

Sentencing trends in
the higher courts of
Victoria
2009–10 to 2013–14

June 2015
No. 176

Rape

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of rape in the County and Supreme Courts of Victoria between 2009–10 and 2013–14.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2014 have been incorporated into the data in this Snapshot.

Detailed data on [rape](#) and other offences are available on [SACStat – Higher Courts](#).

A person who intentionally sexually penetrates another person without that person's consent is guilty of the offence of rape. Sexual penetration includes oral, anal, and vaginal penetration and may be committed by and against both men and women. However, rape is overwhelmingly committed by men against women.

Rape is an indictable offence that carries a maximum penalty of 25 years' imprisonment³ and/or a fine of 3,000 penalty units.⁴

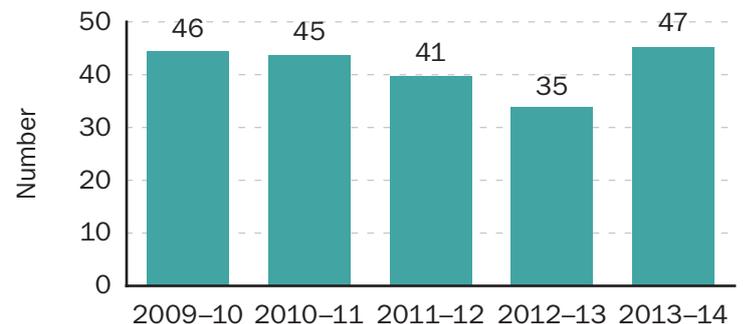
Rape was the principal offence⁵ in 2.2% of cases sentenced in the higher courts between 2009–10 and 2013–14.

People sentenced

From 2009–10 to 2013–14, 214 people were sentenced in the higher courts for a principal offence of rape.

Figure 1 shows the number of people sentenced for the principal offence of rape by financial year. There were 47 people sentenced for this offence in 2013–14, the highest number in the five-year period, and an increase by 12 people from the previous year.

Figure 1: The number of people sentenced for rape by financial year, 2009–10 to 2013–14



Sentence types and trends

Figure 2 shows the total number of people sentenced for rape and the number that 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.⁶ Over the five-year period, 94% of people were given an immediate custodial sentence. This peaked at 98% (45 of 46) in 2009–10 before decreasing to 89% (31 of 35) in 2012–13. In 2013–14, 94% of people sentenced (44 of 47) were given an immediate custodial sentence.

Figure 2: The number of people sentenced for rape and the number that received an immediate custodial sentence, 2009–10 to 2013–14

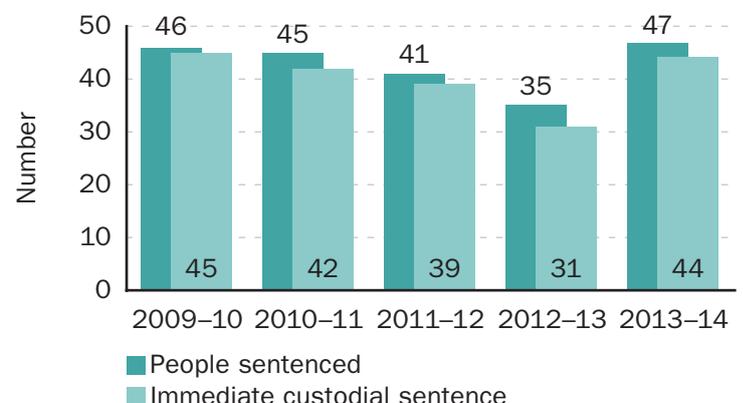


Table 1 shows the number of people sentenced for rape from 2009–10 to 2013–14 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for rape received a period of imprisonment (90% or 192 of 214 people). Seven people (3%) received a partially suspended sentence and 4 people (2%) received a wholly suspended sentence.

The number and percentage of people receiving imprisonment for rape were lowest during 2012–13 (29 of 35 people or 83%) and highest during 2009–10 (45 of 46 people or 98%).

