

Sentencing Snapshot

Sentencing trends in
the higher courts of
Victoria
2007–08 to 2011–12

June 2013
No. 145

Rape

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of rape and details the age and gender² of people sentenced for this offence in the County and Supreme Courts of Victoria between 2007–08 and 2011–12.³ Except where otherwise noted, the data represent sentences imposed at first instance.

A person who intentionally sexually penetrates another person without that person's consent is guilty of the offence of rape.⁴ Sexual penetration includes oral, anal and vaginal penetration⁵ and may be committed by and against both men and women. However, rape is overwhelmingly committed by men against women. Rape is an indictable offence that carries a maximum penalty of 25 years' imprisonment⁶ and/or a fine of 3,000 penalty units.⁷

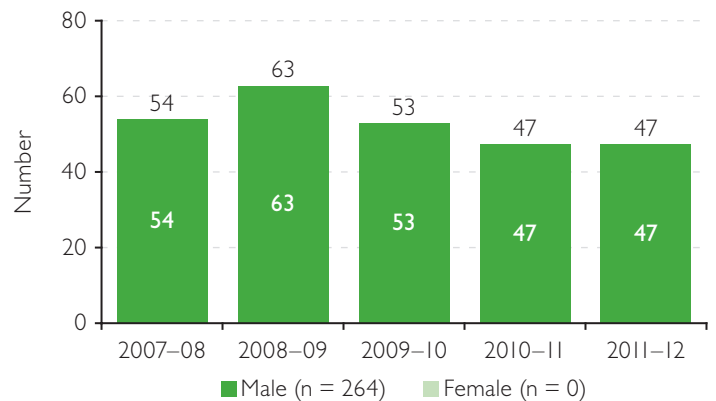
Rape was the principal offence⁸ in 2.6% of cases sentenced in the higher courts between 2007–08 and 2011–12.

People sentenced

From 2007–08 to 2011–12, 264 people were sentenced in the higher courts for a principal offence of rape. These people are the focus of this Snapshot. However, an additional 16 people were sentenced in cases that involved rape but where some other offence was the principal offence. In total, 280 people were sentenced in the higher courts for 543 charges of rape.

Figure 1 shows the number of people sentenced for the principal offence of rape by their gender. Over the five years depicted, everyone sentenced was male.

Figure 1: The number of people sentenced for rape by gender, 2007–08 to 2011–12



Sentence types and trends

Figure 2 shows the total number of people sentenced for rape and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.⁹ Over the five-year period, 93% of people were given an immediate custodial sentence. This peaked at 98% (52 of 53) in 2009–10 after a low of 89% (48 of 54) in 2007–08. In 2011–12, 91% of people sentenced (43 of 47) were given an immediate custodial sentence.

Table 1 shows the number of people sentenced for rape from 2007–08 to 2011–12 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for rape received a period of imprisonment (88% or 232 of 264 people).

The number of people given a sentence of imprisonment for rape was lowest during 2010–11 (40 people) and highest during 2008–09 (55 people). The percentage of people given a sentence of imprisonment was lowest during 2007–08 (80% or 43 of 54 people) and highest during 2009–10 (98% or 52 of 53 people).

Figure 2: The number of people sentenced for rape and the number who received an immediate custodial sentence, 2007–08 to 2011–12

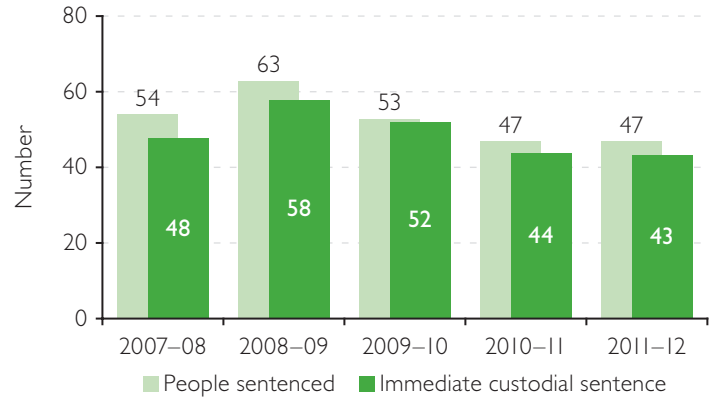


Table 1: The number and percentage of people sentenced for rape by sentence type, 2007–08 to 2011–12

