

The Effect of Introducing Standard Sentences in Victoria

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Executive summary

In February 2018, new legislation came into effect in Victoria requiring courts to take a 'standard sentence' into account when sentencing a number of prescribed offences. A standard sentence is intended to function as a numerical guidepost, similar to a maximum penalty but at a different point on the spectrum of seriousness. For example, the maximum penalty for rape is 25 years' imprisonment, which is intended to reflect the worst offending by the worst offender. On the other hand, the standard sentence for rape is 10 years, which represents what parliament considers to be a sentence that reflects 'the middle of the range of seriousness' before accounting for subjective factors personal to the offender. The new legislation also expressly prohibited courts, when sentencing a standard sentence offence, from considering sentencing practices in cases where the standard sentence didn't apply. The standard sentence was also intended to increase imprisonment lengths for standard sentence offences.

Since that legislation came into effect, courts have been required to take the standard sentence into account if the offending occurred on or after 1 February 2018, the offender was aged 18 or over at the time of the offending, and the case is heard in the County or Supreme Court (rather than summarily in the Magistrates' Court). There are currently 14 standard sentence offences, including a number of homicide offences, a drug trafficking offence and various sex offences.

This report is the first in-depth examination of standard sentences since their introduction over eight years ago. It examines sentencing outcomes for all charges of standard sentence offences sentenced in the County and Supreme Courts in the 10 years to 30 June 2024. This reference period includes four years prior to the introduction of standard sentences to provide context for any existing temporal trends.

We examined whether sentencing practices for standard sentence offences changed over time in terms of both the types and the lengths of sentences imposed, and if so, whether any change could be attributed to the standard sentence. It is notoriously difficult to attribute changes in sentencing practices to any one particular factor, so we have utilised a regression analysis to isolate the likely effect of standard sentences.

Longer prison sentences for serious offences

There has been a notable rise in the lengths of prison sentences for almost all standard sentence offences. This is part of a long-term trend dating back several decades.

For instance, in 2003 the average prison sentence for murder was 18 years, by 2014 it was 21 years, and in 2024 it was 24 years.

There was, however, an apparent trend of charges receiving longer prison sentences where the standard sentence applied than where the standard sentence didn't apply. For example, the median imprisonment length for rape in 2022 was 7 years when the standard sentence applied and 6 years when it didn't. This cautiously indicates that standard sentences are achieving their policy intent of longer prison sentences.

Standard sentences causally contributed to longer prison sentences

To interrogate this tentative finding further, we applied a regression analysis to sentencing practices for three distinct offences: murder, rape and trafficking in a large commercial quantity of a drug of dependence. We were able to do this using court data and supplementing the data with qualitative factors coded from sentencing remarks, such as whether the offender pleaded guilty or whether they had a history of prior offending. This allowed us to reasonably estimate whether the standard sentence was a significant cause of recent changes in sentencing practices, and if so, the quantum of that effect.

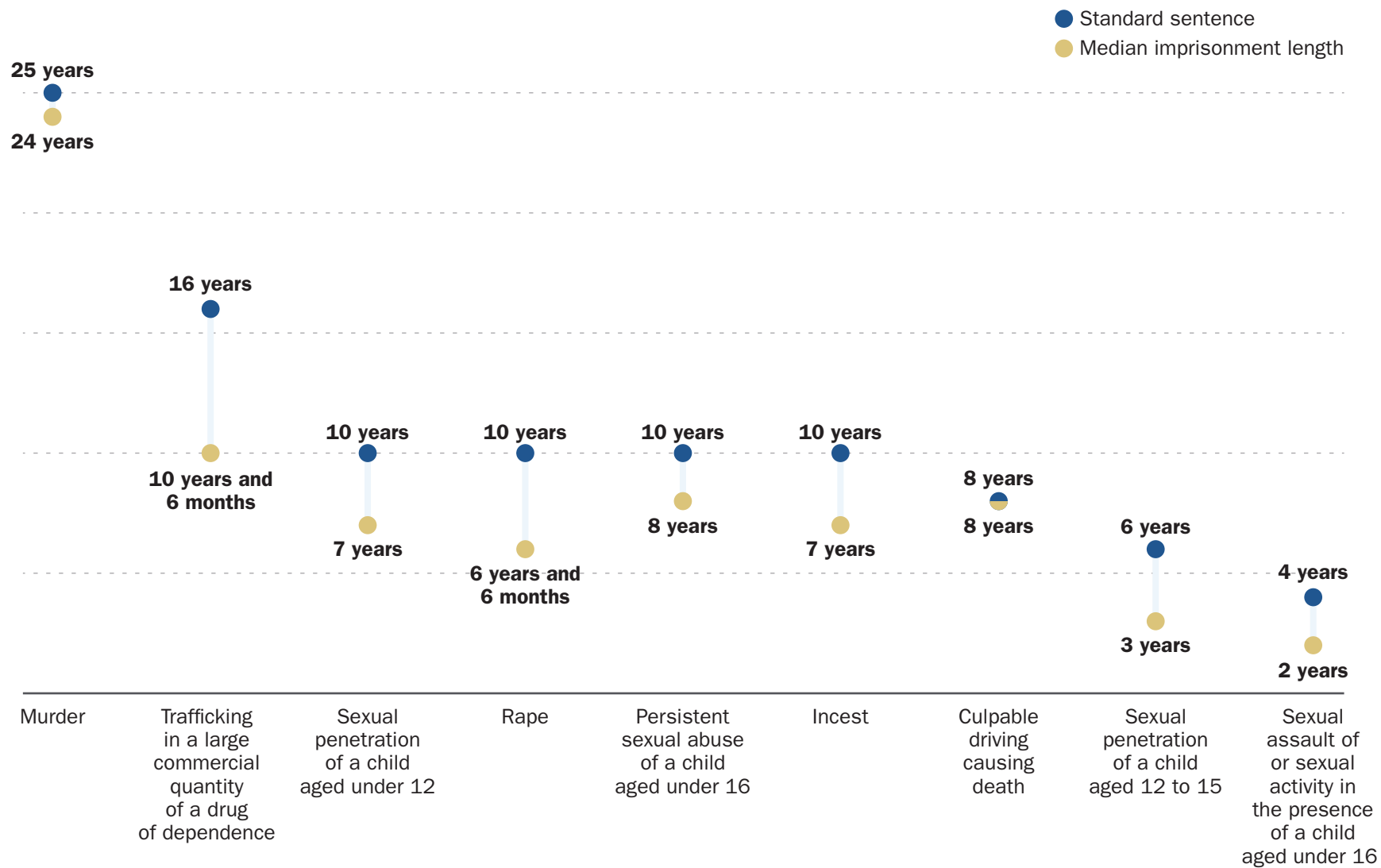
For all three offences, the standard sentence was found to be a significant factor associated with *longer* prison sentences, resulting in people receiving prison sentences that were over a year longer than the prison sentences they would have received if the standard sentence had not applied.

There were also other significant factors identified in the regression analysis, such as the relationship between the offender and the victim in cases involving murder or rape, the form of penetration in rape cases and the person's role in a drug trafficking operation.

Most prison sentences are shorter than the standard sentence

For all of the sex offences with a standard sentence – including rape and sexual penetration of a child – the vast majority of prison sentences were shorter than the applicable standard sentence (see the figure on page xi). For example, 86% of prison sentences for incest (where the standard sentence applied) were shorter than the 10-year standard sentence for that offence. The same was true for the drug trafficking offence, with 97% of prison sentences below the 16-year standard sentence for that offence.

Median imprisonment length compared to the standard sentence



The figure shows the standard sentence for the offence and the median imprisonment length for charges where the standard sentence applied. For all offences except culpable driving causing death, the median imprisonment length was below the standard sentence, some medians more so than others.

A median imprisonment length below the standard sentence is likely due to a number of factors. Most notably, standard sentences are intended to be just one factor in sentencing, not a dominant consideration, meaning their effect is somewhat muted. And further, the standard sentence ignores subjective factors that can weigh very heavily in the sentencing exercise, such as a guilty plea or the presence of mental impairment.

For the two homicide offences with a standard sentence, almost half (murder) or two-thirds (culpable driving causing death) of prison sentences were equal to or longer than the applicable standard sentence. This is likely, at least in part, because sentencing practices for those offences were already relatively similar to the standard sentence. By comparison, sentencing practices for the drug trafficking offence and the sex offences were all previously much lower.

In summary

In recent years, there has been an increase in imprisonment lengths for standard sentence offences, and it appears that the standard sentence was indeed a causal contributor to some of that increase. Sentencing practices for most standard sentence offences do, though, tend to fall below the standard sentence for a number of reasons. Standard sentences exist as just one of the myriad sentencing considerations, and even for mid-range offending, subjective factors personal to the offender carry significant mitigatory weight.

1. Introduction

In 2018, in response to recommendations made by the Council,¹ the Victorian Government introduced what are known as ‘standard sentences’.² Similar to maximum penalties, standard sentences are numerical guideposts that courts must consider when sentencing certain serious offences.³ For instance, the maximum penalty for rape is 25 years’ imprisonment, and the standard sentence for rape is 10 years.⁴ The maximum penalty is reserved for ‘the worst possible case’ of an offence,⁵ and the standard sentence is intended to represent what parliament considers to be the ‘middle of the range of seriousness’ for the offence.⁶

The policy intent of the reforms was to ensure that sentencing is ‘consistent, transparent and in line with community expectations’, with the expectation that the introduction of standard sentences would ‘lead to increased sentences for the most serious crimes’.⁷ The standard sentence scheme in Victoria is based on standard non-parole periods that have been in operation in New South Wales since 2003.⁸ Standard sentences were introduced in Victoria soon after the Court of Appeal had held that their predecessor baseline sentences were invalid because they were incapable of practical operation.⁹ The first case involving a standard sentence was finalised in November 2018,¹⁰ nine months after the standard sentence scheme commenced. And as will be apparent in this report, there have now been hundreds of cases involving standard sentence offences¹¹ since then.

1. Sentencing Advisory Council, *Sentencing Guidance in Victoria: Report* (2016) 160–178 (Recommendations 7–9).

2. *Sentencing Amendment (Sentencing Standards) Act 2017* (Vic). See *Sentencing Act 1991* (Vic) ss 5A–5B.

3. *Sentencing Act 1991* (Vic) ss 5(2)(a)–(ab).

4. *Crimes Act 1958* (Vic) ss 38(2)–(3).

5. *Markarian v The Queen* [2005] HCA 25, [31]. See also *R v AB (No 2)* [2008] VSCA 39, [40].

6. *Sentencing Act 1991* (Vic) s 5A(1)(b).

7. Victoria, *Parliamentary Debates*, Legislative Assembly, 25 May 2017, 1509 (Martin Pakula, Attorney-General).

8. *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* (NSW). See also New South Wales Sentencing Council, *Standard Non-Parole Periods: Final Report* (2013).

9. Baseline sentences were intended to be the median sentence imposed for relevant offences each year. They were introduced in 2014 by the *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic) with features recommended by the Council, noting that the Council was only asked to identify the key features of a baseline sentencing model, not to provide advice on the merits of the model itself: Sentencing Advisory Council, *Baseline Sentencing: Report* (2012). Soon after the introduction of baseline sentences, the Court of Appeal observed that the median sentence cannot be known until the end of the relevant period, making it impossible for courts throughout that period to try and achieve that outcome: *DPP v Walters (a pseudonym)* [2015] VSCA 303.

10. *R v Brown* [2018] VSC 742.

11. Section 3(1) of the *Sentencing Act 1991* (Vic) defines a ‘standard sentence offence’ as ‘an offence for which an Act specifies a standard sentence’.

Aim of this report

This report aims to examine the effect that standard sentences have had on the lengths of sentences imposed for standard sentence offences, now that more than eight years have passed since the introduction of standard sentences in Victoria.

Reference period

This report covers all charges of offences that currently attract standard sentences (whether the standard sentence applied or not) that were sentenced in Victorian courts in the 10 financial years from 1 July 2014 to 30 June 2024. This was the most recent data available to us when this project commenced.

Some of the more recent data will have invariably been affected by COVID-19. For example, there was a backlog of cases during that period and a greater sentencing discount in appropriate cases to reflect the 'greater utilitarian benefit' of guilty pleas,¹² the more onerous conditions of being held in custody, or both.

Moreover, it is important to note that for many of the offences examined in this report, there was already a pre-existing trend (since at least 2001) of higher rates of custodial sentences and longer prison sentences.¹³

An overview of the standard sentence scheme in Victoria

The standard sentence provisions in the *Sentencing Act 1991* (Vic) ('*Sentencing Act*') operate with a number of distinctive features:

- First, as with all factors that courts must consider when deciding an appropriate sentence in a case, the standard sentence for an offence is 'simply another factor' to consider¹⁴ and does not override the fundamental principle of 'instinctive synthesis', which requires courts to arrive at the most appropriate sentence after considering all the relevant factors in the case.¹⁵

12. *Worboyes v The Queen* [2021] VSCA 169, [35].

13. Sentencing Advisory Council, *Long-Term Sentencing Trends in Victoria* (2022).

14. *R v Brown* [2018] VSC 742, [68], upheld on appeal in *Brown v The Queen* [2019] VSCA 286; *DPP v Herrmann* [2019] VSC 694, [104]; *McPherson v The Queen* [2021] VSCA 53, [31].

15. The concept of instinctive synthesis involves a court 'weighing all of the relevant factors, [and] reach[ing] a conclusion that a particular penalty is the one [that] should be imposed': *Markarian v The Queen* [2005] HCA 25, [37]. The notion of ensuring that no individual sentencing factor is always prioritised over others was noted by the High Court in *DPP v Dalglish (a pseudonym)* [2017] HCA 41, [68] ('current sentencing practices must be taken into account, but only as one factor, and not the controlling factor, in the fixing of a just sentence')

- Second, standard sentences only apply to offences *committed* after the standard sentence scheme came into effect.¹⁶ This means that courts sentencing offences committed prior to commencement of the scheme must not take the standard sentence into account. For this reason, there continues to be cases involving applicable offences where the standard sentence doesn't apply,¹⁷ albeit there are fewer such cases each year.
- Third, standard sentences don't apply to offences committed by offenders aged under 18¹⁸ or to offences heard and determined summarily (in the Magistrates' Court).¹⁹ They only apply to offences committed by offenders aged 18 and over who are sentenced in the County or Supreme Court.
- Fourth, with only a handful of exceptions,²⁰ the standard sentence for an offence is precisely 40% of the maximum penalty. This percentage is based on the Council's conclusion in 2016 that 80% of the maximum penalty for each offence accounts for the 'objective' seriousness of the offence, and half of 80% is 40%, so 40% is the 'middle of the range of seriousness' when considering only objective factors.²¹ The remaining 20% of the maximum penalty was intended to account for subjective factors personal to the offender, such as being a 'serious offender' under Part 2A of the *Sentencing Act*.
- Fifth, as shown in Figure 1, when the standard sentence does apply, courts are *prohibited* from taking into account sentencing practices for that offence where the standard sentence

Figure 1: Relevance of sentencing practices based on whether the standard sentence applies

	Standard sentence applies to offence	Standard sentence doesn't apply to offence
Take sentencing practices into account for offences where the standard sentence applied?	Yes	Yes
Take sentencing practices into account for offences where the standard sentence didn't apply?	No	Yes

and is also consistent with the High Court's judgment in *Muldrock v The Queen* [2011] HCA 39, [26]–[27], in which the High Court held that the standard non-parole periods in New South Wales are guideposts, not determinative factors.

16. *Sentencing Act 1991* (Vic) s 165A(2).

17. See, for example, *DPP v Seccull* [2024] VCC 263; *DPP v Browne* [2024] VCC 266.

18. See, for example, *DPP v JA & Ors* [2023] VSC 531.

19. *Sentencing Act 1991* (Vic) s 5B(1).

20. These include two offences with a maximum penalty of life imprisonment (murder and trafficking in a large commercial quantity of a drug of dependence) and the relatively recent offence of homicide by firearm, which has a standard sentence of 13 years, or 52% of the maximum penalty of 25 years. The offence of homicide by firearm was introduced by the *Crimes Amendment (Manslaughter and Related Offences) Act 2020* (Vic).

21. Sentencing Advisory Council (2016), above n 1, 186–187.

didn't apply.²² But conversely, and contrary to some authority on the matter,²³ when the standard sentence does *not* apply, courts must take into account *all* sentencing practices for the offence, including cases where the standard sentence did apply and cases where it didn't.²⁴

The first application of the new standard sentence provisions was in a case involving a proven charge of murder. In late 2018, Champion J outlined how the provisions should operate, and the Court of Appeal subsequently endorsed that application. In particular, the Court of Appeal summarised the application of the provisions as follows:

For the most part, the provisions are clear and the approach required is not in dispute. The key new requirement is that a judge when sentencing for a 'standard sentence offence' must 'take the standard sentence into account as one of the factors relevant to sentencing'. This requirement:

- is to be treated as a 'legislative guidepost', having the same function as the maximum penalty;
- does not affect the established 'instinctive synthesis' approach to sentencing;
- does not require or permit 'two-stage sentencing'; and
- does not otherwise affect the matters which the court may, or must, take into account in sentencing.²⁵

Report structure

This report is structured as follows:

- a brief introduction to the report and standard sentences
- a methodology explaining how we examined the effect of standard sentences
- an analysis of sentencing practices for all standard sentence offences over time
- a regression analysis examining whether standard sentences have caused a change in sentencing practices for a homicide offence (murder), a sex offence (rape) and a drug offence (trafficking in a large commercial quantity of a drug of dependence)
- concluding remarks and
- appendices presenting the included offences, the approach to coding sentencing remarks, additional details about the methodology for the regression analysis and the full results of that regression analysis.

22. *Sentencing Act 1991* (Vic) s 165A(2).

23. *DPP v Leifer* [2023] VCC 1443, [291].

24. *Sentencing Act 1991* (Vic) s 165A(3).

25. *Brown v The Queen* [2019] VSCA 286, [4].

2. Methodology

This chapter outlines our methodology for examining this report's fundamental research question: has the introduction of standard sentences changed sentencing practices? The chapter includes an overview of:

- the offences we examined
- the counting rules we used to determine which charges were included or not
- the court data we used to conduct the analysis
- the way we used generative AI to code publicly available sentencing remarks for three of the offences to supplement that court data and
- the regression analysis we used to examine the effect of standard sentences.

Which offences were examined?

There are currently 14 standard sentence offences. These offences are outlined in Table 1, including the applicable standard sentence.

Table 1: Offence, statutory reference and standard sentence for offences under the standard sentence scheme

Offence	Statutory reference	Standard sentence
Murder of an emergency worker or custodial officer	<i>Crimes Act 1958</i> (Vic) s 3(2)(a)	30 years
Murder	<i>Crimes Act 1958</i> (Vic) s 3(2)(b)	25 years
Homicide by firearm (since July 2020)	<i>Crimes Act 1958</i> (Vic) s 5B(2)	13 years
Culpable driving causing death	<i>Crimes Act 1958</i> (Vic) s 318	8 years
Persistent sexual abuse of a child aged under 16	<i>Crimes Act 1958</i> (Vic) s 49J	10 years
Rape	<i>Crimes Act 1958</i> (Vic) s 38	10 years
Sexual penetration of a child or lineal descendant aged under 18	<i>Crimes Act 1958</i> (Vic) s 50C	10 years
Sexual penetration of a stepchild aged under 18	<i>Crimes Act 1958</i> (Vic) s 50D	10 years
Sexual penetration of a child aged under 12	<i>Crimes Act 1958</i> (Vic) s 49A	10 years
Sexual penetration of a child aged 12 to 15	<i>Crimes Act 1958</i> (Vic) s 49B	6 years
Sexual assault of a child aged under 16	<i>Crimes Act 1958</i> (Vic) s 49D	4 years
Sexual activity in the presence of a child aged under 16	<i>Crimes Act 1958</i> (Vic) s 49F	4 years

Offence	Statutory reference	Standard sentence
Causing a child aged under 16 to be present during sexual activity	<i>Crimes Act 1958</i> (Vic) s 49H	4 years
Trafficking in a large commercial quantity of a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981</i> (Vic) s 71	16 years

No charges of homicide by firearm or murder of an emergency worker or custodial officer were sentenced during our 10-year reference period (to 30 June 2024). All the other 12 offences have been sentenced since the introduction of standard sentences.

This report examines the sentences imposed on all charges of the 12 standard sentence offences that were sentenced during our reference period. There are four important counting rules to be aware of in understanding what is included:

- 1. Charge-level counting rule:** this report adopts a ‘charge-level’ approach, analysing outcomes for individual charges rather than aggregate case-level outcomes. This approach reflects the operation of standard sentences, which apply to individual charges rather than to cases as a whole. If, for example, a murder and a rape were sentenced in the same case, the sentence imposed on each charge of those offences would be included in our analysis. Imprisonment lengths can only be examined for charges that were not part of an aggregate prison sentence; if a charge was one of a number of charges that received a single, aggregate prison sentence, the contribution of each charge to that aggregate prison sentence cannot be discerned.²⁶
- 2. Charges where the standard sentence didn’t apply:** we have included charges where the standard sentence *didn’t* apply. These include offences sentenced prior to the introduction of standard sentences (to understand prior sentencing practices) and offences sentenced after the introduction of standard sentences but committed prior (for example, a rape committed in 2015 and sentenced in 2022). The sentences imposed on charges where the standard sentence didn’t apply are presented separately and serve as a comparison group for assessing whether observed changes in sentencing practices are likely to be attributable to the introduction of standard sentences.
- 3. Repealed statutory provisions:** during the reference period, there were changes to the underpinning legislation for some offences, albeit all of those changes were before the introduction of standard sentences in 2018. We have grouped the current and previous offences together so long as any previous offence was substantially the same and had the same maximum penalty.

26. On this topic, see Sentencing Advisory Council, *Aggregate Prison Sentences in Victoria* (2023).

For example, the current version of the offence of sexual penetration of a child aged 12 to 15 came into operation on 1 July 2017 and has a maximum penalty of 15 years' imprisonment. Only some instances of the previous version of that offence had the same 15-year maximum penalty (and were included) whereas others did not (and were excluded).²⁷ Similarly, we have merged the data relating to the current offences of sexual penetration of a child or lineal descendant aged under 18 and sexual penetration of a stepchild aged under 18 with data relating to the previous offences of incest relating to a child or stepchild.

- 4. Grouping of various child sex offences:** we have also merged data relating to sexual assault of a child aged under 16, sexual activity in the presence of a child aged under 16 and causing a child aged under 16 to be present during sexual activity (referred to as 'sexual assault of or sexual activity in the presence of a child aged under 16'). This was because these three offences came into operation on 1 July 2017 and were previously grouped under the offence of indecent act with or in the presence of a child aged under 16.²⁸ That repealed offence remained prevalent across the entire reference period and cannot be separated out into its current equivalent offences.

Data used in this report

This report examines data provided to us by the Supreme Court, County Court and Magistrates' Court pursuant to long-standing information-sharing agreements between the Council and the courts in Victoria. The data includes the following variables:

- date of sentence
- court jurisdiction
- first name, surname, gender and date of birth of offender
- offences sentenced in the case
- date of offence
- sentence type for each charge of an offence
- sentence length for each charge of an offence.

Additional variables derived from the data include whether the offender had offended previously, and if so, whether they had received a custodial sentence.

27. Sexual penetration of a child aged 12 to under 16, operational from 22 November 2000 to 30 June 2017, was subject to a maximum penalty of 15 years' imprisonment in circumstances where the child was under the care, supervision or authority of the offender. But the maximum penalty was 10 years' imprisonment if the child was not under the care, supervision or authority of the offender: *Crimes Act 1958* (Vic) s 45(2)(b) (repealed).

28. *Crimes Act 1958* (Vic) s 47 (repealed).

The data has enabled us to produce descriptive statistics of sentencing practices for relevant offences over time. The Magistrates' Court data is included for the three standard sentence offences under sections 49D, 49F and 49H of the *Crimes Act 1958* (Vic). While standard sentences don't apply in the summary jurisdiction, it is important to understand whether sentencing practices for those three offences in the summary jurisdiction have or haven't changed in the same way as in the higher courts, as a further point of comparison.

The data in this report accounts for any sentences or convictions altered on appeal on or before 30 June 2024.

Coding of sentencing remarks

Many, if not most, County Court and Supreme Court sentencing remarks (otherwise known as sentencing judgments) are publicly available in Victoria. Using sentencing remarks published on AustLII, we employed generative AI (Claude)²⁹ to code 592 publicly available judgments involving the offences of murder, rape and trafficking in a large commercial quantity of a drug of dependence.³⁰ This was done to allow more qualitative information to be included in the regression analysis (discussed below).

To ensure the reliability of the results, the following process was undertaken:

- 1. Developing the coding manual:** we developed a manual, for both human coders and generative AI, that included instructions on how to code for each of the relevant variables in every case. That coding manual included clear definitions of each variable and required the following steps: (1) evaluate the sentencing remarks against the manual's definitions and code each relevant charge in the case separately; (2) provide a detailed reasoning report for each variable, including direct quotations from the remarks that support the code chosen; (3) after completing the initial coding, verify each result by reviewing the manual definitions and rules a second time; and (4) where a variable is vague or ambiguous, flag the relevant code for manual review.
- 2. Inter-coder reliability (humans):** using the coding manual, we engaged in inter-coder reliability to reach a consensus on how variables should be coded, and to consider whether any revisions to the coding manual were necessary before using it as an input for generative AI to code cases.³¹

29. All AI coding was performed using Claude's Sonnet 4.5 model.

30. The Council routinely receives sentencing remarks directly from the courts and had access to an additional 94 relevant judgments that were not publicly available. We manually performed coding for these judgments.

31. Inter-coder reliability measures the level of agreement between coders. Remarks were coded by two coders independently. These results were compared to ensure that the variable definitions and case instances were being interpreted consistently.

3. **Inter-coder reliability (humans and generative AI):** the same sentencing remarks used for manual (human) inter-coder reliability were then input into generative AI. Remarks were entered one at a time, along with the coding manual, to ensure that the results were the same as those reached manually. Results were exceptionally consistent between the coding by individuals and the coding by generative AI. In the few instances where minor discrepancies arose, the coding manual was revised.
4. **Coding the full sample:** once the coding manual had been validated through inter-coder reliability processes, the full set of public sentencing remarks was input into generative AI. Remarks were entered one at a time, alongside the coding manual, and the results were then exported as data points into a spreadsheet. The core prompt specified that coding had to be based solely on the explicit text of the sentencing remarks, inference beyond what was written was not permitted and the manual's definitions and rules took precedence in all classification decisions. We manually reviewed coding results for every tenth judgment to ensure consistency and accuracy in the coding process as it progressed. Where results were flagged due to ambiguity in the remarks, the remarks themselves were manually reviewed, and AI coding was verified or corrected. All coding outputs generated by AI were subject to human verification, and final responsibility for coding decisions rests with the Council.

A copy of the coding manual is included in Appendix 2.

The variables that were coded include:

- whether the offender pleaded guilty to the charge
- whether the court took into account that the offender had, or has, a mental impairment that was relevant to sentencing
- whether the effect of COVID-19 was a relevant sentencing consideration
- whether the offender had adverse childhood experiences that were relevant to sentencing
- for charges of murder and rape, the relationship of the offender to the victim
- for charges of rape, the form of penetration involved (for example, penile-vaginal) and
- for charges of trafficking in a large commercial quantity of a drug of dependence, the level of authority or responsibility that the offender had within the drug trafficking operation.

For charges of each offence in our reference period, sentencing remarks were available for:

- 212 of 220 charges of murder (96.4%)
- 646 of 877 charges of rape (73.7%)
- 170 of 196 charges of trafficking in a large commercial quantity of a drug of dependence (86.7%).

Additional coding: after running the initial regression models, a second round of coding was performed for charges of trafficking in a large commercial quantity of a drug of dependence to obtain additional information, including:

- the drug that was trafficked
- the offender's primary motivation as identified by the judge
- whether the offender had a history of prior offending (excluding any offending that was mentioned and explicitly stated as not relevant) and if so:
 - the type of offending (for example, drug trafficking, drug possession, other) and
 - whether that prior offending resulted in a custodial sentence.

All coding performed during this second round was output as free text, manually reviewed and grouped for the purposes of modelling.

Regression analysis

To assess whether the introduction of standard sentences has affected sentencing outcomes, we conducted a regression analysis. Regression modelling allows the relationship between a key variable of interest and an outcome – in this case, the introduction of standard sentences and imprisonment lengths – to be estimated while controlling for other factors. Given the resource intensity of preparing the necessary data, regression modelling was undertaken for a subset of applicable offences: a homicide offence (murder), a sex offence (rape) and a drug offence (trafficking in a large commercial quantity of a drug of dependence). These three offences were selected to provide a representative cross-section of standard sentence offences.

Further detail on the regression analysis can be found in Appendix 3.

3. Did sentencing practices for standard sentence offences change over time?

Before examining the effect of standard sentences on sentencing practices, it is important to understand whether sentencing practices have changed for the relevant offences. This chapter includes an overview of each offence, the number of charges sentenced each year of the reference period, the sentence types imposed, the median imprisonment length each year and the distribution of imprisonment lengths throughout the reference period.

Murder

Murder is a common law offence. The most common form of murder involves a person causing the death of another person by a voluntary act intended to kill them or cause them really serious injury, or knowing that death or really serious injury is a probable consequence of a voluntary act (recklessness).³² Murder can also be committed unintentionally if death is caused in the course of certain violent crimes (previously known as the felony murder rule).³³ There are a number of possible defences to a charge of murder, in particular, self-defence or duress.³⁴

Murder is a category 1 offence if it was committed on or after 20 March 2017. This means that a custodial sentence must be imposed, and the sentence cannot be a combined order of imprisonment with a community correction order (CCO).³⁵ The maximum penalty for murder is life imprisonment, and the standard sentence is 25 years.³⁶

How many charges of murder were sentenced?