Table 1: The number and percentage of people sentenced for rape by sentence type, 2009–10 to 2013–14

Sentence type	2009–10	2010–11	2011–12	2012–13	2013–14	Total
Imprisonment	45 (98%)	38 (84%)	38 (93%)	29 (83%)	42 (89%)	192 (90%)
Wholly suspended sentence	0 (–)	3 (7%)	1 (2%)	1 (3%)	2 (4%)	7 (3%)
Partially suspended sentence	0 (–)	3 (7%)	0 (–)	0 (–)	1 (2%)	4 (2%)
Residential treatment order	0 (–)	1 (2%)	0 (–)	1 (3%)	1 (2%)	3 (1%)
Non-custodial supervision order	0 (–)	0 (–)	0 (–)	2 (6%)	0 (–)	2 (<1%)
Community correction order	0 (–)	0 (–)	0 (–)	1 (3%)	1 (2%)	2 (<1%)
Youth justice centre order	0 (–)	0 (–)	1 (2%)	0 (–)	0 (–)	1 (<1%)
Intensive correction order	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (<1%)
Community-based order	0 (–)	0 (–)	1 (2%)	0 (–)	0 (–)	1 (<1%)
Aggregate imprisonment	0 (–)	0 (–)	0 (–)	1 (3%)	0 (–)	1 (<1%)
People sentenced	46	45	41	35	47	214

Age and gender of people sentenced

Data on the age and gender of people sentenced for rape are available on [SACStat – Higher Courts](#).

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.⁷

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 2009–10 to 2013–14.

Principal sentence of imprisonment

A total of 192 people received a principal sentence of imprisonment for rape between 2009–10 and 2013–14.

Figure 3 shows these people by the length of their imprisonment term.⁸ The length of principal imprisonment sentences ranged from 1 year and 6 months to 12 years, while the median length of imprisonment was 5 years (meaning that half of the total effective sentence lengths were below 5 years and half were above).

The most common range of imprisonment length imposed was 4 to less than 5 years (47 people).

As shown in Figure 4, the average length of imprisonment term imposed on people sentenced for rape ranged from 4 years and 10 months in 2011–12 to 5 years and 7 months in 2010–11.

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 5 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 32, while the median was 3 offences. There were 47 people (22%) sentenced for the single offence of rape. The average number of offences per person sentenced for rape was 4.73.

While Figure 5 presents the number of sentenced offences for people sentenced for rape, Table 2 (page 4) 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, 60 of the total 214 people (28.0%) also received sentences for indecent assault. On average, they were sentenced for 2.25 counts of indecent assault.

Figure 3: The number of people sentenced to imprisonment for rape by length of imprisonment term, 2009–10 to 2013–14

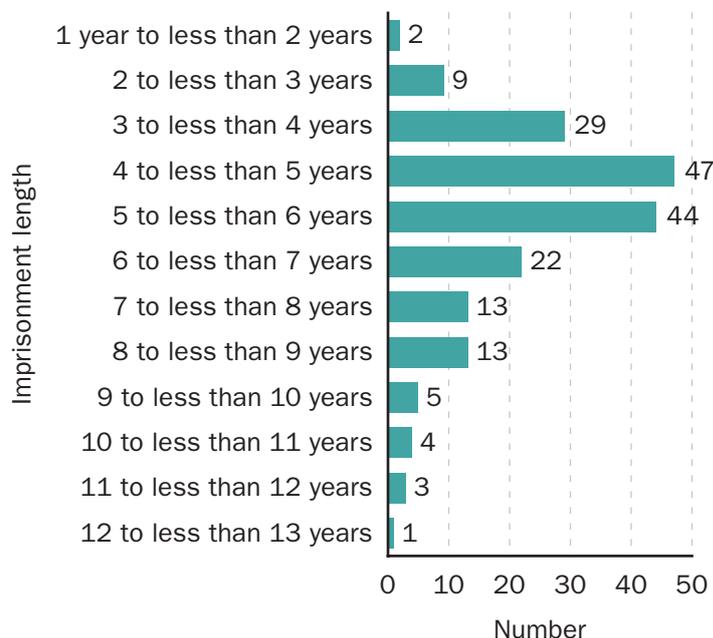


Figure 4: The average length of imprisonment term imposed on people sentenced for rape, 2009–10 to 2013–14