Sentence type	2007–08	2008–09	2009–10	2010–11	2011–12	Total
Imprisonment	43 (80%)	55 (87%)	52 (98%)	40 (85%)	42 (89%)	232 (88%)
Wholly suspended sentence	4 (7%)	4 (6%)	0 (–)	3 (6%)	1 (2%)	12 (5%)
Partially suspended sentence	3 (6%)	3 (5%)	0 (–)	3 (6%)	0 (–)	9 (3%)
Non-custodial supervision order	0 (–)	0 (–)	0 (–)	0 (–)	2 (4%)	2 (<1%)
Intensive correction order	0 (–)	1 (2%)	1 (2%)	0 (–)	0 (–)	2 (<1%)
Community-based order	1 (2%)	0 (–)	0 (–)	0 (–)	1 (2%)	2 (<1%)
Youth training centre order	0 (–)	0 (–)	0 (–)	0 (–)	1 (2%)	1 (<1%)
Residential treatment order	0 (–)	0 (–)	0 (–)	1 (2%)	0 (–)	1 (<1%)
Custodial supervision order	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
Aggregate imprisonment	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
Adjourned undertaking with conviction	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
People sentenced	54	63	53	47	47	264

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for rape grouped by their age¹⁰ between 2007–08 and 2011–12. The average age of people sentenced for rape was 36 years and 9 months. One male juvenile was sentenced over this period.¹¹

Figure 3: The number of people sentenced for rape by gender and age, 2007–08 to 2011–12



Sentence types by age

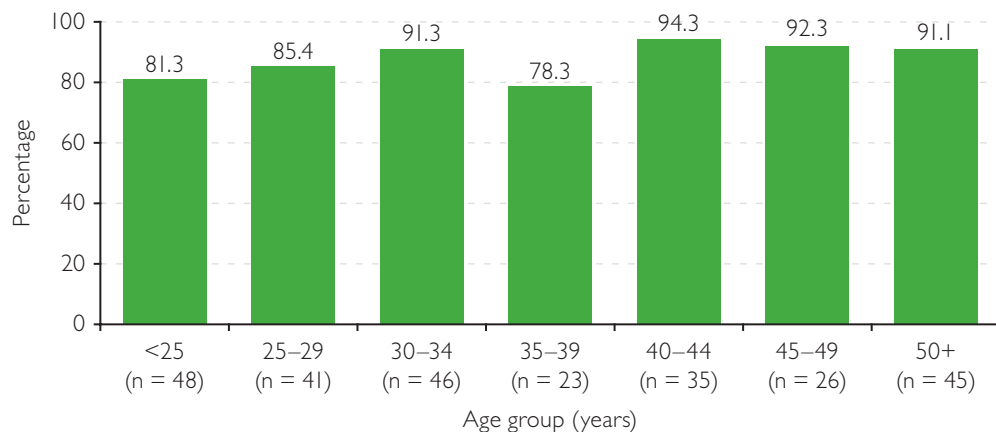
As shown in Table 1, the most common sentence type was imprisonment. The following analysis examines this sentence type by the offender’s age group.

Imprisonment

As shown in Figure 4, sentences of imprisonment were most likely to be given to people aged 40–44 years (94% or 33 of the 35 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 35–39 years (78% or 18 of the 23 people in this age group).

Figure 4: The percentage of people who received a period of imprisonment for rape by age group, 2007–08 to 2011–12



Principal and total effective sentences

Two methods for describing sentence types and lengths are examined in this section. One relates to the principal sentence and examines sentences for the offence at a charge level. The other relates to the total effective sentence and examines sentences for the offence at a case level.

The principal sentence is the individual sentence imposed for the charge that is the principal offence.¹²

The total effective sentence in a case with a single charge is the principal sentence. The total effective sentence in a case with multiple charges is the sentence that results from the court ordering the individual sentences for each charge to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other).

In many cases, the total effective sentence imposed on a person will be longer than the principal sentence. Principal sentences for rape must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of rape from 2007–08 to 2011–12.

Principal sentence of imprisonment

A total of 232 people received a principal sentence of imprisonment for rape between 2007–08 to 2011–12.

Figure 5 shows these people by the length of their imprisonment term.¹³ Imprisonment terms ranged from 2 years to 16 years, while the median length of imprisonment was 5 years (meaning that half of the imprisonment terms were shorter than 5 years and half were longer).

The most common length of imprisonment imposed was 5 to less than 6 years (54 people).

Expanding the analysis from principal sentences of imprisonment to all charges that received imprisonment, there were 503 charges of rape sentenced to imprisonment between 2007–08 and 2011–12. Imprisonment lengths for rape ranged from 3 months to 16 years while the median was 5 years and the most common length was 5 to less than 6 years (112 of 503 charges or 22%).

Returning to principal sentences of imprisonment, as shown in Figure 6, the average length of imprisonment term imposed on people sentenced for rape ranged from 4 years and 11 months in 2011–12 to 5 years and 6 months in 2010–11.

