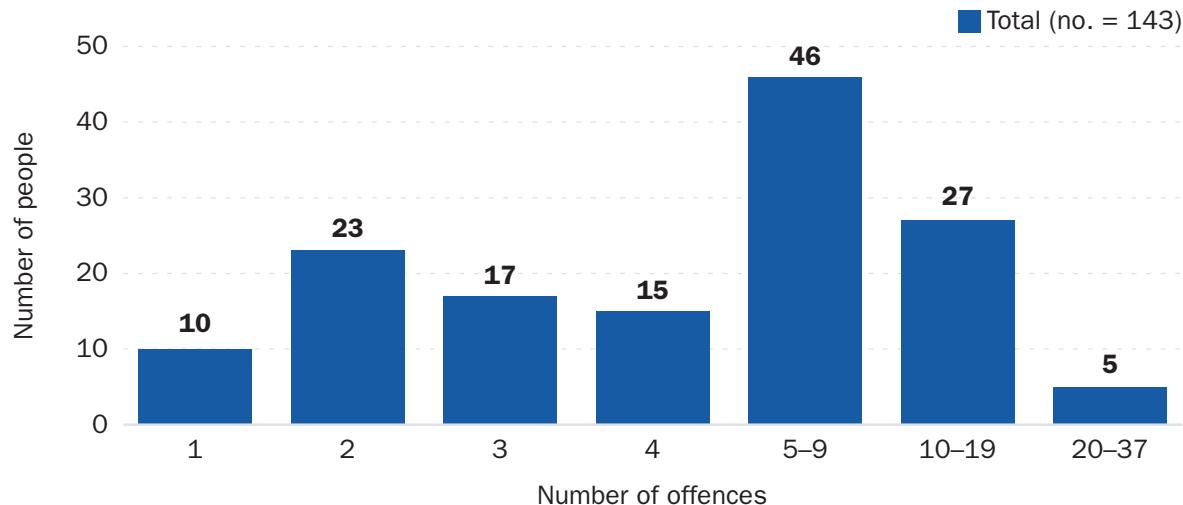


Table 1: The number and percentage of people sentenced for the principal offence of incest, by the most common offences that were sentenced alongside incest, 2019–20 to 2023–24

Offence	Number of cases	Percentage of cases	Average number of proven offences per person
Incest	143	100.0%	3.1
Indecent act with or in the presence of a child aged under 16	61	42.7%	3.1
Sexual assault of a child aged under 16	33	23.1%	2.5
Knowingly possess child abuse material	11	7.7%	1.0
Produce child abuse material	10	7.0%	1.6
Sexual assault	9	6.3%	1.6
Sexual activity in the presence of a child aged under 16	9	6.3%	1.3
Attempted incest with child, step-child or lineal descendant	9	6.3%	1.1
Common law assault	6	4.2%	1.2
Sexual penetration of a child aged 12 to under 16	4	2.8%	3.0
Total	143	100.0%	6.3

Summary

From 2019–20 to 2023–24, 143 people were sentenced in the higher courts for the principal offence of incest. Of those 143 people, 138 (96.5%) received a principal sentence of imprisonment. The remaining people received a partially suspended sentence (3 people) or a wholly suspended sentence (2 people).

Total effective sentences of imprisonment ranged from 2 years and 6 months to 25 years, and non-parole periods ranged from 1 year to 19 years. The median total effective sentence was 10 years and 6 months, while the median non-parole period was 6 years and 9 months. On average, people

sentenced for the principal offence of incest were sentenced for 6.3 offences each, with a maximum of 37 offences.

Of the 53 principal offences of incest subject to the standard sentence of 10 years, all 53 received imprisonment. The average imprisonment term for the 53 principal offences that received imprisonment was 7 years and 7 months, which is longer than the overall average of 7 years and 2 months for the total 137 principal offences that received non-aggregate 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. 284](#), which describes sentencing trends for incest between 2017–18 and 2021–22.
- 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 offences under sections 44(1) and 44(2) 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 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.
- 4 *Crimes Act 1958* (Vic) ss 50C(2), 50D(2).
- 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) ss 5(2)(ab), 5A–5B.
- 7 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.
- 8 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.
- 9 Immediate custodial sentences for incest included imprisonment and partially suspended sentences.
- 10 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.
- 11 The longest prison sentence for a principal offence of incest was 16 years for a rolled-up charge: *DPP v Hudnall (A Pseudonym)* [2022] VCC 2079.
- 12 *Sentencing Act 1991* (Vic) s 5B(2)(b).
- 13 The shortest total effective sentence was 2 years and 6 months: *DPP v Beardsmore (a pseudonym)* [2022] VCC 2280.
- 14 The longest total effective sentence was 25 years: *DPP v Trangle (A Pseudonym)* [2019] VCC 2052.

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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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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.¹

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.²

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’.³

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,⁴ the median imprisonment length for an offence,⁵ changes

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

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

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

The ‘inherent limitations’ of sentencing statistics and comparable cases

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

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].

'Though ... a decent portion of the overall data would deal with matters not covered by the standard sentence scheme ... [the Sentencing Snapshot for incest] provides a breakdown of those cases ... that were covered by the standard sentence scheme. I have had regard to that table'

DPP v Morgan (a pseudonym) [2024] VCC 90

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.¹⁵ 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':¹⁶

- our **Sentencing Snapshots** provide five years of higher courts data on the types and lengths of sentences for 18 common or high-profile principal offences¹⁷
- 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 offences¹⁸
- our **statistical reports** include in-depth analyses of sentencing practices.¹⁹

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**.