There were 220 charges of murder sentenced (in 201 cases) over the 10-year reference period (Figure 2, page 12). The standard sentence applied to 70 of the 220 charges (31.8%). All 220 charges received a prison sentence. Since 1 July 2020, there were only 9 sentenced charges of murder where the standard sentence didn't apply.

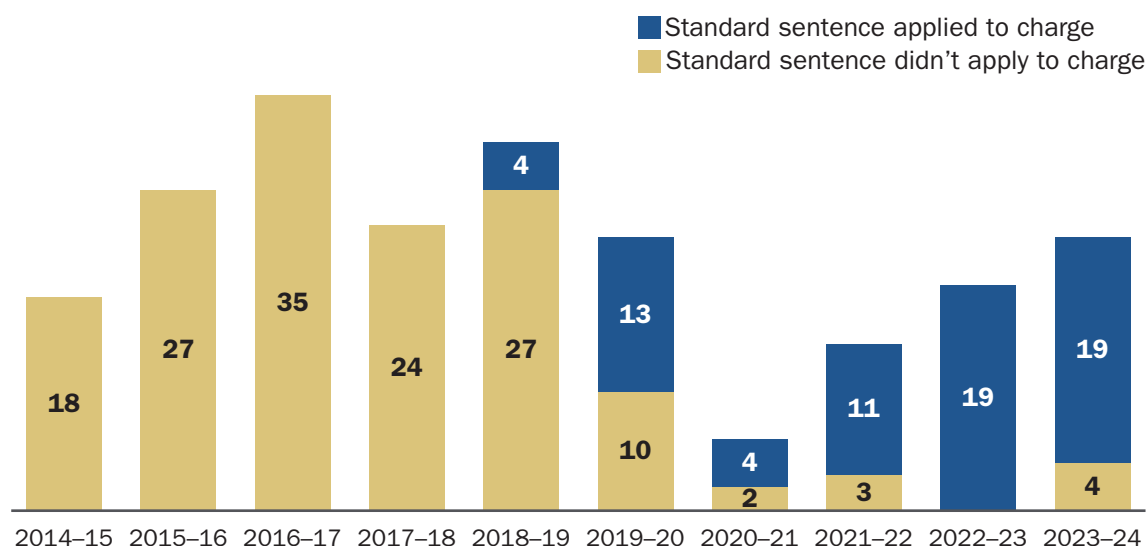
32. *R v Crabbe* [1985] HCA 22, [9].

33. *Crimes Act 1958* (Vic) s 3A.

34. See, for example, *Crimes Act 1958* (Vic) ss 322K, 322O.

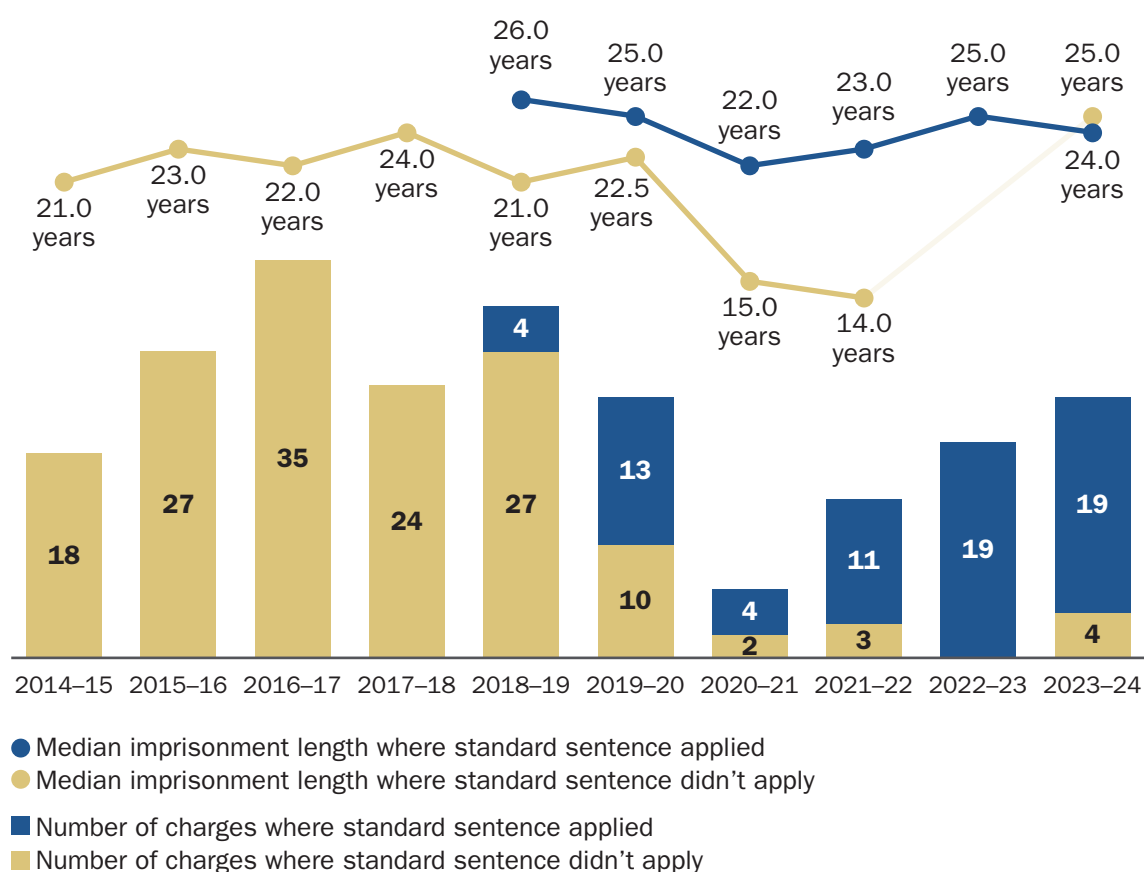
35. *Sentencing Act 1991* (Vic) ss 3(1)(a) (definition of category 1 offence), 5(2G).

36. *Crimes Act 1958* (Vic) ss 3(1)(a), (2)(b). As mentioned above, the standard sentence for murder of an emergency worker or custodial officer is 30 years, but no charges of murder of an emergency worker or custodial officer were sentenced during the reference period.

Figure 2: Number of charges of murder sentenced in Victoria, by financial year (220 charges)

How long were prison sentences for charges of murder?

Figure 3 shows the number of charges of murder that received a non-aggregate prison sentence (all 220 charges sentenced) and the median imprisonment length each financial year.

Figure 3: Number of non-aggregate prison sentences and median imprisonment lengths for charges of murder, by financial year (220 charges)

The median imprisonment length has remained relatively stable for charges of murder where the standard sentence applied, with a small dip during the years that COVID-19 affected charge volumes. In all but one year since standard sentences were introduced, the median was longer for charges of murder where the standard sentence applied than for charges where it didn't. The exception was in 2023–24, when the median was longer for charges of murder where the standard sentence didn't apply (25 years based on four charges) than where it did (24 years based on 19 charges).

The longer median imprisonment length in more recent years follows a steady and pre-existing trend of longer prison sentences for murder since at least 2003.³⁷ The median for charges where the standard sentence didn't apply was particularly volatile from 2020–21 to 2023–24, given the low number of charges (less than 5 charges each year).

Figure 4 (page 14) is a scatter plot showing the imprisonment lengths imposed for individual charges of murder, by date of sentence and whether or not the standard sentence applied. As we have done previously,³⁸ we have given life imprisonment a nominal value of 40 years. The shortest prison sentence was 10 years and 9 months (in 2015),³⁹ which was for a charge where the standard sentence didn't apply. The longest prison sentence was life imprisonment, imposed for 30 charges, 9 of which were standard sentence offences.

Charges of murder where the standard sentence applied were more likely to receive a prison sentence equal to or longer than the standard sentence of 25 years (31 of 70 charges or 44.3%) than charges where the standard sentence didn't apply (48 of 150 charges or 32.0%). As will be seen in the remainder of this report, it is quite unusual for so many charges of an offence to receive a prison sentence at or above the applicable standard sentence. This may be partly due to the role of guilty pleas in sentencing: the standard sentence set for each offence – which exclusively regards *objective* seriousness – does not take guilty plea discounts into account; guilty pleas carry significant mitigatory weight in sentencing (with reductions of about 20% to 40%); and we have previously found that proven charges of murder have 'the lowest' guilty plea rate of all offences sentenced in the higher courts.⁴⁰

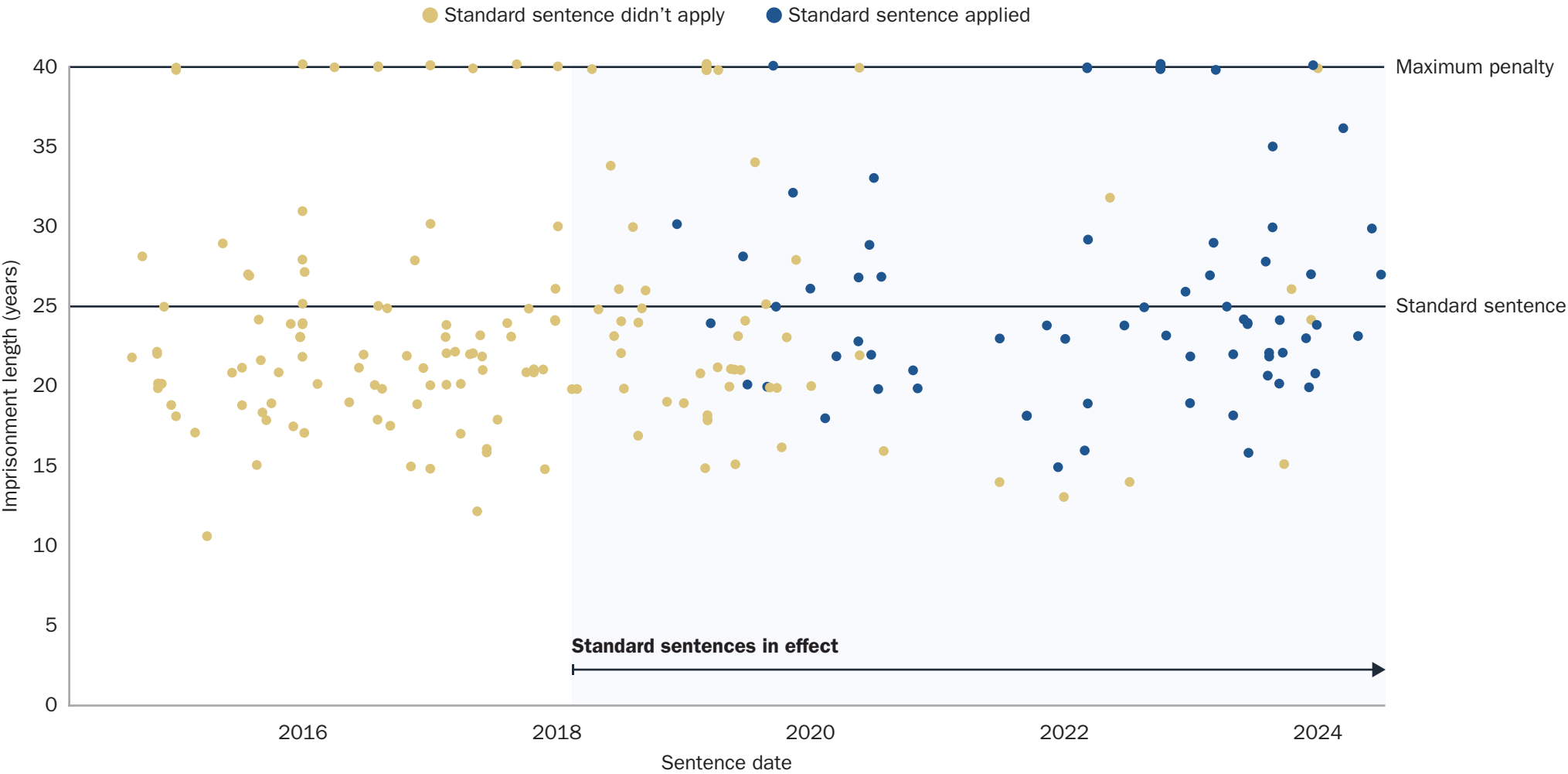
37. Sentencing Advisory Council (2022), above n 13, 6, citing data from Sentencing Advisory Council, *Sentencing Trends for Murder in the Higher Courts of Victoria 2001–02 to 2005–06*, Sentencing Snapshot 27 (2007) 3; Sentencing Advisory Council, *Sentencing Trends for Murder in the Higher Courts of Victoria 2017–18 to 2021–22*, Sentencing Snapshot 273 (2023) 3. In the 15 years from 2002–03 to 2017–18, the average (mean) imprisonment length rose 28%, from 18 years and 3 months to 23 years and 4 months.

38. Sentencing Advisory Council (2016), above n 1, 257 ('40 years is assumed to represent the remainder of the natural life of the majority of offenders sentenced to life imprisonment for murder').

39. *R v Lewis* [2015] VSC 252.

40. Sentencing Advisory Council, *Guilty Pleas in the Higher Courts: Rates, Timing, and Discounts* (2015) xvi, 28.

Figure 4: Scatter plot of non-aggregate imprisonment lengths for charges of murder (220 charges)



Rape

Rape involves a person intentionally sexually penetrating another person (orally, anally or vaginally) without the other person's consent.⁴¹ We have only included rape offences contrary to section 38 of the *Crimes Act*. Other rape offences have been excluded here because they either had different elements or were subject to different maximum penalties.⁴² Almost all of those other rape offences occurred prior to 1991 but were sentenced many years later, during the 10-year reference period to 30 June 2024.

Rape is a category 1 offence if it was committed on or after 20 March 2017. This means that a custodial sentence, other than a combined order of imprisonment with a CCO, must be imposed.⁴³ Rape has a maximum penalty of 25 years' imprisonment, which is the highest maximum in Victoria for a sex offence; the same maximum penalty applies to incest, persistent sexual abuse of a child aged under 16, and sexual penetration of a child aged under 12.⁴⁴ The standard sentence for rape is 10 years.⁴⁵ In 2017, the Court of Appeal held that sentencing practices for rape by digital penetration were 'well below what is necessary to reflect the objective gravity of that offence, and the moral culpability of the offender' and called for an uplift in sentencing practices.⁴⁶

How many charges of rape were sentenced?

There were 877 charges of rape sentenced (in 468 cases) over the 10-year reference period (Figure 5, page 16). Of those, 837 charges received immediate imprisonment, including 18 charges that received a combined order of imprisonment with a CCO for offending committed before 20 March 2017.⁴⁷ Further, the standard sentence applied to 277 of the

41. *Crimes Act 1958* (Vic) s 38(1).

42. For an overview of the history of rape offences in Victoria, see Sentencing Advisory Council, *Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms* (2021) 15.

43. *Sentencing Act 1991* (Vic) ss 3(1)(d) (definition of category 1 offence), 5(2G).

44. *Crimes Act 1958* (Vic) ss 49A, 49J, 50C, 50D. Rape by compelling sexual penetration also carries a maximum penalty of 25 years' imprisonment, but there is no applicable standard sentence: *Crimes Act 1958* (Vic) s 39.

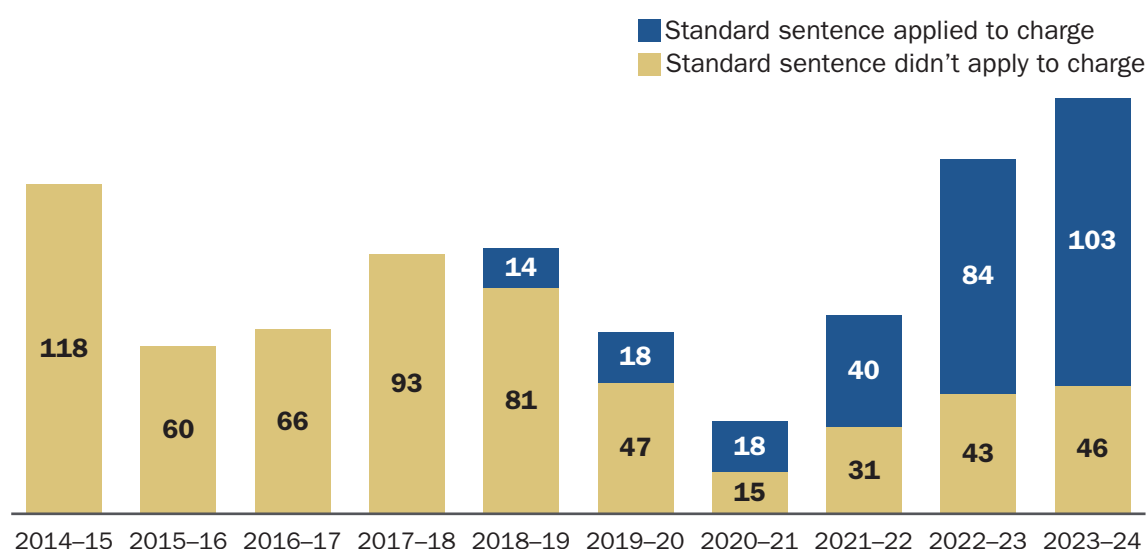
45. *Crimes Act 1958* (Vic) s 38(3).

46. *Shrestha v The Queen* [2017] VSCA 364, [30]. In 2012, the Court of Appeal refused to consider an application by the Director of Public Prosecutions to uplift sentencing practices for rape more generally, and later in 2019 the Director of Public Prosecutions did not pursue an invitation from the Court of Appeal to consider the adequacy of rape sentencing more generally: *DPP v Werry* [2012] VSCA 208; *DPP v Za Lian* [2019] VSCA 75, [100]. There are very few references to *Shrestha* (in particular, to the call to uplift sentencing practices, not just as a comparable case) in publicly available judgments after 2018 and 2019, which could suggest that the uplift component of the judgment has not had much influence on sentencing decisions since then. The few exceptions are *DPP v Kim* [2020] VCC 490; *Salvaggio v The Queen* [2022] VSCA 88; *DPP v Dwyer (a pseudonym)* [2022] VCC 1361; *DPP v Buchanan (a pseudonym)* [2022] VCC 1567; *DPP v Parish* [2023] VCC 758. The most recent of these was, at the time of writing, three years ago.

47. Offences committed on or after that date are category 1 offences and therefore cannot receive a combined order of imprisonment with a CCO: *Sentencing Act 1991* (Vic) ss 3(1) (definition of category 1 offence), 5(2G).

877 charges (32%); 2 of those charges received a CCO and the remaining charges received a prison sentence.⁴⁸ Of the 600 charges where the standard sentence didn't apply, 6.3% (38 charges) received a sentence other than immediate imprisonment (18 CCOs, 16 youth justice centre orders, 3 wholly suspended sentences and one residential treatment order). There continues to be a significant number of rape offences where the standard sentence doesn't apply, likely due to the sometimes years-long delay before sexual offending is reported.⁴⁹

Figure 5: Number of charges of rape sentenced in Victoria, by financial year (877 charges)



How long were prison sentences for charges of rape?

Figure 6 (page 17) shows the number of charges of rape that received a non-aggregate prison sentence and the median imprisonment length each financial year. The median imprisonment length fluctuated between 5.0 and 6.8 years for charges where the standard sentence didn't apply, and it ranged from 6.0 to 7.0 years for charges where the standard sentence did apply. In most years, the median was approximately one year longer for charges where the standard sentence applied than for charges where the standard sentence didn't apply.⁵⁰

48. In theory, 100% of charges of rape should receive imprisonment due to category 1 offence classification. A CCO seems to have been erroneously imposed on two charges of rape in *DPP v Thompson (a pseudonym)* [2020] VCC 1178, seemingly on the misunderstanding that rape is a category 1 offence for which a non-custodial sentence can be imposed if a 'special reason' exists, but rape is not actually one of the category 1 offences for which that can occur. See *Sentencing Act 1991* (Vic) s 5(2GA) for category 1 offences where a non-custodial sentence *can* be imposed if a 'special reason' exists.

49. See, for example, Sentencing Advisory Council, *Sentencing Older Offenders in Victoria* (2021) 72.

50. Sentencing Advisory Council (2022), above n 13, 18, citing data from Sentencing Advisory Council, *Sentencing Trends for Rape in the Higher Courts of Victoria 2001-02 to 2005-06*, Sentencing Snapshot 26 (2007) 3; Sentencing Advisory Council, *Sentencing Trends for Rape in the Higher Courts of Victoria 2017-18 to 2021-22*, Sentencing Snapshot 279 (2023) 3. In the 15 years from 2002-03 to 2017-18, the average (mean) imprisonment length rose 44%, from 4 years and 6 months to 6 years and 6 months.

Figure 6: Number of non-aggregate prison sentences and median imprisonment lengths for charges of rape, by financial year (834 charges)

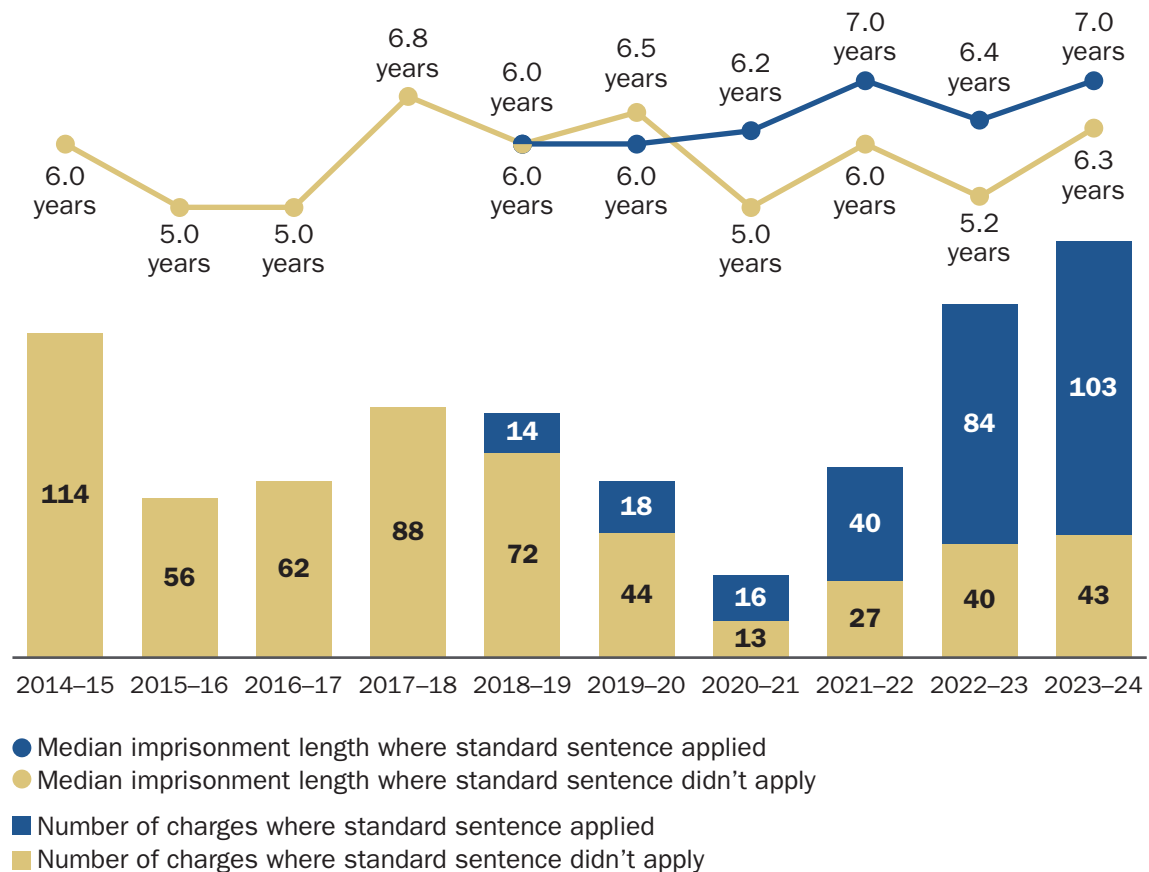


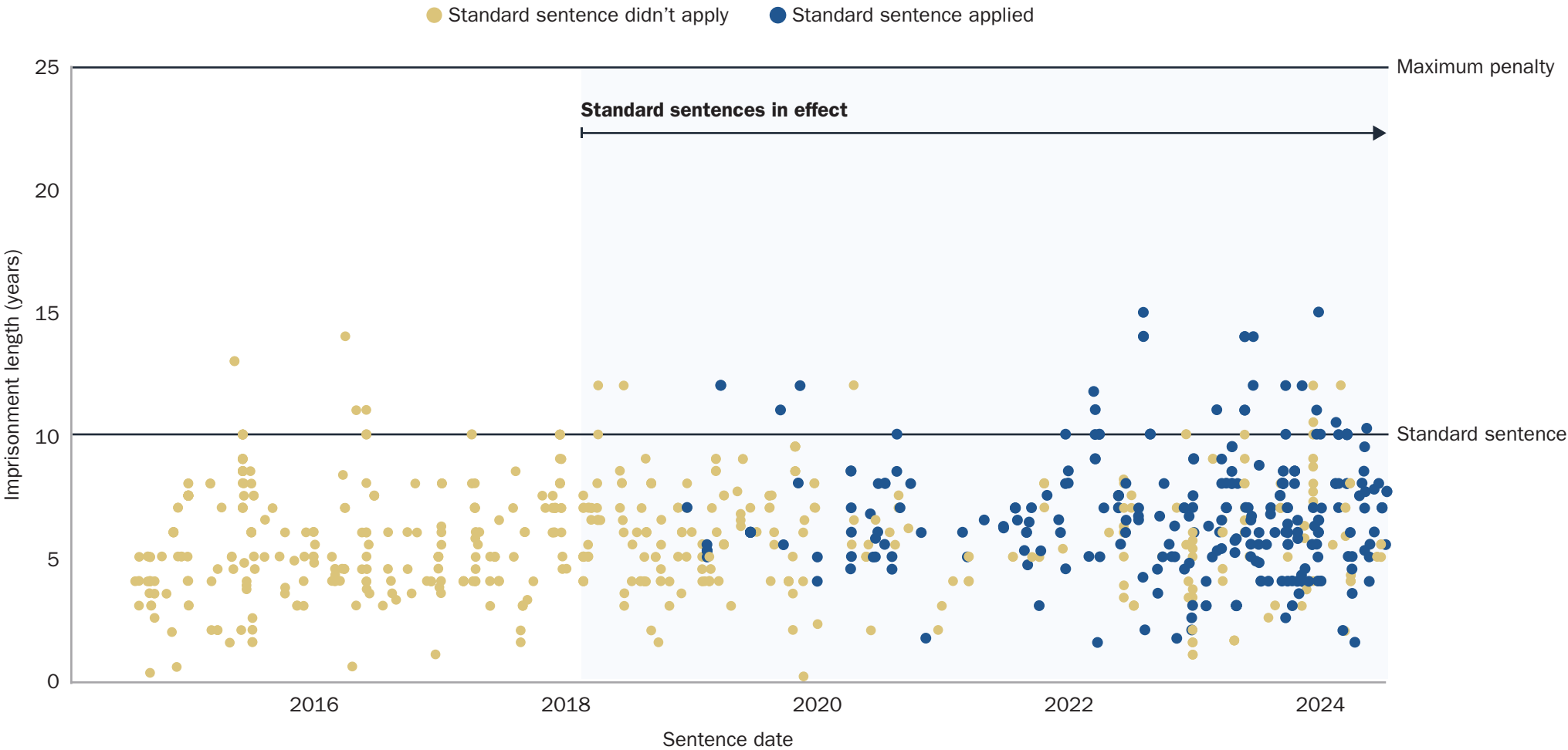
Figure 7 (page 18) shows the imprisonment lengths for the 834 charges that received a non-aggregate prison sentence. The shortest prison sentence for a charge of rape was 39 days (in 2019–20 for a charge where the standard sentence didn't apply), and this prison sentence was combined with an 18-month CCO.⁵¹ The longest prison sentence for a charge of rape was 15 years, for one charge in 2022–23 and one charge in 2023–24 (the standard sentence applied to both charges).⁵²

Charges where the standard sentence applied were more likely to receive a prison sentence of 10 years or more – that is, a prison sentence equal to or greater than the standard sentence – than charges where the standard sentence didn't apply (14.9% or 41 of 275 charges compared to 6.6% or 37 of 559 charges). While the ceiling for imprisonment lengths increased due to charges where the standard sentence applied, no sentence exceeded 15 years, which is 60% of the 25-year maximum penalty.

51. *DPP v Brennan* [2019] VCC 1843. This was for a rape committed over a decade earlier, such that category 1 offence classification didn't apply.

52. *DPP v Wilson* [2022] VCC 1150; *DPP v Ji* [2023] VCC 2315.

Figure 7: Scatter plot of non-aggregate imprisonment lengths for charges of rape (834 charges)



Trafficking in a large commercial quantity of a drug of dependence

The offence of trafficking in a large commercial quantity of a drug of dependence⁵³ involves someone who, without being authorised or licensed to do so, trafficks in a quantity of a drug of dependence that is not less than the large commercial quantity applicable to that drug of dependence. Trafficking in a large commercial quantity of a drug of dependence is a category 1 offence if it was committed on or after 20 March 2017. This means that a custodial sentence, other than a combined order of imprisonment with a CCO, must be imposed.⁵⁴ The maximum penalty for trafficking in a large commercial quantity of a drug of dependence is life imprisonment, and the standard sentence is 16 years. In 2017, the Court of Appeal held that sentencing practices for trafficking in a commercial quantity of a drug of dependence did not ‘reflect the inherent gravity of the offending, the impact on the community or the high maximum penalty’ and therefore called for an uplift in sentencing practices for that offence.⁵⁵ Subsequently, in 2021, the Court of Appeal said that this should have a ‘knock-on effect’ of an uplift in sentencing practices for trafficking in a *large* commercial quantity of a drug of dependence, in order to ensure ‘appropriate relativities’ between the different trafficking offences.⁵⁶

How many charges of trafficking in a large commercial quantity of a drug of dependence were sentenced?