Figure 5: The number of people sentenced to imprisonment for rape by length of imprisonment term, 2007–08 to 2011–12

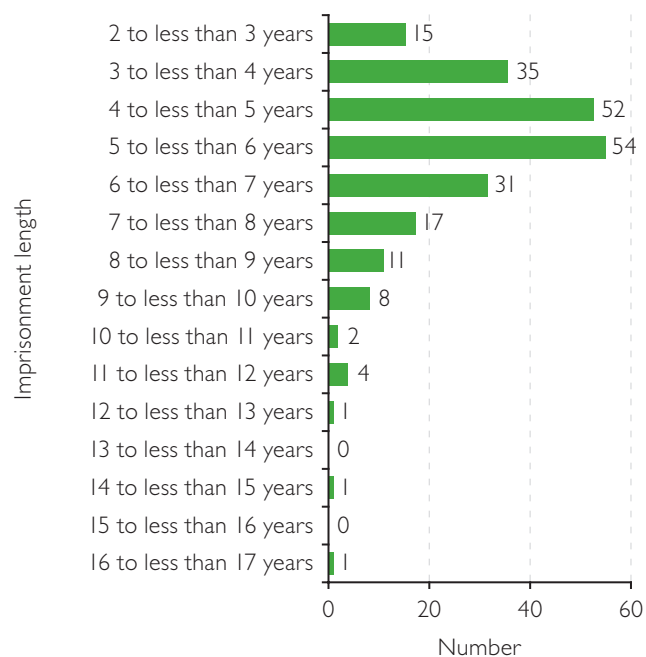
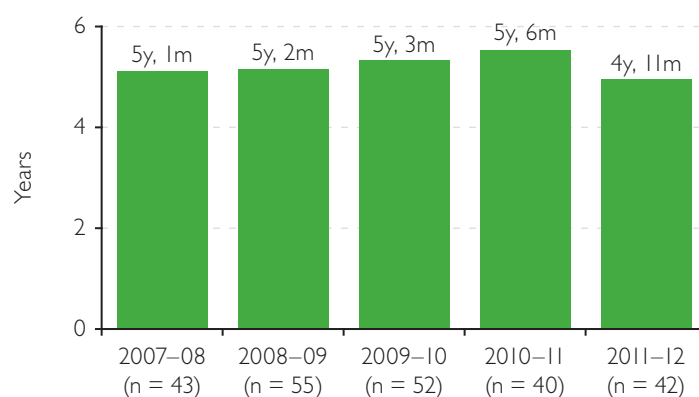


Figure 6: The average length of imprisonment term imposed on people sentenced for rape, 2007–08 to 2011–12

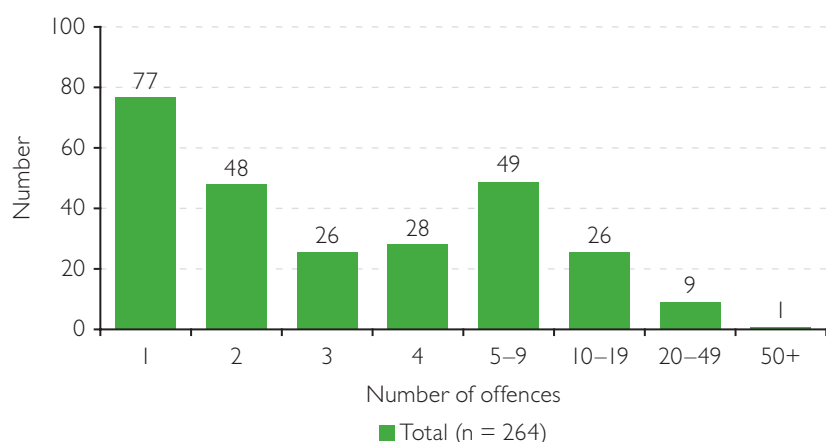


Other offences finalised at the same hearing

Often people prosecuted for rape face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of rape.

Figure 7 shows the number of people sentenced for the principal offence of rape by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 86, while the median was 3 offences. There were 77 people (29.2%) sentenced for the single offence of rape. The average number of offences per person sentenced for rape was 5.19.

Figure 7: The number of people sentenced for the principal offence of rape by the number of sentenced offences per person, 2007–08 to 2011–12



While Figure 7 presents the number of sentenced offences for those sentenced for rape, Table 2 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences. The last column sets out the average number of offences sentenced per person. For example, 66 of the total 264 people (25.0%) also received sentences for indecent assault. On average, they were sentenced for 4.36 counts of indecent assault.