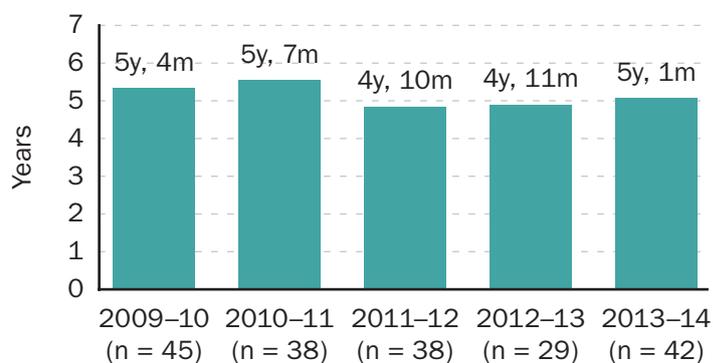


Figure 5: The number of people sentenced for the principal offence of rape by the number of sentenced offences per person, 2009–10 to 2013–14

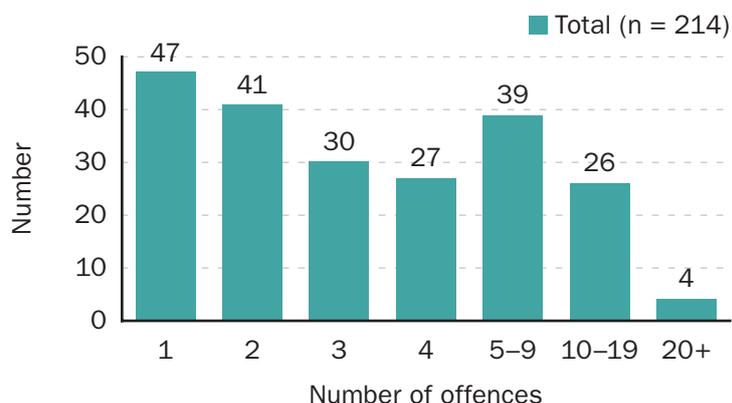


Table 2: The number and percentage of people sentenced for the principal offence of rape by the most common offences sentenced and the average number of those offences sentenced, 2009–10 to 2013–14

Offence	No. of cases	% of cases	Average no. of proven offences per case
1. Rape	214	100.0	2.00
2. Indecent assault	60	28.0	2.25
3. False imprisonment	23	10.7	1.00
4. Assault	22	10.3	1.32
5. Indecent act with or in the presence of a child under 16	21	9.8	3.62
6. Causing injury intentionally	13	6.1	1.69
7. Causing injury recklessly	12	5.6	1.00
8. Theft	11	5.1	1.36
9. Aggravated burglary	11	5.1	1.00
10. Making a threat to kill	10	4.7	1.50
People sentenced	214	100.0	4.73

Total effective sentence of imprisonment

There were 193 people given a total effective sentence of imprisonment.⁹ Figure 6 shows the number of people sentenced to imprisonment for rape between 2009–10 and 2013–14 by length of total effective sentence. The length of total effective sentences ranged from 1 year and 8 months to 23 years and 6 months, 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).