There were 196 charges of trafficking in a large commercial quantity of a drug of dependence sentenced (in 175 cases) over the 10-year reference period (Figure 8, page 20). Of the 196 charges, 195 received a prison sentence, including one aggregate prison sentence, and one charge received a drug and alcohol treatment order. The standard sentence applied to 89 of the 196 charges (45.4%).

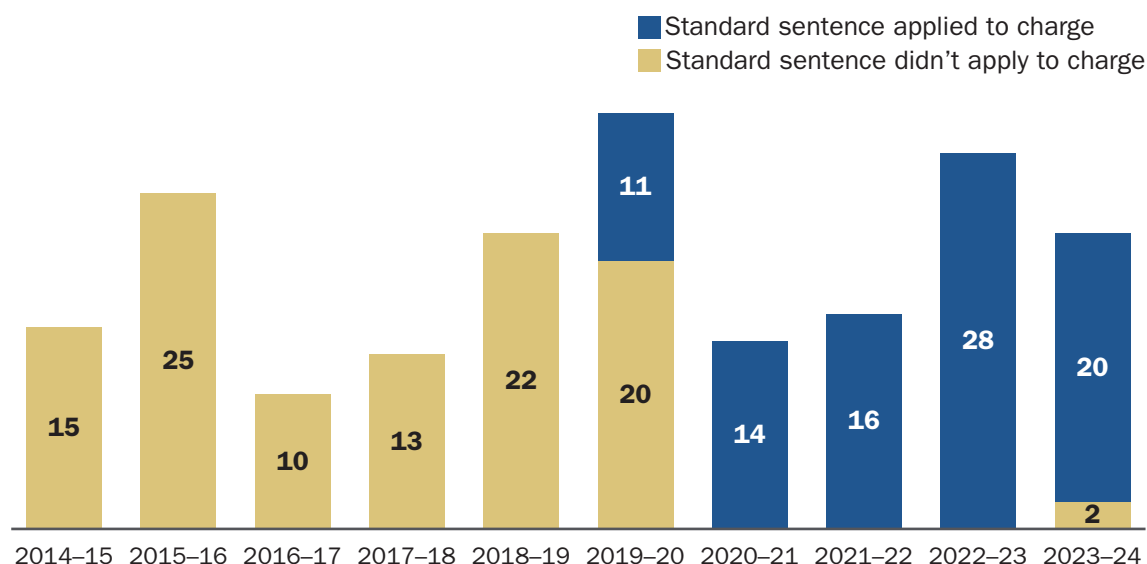
53. *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 71.

54. *Sentencing Act 1991* (Vic) ss 3(1)(j) (definition of category 1 offence), 5(2G).

55. *Gregory (a pseudonym) v The Queen* [2017] VSCA 151, [9].

56. *Rahmani v The Queen* [2021] VSCA 51, [28]. See also *Quah v The Queen* [2021] VSCA 164, [48].

Figure 8: Number of charges of trafficking in a large commercial quantity of a drug of dependence sentenced in Victoria, by financial year (196 charges)



How long were prison sentences for charges of trafficking in a large commercial quantity of a drug of dependence?

Figure 9 (page 21) shows the number of charges of trafficking in a large commercial quantity of a drug of dependence that received a non-aggregate prison sentence and the median imprisonment length each financial year. There was an upward trend until 2019–20 for charges where the standard sentence didn't apply, which is consistent with a pre-existing trend of longer prison sentences for this offence since at least 2004.⁵⁷ Since 2019–20, just 2 charges were sentenced where the standard sentence didn't apply, both in the same case in 2023.⁵⁸ The upward trajectory of the median, seen prior to the scheme's introduction, continued for charges where the standard sentence applied.

57. Sentencing Advisory Council (2022), above n 13, 14, citing data from Sentencing Advisory Council, *Sentencing Trends for Trafficking in a Large Commercial Quantity of Drugs in the Higher Courts of Victoria 2002–03 to 2006–07*, Sentencing Snapshot 46 (2008) 3; Sentencing Advisory Council, *Sentencing Trends for Trafficking in a Large Commercial Quantity of Drugs in the Higher Courts of Victoria 2016–17 to 2020–21*, Sentencing Snapshot 269 (2022) 3. In the 15 years from 2003–04 to 2017–18, the average (mean) imprisonment length rose 32%, from 5 years and 9 months to 7 years and 7 months.

58. *DPP v Aydin* [2023] VCC 1685.

Figure 9: Number of non-aggregate prison sentences and median imprisonment lengths for charges of trafficking in a large commercial quantity of a drug of dependence, by financial year (194 charges)

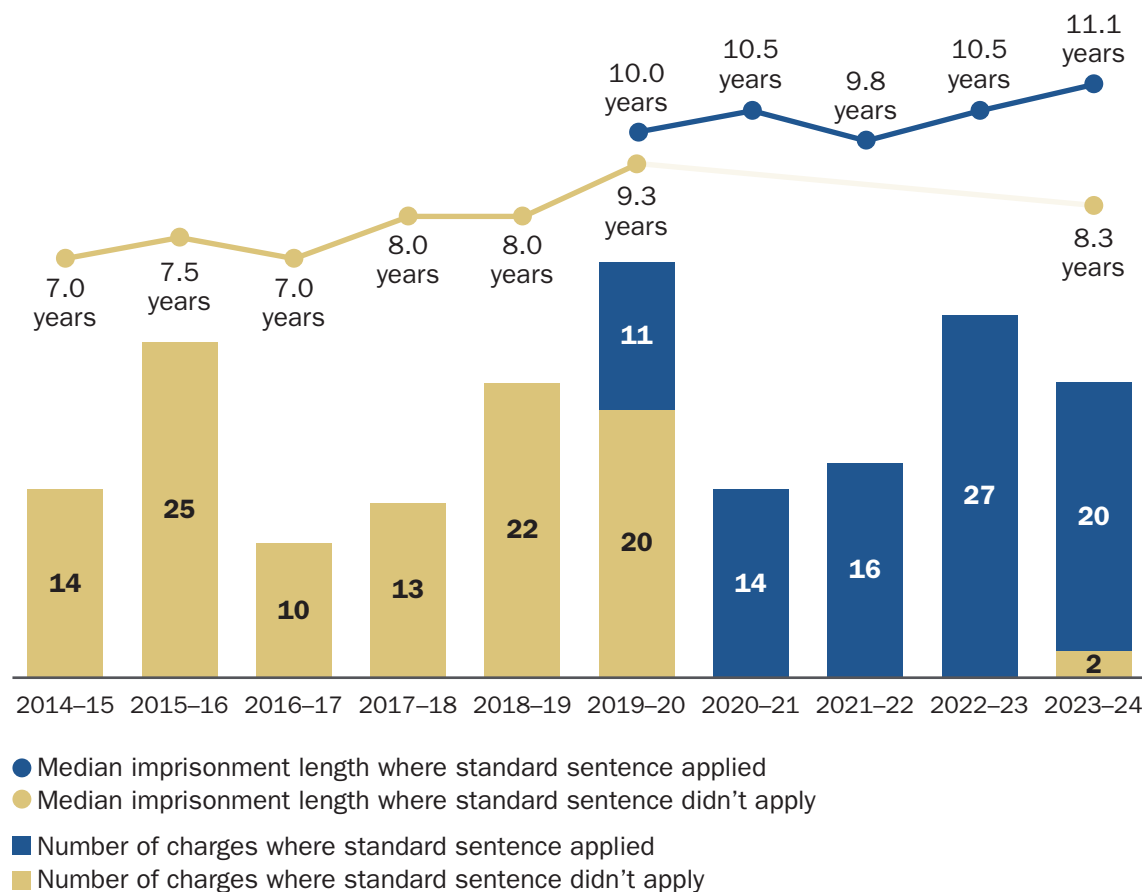


Figure 10 (page 22) shows the imprisonment lengths for the 194 charges that received a non-aggregate prison sentence. The shortest prison sentence was 4 years (for 6 charges, most of which were charges where the standard sentence didn't apply)⁵⁹ and the longest prison sentence was 17 years and 6 months (in 2023–24 for a standard sentence offence).⁶⁰

There were 88 charges where the standard sentence applied that received a non-aggregate prison sentence. Of those charges, 3.4% (3 charges) received a prison sentence of 16 years or more – that is, the prison sentence was equal to or greater than the standard sentence. All 3 of these charges were sentenced in the final year of the reference period (2023–24): 2 charges involved offenders with a significant or principal role within a sophisticated drug syndicate,⁶¹ and one was a rolled-up charge of trafficking on multiple occasions over the course of a year.⁶² The standard sentence applied to all charges that received a prison sentence of 16 years or more.

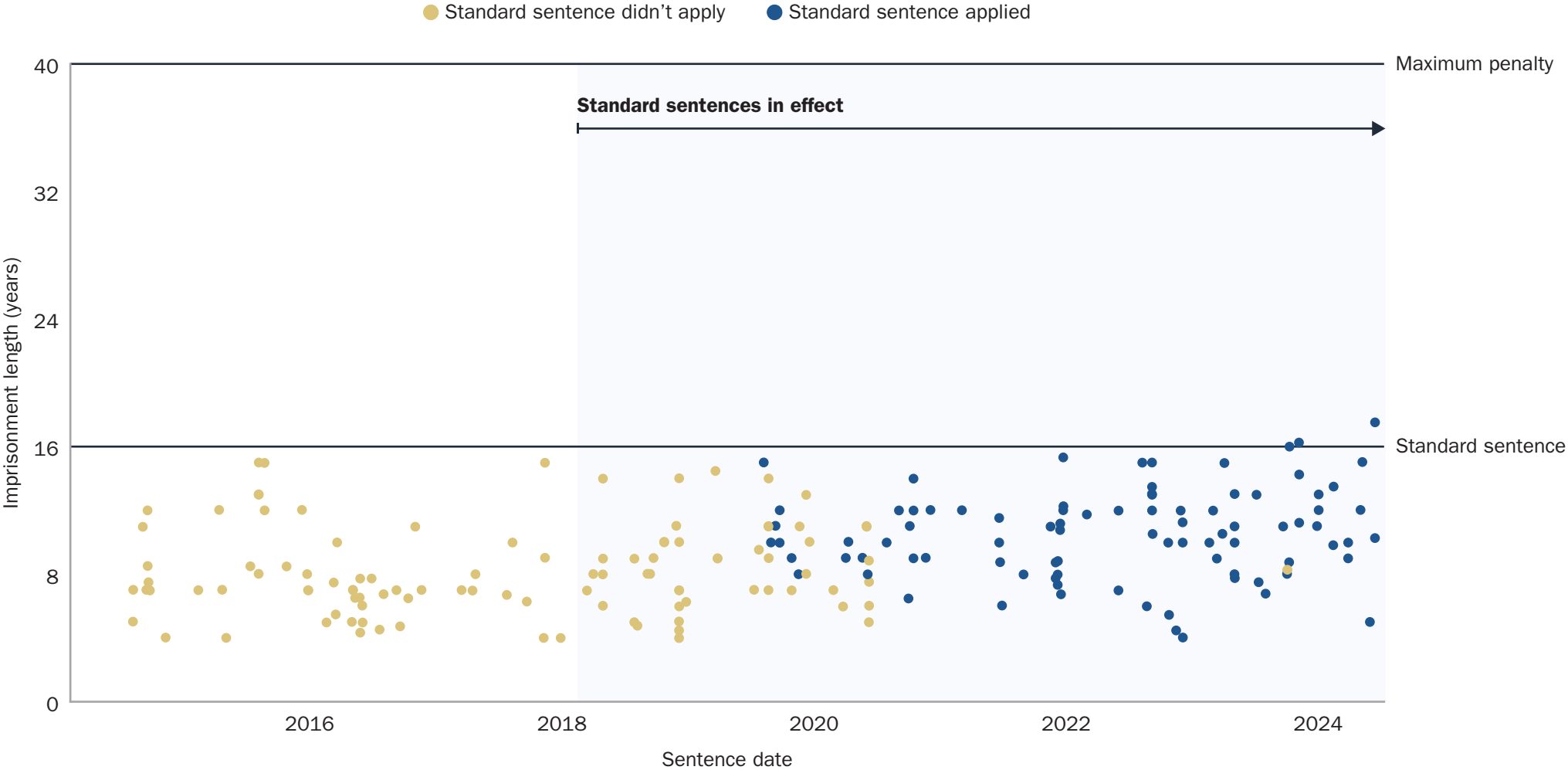
59. There were 6 charges (in 6 cases) that received 4 years' imprisonment, and the standard sentence didn't apply to 4 of these charges. Publicly available sentencing remarks are available for one of the 6 offences: *R v Lowe* [2014] VSC 543.

60. *DPP v Nguyen* [2024] VCC 872.

61. *DPP v Nguyen* [2024] VCC 872; *DPP v Teoh* [2023] VCC 2154.

62. *DPP v Sananikone* [2023] VCC 1717.

Figure 10: Scatter plot of non-aggregate imprisonment lengths for charges of trafficking in a large commercial quantity of a drug of dependence (194 charges)



Culpable driving causing death

Culpable driving causing death involves someone causing the death of another person by driving a motor vehicle in a 'culpable' way.⁶³ It is the most serious vehicular homicide offence, and it has a lesser alternative offence of dangerous driving causing death.⁶⁴ Culpable driving causing death is a category 2 offence if it was committed on or after 28 October 2018.⁶⁵ This means that courts must impose a custodial sentence (other than imprisonment with a CCO) unless the offender assists authorities, the offender had impaired mental functioning that substantially and materially reduces their culpability or would make prison substantially more burdensome for them, or there are otherwise substantial and compelling circumstances that are exceptional and rare.⁶⁶ The maximum penalty is 20 years' imprisonment, and the standard sentence is 8 years.

How many charges of culpable driving causing death were sentenced?

There were 139 charges of culpable driving causing death sentenced (in 117 cases) over the 10-year reference period (Figure 11, page 24), and the standard sentence applied to 72 of those charges (51.8%). Of the 139 charges, 137 received a prison sentence, including one charge that was part of an aggregate prison sentence. The remaining 2 charges received a youth justice centre order. Since 1 July 2020, there were just 2 charges of culpable driving causing death where the standard sentence didn't apply, and this was because the offender in each case was aged under 18 at the time of the offending.⁶⁷

63. *Crimes Act 1958* (Vic) s 318(1). Someone will be considered culpable if they were under the influence of alcohol or drugs such that they were incapable of having proper control of the vehicle, if they were grossly negligent in their driving or if they consciously and unjustifiably drove in a way that showed a disregard for creating a substantial risk of death or grievous bodily harm to another person: s 318(2).

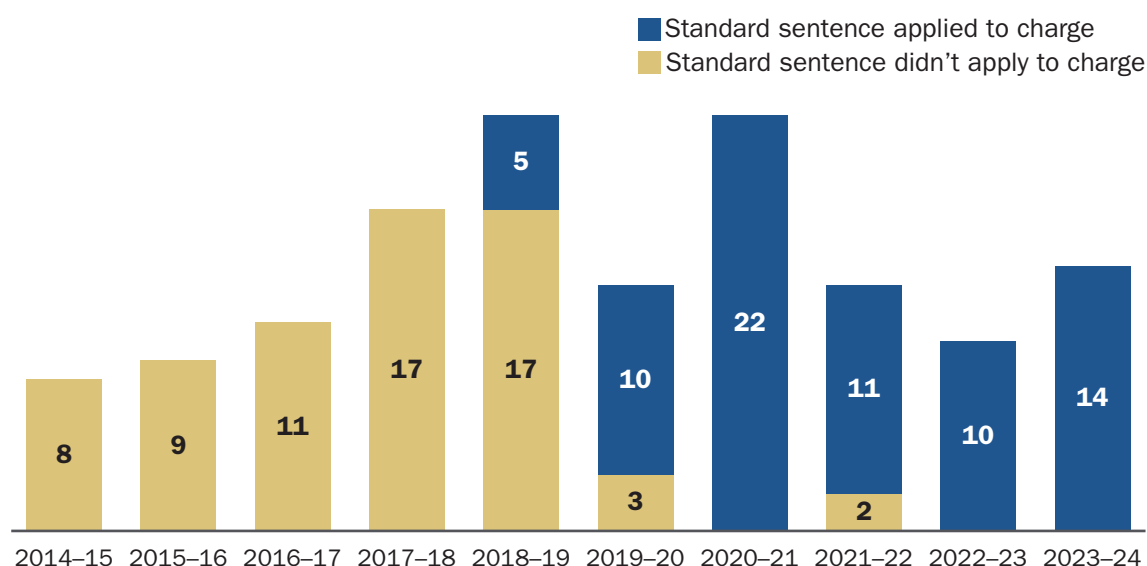
64. *Crimes Act 1958* (Vic) s 319(1).

65. *Sentencing Act 1991* (Vic) s 3(1)(ea) (definition of category 2 offence).

66. *Sentencing Act 1991* (Vic) ss 5(2H)–(2I).

67. *DPP v Gallagher (a pseudonym)* [2021] VCC 1528; *DPP v Holt (a pseudonym)* [2021] VCC 1655.

Figure 11: Number of charges of culpable driving causing death sentenced in Victoria, by financial year (139 charges)



How long were prison sentences for charges of culpable driving causing death?

Figure 12 (page 25) shows the number of charges of culpable driving causing death that received a non-aggregate prison sentence and the median imprisonment length each financial year. Overall, the median imprisonment lengths were longer where the standard sentence applied than where the standard sentence didn't apply. However, there was a slight decline in the median since the introduction of standard sentences. As with the increases in medians for other offences in this report, the overall increase in the median for culpable driving causing death follows a steady and pre-existing trend of longer prison sentences, in this instance since at least 2003.⁶⁸

68. Sentencing Advisory Council (2022), above n 13, 6, citing data from Sentencing Advisory Council, *Sentencing Trends for Culpable Driving Causing Death in the Higher Courts of Victoria 2001-02 to 2005-06*, Sentencing Snapshot 29 (2007) 3; Sentencing Advisory Council, *Sentencing Trends for Culpable Driving Causing Death in the Higher Courts of Victoria 2013-14 to 2017-18*, Sentencing Snapshot 225 (2019) 3. In the 15 years from 2002-03 to 2017-18, the average (mean) imprisonment length rose 35%, from 5 years and 8 months to 7 years and 8 months.

Figure 12: Number of non-aggregate prison sentences and median imprisonment lengths for charges of culpable driving causing death, by financial year (136 charges)

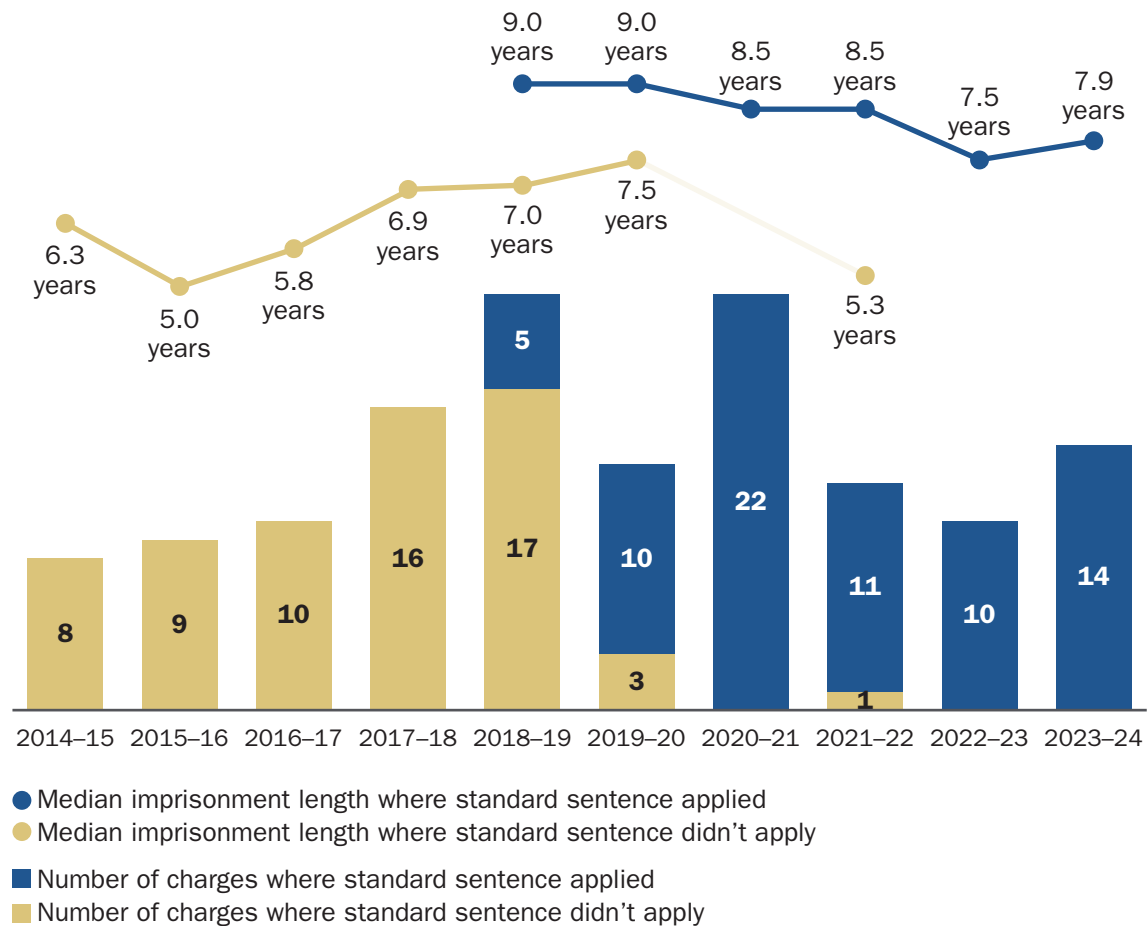
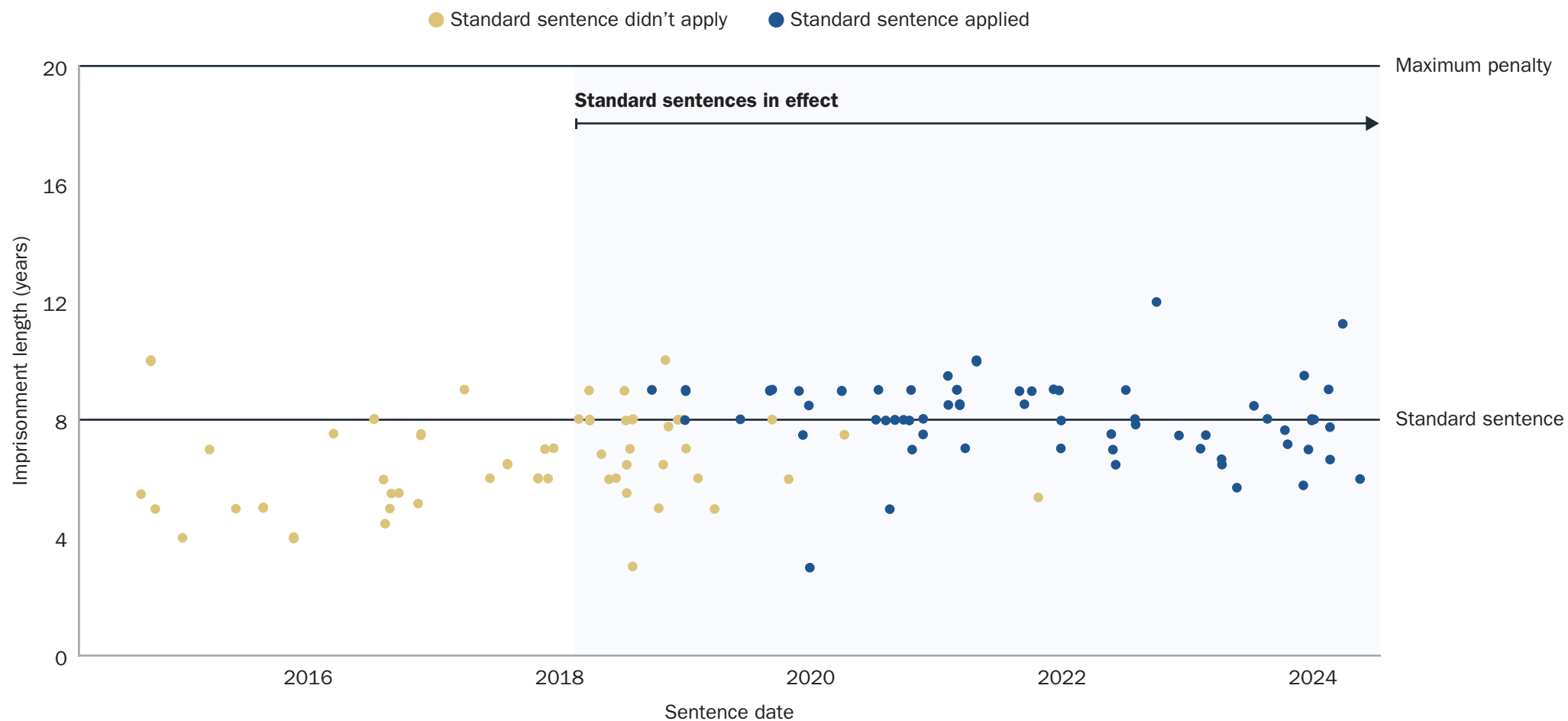


Figure 13 (page 26) shows the imprisonment lengths for the 136 charges that received a non-aggregate prison sentence. The shortest prison sentence was 3 years (in 2018–19 for a charge where the standard sentence didn't apply and in 2019–20 for a charge where the standard sentence did apply) and the longest was 12 years (in 2022–23).⁶⁹ Two-thirds of sentences where the standard sentence applied were at or above the standard sentence of 8 years (66.7% or 48 charges), twice the rate of charges where the standard sentence didn't apply (30.8% or 20 charges). Imprisonment lengths were relatively closely distributed around the standard sentence, usually within a year or two of the standard sentence of 8 years.

69. Sentencing remarks are not publicly available for the two cases resulting in 3-year prison sentences. The next shortest sentence was 4 years: *R v Bollen* [2014] VSC 651 (a charge where the standard sentence didn't apply). The 12-year prison sentence was imposed in *DPP v Hennessy* [2022] VCC 1600.

Figure 13: Scatter plot of non-aggregate imprisonment lengths for culpable driving causing death (136 charges)



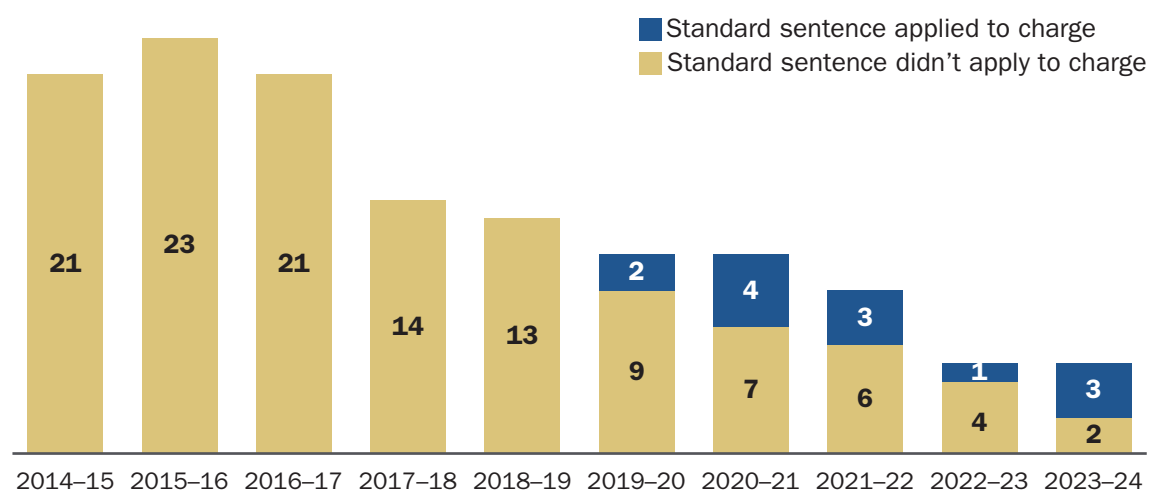
Persistent sexual abuse of a child aged under 16

Persistent sexual abuse of a child aged under 16 involves a person sexually abusing a child aged under 16 on at least three occasions during a particular period.⁷⁰ Behaviours that can constitute sexual abuse include rape, sexual penetration, sexual assault, and engaging in sexual activity in the presence of a child.⁷¹ Persistent sexual abuse of a child aged under 16 is a category 1 offence if it was committed on or after 20 March 2017. This means that a custodial sentence, other than a combined order of imprisonment with a CCO, must be imposed.⁷² The offence has a maximum penalty of 25 years' imprisonment, which is the highest maximum in Victoria for a sex offence; the same maximum applies to incest, rape and sexual penetration of a child aged under 12.⁷³ The standard sentence for persistent sexual abuse of a child aged under 16 is 10 years.⁷⁴

How many charges of persistent sexual abuse of a child aged under 16 were sentenced?

There were 133 charges of persistent sexual abuse of a child aged under 16 sentenced (in 111 cases) over the 10-year reference period (Figure 14). Of those, the standard sentence applied to just 13 charges (9.8%). Of the 120 charges where the standard sentence didn't apply, 109 charges (90.8%) received immediate imprisonment.

Figure 14: Number of charges of persistent sexual abuse of a child aged under 16 sentenced in Victoria, by financial year (133 charges)



70. *Crimes Act 1958* (Vic) s 49J(1).

71. *Crimes Act 1958* (Vic) s 49J(5).

72. *Sentencing Act 1991* (Vic) ss 3(1)(g) (definition of category 1 offence), 5(2G).

73. *Crimes Act 1958* (Vic) ss 38, 39, 49A, 50C, 50D.