Table 2: The number and percentage of people sentenced for the principal offence of rape by the most common offences that were sentenced and the average number of those offences that were sentenced, 2007–08 to 2011–12

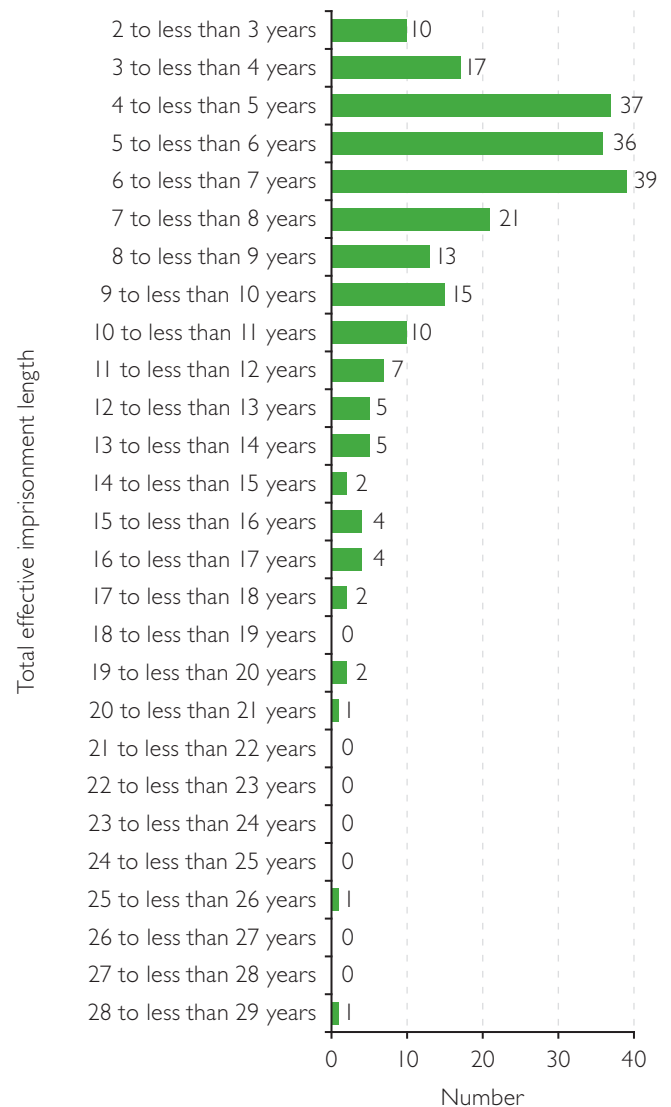
Offence	No.	%	Avg.
1 Rape	264	100.0	1.95
2 Indecent assault	66	25.0	4.36
3 Indecent act with a child under 16	32	12.1	4.00
4 False imprisonment	29	11.0	1.03
5 Common law assault	21	8.0	1.24
6 Sexual penetration of a child under 16	18	6.8	2.67
7 Causing injury intentionally	15	5.7	1.67
8 Aggravated burglary	15	5.7	1.33
9 Making a threat to kill	12	4.5	1.67
10 Causing injury recklessly	12	4.5	1.00
People sentenced	264	100.0	5.19

Total effective sentence of imprisonment

There were 232 people given a total effective sentence of imprisonment.¹⁴ Figure 8 shows the number of people sentenced to imprisonment for rape between 2007–08 and 2011–12 by length of total effective sentence. The length of total effective sentences ranged from 2 years to 28 years, while the median total effective length of imprisonment was 6 years (meaning that half of the total effective sentence lengths were below 6 years and half were above).

The most common total effective imprisonment length was 6 to less than 7 years (39 people).

Figure 8: The number of people sentenced to imprisonment for rape by length of total effective imprisonment term, 2007–08 to 2011–12



Non-parole period

When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under section 11(4) of the *Sentencing Act 1991 (Vic)*, if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be longer than the individual principal sentence for rape. Sentences and non-parole periods must be considered in this broader context.

Of the 232 people who were sentenced to imprisonment for rape, all were eligible to have a non-parole period fixed. Of these people, 228 were given a non-parole period (98%).¹⁵ Figure 9 shows the number of people sentenced to imprisonment for rape between 2007–08 and 2011–12 by length of non-parole period. Non-parole periods ranged from 6 months to 22 years, while the median length of the non-parole period was 4 years (meaning that half of the non-parole periods were below 4 years and half were above).

The most common non-parole period imposed was 3 to less than 4 years (44 people).

Total effective sentences of imprisonment and non-parole periods

Figure 10 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people from 2007–08 to 2011–12.