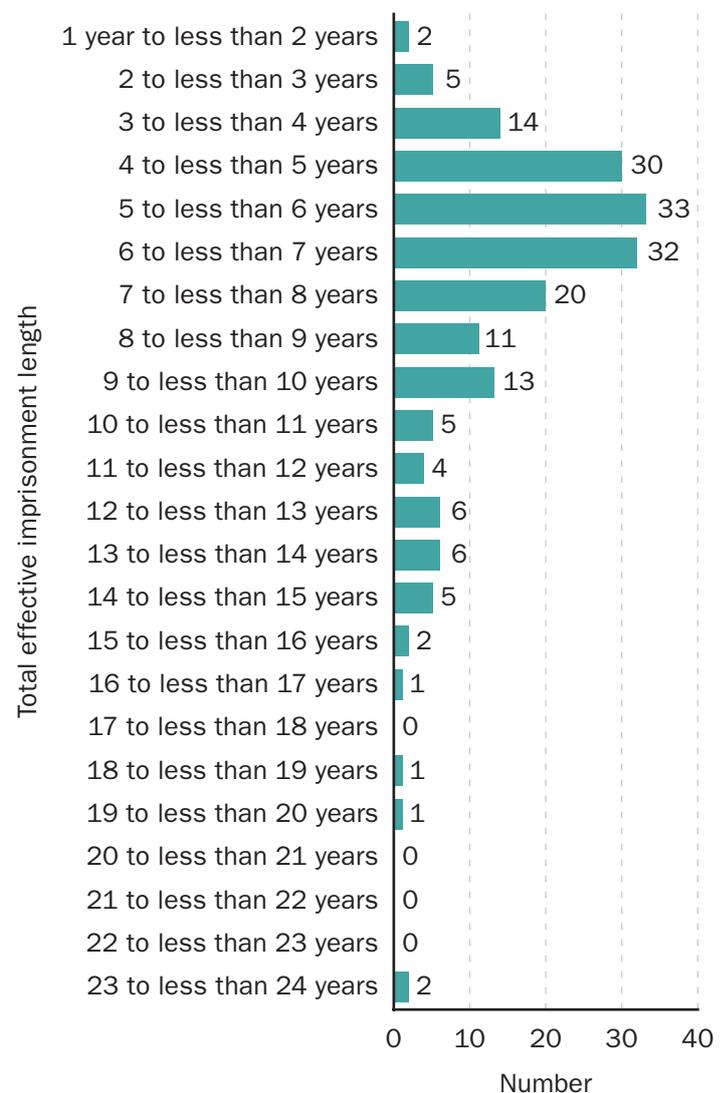
The most common range of total effective imprisonment length was 5 to less than 6 years (33 people).

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.

Figure 6: The number of people sentenced to imprisonment for rape by length of total effective imprisonment term, 2009–10 to 2013–14



Sentences and non-parole periods must be considered in this broader context.

Of the 193 people sentenced to imprisonment for rape, all were eligible to have a non-parole period fixed. Of these people, 188 were given a non-parole period (97%).¹⁰ Figure 7 shows the number of people sentenced to imprisonment for rape between 2009–10 and 2013–14 by length of non-parole period. Non-parole periods ranged from 8 months to 19 years and 6 months, 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 range of non-parole period imposed was 3 to less than 4 years (41 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods from 2009–10 to 2013–14.

From 2009–10 to 2013–14, the average length of total effective sentences for all people ranged from 6 years and 5 months in 2012–13 to 7 years and 6 months in 2013–14. Over the same period, the average length of non-parole periods ranged from 4 years and 3 months in 2011–12 and 2012–13 to 5 years and 1 month in 2009–10 and 2013–14.

Total effective sentence of imprisonment by non-parole period

Data on the total effective sentence of imprisonment by non-parole period for [rape](#) are available on [SACStat – Higher Courts](#).

Non-imprisonment sentences

Data on the length of non-imprisonment sentence types, such as community correction orders, suspended sentences, and fines, for [rape](#) are available on [SACStat – Higher Courts](#).

Summary

Between 2009–10 and 2013–14, 214 people were sentenced for rape in the higher courts. Of these people, 192 (90%) were given a principal sentence of imprisonment.

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.

Figure 7: The number of people sentenced to imprisonment for rape by length of non-parole period, 2009–10 to 2013–14