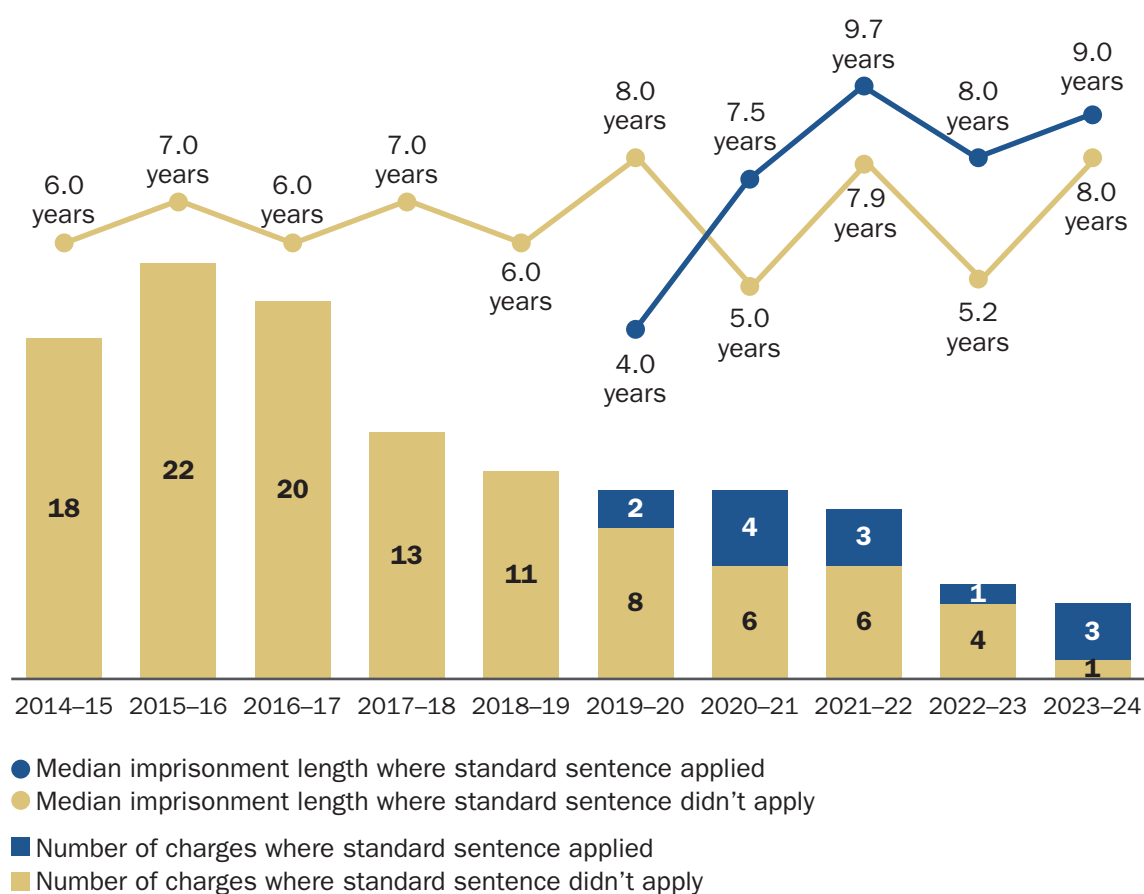
74. *Crimes Act 1958* (Vic) s 49J(2A).

Of the other 11 charges, 7 received a CCO, 2 received a wholly suspended sentence, and 2 received a partially suspended sentence.⁷⁵ All 13 offences where the standard sentence applied received immediate imprisonment.

How long were prison sentences for charges of persistent sexual abuse of a child aged under 16?

Figure 15 shows the number of charges of persistent sexual abuse of a child aged under 16 that received a non-aggregate prison sentence and the median imprisonment length each financial year. In all years other than 2019–20, the median imprisonment length was longer for charges where the standard sentence applied than for charges where the standard sentence didn't apply. However, the very low charge numbers each year make it difficult to draw reliable conclusions.

Figure 15: Number of non-aggregate prison sentences and median imprisonment lengths for charges of persistent sexual abuse of a child aged under 16, by financial year (122 charges)



75. During the reference period, suspended sentences were only available for persistent sexual abuse of a child aged under 16 if the offence was committed prior to 1 May 2011. This is because persistent sexual abuse of a child aged under 16 was a 'serious offence' within the meaning of section 3 of the *Sentencing Act 1991* (Vic); *Sentencing Amendment Act 2010* (Vic) s 12.

Figure 16 (page 30) shows the imprisonment lengths for the 122 charges that received a non-aggregate prison sentence. The shortest prison sentence was 12 months, which was imposed on 2 charges where the standard sentence didn't apply (one charge in 2016–17 and one charge in 2018–19),⁷⁶ and the 12-month prison sentence was combined with a CCO for both charges. The longest prison sentence was 13 years, which was imposed on 2 charges where the standard sentence didn't apply (one in 2015–16 and one in 2021–22).⁷⁷

Of the 13 charges where the standard sentence applied, 2 charges (15.4%) received a prison sentence of 10 years or more – that is, the prison sentence was equal to or greater than the standard sentence. One of those charges involved 27 occasions of a man sexually abusing his youngest daughter, who was aged 5 when the offending began, over a 2.5-year period (among other child sex offending, including production and dissemination of child abuse material online). He received an 11-year prison sentence for the charge of persistent sexual abuse of a child aged under 16 (Case Study 1, page 31). The other charge involved a man persistently sexually penetrating a 13-year-old boy, who was not his child, over an 8-month period. The offender received a prison sentence of 11.5 years for that offence.⁷⁸ Of the 109 charges where the standard sentence didn't apply, 14 (12.8%) resulted in a prison sentence of 10 years or more.

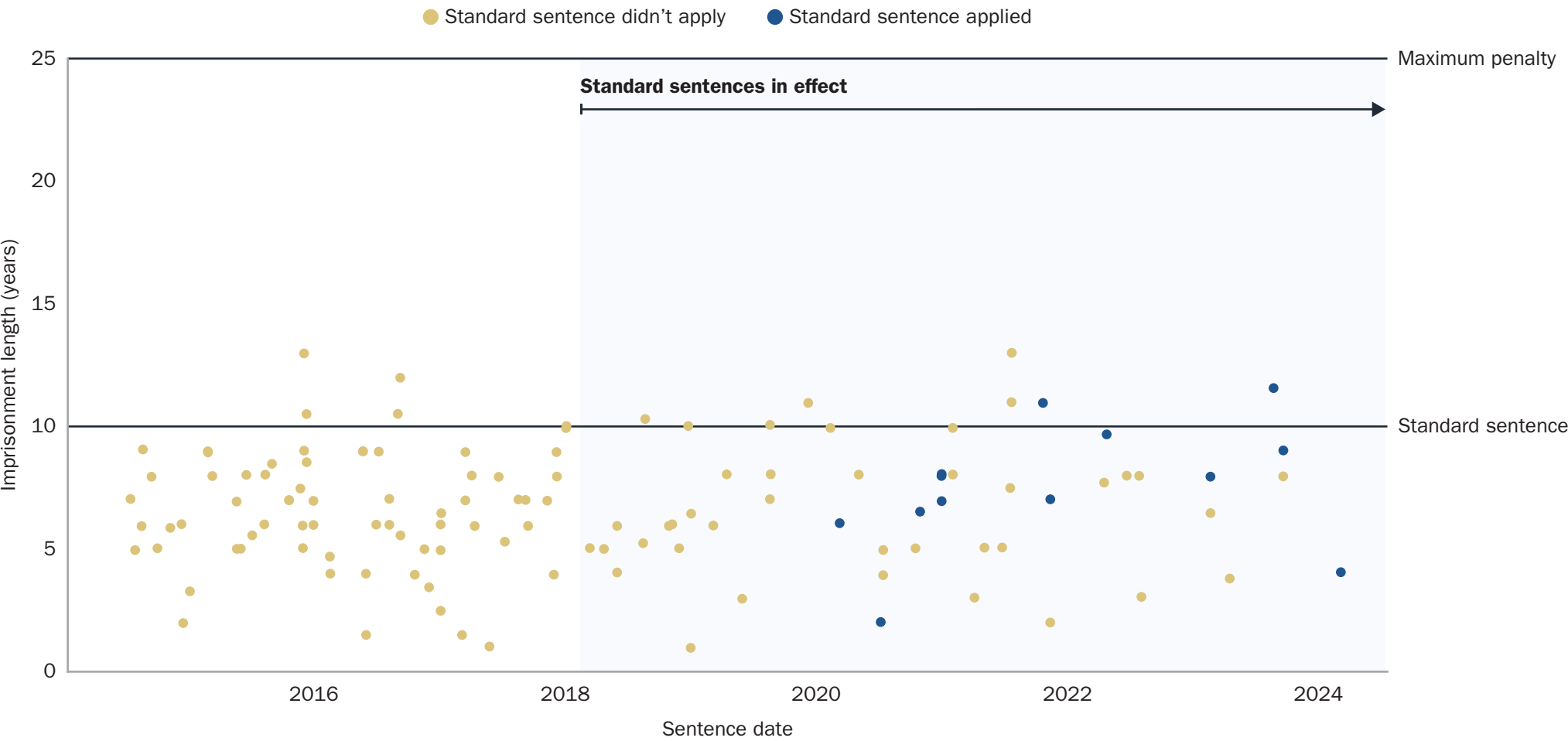
While Figure 15 shows a slight rise in median imprisonment lengths and longer median imprisonment lengths for charges where the standard sentence applied, Figure 16 shows that the distribution of imprisonment lengths has not changed a great deal.

76. Sentencing remarks are publicly available for one of these cases: *DPP v Dawson (a pseudonym)* [2017] VCC 580.

77. Sentencing remarks are publicly available for one of these cases: *DPP v Morgan (a pseudonym)* [2015] VCC 1668.

78. These 2 cases are *DPP v Murphy (a pseudonym)* [2021] VCC 1525 and *DPP v Neal* [2023] VCC 1431.

Figure 16: Scatter plot of non-aggregate imprisonment lengths for persistent sexual abuse of a child aged under 16 (122 charges)



Case Study 1: Prison sentence longer than the 10-year standard sentence for persistent sexual abuse of a child aged under 16

This case involved frequent offending over a period of 2.5 years by the offender (aged 40 when it started) against his three biological children who were aged 5, 9 and 11 when the abuse began. The offender also filmed and photographed the sexual acts and shared them on the internet.

One of the charges in the case was persistent sexual abuse of his 5-year-old daughter on 27 occasions during the 2.5-year period. Among other things, the offending included his placing her hand on his penis and masturbating, putting his penis on her lips, inserting his finger into her vagina, and rubbing his penis against her genitals, often filming the behaviour.

As to the objective gravity of his offending, the court said:

The depths of your depravity are hard to fathom ... Your offending involved a gross breach of trust ... [having] fought for sole custody of your three children, you then totally abdicated your responsibility as a father to protect and nurture them. You sexually assaulted two of them in a most egregious manner, including penetrative activity. You did not wear a condom despite repeatedly touching Emily's face, genitals and anus with your penis. You also used all three of your children as commodities to trade on the internet ... The harm you will have caused your children is immeasurable.

In mitigation, the court noted that the offender pleaded guilty and received additional mitigation for having done so during the COVID-19 pandemic.

For the charge of persistent sexual abuse of his 5-year-old daughter, the offender received a sentence of 11 years' imprisonment (one year longer than the standard sentence). The court said that 'in my view a sentence above the standard sentence is warranted'. With cumulated prison sentences for other offences in the case, the court imposed a total effective sentence of 20 years' imprisonment.

DPP v Murphy (a pseudonym) [2021] VCC 1525

Sexual penetration of a child, stepchild or lineal descendant aged under 18 (incest)

A person who engages in an act of sexual penetration with someone they know to be their own (or their partner's or spouse's) child, stepchild or lineal descendant is guilty of incest.⁷⁹ Incest is a category 1 offence if it was committed on or after 20 March 2017. This means that a custodial sentence, other than a combined order of imprisonment with a CCO, must be imposed.⁸⁰ Incest carries a maximum penalty of 25 years' imprisonment, and the standard sentence is 10 years.

In 2016, the Court of Appeal held that sentencing for this offence 'does not reflect the objective gravity of such offending or the moral culpability of the offender' and that 'sentences imposed devalue the objective gravity of the offence, as informed by the egregious breach of trust and the appalling consequences for victims'.⁸¹ The court concluded that '[s]entences for incest offences of mid-range seriousness must be adjusted upwards'.⁸² Moreover, the High Court later ruled (in the same case) that if sentencing practices are manifestly inadequate, they should increase immediately, not incrementally.⁸³ We examined sentencing practices for incest in a 2021 report and found that prison sentences had increased significantly in the years after these decisions.⁸⁴

How many charges of incest were sentenced?

There were 811 charges of incest sentenced (in 277 cases) over the 10-year reference period (Figure 17, page 33). Of those 811 charges, 794 received a prison sentence (3 prison sentences were part of an aggregate prison sentence). The standard sentence didn't apply to the remaining 17 charges. Those charges received a wholly suspended sentence (8 charges), a partially suspended sentence (2 charges), a CCO (4 charges) and unconditional release (3 charges). The standard sentence applied to 146 of the 811 charges (18.0%), and all 146 charges received a non-aggregate prison sentence. In almost all years since the introduction of standard sentences, the standard sentence *didn't apply* to most charges of incest, highlighting how commonly incest is sentenced many years after its occurrence.

79. *Crimes Act 1958* (Vic) ss 50C, 50D. There were significant reforms to sex offences in Victoria that took effect in July 2017, replacing the previous suite of sex offences with new iterations: *Crimes Amendment (Sexual Offences) Act 2016* (Vic). Prior to 1 July 2017, the offence of incest was located in sections 44(1)–(2) of the *Crimes Act 1958* (Vic) (repealed).

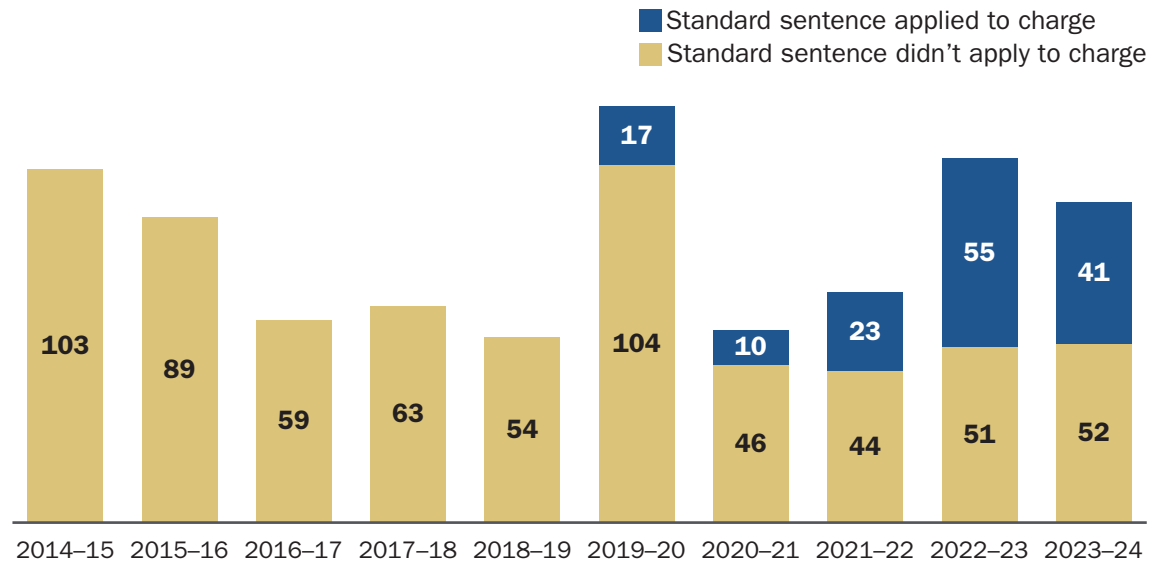
80. *Sentencing Act 1991* (Vic) ss 3(1)(f) (definition of category 1 offence), 5(2G).

81. *DPP v Dalglish (a pseudonym)* [2016] VSCA 148, [64], [123].

82. *DPP v Dalglish (a pseudonym)* [2016] VSCA 148, [128].

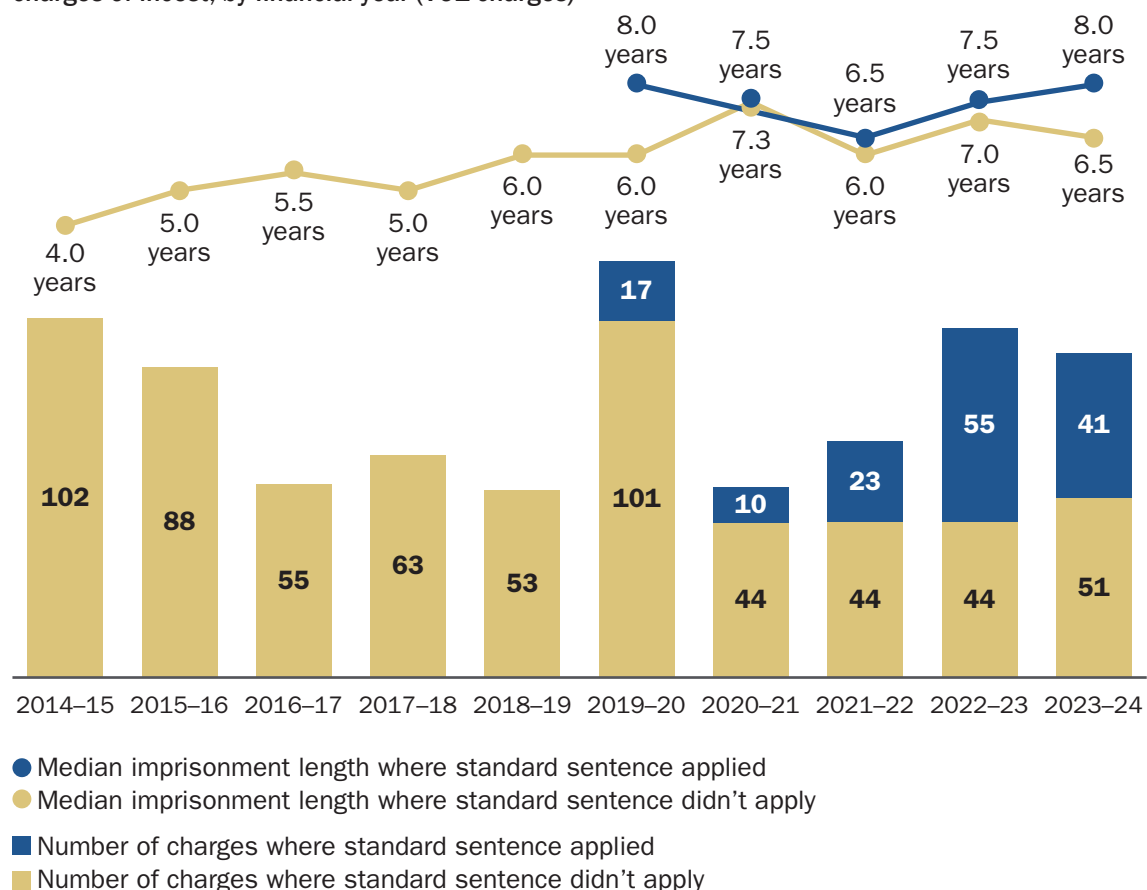
83. *DPP v Dalglish (a pseudonym)* [2017] HCA 41, [67]–[68] ('An offender can have no expectation of a manifestly inadequate sentence' and offenders who plead guilty are not 'entitled to be sentenced by reference to an erroneous understanding of the principles bearing upon the fixing of a just sentence').

84. Sentencing Advisory Council (2021), above n 42, 38–42. The average imprisonment length rose 73%, from 4 years in 2015 to 6 years and 11 months in 2019.

Figure 17: Number of charges of incest sentenced in Victoria, by financial year (811 charges)

How long were prison sentences for incest?

Figure 18 shows the number of charges of incest that received a non-aggregate prison sentence and the median imprisonment length each financial year. For offences where

Figure 18: Number of non-aggregate prison sentences and median imprisonment lengths for charges of incest, by financial year (791 charges)

the standard sentence didn't apply, the median increased by 62.5% over the period (from 4.0 years in 2014–15 to 6.5 years in 2023–24), with much of that increase occurring prior to the introduction of standard sentences. For offences where the standard sentence applied, the median was relatively stable, fluctuating between 6.5 and 8.0 years. In the years following the introduction of standard sentences, the median was comparable between charges where the standard sentence applied and where it didn't, though the median tended to be slightly longer for charges where the standard sentence applied.

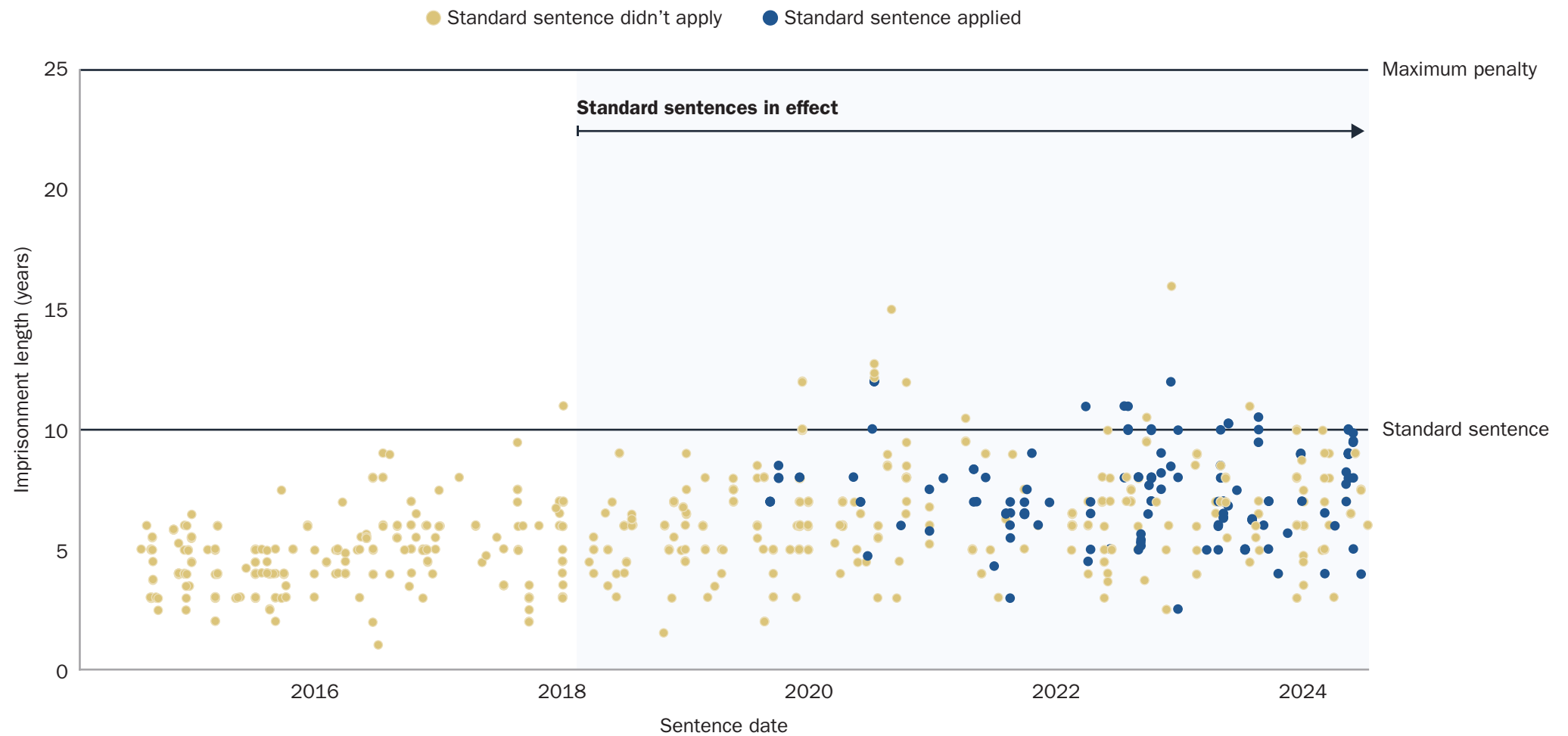
Figure 19 (page 35) shows the imprisonment lengths for all 791 charges of incest that received a non-aggregate prison sentence. The shortest prison sentence for a charge of incest was 12 months (in 2015–16).⁸⁵ The longest prison sentence was 16 years (imposed in 2022 for a course of conduct charge covering behaviour that occurred over a seven-year period where the standard sentence didn't apply) and the second longest was 15 years (imposed in 2021, also for a course of conduct charge where the standard sentence didn't apply).⁸⁶

Charges where the standard sentence applied were more likely to receive a prison sentence equal to or longer than the standard sentence of 10 years (21 of 146 charges or 14.4%) than charges where the standard sentence didn't apply (32 of 645 charges or 5.0%). The distributions gradually rose over time for charges where the standard sentence both did and didn't apply. This is consistent with a pre-existing trend of longer prison sentences for incest since at least 2003.⁸⁷ Although charges where the standard sentence applied, on average, received slightly longer sentences, there was no clear distinction between charges where the standard sentence applied and charges where it didn't. Charges where the standard sentence *didn't* apply received some of the shortest *and* the longest prison sentences each year.

85. Sentencing remarks are not publicly available for the case resulting in a 12-month prison sentence for incest. The next shortest prison sentence was 18 months in *DPP v Sampson (a pseudonym)* [2018] VCC 2012.

86. *DPP v Hudnall (a pseudonym)* [2022] VCC 2079. The next longest sentence was 15 years' imprisonment, also for a course of conduct charge: *DPP v Tullipan (a pseudonym)* [2021] VSCA 191.

87. Sentencing Advisory Council (2022), above n 13, 18, citing data from Sentencing Advisory Council, *Sentencing Trends for Incest in the Higher Courts of Victoria 2002–03 to 2006–07*, Sentencing Snapshot 43 (2008) 3; Sentencing Advisory Council, *Sentencing Trends for Incest in the Higher Courts of Victoria 2017–18 to 2021–22*, Sentencing Snapshot 284 (2023) 3. In the 15 years from 2002–03 to 2017–18, the average (mean) imprisonment length rose by 50%, from 3 years and 10 months to 5 years and 9 months.

Figure 19: Scatter plot of non-aggregate imprisonment lengths for incest (791 charges)

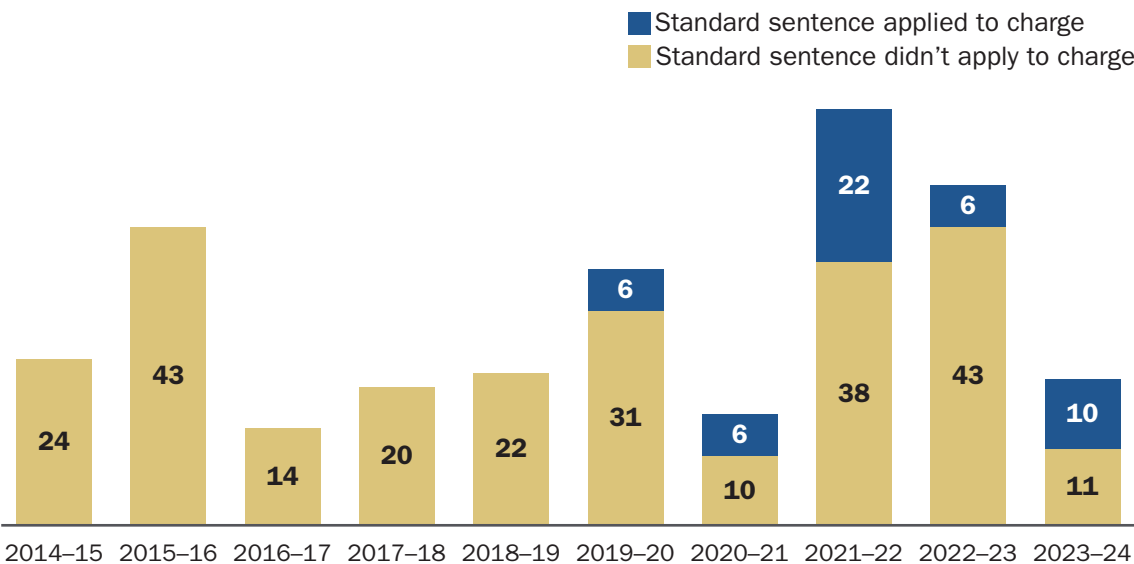
Sexual penetration of a child aged under 12

The offence of sexual penetration of a child aged under 12⁸⁸ involves someone engaging in an act of sexual penetration with a child aged under 12, including circumstances where the offender penetrates a child or the offender causes or allows a child to penetrate themselves, the offender, or another person.⁸⁹ Sexual penetration of a child aged under 12 is a category 1 offence if it was committed on or after 20 March 2017. This means that a custodial sentence, other than a combined order of imprisonment with a CCO, must be imposed.⁹⁰ Sexual penetration of a child aged under 12 has a maximum penalty of 25 years' imprisonment and a standard sentence of 10 years.

How many charges of sexual penetration of a child aged under 12 were sentenced?

There were 306 charges of sexual penetration of a child aged under 12 sentenced (in 158 cases) over the 10-year reference period (Figure 20). The standard sentence applied to 50 of those 306 charges (16.3%).

Figure 20: Number of charges of sexual penetration of a child aged under 12 sentenced in Victoria, by financial year (306 charges)



88. *Crimes Act 1958* (Vic) s 49A.

89. The offence of sexual penetration of a child aged under 12 has changed over time. From 22 November 2000 to 30 June 2017, this offence was combined with the offence of sexual penetration of a child aged 12 to 15 and known as 'sexual penetration with a child aged under 16' (*Crimes Act 1958* (Vic) s 45(1) (repealed)).

90. *Sentencing Act 1991* (Vic) ss 3(1)(f) (definition of category 1 offence), 5(2G).