From 2007–08 to 2011–12, the average length of total effective sentences for all people ranged from 6 years and 7 months in 2011–12 to 7 years and 7 months in 2008–09. Over the same period, the average length of non-parole periods ranged from 4 years and 3 months in 2011–12 to 4 years and 11 months in 2008–09.

Figure 9: The number of people sentenced to imprisonment for rape by length of non-parole period, 2007–08 to 2011–12

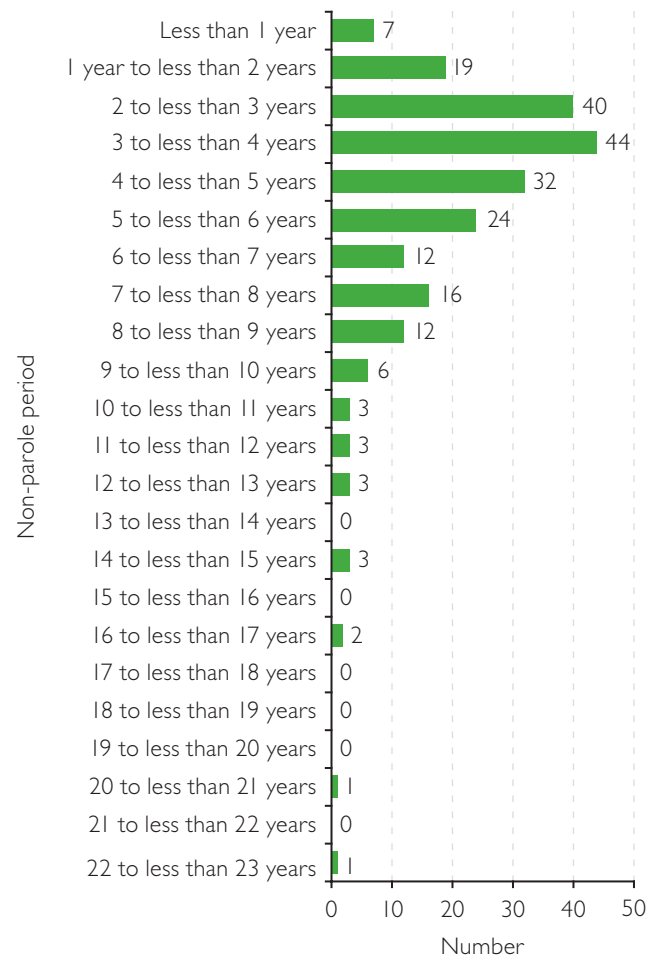
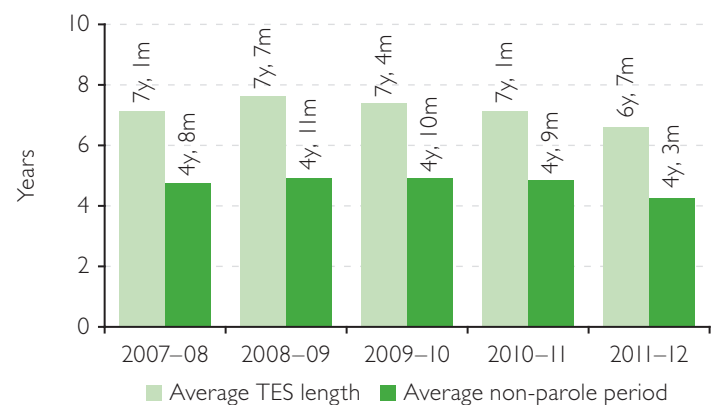


Figure 10: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for rape, 2007–08 to 2011–12