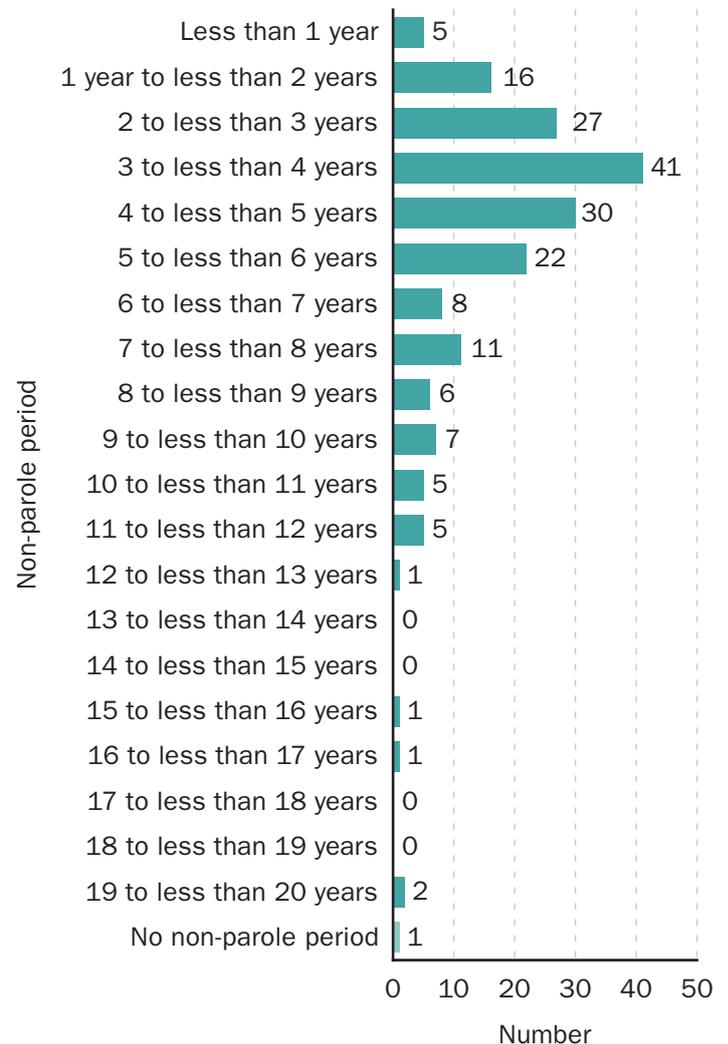
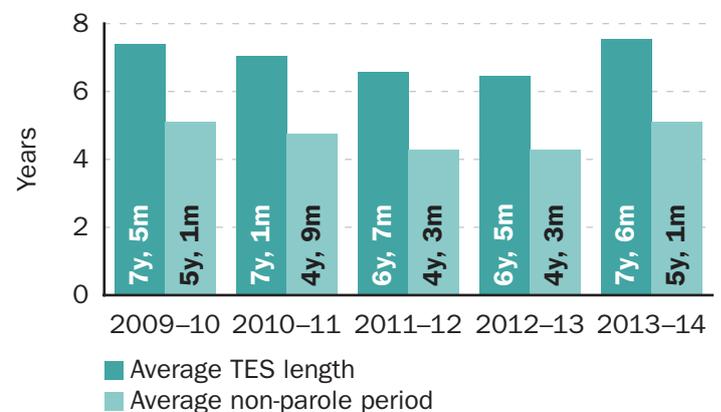


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for rape, 2009–10 to 2013–14



Total effective imprisonment lengths ranged from 1 year and 8 months to 23 years and 6 months, and non-parole periods (where imposed) ranged from 8 months to 19 years and 6 months.

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 found to be unfit to stand trial or 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. 145, which describes sentencing trends for rape between 2007–08 and 2011–12.
2. Data on first instance sentence outcomes presented in this Snapshot were obtained from the Strategic Analysis and Review Team at Court Services Victoria. The Sentencing Advisory Council collected data on appeal outcomes from the [Australasian Legal Information Institute](#). 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.
3. *Crimes Act 1958* (Vic) s 38.
4. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the [Victorian Legislation and Parliamentary Documents website](#).
5. 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.
6. Immediate custodial sentences included imprisonment, partially suspended sentence, residential treatment order, youth justice centre order, and aggregate imprisonment.
7. Refer to endnote 5.
8. Data presented in this section do 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 3 only deals with sentences of imprisonment for the principal proven offence of rape. During the 2009–10 to 2013–14 period, 1 person received an aggregate form of imprisonment.
9. All of the 192 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence. One person given an aggregate sentence of imprisonment is also counted in this section.
10. 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. A non-parole period was not set for one person who was eligible for a non-parole period.

SACStat – Higher Courts Rape

http://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_38_1.html

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