Table 2 shows the sentence types imposed for charges of sexual penetration of a child aged under 12. Of the 306 charges sentenced, 262 received a prison sentence (4 prison sentences were part of an aggregate prison sentence, and 4 prison sentences were combined with a CCO). The 'other' sentence types in Table 2 include 11 CCOs, 16 wholly suspended sentences, 7 partially suspended sentences, 6 youth justice centre orders and 4 adjourned undertakings.

Table 2: Sentencing outcomes for charges of sexual penetration of a child aged under 12, sentenced in Victoria

Sentence type	Charges where the standard sentence applied	Charges where the standard sentence didn't apply	Total
Total imprisonment	213	49	262
Non-aggregate prison sentence	207	48	255
Aggregate prison sentence	3	0	3
Non-aggregate prison sentence combined with a CCO	3	0	3
Aggregate prison sentence combined with a CCO	0	1	1
Other	43	1	44
Total	256	50	306

How long were prison sentences for sexual penetration of a child aged under 12?

Figure 21 (page 38) shows the number of charges of sexual penetration of a child aged under 12 that received a non-aggregate prison sentence and the median imprisonment length each year. The median imprisonment length for charges where the standard sentence applied was consistently and notably longer than the median for charges where the standard sentence didn't apply. The median has moved for charges where the standard sentence both did and didn't apply, but there is no clear upward trend.

Figure 21: Number of non-aggregate prison sentences and median imprisonment lengths for charges of sexual penetration of a child aged under 12, by financial year (258 charges)

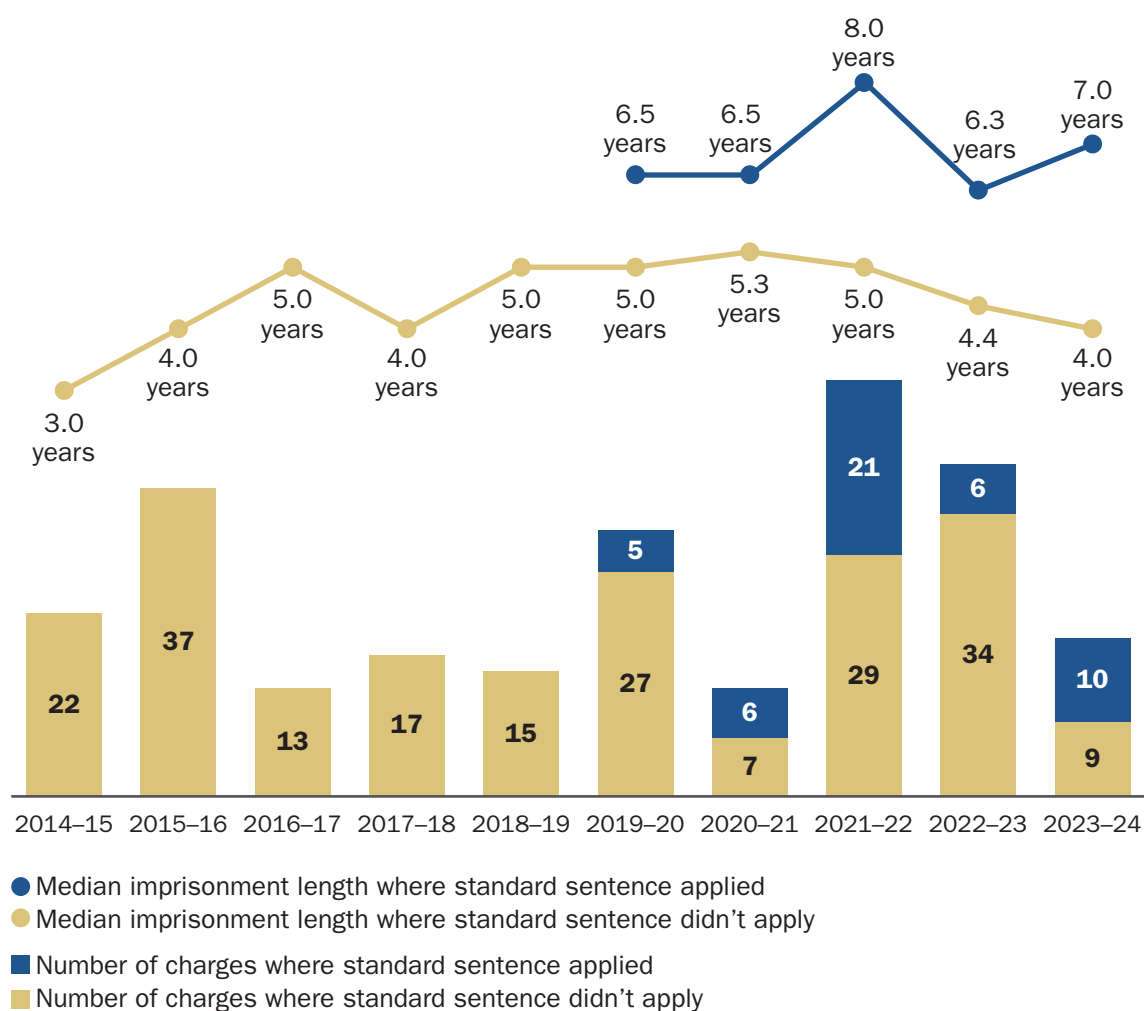
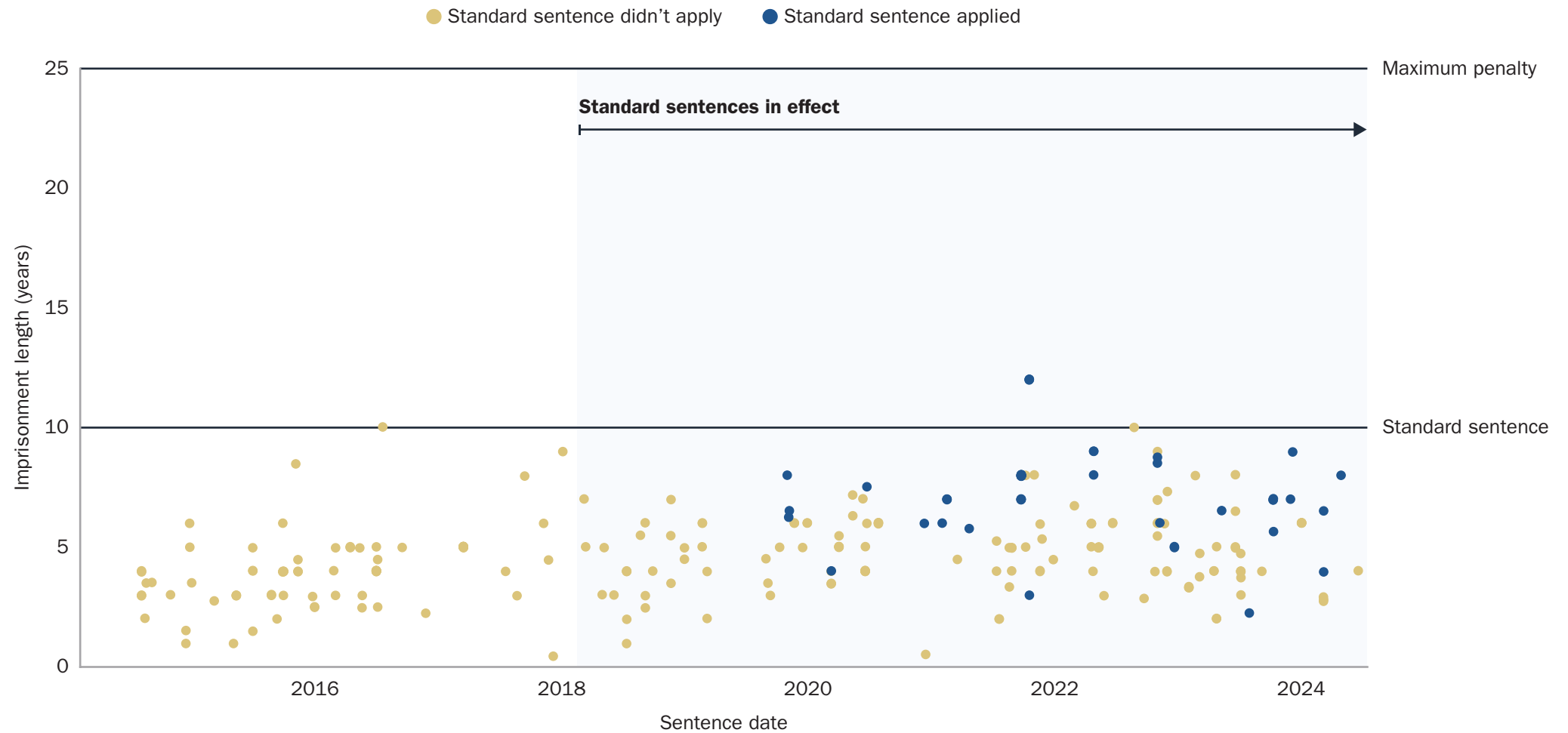


Figure 22 (page 39) shows the imprisonment lengths for the 258 charges that received a non-aggregate prison sentence. The vast majority of charges (98.1%) received a sentence shorter than the standard sentence of 10 years. Further, almost half of all charges (45.7%) received a sentence shorter than 5 years (half the standard sentence). The shortest prison sentence was 5 months⁹¹ (in 2017–18). Of the 5 charges that received a prison sentence of 10 years or more, the longest prison sentence was 12 years. A 12-year prison sentence was imposed on each of 3 charges where the standard sentence applied in a single case (Case Study 2, page 40).⁹² These were the only charges of sexual penetration of a child aged under 12 to receive a prison sentence that exceeded the standard sentence of 10 years during the reference period. The next longest prison sentence was 10 years, which was imposed on 2 charges (the standard sentence didn't apply to either charge).

91. *DPP v Scott* [2017] VCC 1815.

92. *DPP v Case (a pseudonym)* [2021] VCC 1488.

Figure 22: Scatter plot of non-aggregate imprisonment lengths for sexual penetration of a child aged under 12 (258 charges)



Case Study 2: Prison sentence longer than the 10-year standard sentence for sexual penetration of a child aged under 12

This case involved an offender who was found guilty by a jury of causing a six-year-old boy with autism, ADHD and an early learning development disability, to orally and digitally penetrate the boy's mother (the offending was filmed). The offender had previously been sentenced for 43 offences of sexual intercourse with a 13-year-old girl while he was aged between 23 and 24. The mother was separately sentenced for her role in the offending.

As to the objective gravity of the offending, the court said:

I have no hesitation in determining that the offending here ... is more serious than the middle of the range of seriousness for these offences.

The court imposed prison sentences of 12 years on each of the 3 charges. The court imposed a total effective sentence of 13.5 years' imprisonment, with cumulated prison sentences for the 3 charges and other offences in the case.

DPP v Case (a pseudonym) [2021] VCC 1488

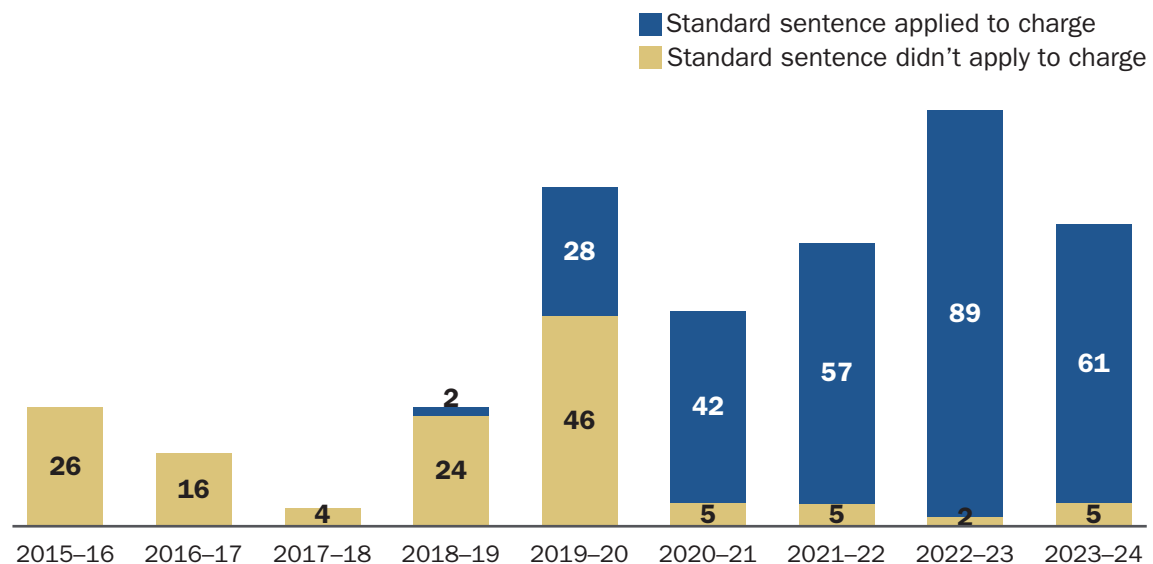
Sexual penetration of a child aged 12 to 15

The offence of sexual penetration of a child aged 12 to 15⁹³ involves a person engaging in an act of sexual penetration with a child between the ages of 12 and 15 including circumstances where the offender penetrates a child or causes or allows a child to penetrate themselves, the offender, or another person. The offence has a maximum penalty of 15 years' imprisonment and a standard sentence of 6 years.⁹⁴

How many charges of sexual penetration of a child aged 12 to 15 were sentenced?

There were 412 charges of sexual penetration of a child aged 12 to 15 sentenced (in 201 cases) over the 10-year reference period (Figure 23).⁹⁵ The standard sentence applied to 279 of those 412 charges (67.7%).

Figure 23: Number of charges of sexual penetration of a child aged 12 to 15 sentenced in Victoria, by financial year (412 charges)



93. *Crimes Act 1958* (Vic) s 49B.

94. The offence of sexual penetration of a child aged 12 to 15 has changed over time. From 22 November 2000 to 30 June 2017, this offence was combined with the offence of sexual penetration of a child aged under 12 and known as 'sexual penetration with a child aged under 16' (*Crimes Act 1958* (Vic) s 45(1) (repealed)). Charges under this repealed provision have only been included where the victim was aged between 12 and 15 and was under the care, supervision or authority of the offender because a maximum penalty of 15 years applied in those circumstances.

95. No charges with a 15-year maximum penalty were sentenced in 2014-15.

Table 3 shows the sentence types imposed on those 412 charges, with 318 charges receiving a prison sentence (8 prison sentences were part of an aggregate prison sentence, and 36 prison sentences were combined with a CCO). One charge received a fine in addition to a prison sentence. The 'other' sentence types in Table 3 include 79 CCOs, 11 youth justice centre orders, 3 adjourned undertakings and one partially suspended sentence. The imprisonment rate was lower for charges of this offence where the standard sentence applied (76.7%) than for charges of this offence where the standard sentence didn't apply (78.2%).

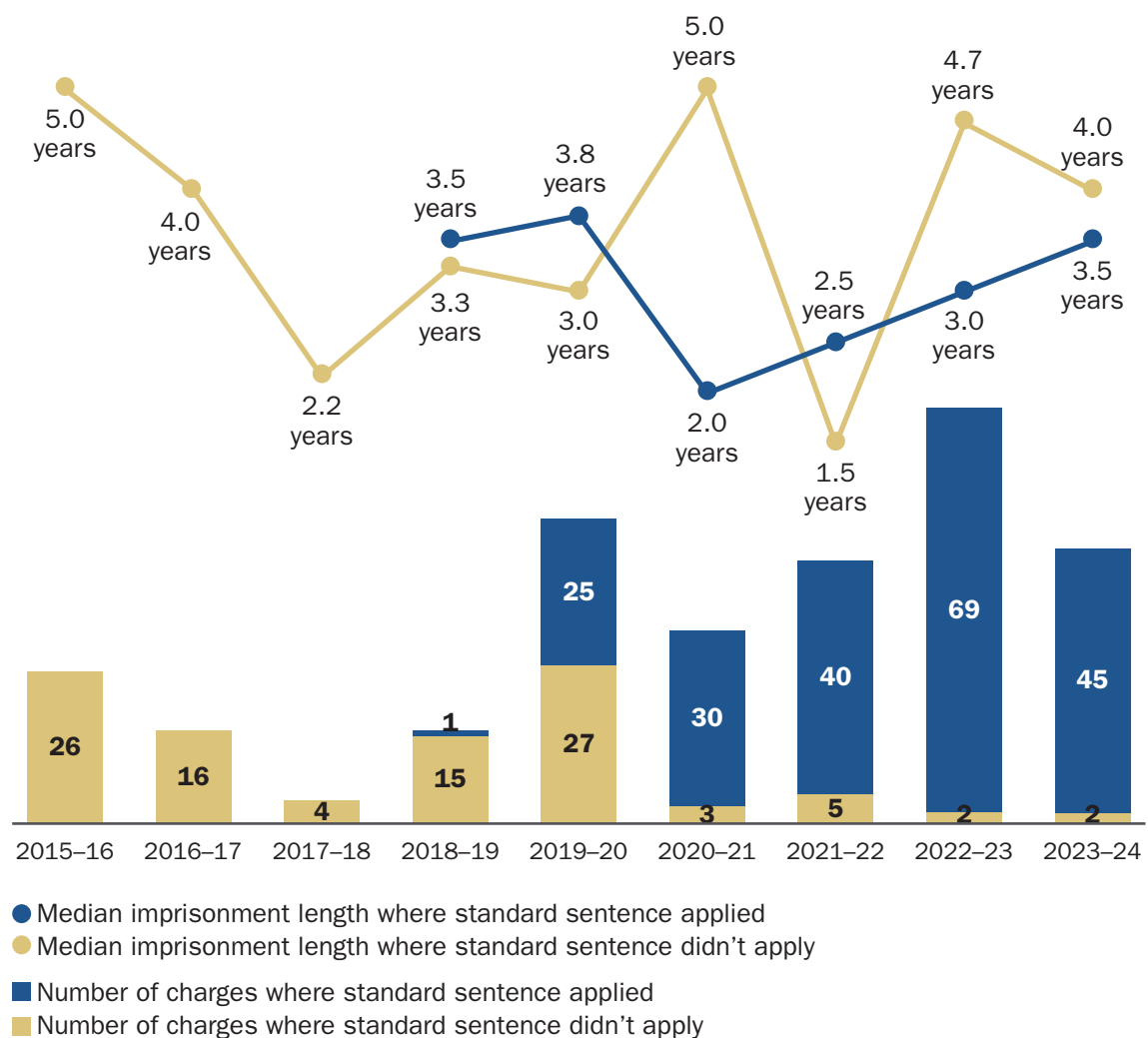
Table 3: Sentencing outcomes for charges of sexual penetration of a child aged 12 to 15, sentenced in Victoria

Sentence type	Charges where the standard sentence applied	Charges where the standard sentence didn't apply	Total
Total imprisonment	104	214	318
Non-aggregate prison sentence	91	190	281
Non-aggregate prison sentence combined with a CCO	8	20	28
Aggregate prison sentence combined with a CCO	4	4	8
Non-aggregate prison sentence combined with a fine	1	0	1
Other	29	65	94
Total	133	279	412

How long were prison sentences for charges of sexual penetration of a child aged 12 to 15?

Figure 24 shows the number of charges of sexual penetration of a child aged 12 to 15 that received a non-aggregate prison sentence and the median imprisonment length each year. Median imprisonment lengths for charges where the standard sentence both did and didn't apply were particularly volatile, with no clear trend. This volatility follows a steady and pre-existing trend of longer prison sentences for sexual penetration of a child aged 12 to 15 since at least 2003.⁹⁶

Figure 24: Number of non-aggregate prison sentences and median imprisonment lengths for charges of sexual penetration of a child aged 12 to 15, by financial year (310 charges)



96. Sentencing Advisory Council (2022), above n 13, 18, citing data from Sentencing Advisory Council, *Sentencing Trends for Sexual Penetration of a Child Aged Between 10 and 16 in the Higher Courts of Victoria 2001-02 to 2005-06*, Sentencing Snapshot 31 (2007) 4; Sentencing Advisory Council, *Sentencing Trends for Sexual Penetration of a Child Aged 12 to under 16 in the Higher Courts of Victoria 2017-18 to 2021-22*, Sentencing Snapshot 282 (2023) 4.

Figure 25 (page 45) shows the imprisonment lengths for the 310 charges that received a non-aggregate prison sentence. Of those 310 charges, 10 received a prison sentence of 6 months or less (8 prison sentences were combined with a CCO, and one was combined with a fine). The shortest prison sentence was 42 days and was combined with a CCO.⁹⁷ The longest prison sentence was 8 years and 6 months (the standard sentence applied to the charge) for offending against the offender's 12-year-old niece that resulted in a pregnancy.⁹⁸

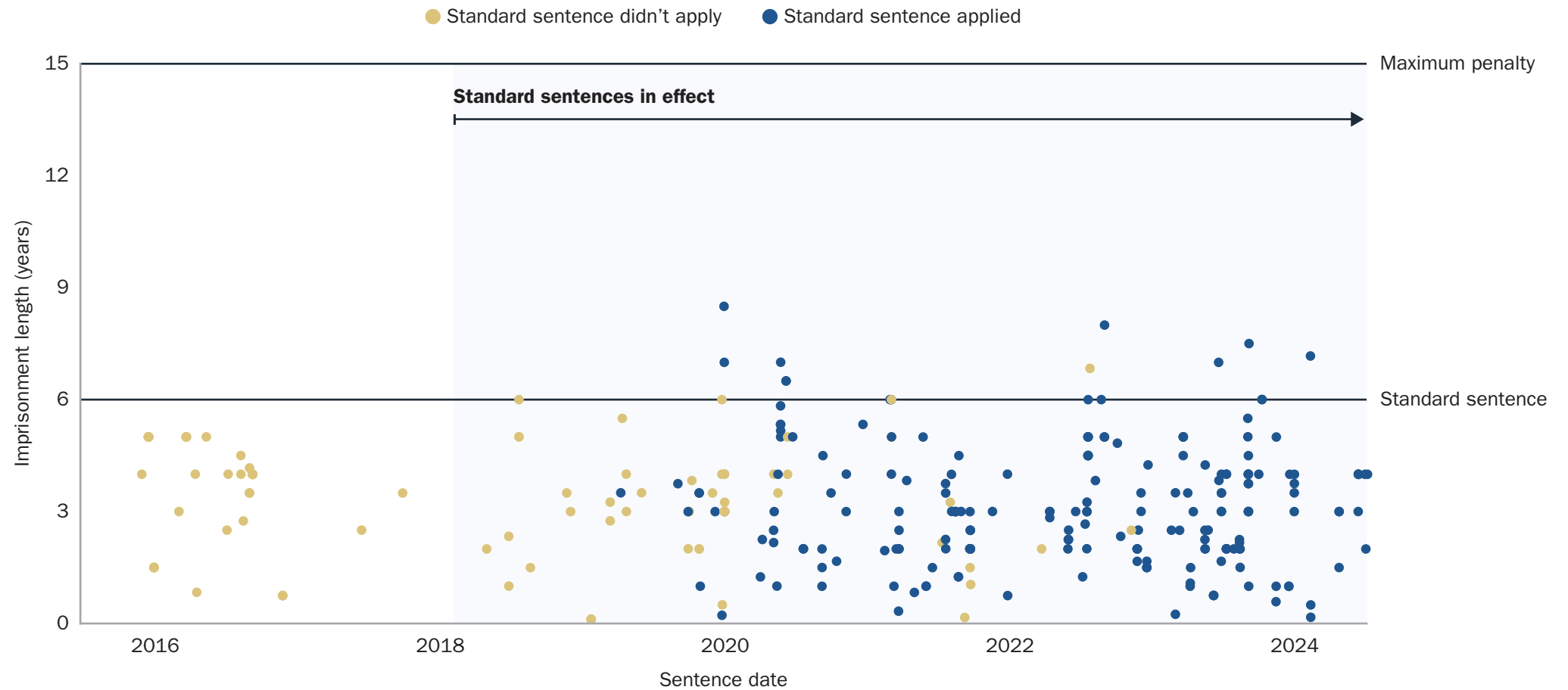
Charges where the standard sentence applied were more than twice as likely to receive a sentence of 6 years or more – that is, a prison sentence equal to or greater than the standard sentence – as charges where the standard sentence didn't apply (7.6% or 16 of 210 charges compared to 3.0% or 3 of 100 charges).

While there is no clear trend in median imprisonment lengths in Figure 24, Figure 25 shows that the distribution of imprisonment lengths has widened since the introduction of standard sentences, coinciding with an increase in charge volumes. That is, charges where the standard sentence applied have lifted the ceiling on imprisonment lengths received for sexual penetration of a child aged 12 to 15. However, the distribution of imprisonment lengths remains heavily skewed to the lower end of the available range.

In the 15 years from 2002–03 to 2017–18, the average (mean) imprisonment length rose 31%, from 2 years and 5 months to 3 years and 2 months (the results in the 2022 report differ because the report exclusively examined sentences for charges that were the principal offence in the case).

97. Sentencing remarks are not publicly available for the case with the 42-day prison sentence. The shortest prison sentence with available sentencing remarks was 3 months: *DPP v Macfarlan (a pseudonym)* [2023] VCC 226. The court in *Macfarlan* said that the 'offending and circumstances of the offending are significantly less than the objective features relevant to the standard sentence': at [64].
98. A sentence of 6 years and 10 months in *DPP v Amaral (a pseudonym)* [2019] VCC 2178 was increased to 8 years and 6 months on appeal in *DPP v Amaral* [2020] VSCA 290. The court at first instance said that it 'consider[ed] the whole of [the] offending to be very serious and [the offender's] moral culpability to be high': at [57].

Figure 25: Scatter plot of non-aggregate imprisonment lengths for sexual penetration of a child aged 12 to 15 (310 charges)



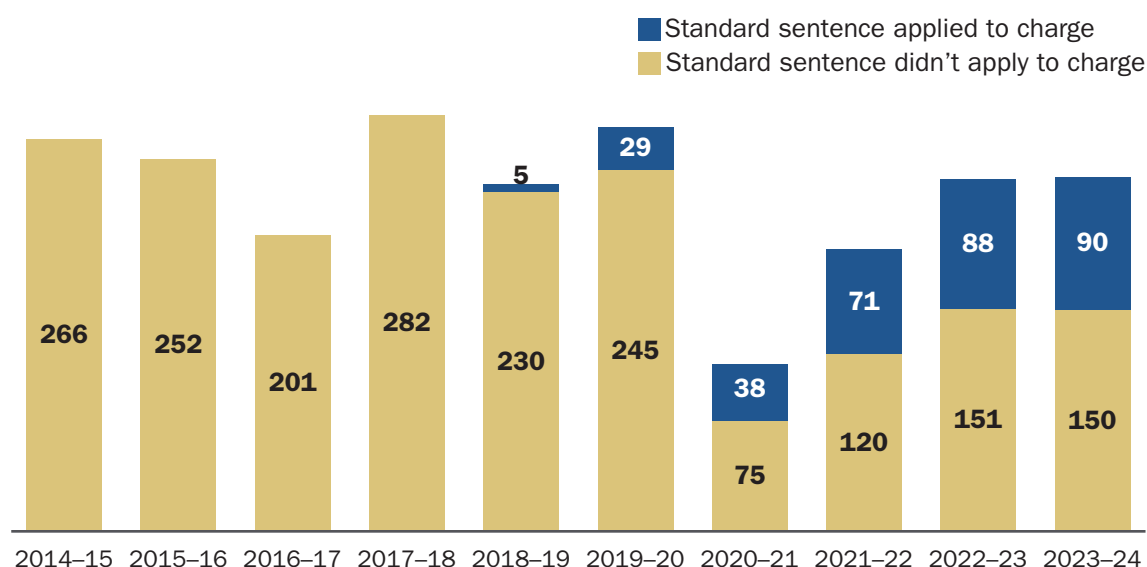
Sexual assault of or sexual activity in the presence of a child aged under 16

Sexual assault of or sexual activity in the presence of a child aged under 16 involves a person engaging in any act of sexual activity with or in the presence of a child aged under 16. Prior to 1 July 2017, all instances of this offending were classified under a single statutory provision.⁹⁹ Depending on the circumstances, offending on or after 1 July 2017 constitutes sexual assault of a child aged under 16,¹⁰⁰ sexual activity in the presence of a child aged under 16¹⁰¹ or causing a child aged under 16 to be present during sexual activity.¹⁰² These offences carry a maximum penalty of 10 years' imprisonment and a standard sentence of 4 years.

How many charges of sexual assault of or sexual activity in the presence of a child aged under 16 were sentenced?

There were 2,293 charges of sexual assault of or sexual activity in the presence of a child aged under 16 sentenced (in 808 cases) in the higher courts over the 10-year reference period (Figure 26). The standard sentence applied to 321 of those 2,293 charges (14.0%). Even as of 2023–24, it was more common for the standard sentence *not* to apply, usually because the offending had occurred prior to the introduction of standard sentences in 2018.

Figure 26: Number of charges of sexual assault of or sexual activity in the presence of a child aged under 16 sentenced in the higher courts, by financial year (2,293 charges)



99. *Crimes Act 1958* (Vic) s 47 (repealed).

100. *Crimes Act 1958* (Vic) s 49D.

101. *Crimes Act 1958* (Vic) s 49F.

102. *Crimes Act 1958* (Vic) s 49H.

Table 4 shows the sentence types imposed for all charges sentenced in the higher courts. Of the 2,293 charges, 1,891 (82.5%) received a prison sentence; 131 prison sentences were combined with a CCO, and 9 were part of an aggregate prison sentence. The 'other' sentence types in Table 4 include 204 CCOs, 97 wholly suspended sentences, 42 partially suspended sentences, 16 unconditional releases, 15 adjourned undertakings, 13 youth justice centre orders, 8 fines, 6 discharges and one residential treatment order. The imprisonment rate was higher for charges of this offence where the standard sentence applied (92.2%) than for charges where the standard sentence didn't apply (80.9%).