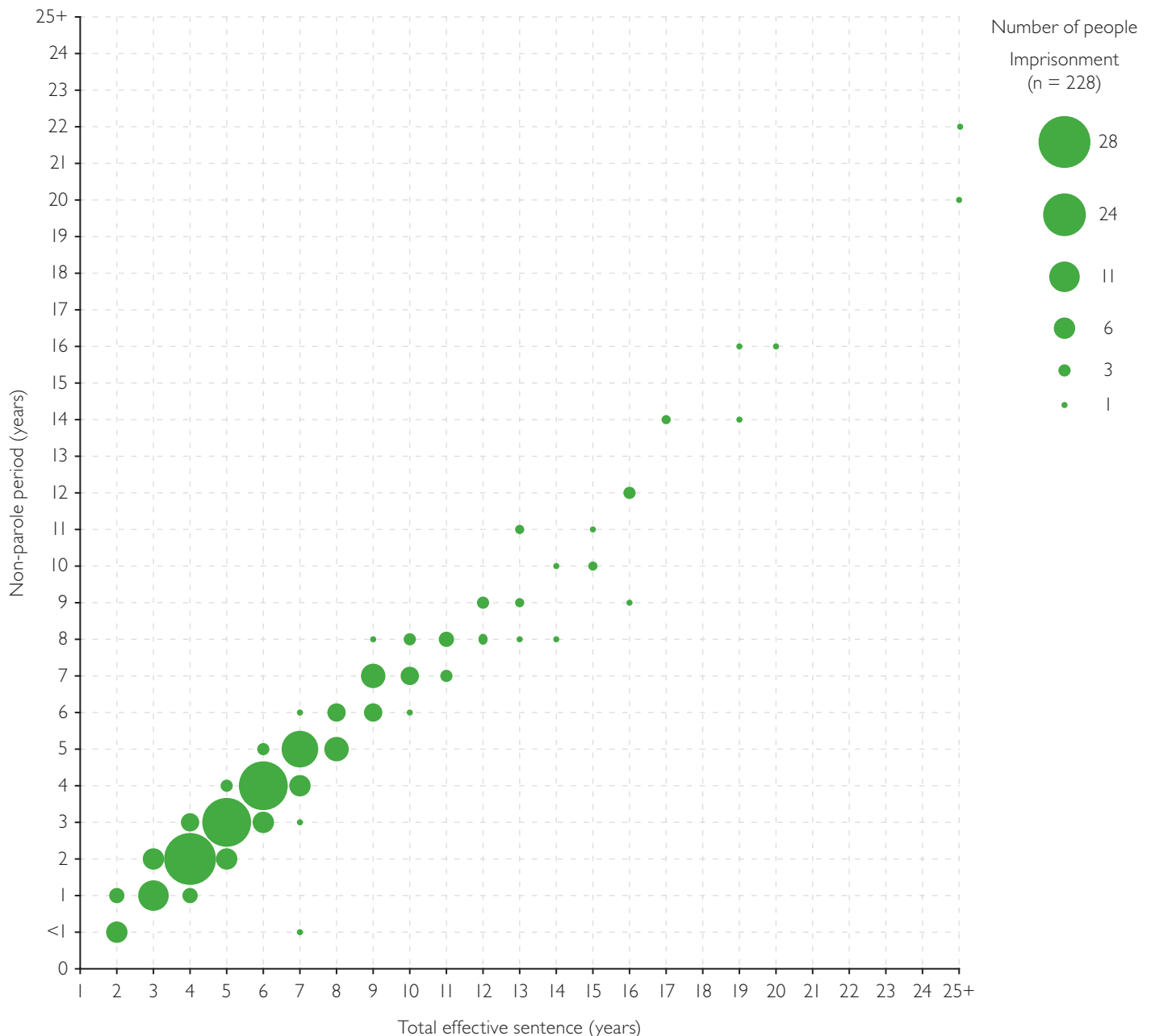
Total effective sentence of imprisonment by non-parole period

While Figures 8 and 9 present the lengths of the total effective sentences and non-parole periods separately, Figure 11 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for rape for each individual person.

The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the bubble reflects the number of people who received that particular combination. Sentence lengths and non-parole periods that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths and non-parole periods of less than one year are grouped into the '<1 year' category. For example, a sentence length of 2 years and 6 months would be included as a sentence length of 2 years for the purposes of Figure 11.

The most common combination of imprisonment length and non-parole period imposed was 4 years with a non-parole period of 2 years (28 people – as represented by the largest bubble on the chart) followed closely by 5 years' imprisonment with a non-parole period of 3 years (27 cases) and 6 years' imprisonment with a non-parole period of 4 years (24 cases). The length of imprisonment ranged from 2 years with a non-parole period of 6 months to 28 years with a non-parole period of 20 years.

Figure 11: The number of people sentenced to imprisonment for rape by the total effective sentence and the non-parole period imposed, 2007–08 to 2011–12



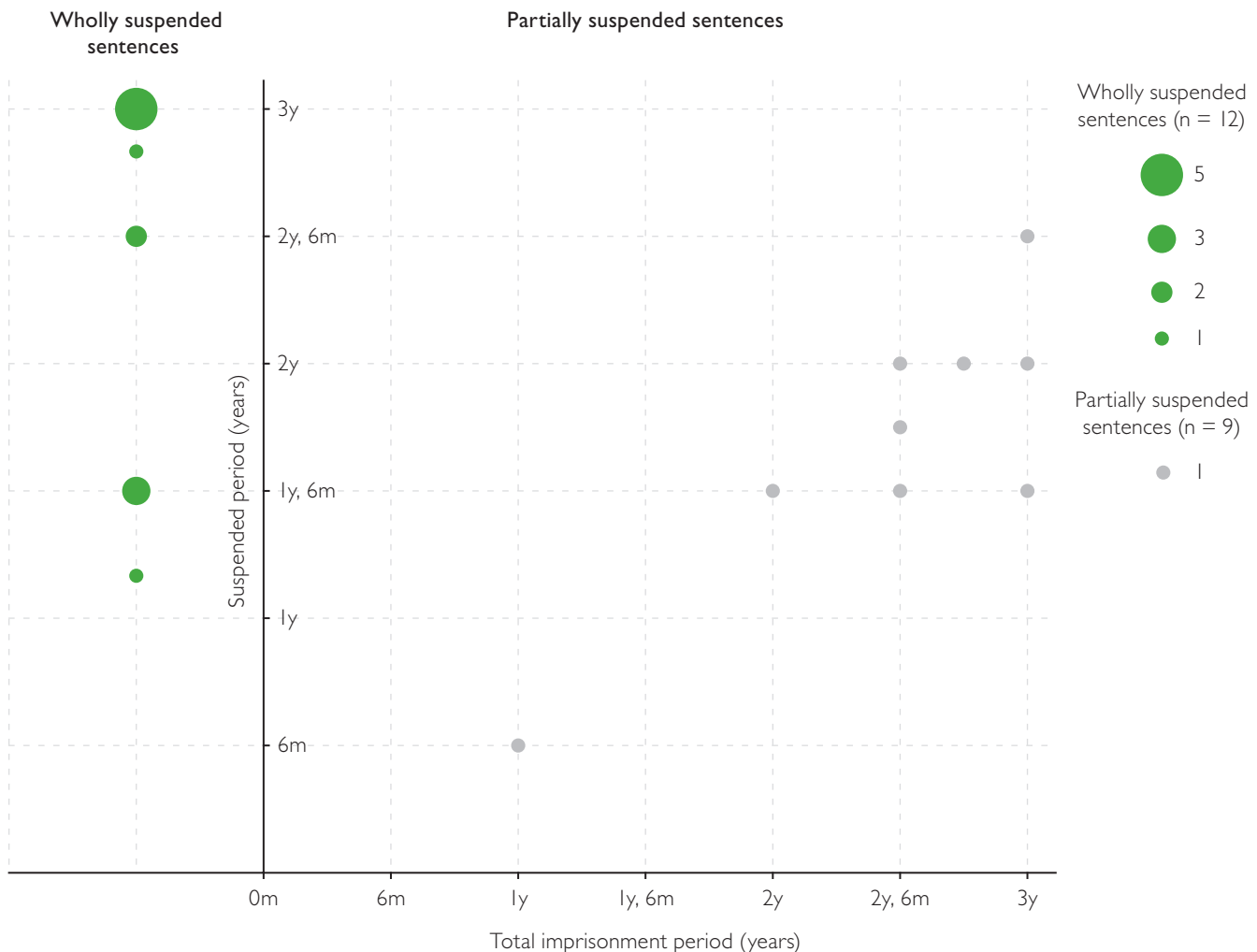
Suspended sentences of imprisonment

There were 21 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 12 people had their prison sentence wholly suspended and 9 received a partially suspended sentence of imprisonment. Figure 12 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the suspended sentence type and length of sentence. The green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the grey bubbles to the right of the vertical axis show the combination of total imprisonment length and the suspended period for those sentenced to a partially suspended sentence. The size of the bubble reflects the number of people who received either the wholly or the partially suspended prison term. Imprisonment lengths and suspended periods that end part way through a month are rounded down to the nearest complete month. For example, a wholly suspended sentence of 6 months and 12 days would be included as a sentence length of 6 months for the purposes of Figure 12.

Wholly suspended sentence lengths ranged from 1 year and 2 months to 3 years. The most common wholly suspended sentence length was 3 years (5 people – as represented by the largest green bubble on the chart).

Partially suspended sentences ranged from 1 year's imprisonment with 6 months suspended to 3 years' imprisonment with 2 years and 6 months suspended. Each combination of imprisonment length and suspension period was equally distributed for people who received a partially suspended sentence (1 person each – as represented by the nine grey bubbles on the chart).

Figure 12: The number of people given a wholly or partially suspended sentence of imprisonment for rape by sentence type and length, 2007–08 to 2011–12



Appeals

A sentence imposed on a person may be appealed¹⁶ by that person or by the Crown. A person sentenced may also appeal against his or her conviction. All appeals made in relation to people sentenced in the higher courts are determined by the Court of Appeal.