Table 4: Sentencing outcomes for charges of sexual assault of or sexual activity in the presence of a child aged under 16, sentenced in the Victorian higher courts

Sentence type	Charges where the standard sentence applied	Charges where the standard sentence didn't apply	Total
Total imprisonment	1,595	296	1,891
Non-aggregate prison sentence	1,487	271	1,758
Aggregate prison sentence	2	0	2
Non-aggregate prison sentence combined with a CCO	100	24	124
Aggregate prison sentence combined with a CCO	6	1	7
Other	377	25	402
Total	1,972	321	2,293

How long were prison sentences for charges of sexual assault of or sexual activity in the presence of a child aged under 16?

Sentencing outcomes in the higher courts

Figure 27 (page 48) shows the number of charges of sexual assault of or sexual activity in the presence of a child aged under 16 that received a non-aggregate prison sentence in the higher courts and the median imprisonment length each financial year:

The median imprisonment length remained stable at one year from 2014–15 to 2017–18 before increasing to 1.5 years in 2018–19, following the introduction of the standard sentence. The median imprisonment length was also stable for charges where the standard sentence applied, ranging between 1.5 and 2.5 years across the period and sitting slightly higher than the median for charges where the standard sentence didn't apply.

Figure 27: Number of non-aggregate prison sentences and median imprisonment lengths for charges of sexual assault of or sexual activity in the presence of a child aged under 16 in the higher courts, by financial year (1,882 charges)

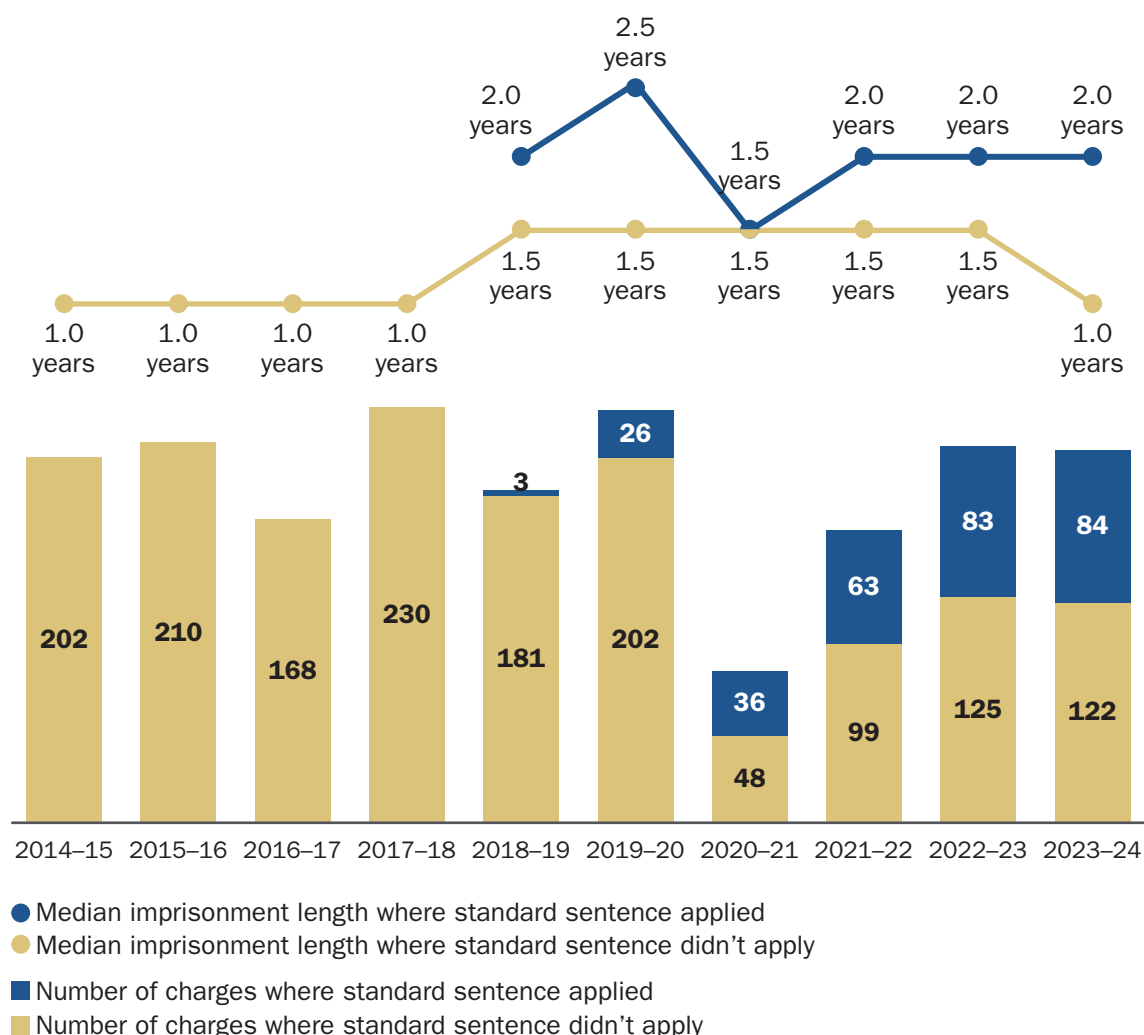


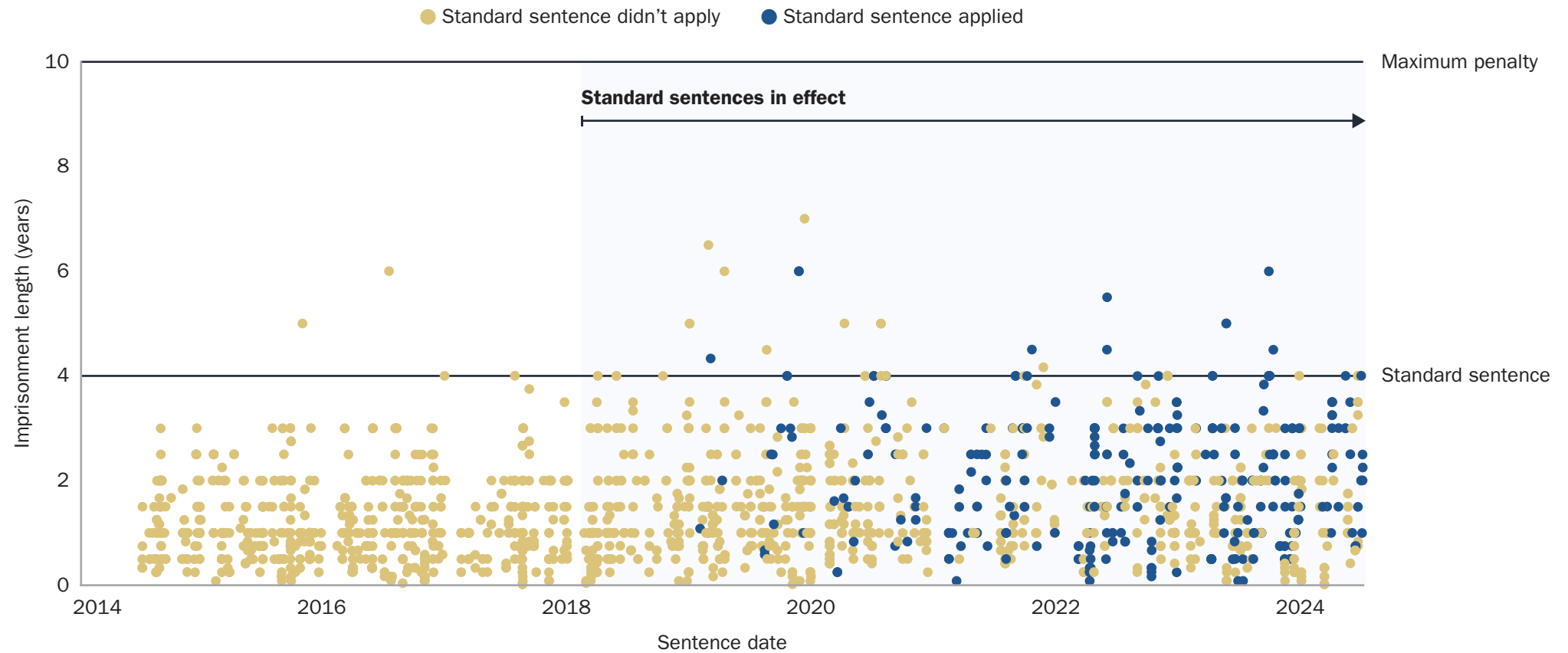
Figure 28 (page 49) shows the imprisonment lengths for the 1,882 charges that received a non-aggregate prison sentence. The standard sentence applied to 297 of those 1,882 charges. The shortest prison sentence was 7 days.¹⁰³ The longest prison sentence was 7 years, imposed on a rolled-up charge in a case with extensive child sex offending. The standard sentence didn't apply to this charge.¹⁰⁴

Charges where the standard sentence applied were much more likely to receive a prison sentence of 4 years or more – that is, a prison sentence equal to or greater than the standard sentence – than charges where the standard sentence didn't apply (9.5% or 28 of 295 charges compared to 2.0% or 31 of 1,587 charges).

103. A prison sentence of 7 days was imposed on each of 3 charges in one case in the context of other offending that resulted in a total effective sentence of 9 months' imprisonment: *DPP v Movel (a pseudonym)* [2024] VCC 193.

104. *DPP v Trangle (a pseudonym)* [2019] VCC 2052.

Figure 28: Scatter plot of non-aggregate imprisonment lengths for sexual assault of or sexual activity in the presence of a child aged under 16 (1,882 charges)

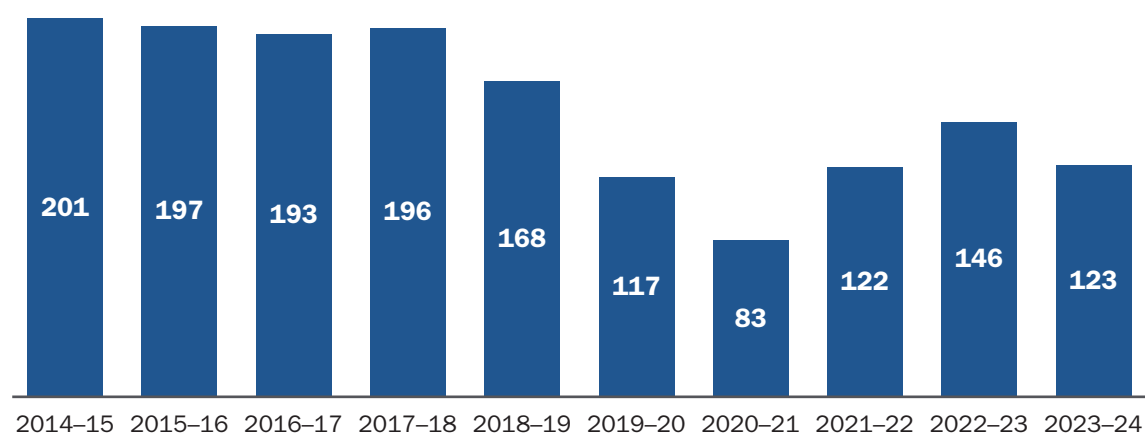


Sentencing outcomes in the Magistrates' Court

Sexual assault of or sexual activity in the presence of a child aged under 16 may also be tried summarily in the Magistrates' Court, but the standard sentence doesn't apply in that jurisdiction. These charges are included as a point of comparison to the charges sentenced in the higher courts.

Figure 29 shows the 1,546 charges of sexual assault of or sexual activity in the presence of a child aged under 16 sentenced in the Magistrates' Court over the 10-year period. Charge volumes in the Magistrates' Court followed a similar trend to charge volumes in the higher courts: the number of charges reached a low in 2020–21 and then rose back up in the following years, not quite reaching pre-COVID-19 levels.

Figure 29: Number of charges of sexual assault of or sexual activity in the presence of a child aged under 16 sentenced in the Magistrates' Court, by financial year (1,546 charges)



Between 28.4% and 52.4% of charges each year received a prison sentence (including a prison sentence combined with a CCO) (Figure 30). Between 32.1% and 56.3% of charges each year received a CCO (not combined with a prison sentence). Together, these two outcomes comprised between 74.7% and 87.2% of all sentencing outcomes each year, fluctuating across the period with no clear trend or change in composition. Other sentencing outcomes included suspended sentences, fines and adjourned undertakings.

There were 638 charges (41.3% of all charges) of sexual assault of or sexual activity in the presence of a child aged under 16 that received a prison sentence. Of those, 197 charges received a non-aggregate prison sentence.

Figure 30: Sentencing outcomes for charges of sexual assault of or sexual activity in the presence of a child aged under 16 sentenced in the Magistrates' Court, by financial year

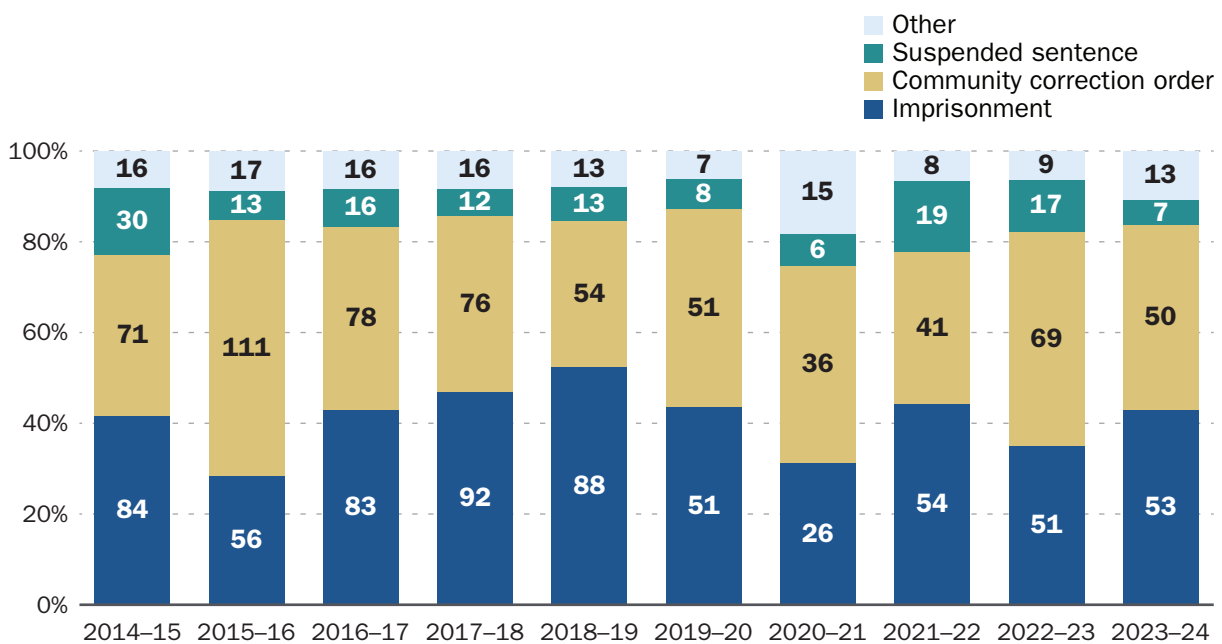
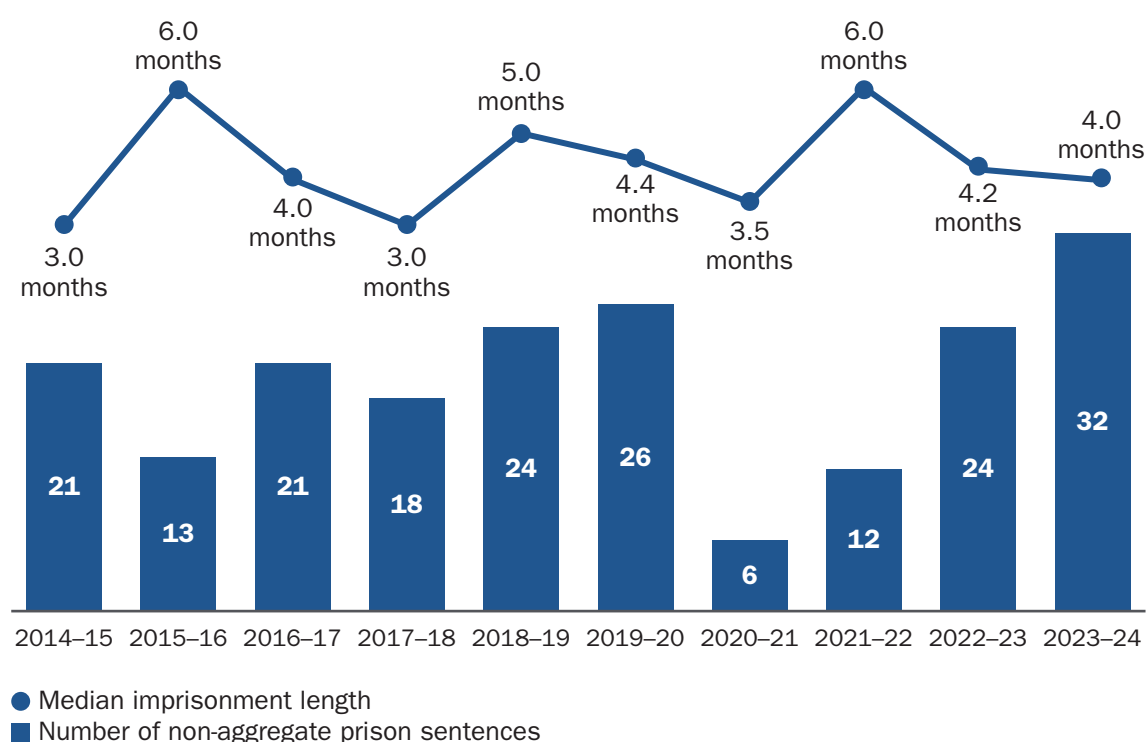


Figure 31 shows the number of charges that received a non-aggregate prison sentence and the median imprisonment length each year. It is important to note that the medians in Figure 31 do not include the 441 charges that received an aggregate prison sentence.

Median imprisonment lengths ranged from 3 months to 6 months. Non-aggregate imprisonment lengths ranged from 5 days to 2 years. The lack of any temporal trend suggests that the introduction of the standard sentence scheme to the higher courts did not have an impact on sentencing practices in the Magistrates' Court for sexual assault of or sexual activity in the presence of a child aged under 16.

Figure 31: Number of non-aggregate prison sentences and median imprisonment lengths (months) for sexual assault of or sexual activity in the presence of a child aged under 16 sentenced in the Magistrates' Court, by financial year (197 charges)



4. Did introducing standard sentences increase imprisonment lengths?

This chapter applies a regression analysis to examine whether sentencing practices have changed for three standard sentence offences: murder, rape and trafficking in a large commercial quantity of a drug of dependence.

How to interpret a regression analysis

Regression is a technique used to measure the relationship between two or more variables while holding all other relevant factors constant. It takes any number of independent variables (factors) and estimates their impact on a dependent variable (outcome). In this report, we have used the imprisonment length imposed on the charge as our outcome. Our goal was to determine what impact, if any, the standard sentence scheme has had on imprisonment lengths; this is one of the factors included in the regression analysis.

There are three outputs of interest in a regression model:

- Each factor has its own **coefficient**, a number representing the estimated effect of that factor on the outcome, holding all other variables constant. For example, a coefficient of 0.4 for the 'prior offending' variable would indicate that imprisonment lengths for offenders with a history of prior offending on average were 0.4 years longer than imprisonment lengths for offenders with no prior offending.
- The **p-value** is an indicator of statistical significance. It measures the probability of observing a result at least as extreme as the one obtained, assuming there is truly no effect. Using the same example of the 0.4 coefficient for prior offending, if this coefficient had a p-value of 0.5, it would mean that there was a 50% chance of observing a coefficient as large as 0.4 through random variation. By convention, a p-value should be below 0.05 to be considered statistically significant, that is, there is less than a 5% probability of observing a result that extreme if there were truly no causal relationship.

- The **R²** or **goodness-of-fit** is a value between 0 and 1 that indicates how well a model explains the variance in the outcome. For example, an R² value of 0.61 indicates that the model explains 61% of the variance in imprisonment lengths (leaving 39% unexplained by the factors included in the model).

Any regression analysis is only as reliable as the data that underlies it. There may be factors that the model was not able to quantify, such as the many unaccounted-for sentencing factors involved in instinctive synthesis. For this reason, the goodness-of-fit or R² value is important to keep in mind when interpreting the coefficients as it indicates how much variation can be explained by the model.

The full statistical tables for each regression analysis are detailed in Appendix 4.

All analysis regarding regression includes only those charges that had sentencing remarks available for coding. As noted in Chapter 2, we had sentencing remarks for 96.4% of sentenced charges of murder (212 of 220 charges), 73.7% of charges of rape (646 of 877 charges) and 86.7% of charges of trafficking in a large commercial quantity of a drug of dependence (170 of 196 charges).

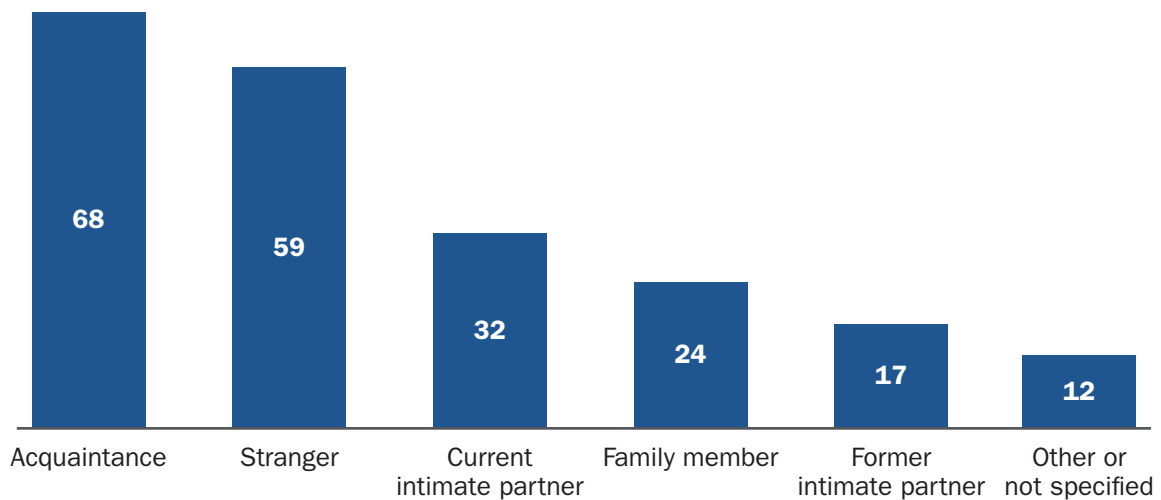
Did the standard sentence affect imprisonment lengths for murder?

As described in Chapter 2, we coded 10 years of available sentencing remarks in cases where an offender had been sentenced for a charge of murder. There were 212 such charges, and the standard sentence for murder applied to 68 of those. The results of the coding exercise allowed for more descriptive statistics about the nature of those charges and improved the reliability of the regression analysis examining whether standard sentences have changed sentencing practices. Some key features of the 212 charges of murder included:

- just over half of the charges were resolved by way of a guilty plea (51.4% or 109 charges), while the remainder were resolved by a finding of guilt following a trial (103 charges)
- 90.6% of charges were committed by a male offender (192 charges), and the remaining 9.4% were committed by a female offender (20 charges)

- the median age of offenders at the time of sentencing was 37, ranging from 16¹⁰⁵ to 82¹⁰⁶
- offending was most commonly committed against an acquaintance of, or a stranger to, the offender (together, 59.9% of charges – see Figure 32)
- noting that COVID-19 occurred during our reference period, there was additional mitigation to reflect the enhanced utilitarian value of guilty pleas, the more onerous conditions of custody at the time, or both, for 24.5% of charges (52 charges)¹⁰⁷
- for 43.4% of charges (92 charges), the court took into account the offender having a mental impairment, either at the time of the offending or at the time of sentencing
- for 35.8% of charges (76 charges), the court took into account as a mitigating factor that the offender had experienced childhood deprivation (see, for example, Case Study 3, page 56)
- 71.7% of murder charges (152 charges) were committed by an offender who had a history of prior offending, that is, 77 of those charges were committed by an offender who had previously received a custodial sentence.

Figure 32: Relationship between offender and victim in sentenced charges of murder (212 charges)



105. *R v Chey* [2021] VSC 843; *DPP v DJ (a pseudonym)* [2022] VSC 358; *DPP v JA & Ors* [2023] VSC 531.

106. *DPP v Heddergott* [2021] VSC 793.

107. For example, in *DPP v Ledlin* [2022] VSC 826, Champion J wrote that '[i]t is to be accepted that the impact of the pandemic was felt in the prison system, resulting in episodes of quarantine, limited visits, and limitations on the range of educational programs': at [90]. See also *DPP v Munn* [2020] VSC 251, in which Champion J said that 'I am prepared to accept in your circumstances of hyper-vigilance and hyper-arousal that you may well carry an extra subjective burden of anxiety and stress about incarceration possibly increasing you to a higher risk of infection from the disease that might apply to the general community': at [155].

Case Study 3: Childhood deprivation as a sentencing factor in a murder case

“[36]... As a young child, you were exposed to domestic violence between your parents. Your parents separated when you were eight years of age. Following their separation, you and your twin brother resided with your father for about two years until your father was sentenced to a lengthy term of imprisonment. You then had to live with your mother and her boyfriend. During that time, both your mother and her boyfriend were physically violent towards you, and they would beat you with a cricket bat and punch you. Your mother’s boyfriend was particularly violent when he was intoxicated. When you knew that he was drinking, you would stay away from home and live on the streets, usually at Flinders Street station. On one occasion, you were hospitalised due to injuries you sustained as a result of a beating by him.

[37] You were placed in State care from the age of 10 years ... You were sexually abused by staff and other older boys while you were in institutional care between the ages of 10 and 15 years.”

DPP v Holt [2023] VSC 515

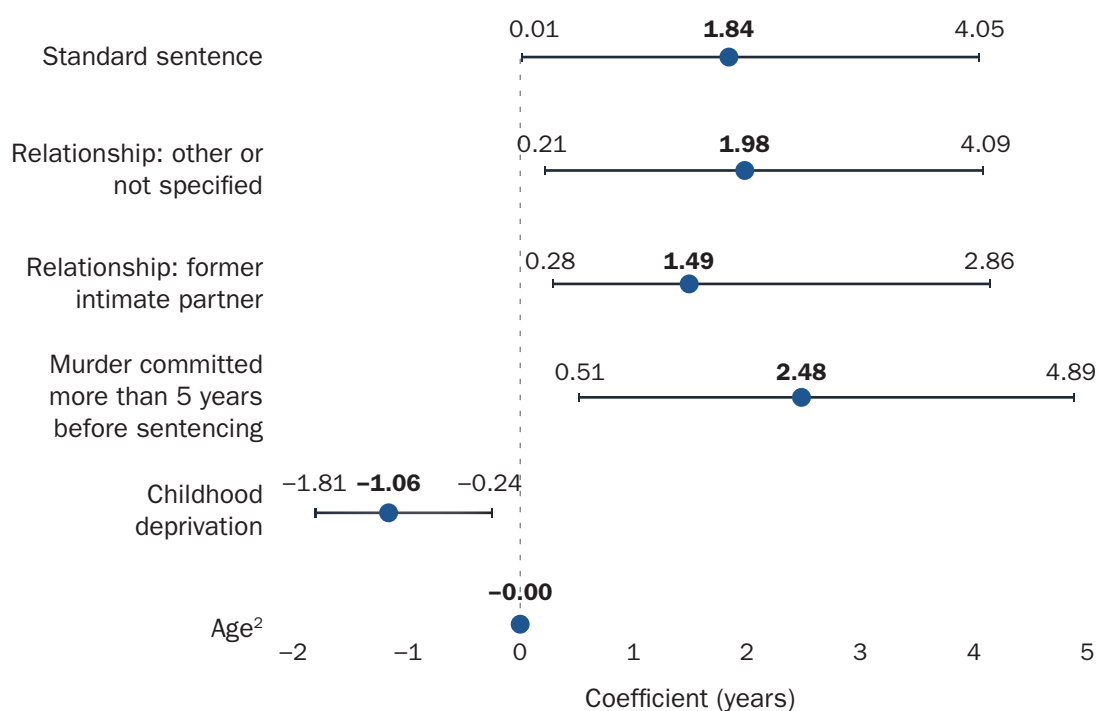
Regression analysis for murder

The regression model for murder had an R^2 of 0.263, meaning the model accounts for 26.3% of the variation in imprisonment lengths for charges of murder. While this may appear modest, it is consistent with expectations for individual-level observational data in criminology and social science research more broadly, where a substantial proportion of variation is inherently attributable to unobserved factors that cannot be captured by any model.¹⁰⁸ All variables were included in the model and are presented in Appendix 4.

Figure 33 presents only the statistically significant variables in the model. The dots indicate the estimated coefficient (or the impact of the factor on the imprisonment length), and the bars extending from those dots indicate the 95% confidence intervals.¹⁰⁹

The standard sentence was one of six significant factors associated with imprisonment lengths for charges of murder. Charges where the standard sentence applied were associated with imprisonment lengths approximately 1.84 years (1 year and 10 months) longer than imprisonment lengths for charges where the standard sentence didn't apply. The 95% confidence interval for the coefficient for standard sentence was 0.01 to 4.05. This means we can say that the true effect of the standard sentence on imprisonment lengths for murder is an increase somewhere between about 4 days and just over 4 years.

Figure 33: Coefficients and 95% confidence intervals for statistically significant variables in the regression model for murder



In addition to the standard sentence, the other statistically significant factors in the regression model that seemed associated with *longer* prison sentences included the following:

- a murder committed **more than 5 years before sentencing** was among the strongest predictors of imprisonment length. At best estimate, this factor resulted in prison sentences about 2.5 years longer than prison sentences for murder committed within 5 years of sentencing, with a 95% confidence interval of between 6 months and just short of 5 years¹¹⁰ and
- a murder perpetrated against a **former intimate partner** (resulting in prison sentences about 1.5 years longer) or the relationship between the offender and victim was **other** or **not specified** (resulting in prison sentences about 2 years longer) compared to a murder perpetrated against an acquaintance (the reference category).