Up to June 2012, 15 people sentenced for a principal offence of rape in the period 2007–08 to 2011–12 successfully appealed their convictions. Of these, 2 people were granted acquittals while 13 were granted a retrial. Three of the 15 people, although acquitted or granted a retrial for the principal offence of rape continued to be found guilty of other charges and were resentenced accordingly. Thus, the number of people sentenced from 2007–08 to 2011–12 for a principal offence of rape was reduced to 249 people once appeals are considered.

As a result of successful appeals against sentence, the total effective sentence and/or the non-parole period changed for 19 people. Thirteen of these appeals were made by the person sentenced and resulted in a sentence reduction. The longest total effective imprisonment term to be reduced was a sentence of 25 years and 6 months' imprisonment with a non-parole period of 22 years, which decreased to 23 years and 5 months' imprisonment with a non-parole period of 19 years and 6 months on appeal.

There were 6 successful appeals made by the Crown during 2007–08 to 2011–12 that resulted in an increase in severity from the original sentence. The longest total effective term to be increased was an original sentence of 16 years' imprisonment with a non-parole period of 9 years, which increased to 16 years' imprisonment with a non-parole period of 11 years after appeal.

The principal sentence changed for 10 people as a result of a successful appeal. Of these, 5 resulted in a decrease in the principal sentence while the remaining 5 resulted in an increase. The longest principal sentence of imprisonment reduced was 6 years and 6 months, which decreased to 5 years. The longest principal sentence to increase was a sentence of 5 years' imprisonment, which changed to 6 years on appeal.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term was unchanged at 28 years with a non-parole period of 20 years and the adjusted longest principal sentence of imprisonment was also unchanged at 16 years.

Summary

Between 2007–08 and 2011–12, 264 people were sentenced for rape in the higher courts. Over this period, all of those people sentenced were men (100%), while 71% were between the ages of 20 and 44 years.

The majority of the people sentenced for rape received a period of imprisonment (88%), which was most common for people aged between 40 to 44 years.

Each of the 264 people was sentenced for an average of 5.19 offences, including 1.95 offences of rape. The most common offence finalised in conjunction with rape was indecent assault (25.0% of all cases). The number and range of offences for which people with a principal offence of rape were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 6 years, while the median principal imprisonment length was 5 years.

Total effective imprisonment lengths ranged from 2 years with a non-parole period of 6 months to 28 years with a non-parole period of 20 years. The most common sentence of imprisonment was 4 years with a non-parole period of 2 years, which was given to 28 cases, followed closely by 5 years' imprisonment with a non-parole period of 3 years (27 cases) and 6 years' imprisonment with a non-parole period of 4 years (24 cases).

A small number of people were able to successfully appeal against their sentences. When the results of the appeal outcomes are incorporated into the original sentencing data, the range of total effective imprisonment lengths and principal imprisonment sentence lengths is unchanged.

Endnotes

1. This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases where the defendant is not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot no. 117, which describes sentencing trends for rape between 2005–06 and 2009–10.
2. The information source for sentencing outcomes for rape only contains information on age and gender characteristics. No other demographic analysis is possible using this data source.
3. The source data for the statistical information presented in this Snapshot were provided by the Business Intelligence area of the Courts and Tribunals unit within the Department of Justice (Vic). The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.
4. *Crimes Act 1958* (Vic) s 38(2)(a).
5. *Crimes Act 1958* (Vic) s 35.
6. *Crimes Act 1958* (Vic) s 38(1).
7. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website <www.ocpc.vic.gov.au>.
8. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
9. Immediate custodial sentence includes imprisonment, partially suspended sentence, youth justice centre order, residential treatment order, custodial supervision order and aggregate imprisonment.
10. Age is at the time of sentencing.
11. Some defendants who were under the age of 18 at the time of committing the alleged offence and who were not 19 years or older at the time proceedings commenced may have been dealt with in the Children's Court of Victoria.
12. Refer to endnote 8.
13. Data presented in this section does not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Sentence lengths for aggregate sentences of imprisonment apply to the whole case, while Figure 5 only deals with sentences of imprisonment for the principal proven offence of rape. During the 2007–08 to 2011–12 period, one person received an aggregate form of imprisonment.
14. Of the 232 people who were given a principal sentence of imprisonment, 231 were also given a total effective sentence of imprisonment. There was one person who was given imprisonment as the principal sentence for rape and a residential treatment order as a total effective sentence. This person was not included in Figure 8. There was one additional person who received an aggregate sentence of imprisonment as their principal sentence and who was included in Figure 8.
15. Four people were not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to these cases. The non-parole periods for these people are excluded from the analysis.
16. Appeals data were collected by the Sentencing Advisory Council from transcripts of sentencing remarks of criminal appeals on the Australasian Legal Information Institute's website <www.austlii.gov.au>.

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