Age had a small, non-linear effect, with imprisonment lengths rising and then declining with age. Adverse childhood experiences, where relevant, were mitigatory (prison sentences were about one year shorter than prison sentences for charges without that factor).

Did the standard sentence affect imprisonment lengths for rape?

We were able to code sentencing remarks for 646 of the 834 charges of rape that received a non-aggregate prison sentence during the reference period. The standard sentence for rape applied to 216 of those charges. Some key features of the 646 charges included the following:

- about half of the charges were resolved by way of a guilty plea (330 charges or 51.1%)
- the overwhelming majority of charges of rape were committed by male offenders (98.6% or 637 of 646 charges)

108. Peterson K. Ozili, 'The Acceptable R-Square in Empirical Modelling for Social Science Research' in Candauda Arachchige Saliya (ed.), *Social Research Methodology and Publishing Results: A Guide to Non-Native English Speakers* (2023) 139–140.

109. A 95% confidence interval gives the range of plausible values for the true effect. A narrower interval indicates a more precise estimate; a wider interval reflects more uncertainty. If the interval includes zero, the effect is not statistically significant at a 0.05 (or 5%) threshold, meaning we cannot rule out that there is no real effect.

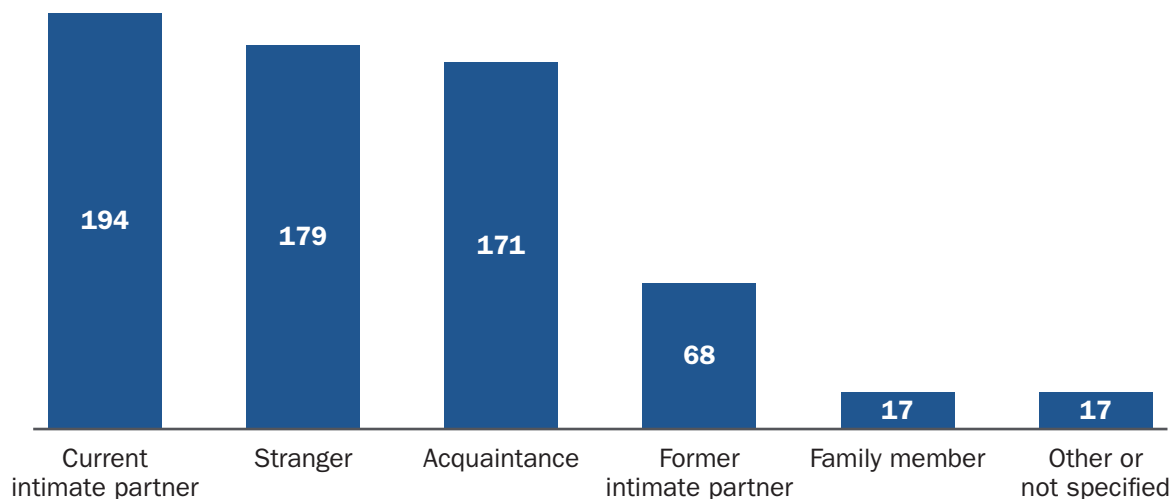
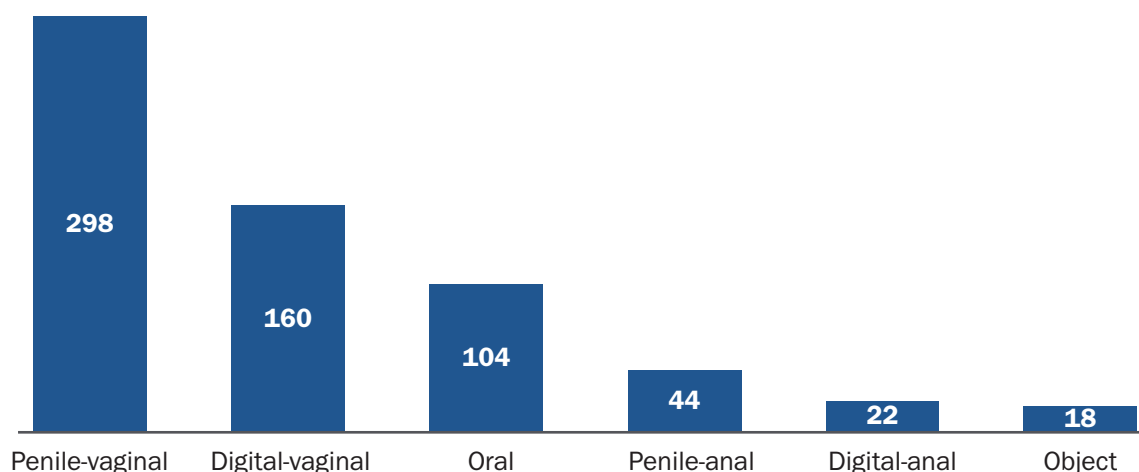
110. This is most likely because, when murder is sentenced years after the offending, it is often a result of the offender having attempted to conceal their offending (for example, by hiding or disposing of the deceased's remains). This is both indicative of the offender having little to no remorse and a significant aggravating factor in the form of post-offence conduct: see, for example, *R v Loughnane* [2025] VSC 41; *DPP v Ristevski* [2019] VSCA 287; *R v Borovjak* [2018] VSC 793; *R v Xypolitis* [2013] VSC 514.

- the youngest offender was 18 at the time of sentencing,¹¹¹ the oldest was 80,¹¹² and the median age was 36
- charges of rape were most commonly committed against current intimate partners (194 charges or 30.0%) followed by strangers (179 charges or 27.7%) and acquaintances (171 charges or 26.5%) (see Figure 34, page 60)
- for 43.2% of charges, the rape occurred in the context of family violence, in particular, against current intimate partners (30.0%), former intimate partners (10.5%) and other family members (2.6%)¹¹³
- the most common form of penetration was penile-vaginal, comprising almost half of the charges (298 charges or 46.1%)
- for 28.0% of charges (181 charges), the court took COVID-19 into account as a relevant sentencing consideration
- for 35.4% of charges (229 charges), the court took into account the offender having a mental impairment, either at the time of the offending or at the time of sentencing
- for 24.8% of charges (160 charges), the court expressly took into account as a mitigating factor that the offender had experienced childhood deprivation
- for 24.5% of charges (158 charges), the offending took place more than 5 years before sentencing and
- two-thirds of charges (66.7% or 431 charges) were committed by offenders with a history of prior offending, and almost half of those charges were committed by an offender who had previously served a custodial sentence (200 charges).

111. Sentencing remarks are not publicly available for one case involving an 18-year-old offender. An 18-year-old rape offender received a youth justice centre order during the reference period, but youth justice centre orders are excluded from this analysis of imprisonment lengths. The second youngest rape offender was 19 at the time of sentencing. This offender was sentenced for a representative charge of rape, involving 6 acts of digital penetration of a 16-year-old after breaking into her home, and received 6 years' imprisonment: *DPP v Aldrich* [2015] VCC 1913.

112. The oldest rape offender in the higher courts was 80 at the time of sentencing (and 78 at the time of the offending). The offender was sentenced for a charge of rape representing two occasions of digital penetration of a 19-year-old girl with cognitive impairment, for whom the offender and his wife were de facto carers. He received 5 years' imprisonment: *DPP v Rickby (a pseudonym)* [2018] VCC 1419.

113. In the 12 cases involving family members, the relationship was an extended family member (*DPP v Lockington* [2016] VCC 1082; *DPP v Spell (a pseudonym)* [2019] VCC 1830; *DPP v Poole (a pseudonym)* [2020] VCC 340), an 'Uncle in aboriginal terms' (*DPP v Harrison* [2022] VCC 333), a stepchild (*DPP v Cooper (a pseudonym)* [2016] VCC 661; *DPP v Frith (a pseudonym)* [2017] VCC 332; *DPP v Slater (a pseudonym)* [2019] VCC 161), a sister-in-law (*DPP v Lochie (a pseudonym)* [2017] VCC 1323; *DPP v Nimely (a pseudonym)* [2024] VCC 837) and a daughter (*DPP v Sastre (a pseudonym)* [2023] VCC 2293).

Figure 34: Relationship between offender and victim in sentenced charges of rape (646 charges)**Figure 35:** Form of penetration in sentenced charges of rape (646 charges)

Regression analysis for rape

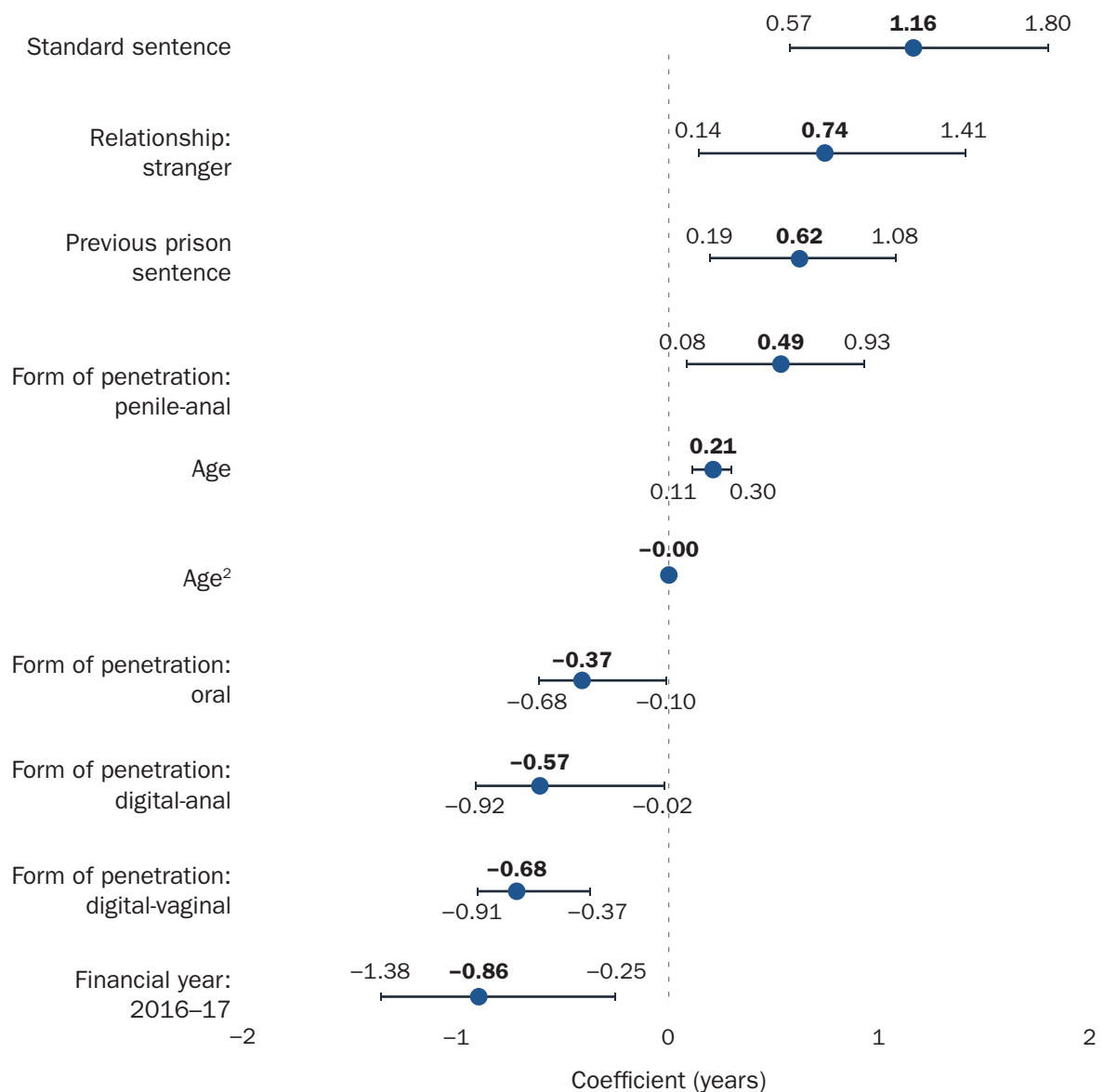
The regression model for rape had an R^2 of 0.240, meaning the model accounts for 24.0% of the variation in imprisonment lengths for charges of rape. All variables were included in the model and are presented in Appendix 4.

Figure 36 (page 61) presents only the statistically significant variables in the model. The dots indicate the estimated coefficient (or the impact of the factor on the imprisonment length), and the bars extending from those dots indicate the 95% confidence intervals.

The standard sentence was one of 10 significant predictors of imprisonment lengths for charges of rape. Charges where the standard sentence applied were associated with imprisonment lengths approximately 1.16 years longer (about 1 year and 2 months) than imprisonment lengths for charges where the standard sentence didn't apply.

The 95% confidence interval for the coefficient for standard sentence was between 0.57 years and 1.80 years. This means the true effect of the standard sentence on imprisonment lengths for rape was an increase of between about 7 months and 1 year and 10 months.

Figure 36: Coefficients and 95% confidence intervals for statistically significant variables in the regression model for rape



For an explanation of Age² (squared value of age), see page 81.

In addition to the standard sentence, the other statistically significant factors in the regression model that seemed associated with *longer* prison sentences included the following:

- the rape was perpetrated against a **stranger** (compared to a rape perpetrated against a current intimate partner, which was the most common relationship between offender and victim for sentenced charges of rape)
- the offender had **previously received a prison sentence** and
- the form of penetration was **penile-anal** (compared to penile-vaginal penetration, which was the most common form of penetration for sentenced charges of rape), with an estimated increase in imprisonment length of about 6 months.

Similarly, the statistically significant factor that seemed to be associated with *shorter* prison sentences was the form of penetration being **oral**, **digital-vaginal** or **digital-anal** (compared to penile-vaginal penetration (the reference category), which was the most common form of penetration for sentenced charges of rape). The estimated effects of these forms of penetration on imprisonment lengths were about 4.5 months (oral), 8.2 months (digital-vaginal) and 6.8 months (digital-anal).

Age had a small, non-linear effect, with imprisonment lengths rising then declining with age, as they did for murder. The regression did not identify a significant year-on-year trend; 2016–17 was the only financial year that reached the threshold for significance and was associated with shorter sentences, compared to 2013–14 (the reference year).

Trafficking in a large commercial quantity of a drug of dependence

We were able to code sentencing remarks for 170 of the 196 charges of trafficking in a large commercial quantity of a drug of dependence sentenced during the reference period. The standard sentence for this offence applied to 77 of those charges. Some key features of those 170 charges included the following:

- 88.8% of charges resolved by way of a guilty plea (151 charges)
- male offenders committed the vast majority of offences (93.5% or 159 charges)
- half of the charges were committed by an offender who had a significant role in the drug trafficking operation (50.6% or 86 charges), and the remaining charges were split between offenders with a minor role (25.9%) and offenders with a principal role (23.5%)
- for 41.2% of charges (70 charges), the court took into account the enhanced utilitarian value of a guilty plea due to COVID-19

- for 25.3% of charges (43 charges), the court took into account the offender having a mental impairment, either at the time of the offending or at the time of sentencing
- for 17.6% of charges (30 charges), the court expressly took into account as a mitigating factor that the offender had experienced childhood deprivation
- almost half of the charges (47.6%) were committed by an offender who had a history of prior offending (81 charges), and for 38 of those charges, the offender had previously received a custodial sentence
- of the 81 charges committed by an offender who had a history of prior offending, 50 charges (61.7%) were committed by an offender with a history of drug trafficking and 14 charges (17.3%) were committed by an offender with a history of other drug-related offending
- the most common primary motivation for offending was self-enrichment (59.4% or 101 charges), followed by supporting a drug addiction (35 charges) and debt repayment (22 charges) and
- methylamphetamine was the drug most commonly trafficked in a large commercial quantity, comprising 45.3% of charges (77 charges). This was followed by 27 charges of trafficking in various drugs, 23 charges of trafficking heroin, 13 charges of trafficking MDMA, 12 charges of trafficking cocaine, 8 charges of trafficking ephedrine, and 6 charges of trafficking 1,4-butanediol.

Regression analysis for trafficking in a large commercial quantity of a drug of dependence

The regression model for trafficking in a large commercial quantity of a drug of dependence had an R^2 of 0.411. This means the model accounts for 41.1% of the variation in imprisonment lengths for charges of trafficking in a large commercial quantity of a drug of dependence. All variables were included in the model and are presented in Appendix 4.

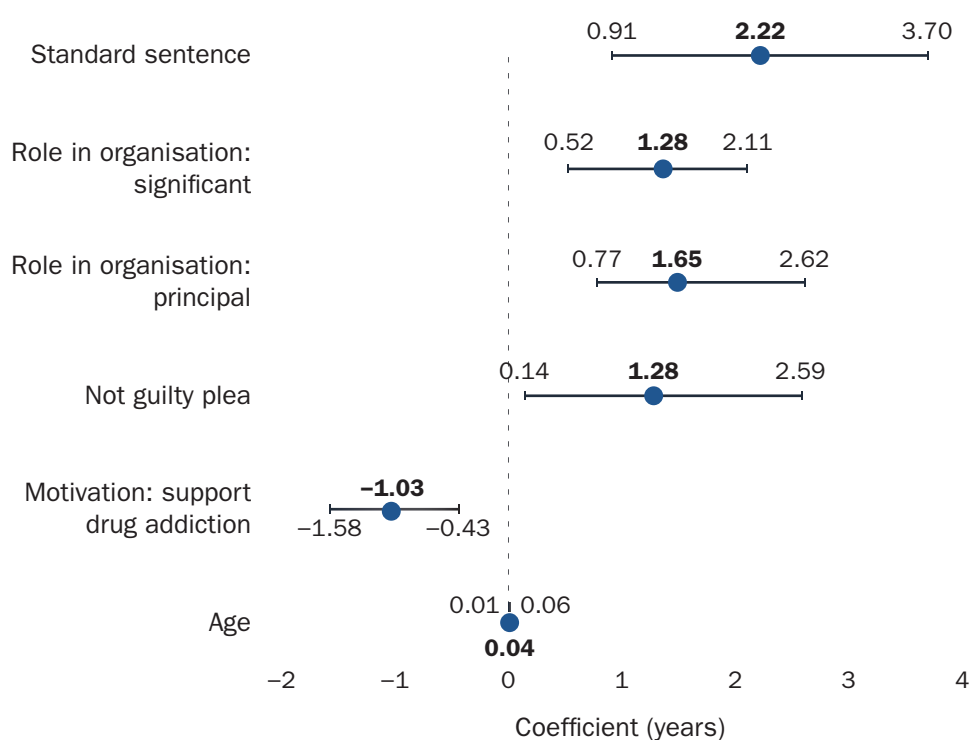
Figure 37 (page 64) presents only the statistically significant variables in the model. The dots indicate the estimated coefficient (or the impact of the factor on the imprisonment length), and the bars extending from those dots indicate the 95% confidence intervals.

The standard sentence was one of six significant variables:

- charges where the **standard sentence** applied were associated with imprisonment lengths 2.22 years longer than imprisonment lengths for charges where the standard sentence didn't apply. The 95% confidence interval for the coefficient for standard sentence was 0.91 to 3.70 years, meaning the true effect of the standard sentence on imprisonment lengths for this offence was between about 11 months and 3 years and 8 months

- **age** had a small linear effect, with imprisonment lengths rising with age
- charges received shorter imprisonment lengths where the **primary motivation** to traffick was a need to support a drug addiction than where the primary motivation was self-enrichment
- offenders who had a **significant** or **principal role** in the drug trafficking operation received longer imprisonment lengths than offenders with a minor role
- charges with a **not guilty plea** received longer imprisonment lengths than charges with a guilty plea.

Figure 37: Coefficients and 95% confidence intervals for statistically significant variables in the regression model for trafficking in a large commercial quantity of a drug of dependence



Financial year was not included in this regression model as it had a high degree of collinearity with other variables in the model, namely the effects of the standard sentence and the effects of the calls to uplift sentencing practices for trafficking offences.

5. Concluding remarks

The holy grail of sentencing policy is to identify a reform lever that can effectively change sentencing practices without unduly interfering with judicial discretion. Mandatory sentencing in all its forms has proven, time and again, to result in injustices that judges have no discretion to avoid. Changing the maximum penalty often has little effect on sentencing practices. There has been just one guideline judgment in Victoria in the 20 years since they were made available in the *Sentencing Act*. And in 2015, the Victorian Court of Appeal found that ‘baseline sentences’ were incapable of practical operation.¹¹⁴

In 2016, the Council recommended enhancing the guideline judgment provisions of the *Sentencing Act* to enable the Court of Appeal to play a greater role in recalibrating sentencing practices when required. However, the Council was also mindful that there was a clear preference for introducing some form of legislated numerical guidance to assist courts sentencing serious offences. The Council therefore advised that:

[a] standard sentence scheme is not the Council's preferred model of sentencing guidance. Nevertheless, the Council has made contingent recommendations in relation to the model, the offences to which the scheme should apply, and the levels at which standard sentences should be prescribed, if a standard sentence scheme were to be introduced.¹¹⁵

Shortly after that advice was published, standard sentences were introduced in Victoria, using a model very similar to that outlined by the Council. Standard sentences were new numerical guideposts representing the middle of the range of objective seriousness for a handful of serious offences in Victoria. The new legislative provisions also prohibited courts from taking sentencing practices from earlier cases into account, effectively unmooring courts from the ‘anchor’ of past sentencing practices as a reference point for standard sentence offences.

It has now been more than eight years since the legislation introducing standard sentences in Victoria came into effect. The aim of this report has been to examine whether sentencing practices for standard sentence offences have changed since standard sentences came into effect, and if so, whether the changes are likely attributable (even in part) to the introduction of standard sentences. That is, did standard sentences achieve their policy intent? This is not a simple question to answer: *before* the introduction of standard sentences, imprisonment lengths for serious offences had been steadily increasing in Victoria since at least 2001, and *after* the introduction of standard sentences, COVID-19 had both obvious and subtle effects on sentencing for years.

114. *DPP v Walters (a pseudonym)* [2015] VSCA 303.

115. Sentencing Advisory Council (2016), above n 1, xxviii, 160.

Have sentencing practices changed since standard sentences were introduced?

In short, yes, prison sentences have gotten longer for serious offences in Victoria. There has been an increase in the median imprisonment length for almost all of the standard sentence offences. For instance, from 2014–15 to 2023–24, the median imprisonment length for standard sentence offences in the higher courts increased as follows:

- **murder:** from 21.0 years (where the standard sentence didn't apply) to 24.0 years (where the standard sentence applied)
- **rape:** from 6.0 years (where the standard sentence didn't apply) to 7.0 years (where the standard sentence applied)
- **trafficking in a large commercial quantity of a drug of dependence:** from 7.0 years (where the standard sentence didn't apply) to 11.1 years (where the standard sentence applied)
- **culpable driving causing death:** from 6.3 years (where the standard sentence didn't apply) to 7.9 years (where the standard sentence applied)
- **persistent sexual abuse of a child aged under 16:** from 6.0 years (where the standard sentence didn't apply) to 9.0 years (where the standard sentence applied)
- **incest:** from 4.0 years (where the standard sentence didn't apply) to 8.0 years (where the standard sentence applied)
- **sexual penetration of a child aged under 12:** from 3.0 years (where the standard sentence didn't apply) to 7.0 years (where the standard sentence applied)
- **sexual assault of or sexual activity in the presence of a child aged under 16:** from 1.0 years (where the standard sentence didn't apply) to 2.0 years (where the standard sentence applied) in the higher courts; this was greater than the increase from 3.0 months to 4.0 months in the Magistrates' Court.

Sexual penetration of a child aged 12 to 15 was the one exception where there was actually a decline in the median imprisonment length, from 5.0 years (where the standard sentence didn't apply) to 3.5 years (where the standard sentence applied). However, the trend for this offence was particularly volatile.

While there has been an increase in imprisonment lengths for most standard sentence offences, most imprisonment lengths continue to fall below the standard sentence:

- for rape, **15%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 10 years
- for persistent sexual abuse of a child aged under 16, **15%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 10 years

- for incest, **14%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 10 years
- for sexual assault of or sexual activity in the presence of a child aged under 16, **9%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 4 years
- for sexual penetration of a child aged 12 to 15, **6%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 6 years
- for trafficking in a large commercial quantity of a drug of dependence, **4%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 16 years
- for sexual penetration of a child aged under 12, **2%** of charges where the standard sentence applied (1 of 50 charges) received a prison sentence at or above the standard sentence of 10 years (see Case Study 2, page 40).

The main exceptions were the two homicide offences:

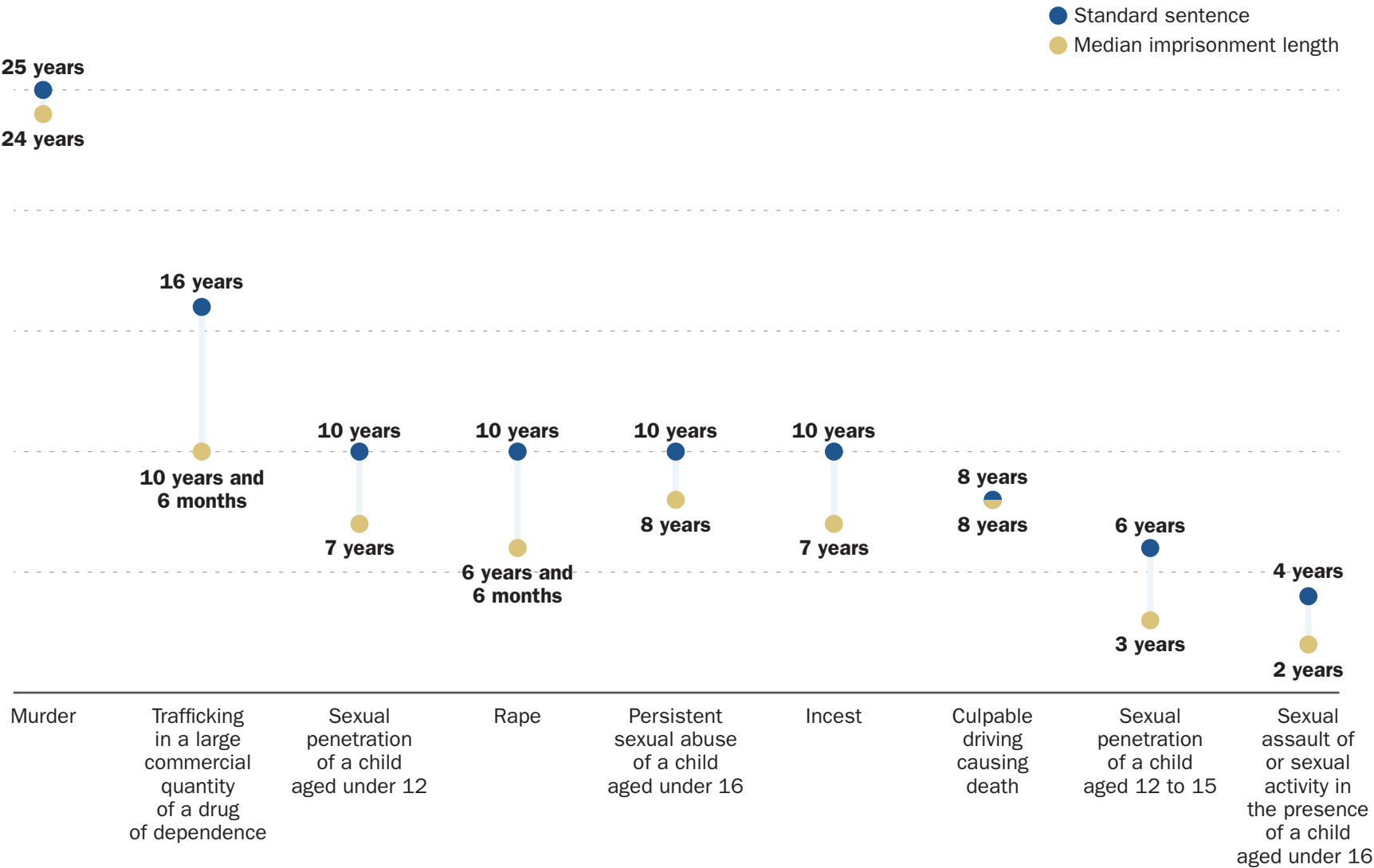
- for murder, **44%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 25 years
- for culpable driving causing death, **67%** of charges where the standard sentence applied received a prison sentence at or above the standard sentence of 8 years.

That is, the vast majority of prison sentences for all of the sex offences, and for the drug-related offence, continue to be shorter than the applicable standard sentence.

Some offences had median imprisonment lengths relatively close to the standard sentence (Figure 38, page 68). For example, the standard sentence for murder was 25 years and the median imprisonment length was 24 years, that is, 1 year (4%) shorter. For other offences, the median imprisonment length was notably shorter than the standard sentence. For example, the median imprisonment length for trafficking in a large commercial quantity of a drug of dependence was 10.5 years, which is 5.5 years (34%) shorter than the standard sentence, and the median imprisonment length for rape was 6.5 years, which is 3.5 years (35%) shorter than the standard sentence.¹¹⁶

116. Note that the data for this figure does not include charges that were part of an aggregate prison sentence or charges that received a non-custodial sentence.

Figure 38: Standard sentences and median imprisonment lengths for charges where the standard sentence applied



Did standard sentences change sentencing practices?

It is difficult to attribute any change in sentencing practices to any one factor. There were numerous developments during the reference period that might have been expected to change imprisonment lengths for standard sentence offences. For example, the Court of Appeal found sentences too low for certain offences and called for an uplift in overall sentencing practices; the offences included incest (in 2016), rape by digital penetration (in 2017) and trafficking in a large commercial quantity of a drug of dependence (2017 and 2021). There was also a pre-existing trend, dating back at least 20 years, of longer prison sentences for most of these offences, making it difficult to discern whether the increase in recent years was attributable to intentional reforms, a continuation of a pre-existing trend, or both.

For this reason, we analysed imprisonment lengths using regression analysis, a statistical technique that isolates the effect of various factors, including the standard sentence. Many of the factors included in the regression analysis were derived from court data, such as the offender's age and gender, and the date of offence. Other factors were derived from publicly available sentencing remarks, such as guilty pleas and the relationship between the offender and the victim for crimes of interpersonal violence. Given the resource intensity of conducting regression analyses, we limited our focus to three distinct offences: a homicide offence (murder), a sex offence (rape) and a drug-related offence (trafficking in a large commercial quantity of a drug of dependence).

The results of the regression analysis found that standard sentences were associated with a statistically significant increase in imprisonment lengths for all three offences:

- for charges of murder, the standard sentence increased imprisonment lengths by an estimated 1 year and 10 months. We can be 95% confident that the true effect (the 95% confidence interval) falls between 4 days and just over 4 years
- for charges of rape, the standard sentence increased imprisonment lengths by an estimated 1 year and 2 months (the 95% confidence interval ranged from 7 months to 1 year and 10 months)
- for charges of trafficking in a large commercial quantity of a drug of dependence, the standard sentence increased imprisonment lengths by an estimated 2 years and 3 months (the 95% confidence interval ranged from 11 months to 3 years and 8 months).

Other statistically significant factors were found to be associated with *longer* prison sentences for these offences, including:

- murdering a former intimate partner (compared to murdering an acquaintance)
- committing a murder more than 5 years before sentencing (compared to committing a murder within 5 years of sentencing)
- raping a stranger (compared to raping a current intimate partner)
- being a rape offender who had previously received a prison sentence
- engaging in penile-anal rape (compared to penile-vaginal rape)
- having a significant or principal role in a drug trafficking operation (compared to a more minor role) and
- pleading not guilty to trafficking in a large commercial quantity of a drug of dependence.

There were also statistically significant factors associated with *shorter* prison sentences, including:

- experiencing deprivation or trauma in childhood (for charges of murder)
- engaging in oral rape, digital-vaginal rape or digital-anal rape (compared to penile-vaginal rape) and
- being motivated primarily by a need to support a drug addiction (for charges of trafficking in a large commercial quantity of a drug of dependence).

Did standard sentences achieve their policy intent?

The most difficult question to address is whether standard sentences have achieved their policy intent. Have imprisonment lengths gotten longer? For almost every offence, yes, they have. Did standard sentences contribute to that increase? Our regression analysis strongly suggests that standard sentences played a causal role in some of that increase. The stated intent of standard sentences was ‘increased sentences for the most serious crimes’, and it would certainly seem that standard sentences have led to those increased sentences.

The question remains, however, whether standard sentences have changed sentencing practices to the extent anticipated. With the exceptions of imprisonment lengths for two homicide offences – murder and culpable driving causing death – the vast majority (85% or more) of imprisonment lengths continue to fall below (sometimes well below) the applicable standard sentence for each of the standard sentence offences, in particular, the sex offences and the drug trafficking offence.

The nature of the legislation and how it operates explain why sentencing practices have not changed drastically. As Champion J wrote in the first case that applied the standard sentence provisions, the standard sentence for an offence is just ‘one factor’ that does not ‘have dominance over another’, and courts should consider ‘the relevant standard sentence as one of the sentencing factors in [their] instinctive synthesis’.¹¹⁷

In taking the standard sentence into account, courts have consistently identified the objective seriousness of the offending as being ‘above’,¹¹⁸ ‘below’¹¹⁹ or in ‘the middle’¹²⁰ of the range. Where sentences were below the standard sentence, it was usually because the subjective sentencing factors personal to the offender – their past history, guilty plea, mental impairment – were powerful considerations in the case.¹²¹ The Council has, for example, previously found that most offenders plead guilty (rather than being found guilty by a jury) and guilty plea discounts usually range between about 20% and 30% of the sentence that they otherwise would have received.

That is, subjective factors play a critical and powerful role in sentencing, and the standard sentence was intentionally established as just one factor to be considered in the instinctive synthesis approach, separate from subjective factors. In light of this, it is perhaps more noteworthy that so many prison sentences for murder and culpable driving causing death are at or above the standard sentence for those offences, than it is that many prison sentences for the other offences are not at or above the standard sentence. This may, however, also be because many prison sentences for those two homicide offences were already much closer to the standard sentence than prison sentences for the other offences were.

We are not in a position to comment on whether the increases to imprisonment lengths for standard sentence offences have achieved their purpose of ensuring sentencing practices are both (a) at a particular level that is capable of achieving the purposes of sentencing and (b) aligned with community expectations. For now, all that can be said is that standard sentences do appear to have increased imprisonment lengths for standard sentence offences.

117. *R v Brown* [2018] VSC 742, [75], [139]. See also *DPP v Lindemann* [2024] VSC 220, [116]–[117]; *DPP v Hillman* [2024] VSC 100, [81]–[82]; *DPP v Herrmann* [2019] VSC 694, [103]–[104]; *DPP v PS* [2023] VSC 85, [104]. This is consistent with the High Court’s approach to ‘current sentencing practices’ as just one sentencing factor that should not swamp other considerations: *DPP v Dalgliesh (a pseudonym)* [2017] HCA 41.

118. *DPP v Sako* [2024] VSC 77, [106]; *R v Basham* [2023] VSC 79, [101]; *DPP v Tan* [2023] VSC 416, [59]; *DPP v Elliott & Anor* [2022] VSC 554, [188].

119. *DPP v Payne* [2023] VSC 286, [80].

120. *DPP v Fairhall* [2022] VSC 444, [84].

121. *DPP v Whyte* [2023] VSC 645, [41]; *DPP v Taylor* [2022] VSC 598, [57]; *R v Williams* [2023] VSC 280, [101]–[102], [135] (noting that the sentence for murder would have been 28 years but was reduced to 23 years due to the guilty plea); *DPP v McCartin & Anor* [2023] VSC 193, [84].

Appendix 1: Offences in scope

Table A1: Offences included in this report

Offence	Statutory reference	Operational period	Statutory reference for repealed or previous offence	Relevant operational period for repealed or previous offence	Maximum penalty	Standard sentence
Culpable driving causing death	<i>Crimes Act 1958</i> (Vic) s 318	1 September 1997 to present	Not applicable	Not applicable	20 years' imprisonment, 2,400 penalty units or both	8 years
Rape	<i>Crimes Act 1958</i> (Vic) s 38	1 January 1992 to present	Not applicable	Not applicable	25 years' imprisonment	10 years
Sexual penetration of a child aged under 12	<i>Crimes Act 1958</i> (Vic) s 49A	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) s 45(2)(a)	1 September 1997 to 30 June 2017	25 years' imprisonment	10 years
Sexual penetration of a child aged 12 to 15	<i>Crimes Act 1958</i> (Vic) s 49B	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) s 45(2)(b) (where the child was under the care, supervision or authority of the offender)	22 November 2000 to 30 June 2017	15 years' imprisonment	6 years
Sexual assault of a child aged under 16	<i>Crimes Act 1958</i> (Vic) s 49D	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) s 47	5 August 1991 to 30 June 2017	10 years' imprisonment	4 years
Sexual activity in the presence of a child aged under 16	<i>Crimes Act 1958</i> (Vic) s 49F	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) s 47	5 August 1991 to 30 June 2017	10 years' imprisonment	4 years

Offence	Statutory reference	Operational period	Statutory reference for repealed or previous offence	Relevant operational period for repealed or previous offence	Maximum penalty	Standard sentence
Causing a child aged under 16 to be present during sexual activity	<i>Crimes Act 1958</i> (Vic) s 49H	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) s 47	5 August 1991 to 30 June 2017	10 years' imprisonment	4 years
Persistent sexual abuse of a child aged under 16	<i>Crimes Act 1958</i> (Vic) s 49J	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) s 47A	1 December 2006 to 30 June 2017	25 years' imprisonment	10 years
Sexual penetration of a child or lineal descendant aged under 18	<i>Crimes Act 1958</i> (Vic) s 50C	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) ss 44(1), 44(2)	1 September 1997 (when the maximum penalty was increased) to 30 June 2017	25 years' imprisonment	10 years
Sexual penetration of a stepchild aged under 18	<i>Crimes Act 1958</i> (Vic) s 50D	1 July 2017 to present	<i>Crimes Act 1958</i> (Vic) ss 44(1), 44(2)	1 September 1997 (when the maximum penalty was increased) to 30 June 2017	25 years' imprisonment	10 years
Homicide by firearm	<i>Crimes Act 1958</i> (Vic) s 5B	1 July 2020 to present	Not applicable	Not applicable	25 years' imprisonment	13 years
Trafficking in a large commercial quantity of a drug of dependence	<i>Drugs, Poisons and Controlled Substances Act 1981</i> (Vic) s 71	1 November 2002 to present	Not applicable	Not applicable	Life imprisonment, 5,000 penalty units or both	16 years
Murder	Common law; <i>Crimes Act 1958</i> (Vic) s 3	Not applicable	Not applicable	Not applicable	Life imprisonment	25 years
Murder of an emergency worker or custodial officer	Common law; <i>Crimes Act 1958</i> (Vic) s 3	1 February 2018 to present	Not applicable	Not applicable	Life imprisonment	30 years

Appendix 2: Coding manual

Standard Sentences Coding Manual (Version 6)

6th November 2025

Purpose

This coding manual sets out the **definitions** and **rules** for coding **8 variables** from publicly available sentencing remarks in cases containing offences under the standard sentence scheme in the Victorian County Court and Supreme Court.

Each **variable** corresponds to a criterion in the coding spreadsheet.

This manual is intended to be:

- a. used in inter-coder reliability testing,
- b. used as guidance for manual coding of non-public sentencing remarks; and
- c. uploaded to the generative AI tool, as part of a prompt instructing it on how to code sentencing remarks.

Overarching guidance

- Always code based on the explicit text of the sentencing remarks, the prompt, and this coding manual. Do not infer beyond what is written in the sentencing remarks, and do not rely on any other external sources of information.
- If uncertain about how to code a particular factor due to vague, ambiguous or conflicting text, leave that field blank and make a note for inter-coder resolution.
- In coding the variables, only use the provided code options. Do not invent new codes, or alternative wording for the same code (for example, under variable 5, always use 'former intimate partner' for that type of relationship; do not also use alternatives such as 'ex-wife'). As stated above, if uncertain about how to code a particular factor, leave it blank and make a note for manual inter-coder resolution.
- Some judgments will refer to how certain sentencing factors have applied in other cases, even if they have not found that factor relevant in the present case. For example, they may indicate that there were *Verdins* or *Bugmy* principles applicable in other cases as a means of distinguishing the facts of those cases from the present case. Be mindful not to infer, in these circumstances, that those sentencing factors were relevant in the present case.
- Where the remarks contain more than one relevant charge for coding (for example, two charges of rape), also output the charge-level prison duration for

each of those charges as a string value, and whether the charge was the base sentence or not, as a Boolean value.

- For variables 1, 5, 6, 7 and 8, only code these variables for any relevant charges of rape, murder, and trafficking in a large commercial quantity in a case. Charges for other offences can be disregarded. Output the results of each relevant charge as a separate row in tabular form. Variables 2, 3 and 4 are case-level variables and should be coded once per case but include case level variables in each row. Mark flagged items with a “*” symbol and summarise reason for flag in the ‘Notes’ column of the output table.
- Follow this approach:
 - Read ENTIRE manual entry (all paragraphs, all dot points)
 - Identify ALL rules/pathways
 - Check each rule against the judgment
 - Look for explicit judicial statements first
 - Don’t add requirements not stated
 - Don’t dismiss explicit statements because of other cases
 - Mark the specific paragraph/quote that satisfies (or doesn’t satisfy) each rule
- Please output results in the following table format:

Charge Number	Base Sentence (Yes/No)	Prison Duration	Offence Type
Variable 2: Worboyes Discount	Variable 3: Mental Impairment	Variable 4: Childhood Deprivation	Variable 1: Guilty Plea
Variable 5: Primary Victim Relationship	Variable 6: Form of Penetration	Variable 7: Offender’s Role	Variable 8: Custodial Worker
Notes			
- After output of coded results, remove the sentencing remarks and resultant coding from memory. Do not use previous remarks in the coding of later remarks, treat each case as if it is your first and read every word of the manual each time a new case is provided before coding.

1. Guilty plea

- **Definition:** Whether the offender pleaded guilty to the relevant offence.
- **Codes:** Guilty; Not guilty.
- **Rules:**
 - If verdict by trial or “plea of not guilty” is mentioned, code as “not guilty”.
 - If “plea of guilty” is mentioned or a declaration pursuant to section 6AAA of the Sentencing Act 1991 is made, code as “guilty”.
 - If there is a mixture of guilty and not guilty pleas to different charges in the case, code whether the offender pleaded guilty or not guilty to each relevant charge of murder, rape, or trafficking in a large commercial quantity.

2. Worboyes discount

- **Definition:** Whether *Worboyes v The Queen* [2021] VSCA 169 or custodial conditions during COVID-19 were cited as relevant factors in determining sentence. This includes any circumstances where COVID-19 restrictions resulted in increased burden of imprisonment such as restricted contact with other prisoners, restricted access to prison facilities, restricted contact with family members.
- **Codes:** Yes; No/not specified.
- **Rules:**

Check each of the below rules independently. If either of the first two rules are satisfies, code as “Yes”.

 - If conditions of detention during COVID-19 have been taken into account as mitigating, code as “yes”
 - If *Worboyes v The Queen* was cited in the case as a relevant sentencing consideration, code as “yes”
 - If neither *Worboyes* or COVID-19 have been included as a consideration, or have not been mentioned at all, code as “no/not specified”.

3. Relevance of mental impairment or illness

- **Definition:** Whether the offender having a mental impairment or mental illness was a factor in sentencing. This will usually be indicated by the sentencing judge finding that any of the limbs in *Verdins & Ors v The Queen* [2007] VSCA 102 applied. Since *Brown v The Queen* [2020] VSCA 212, this also includes personality disorders. Mental impairment may have a mitigating effect due to reduced moral culpability whereas mental illness may have a mitigating effect due to increased burden of imprisonment.
- **Codes:** Yes; No/not specified
- **Rules:**
 - If judgement clearly specifies that mental impairment or mental illness was a relevant mitigating factor in sentencing the offender, code as “Yes”, this includes where imprisonment will be more onerous on the offender and this has been “taken into account”
 - If judgment uses a broad or vague reference (for example, “mental impairment” without further elaboration or indication that this was a consideration in sentencing the offender), code as “No/not specified”
 - If no mental impairment mentioned, code as “No/not specified”

4. Relevance of childhood deprivation

- **Definition:** Whether the offender experienced childhood deprivation in a way that was considered a relevant factor in sentencing. This may be indicated by the court finding that the case of *Bugmy v The Queen* [2013] HCA 37 applied. The childhood circumstances do not have to completely excuse the offending or mitigate all moral culpability to be a mitigating factor. Childhood deprivation includes, for example:
 - Exposure to, and/or experience of, family violence as a child
 - Experiencing childhood sexual abuse
 - Early exposure to alcohol and other drug abuse
 - Homelessness
 - Child abuse and neglect
 - **Codes:** Yes; No/not specified
 - **Rules:**
 - If significant childhood deprivation is mentioned, code as “Yes” (e.g., “The offender grew up in a violent household”, “I take into account the offender’s traumatic childhood”)
 - If childhood deprivation has been strongly linked to be a root cause for a mental condition wherein application of one of the limbs in *Verdins & Ors v The Queen* [2007] VSCA 102 applied, code as “Yes”. Childhood circumstances must be significantly adverse under at least one of the five categories defined above to be considered relevant to this interpretation
 - If childhood deprivation not mentioned at all or mentioned but explicitly stated as not relevant to sentencing, code as “No/not specified”
-

5. Primary victim relationship to offender (rape and murder charges only)

- **Definition:** The nature of the relationship between the offender and the primary victim (that is, the victim of the offence receiving the most severe penalty in the case) at the time of the offending.
- **Codes:** Current intimate partner; Former intimate partner; Family member; Acquaintance; Stranger; Other/not specified.
- **Rules:** For each charge of rape or murder:
 - If there are multiple victims, select the primary family violence victim referenced in sentencing. The primary family violence victim is the victim against which the most serious offending occurs. Typically, this can be determined by the charge

in the case that received the most severe sentence (for example, the longest prison term).

- The status of the relationship can change throughout the offending in some cases. For example, the relationship may shift from current to former intimate partner numerous times. Record the status of the relationship at the time of each relevant rape or murder offence.
- If the offender and victim were formerly intimate partners but only maintain a friendship at the time of offending, code as “Acquaintance”.
- Code “Family member” if the victim was not an intimate partner but some other member of the offender’s family by birth, marriage or de-facto relationship (for example daughter-in-law, step-child, sibling, father).
- If the offender doesn’t have a direct relationship with the victim as an acquaintance but they have some other mutual acquaintance, code as “Other/not specified”.

6. What form of penetration (rape charges only)

- **Definition:** What form of penetration was used in each rape charge.
- **Codes:** Penile-vaginal; Penile-anal; Oral; Digital-vaginal; Digital-anal; Object; Body part; Other/not specified
- **Rules:**
 - If multiple charges of rape are included in the case, code each individual charge for form of penetration.
 - Sometimes there will be multiple charges of rape in a case, and it will not be clear which charge number and sentence is associated with each instance of rape described in the judgment. In those instances, make a reasonable inference about which rape offence matches each charge-level sentence, but also flag it for manual inter-coder resolution.
 - Code as “Other/not specified” if unclear.

7. Offender’s role in the trafficking process (trafficking a large commercial quantity charges only)

- **Definition:** The following roles were identified in the Sentencing Advisory Council’s 2015 report on sentencing major drug offences: (1) principal / co-principal or proprietor / co-proprietor, (2) significant role, such as a lieutenant or right-hand man of the principal, and (3) minor role, such as a gofer or courier.
- **Codes:** Principal; Significant; Minor; Unclear/not specified

- **Rules:**

- Code 'Principal' if the judgment characterises the offender as being the person in charge of the operation, or key aspects of the supply chain (for example, wholesaling).
- Code 'Significant' if the judgment characterises the offender as having significant control of the operation, but they are not the person in charge.
- Code 'Minor' if the judgment characterises the offender as having a relatively limited role in the operation, such as a gofer or courier.
- Code 'Unclear/not specified' if the judgment is not clear about, or does not mention, the offender's role in the operation.

8. Murder – emergency worker (murder charges only)

- **Definition:** Whether the victim was an emergency worker or custodial officer on duty.

- **Codes:** Yes; No/not specified

- **Rules:**

- Code 'Yes' if the person murdered was a custodial officer on duty or an emergency worker on duty, and the court has sentenced the offender on the basis that they knew or were reckless as to whether the victim was a custodial officer or an emergency worker
- Code 'No/not specified' if the person murdered was not a custodial officer on duty or an emergency worker on duty, or if it was not mentioned.

Additional coding: Flag any coding that is ambiguous with an asterisk, output results in a table, creating a new table for each batch of remarks provided.

1. What type of drug was trafficked in a large commercial quantity?
2. Did the judge mention the offender having a history of prior offending? Specify whether the offending was explicitly stated as not relevant.
3. If the offender had a history of prior offending, what was the nature of the offending? E.g. drug trafficking, drug possession, assault.
4. If the offender had a history of prior offending, did they serve a custodial sentence (such as imprisonment)?
5. What was the primary motivation for offending (e.g. greed, self-enrichment, sense of community, debt, support addiction).

Appendix 3: Regression analysis

Ordinary least squares (OLS) regression was used to estimate the relationship between imprisonment length and a range of predictor variables. The three models used in this report (one per offence examined) were designed to characterise sentencing practices within the reference period, rather than to support extrapolation beyond the observed data.

Statistical inference

Each regression model calculates a 'coefficient' for each predictor variable, representing the estimated magnitude of its impact on the outcome. Because these estimates carry margins of error, the model also produces a p-value for each predictor.

The p-value indicates the probability that the predictor's true effect is zero (that is, it has no real impact). A p-value below 0.05 is the commonly accepted threshold for concluding that a predictor has a statistically significant effect. This means there is less than a 5% probability that the observed impact is due to chance alone.

Assumptions

To ensure the validity of the regression results, each model was assessed against the standard assumptions of linear regression. Where those assumptions were not satisfied, appropriate transformations and adjustments were applied:

- a linear relationship between a factor and the outcome: where a non-linear relationship between a continuous factor and an outcome is observed, a transformation of the predictor is required
- residuals: residuals of the model must be approximately normally distributed. They are the distance between the observed data point and the model's predicted value and are an indicator of margin of error of the model
- homoscedasticity: residuals should have consistent variance across the full range of the model, that is, the margin of error of the model shouldn't be notably larger for any subsection of the range of observed values when compared to the remaining sections of the range
- independence of errors (no serial correlation): each individual data point should be independent and not affected by any other data point in the sample, that is, preceding values should not influence other values where time is a factor.

Addressing assumption violations

Non-normal residuals: Box Cox

The Box Cox¹²² transformation is an exponent of the form:

$$y = \begin{cases} \frac{y^\lambda - 1}{\lambda}, & \text{if } \lambda \neq 0 \\ \log y, & \text{if } \lambda = 0 \end{cases}$$

where y is the dependent variable (outcome), the imprisonment length for a charge of the offence.

The lambda value (λ) is chosen by optimising for the value that transforms the outcome to the closest approximation of a normal distribution curve, that is, a symmetrical bell-curve. Each model has been transformed separately and has its own unique lambda value. Once transformed, the model estimates coefficients for each independent variable. The inverse transformation of the Box Cox equation is then applied to the model's coefficients to understand the coefficients in raw units.

Non-linear relationship: age transformation

For murder and rape, the relationship between age and imprisonment length was not linear; that is, imprisonment length did not increase and decrease at a steady rate with age. For most of the data, younger offenders tended to receive shorter sentences, with imprisonment lengths increasing with age to a certain point. Older offenders did not receive increasingly longer sentences; in fact, the imprisonment length began to plateau and slightly decrease for offenders aged 50 and over. A transformed variable of the squared value of age (quadratic transformation) was included in the model to account for the lower imprisonment lengths on either end of the age range, linearising the relationship between age and imprisonment length. The model for trafficking in a large commercial quantity of a drug of dependence met the linearity assumption, and so transformation of the age variable was not required.

122. George E. P. Box and David R. Cox, 'An Analysis of Transformations' (1964) 26(2) *Journal of the Royal Statistical Society: Series B (Methodological)* 211.

Serially correlated residuals: Newey-West standard errors

Autocorrelation (or serial correlation) of residuals was present for all three models. This was to be expected given that sentences are affected by preceding sentenced offences (consideration of like cases and sentencing practices). This means that successive observations have a degree of correlation and are not entirely independent of each other.

Autocorrelation can produce inefficient or biased coefficients. The regression has addressed this issue by employing Newey-West standard errors.¹²³ This is a robust method that calculates larger errors than the errors calculated using the conventional method so as not to overstate the inferential power of the model. This method recalculates p-values – the statistical significance of the estimate's coefficient. Where errors are larger, the variable is less likely to be statistically significant. This ensures that we are not overstating the power of the model. The model and its coefficients remain the same; only the statistical significance of the coefficients is impacted by this technique.

123. Whitney K. Newey and Kenneth D. West, 'A Simple, Positive Semi-Definite, Heteroskedasticity and Autocorrelation Consistent Covariance Matrix' (1987) 55(3) *Econometrica* 703.

Appendix 4: Regression results

Table A2 presents the regression results for all three models developed for this report. All variables included in each model are displayed with their calculated coefficients. Statistically significant variables are indicated by an asterisk (*). This table also provides model summary details such as the model fit (R^2) and the lambda (λ) used for the Box Cox transformation.

Table A2: Regression modelling results for murder, rape and trafficking in a large commercial quantity of a drug of dependence

Variable	Murder	Rape	Trafficking in a large commercial quantity of a drug of dependence
Coefficients			
(Intercept)	15.5	-0.35	7.94
Standard sentence	1.84*	1.16*	2.22*
Age of offender at sentencing	0.14	0.21*	0.04*
Age ²	~0*	~0*	
Childhood deprivation considered	-1.06*	-0.23	0.43
COVID-19 conditions considered	1.15	-0.22	-0.3
Female offender	-0.84	0.11	-0.1
Mental impairment or illness considered	0.15	-0.21	-0.16
Not guilty plea	0.64	0	1.28*
Offending more than 5 years before sentence	2.48*	0.23	0.13

Variable	Murder	Rape	Trafficking in a large commercial quantity of a drug of dependence
Year of sentence <i>[reference category: 2014–15]</i>			
2015–16	0.23	-0.64	
2016–17	-0.54	-0.86*	
2017–18	1.35	0.46	
2018–19	1	-0.43	
2019–20	-0.07	0.2	
2020–21	-1.69	-0.24	
2021–22	-2.06	-0.48	
2022–23	-0.84	-0.42	
2023–24	-0.76	-0.24	
Prior offending <i>[reference category: no prior offending]</i>			
Prior offending: custodial	0.68	0.62*	-0.36
Prior offending: non-custodial	0.29	-0.17	0.24
Relationship to offender: acquaintance	<i>[reference category for murder]</i>	-0.19	
Relationship to offender: current intimate partner	0.3	<i>[reference category for rape]</i>	
Relationship to offender: family member	1.75	0.28	
Relationship to offender: former intimate partner	1.49*	0.09	
Relationship to offender: other or not specified	1.98*	-0.08	
Relationship to offender: stranger	1.45	0.74*	

Variable	Murder	Rape	Trafficking in a large commercial quantity of a drug of dependence
Form of penetration <i>[reference category: penile-vaginal]</i>			
Digital-anal		-0.57*	
Digital-vaginal		-0.68*	
Object		0.11	
Oral		-0.37*	
Penile-anal		0.49*	
Digital rape before uplift		0.25	
Role in operation <i>[reference category: minor]</i>			
Principal			1.65*
Significant			1.28*
Sentenced after uplift for commercial quantity offences			0.84
Sentenced after uplift for large commercial quantity offences			1.23
Motivation <i>[reference category: self-enrichment]</i>			
Support drug addiction			-1.03*
Debt repayment			-0.34
Mixed: financial reward and support drug addiction			-0.65
Not specified			0.58

Variable	Murder	Rape	Trafficking in a large commercial quantity of a drug of dependence
Drug trafficked [reference category: methamphetamine]			
Heroin			0.65
MDMA			-0.77
Cocaine			0.09
Ephedrine			-0.02
1,4-butanediol			-0.17
Various			0.53
Other			-0.68

Model summary statistics

R ²	0.263	0.24	0.411
Adjusted R ²	0.164	0.202	0.309
Residual standard error (σ)	0.052	1.488	0.689
F-statistic	2.66	6.26	4.02
P-value	<0.01	<0.01	<0.01
Degrees of freedom	25	31	25
Number of observations	212	646	170
Lambda	-0.505	0.788	0.424
Lag	8	4	1

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- Sentencing Advisory Council, *Sentencing Trends for Sexual Penetration of a Child Aged Between 10 and 16 in the Higher Courts of Victoria 2001–02 to 2005–06*, Sentencing Snapshot 31 (Sentencing Advisory Council, 2007).
- Sentencing Advisory Council, *Sentencing Trends for Incest in the Higher Courts of Victoria 2002–03 to 2006–07*, Sentencing Snapshot 43 (Sentencing Advisory Council, 2008).
- Sentencing Advisory Council, *Sentencing Trends for Trafficking in a Large Commercial Quantity of Drugs in the Higher Courts of Victoria 2002–03 to 2006–07*, Sentencing Snapshot 46 (Sentencing Advisory Council, 2008).
- Sentencing Advisory Council, *Sentencing Trends for Culpable Driving Causing Death in the Higher Courts of Victoria 2013–14 to 2017–18*, Sentencing Snapshot 225 (Sentencing Advisory Council, 2019).
- Sentencing Advisory Council, *Sentencing Trends for Trafficking in a Large Commercial Quantity of Drugs in the Higher Courts of Victoria 2016–17 to 2020–21*, Sentencing Snapshot 269 (Sentencing Advisory Council, 2022).
- Sentencing Advisory Council, *Sentencing Trends for Murder in the Higher Courts of Victoria 2017–18 to 2021–22*, Sentencing Snapshot 273 (Sentencing Advisory Council, 2023).
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- Sentencing Advisory Council, *Sentencing Trends for Sexual Penetration of a Child Aged 12 to under 16 in the Higher Courts of Victoria 2017–18 to 2021–22*, Sentencing Snapshot 282 (Sentencing Advisory Council, 2023).
- Sentencing Advisory Council, *Sentencing Trends for Incest in the Higher Courts of Victoria 2017–18 to 2021–22*, Sentencing Snapshot 284 (Sentencing Advisory Council, 2023).

Legislation

Victoria

- Crimes Act 1958* (Vic)
- Crimes Amendment (Manslaughter and Related Offences) Act 2020* (Vic)
- Crimes Amendment (Sexual Offences) Act 2016* (Vic)
- Drugs, Poisons and Controlled Substances Act 1981* (Vic)
- Sentencing Act 1991* (Vic)
- Sentencing Amendment Act 2010* (Vic)
- Sentencing Amendment (Baseline Sentences) Act 2014* (Vic)
- Sentencing Amendment (Sentencing Standards) Act 2017* (Vic)

Interstate

Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002 (NSW)

Case law

Victoria

Brown v The Queen [2019] VSCA 286
DPP v Aldrich [2015] VCC 1913
DPP v Amaral (a pseudonym) [2019] VCC 2178
DPP v Amaral [2020] VSCA 290
DPP v Aydin [2023] VCC 1685
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