

Sentencing trends in
the higher courts of
Victoria
2010–11 to 2014–15

June 2016
No. 191

Affray

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of affray in the County and Supreme Courts of Victoria between 2010–11 and 2014–15.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2015 have been incorporated into the data in this Snapshot.

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

A person who is involved in unlawful fighting, violence, or a display of force that might cause fear to an innocent member of the public is guilty of the offence of affray. This offence does not require a member of the public actually to be present, but rather that the fighting, violence, or display of force was of a magnitude that a person, if present, would have been afraid. Affray³ is an indictable offence that carries a maximum penalty of 5 years' imprisonment and/or a fine of 600 penalty units.⁴ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Affray can also be tried summarily by the Magistrates' Court if the Magistrates' Court considers it appropriate and the defendant consents.

Affray was the principal offence⁵ in 0.9% of cases sentenced in the higher courts between 2010–11 and 2014–15.

People sentenced

From 2010–11 to 2014–15, 87 people were sentenced in the higher courts for a principal offence of affray.

Figure 1 shows the number of people sentenced for the principal offence of affray by financial year. There were 5 people sentenced for this offence in 2014–15, down by 15 people from the previous year. The number of people sentenced was highest in 2010–11 (31 people).

Sentence types and trends

Figure 2 shows the total number of people sentenced for affray 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, 18% of people were given an immediate custodial sentence. This peaked at 20% in 2012–13, 2013–14, and 2014–15 after a low of 14% (3 of 21) in 2011–12.

Figure 1: The number of people sentenced for affray by financial year, 2010–11 to 2014–15

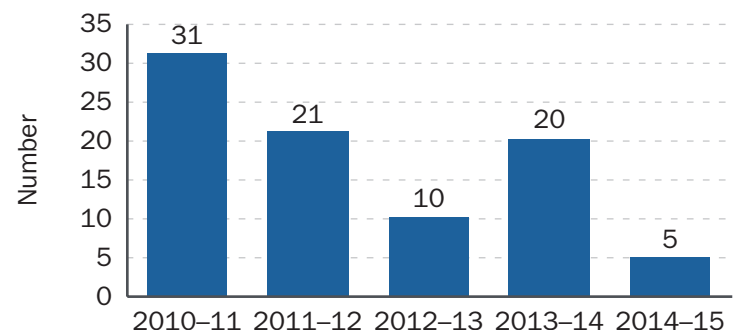


Figure 2: The number of people sentenced for affray and the number that received an immediate custodial sentence, 2010–11 to 2014–15

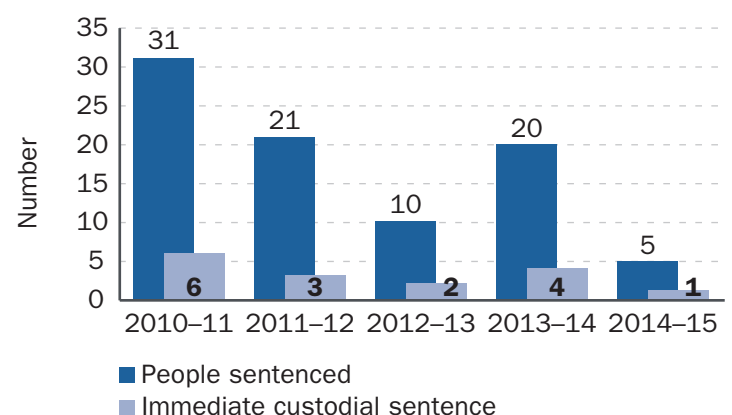


Table 1 shows the number of people sentenced for affray from 2010–11 to 2014–15 by the types of sentences imposed.

Over the five-year period, around one in four people sentenced for affray received a wholly suspended sentence of imprisonment (24% or 21 of 87 people), while 22% received a community correction order, 15% received a community-based order, 11% received a period of imprisonment, and 10% received a fine.

The percentage and number of people receiving a wholly suspended sentence for affray was highest at 29% (9 of 31 people) in 2010–11, and was lowest at 20% (2 of 10 people) in 2012–13.

The percentage of people receiving a community correction order for affray peaked at 80% (4 of 5 people) in 2014–15, while the number of people receiving this sentence was highest in 2013–14 (40% or 8 of 20 people). In 2011–12, when community correction orders were introduced as a sentencing disposition, only 10% (2 of 21 people) received a community correction order.

Table 1: The number and percentage of people sentenced for affray by sentence type, 2010–11 to 2014–15

Sentence type	2010–11	2011–12	2012–13	2013–14	2014–15	Total
Wholly suspended sentence	9 (29%)	5 (24%)	2 (20%)	5 (25%)	0 (–)	21 (24%)
Community correction order	0 (–)	2 (10%)	5 (50%)	8 (40%)	4 (80%)	19 (22%)
Community-based order	11 (35%)	2 (10%)	0 (–)	0 (–)	0 (–)	13 (15%)
Imprisonment	2 (6%)	2 (10%)	1 (10%)	4 (20%)	1 (20%)	10 (11%)
Fine	1 (3%)	5 (24%)	1 (10%)	2 (10%)	0 (–)	9 (10%)
Partially suspended sentence	4 (13%)	1 (5%)	0 (–)	0 (–)	0 (–)	5 (6%)
Adjourned undertaking with conviction	1 (3%)	2 (10%)	0 (–)	0 (–)	0 (–)	3 (3%)
Adjourned undertaking without conviction	2 (6%)	0 (–)	0 (–)	1 (5%)	0 (–)	3 (3%)
Intensive correction order	0 (–)	2 (10%)	0 (–)	0 (–)	0 (–)	2 (2%)
Youth justice centre order	0 (–)	0 (–)	1 (10%)	0 (–)	0 (–)	1 (1%)
Mix (community-based order and fine)	1 (3%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (1%)
People sentenced	31	21	10	20	5	87

Age and gender of people sentenced

Data on the age and gender of people sentenced for affray 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 affray must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of affray from 2010–11 to 2014–15.

Principal sentence of imprisonment

A total of 10 people (11%) received a principal sentence of imprisonment for affray between 2010–11 and 2014–15.

Figure 3 shows these people by the length of their imprisonment term. Imprisonment terms ranged from 3 months to 1 year, 8 months and 12 days, while the median length of imprisonment was 1 year, 3 months and 15 days (meaning that half of the imprisonment terms were shorter than 1 year, 3 months and 15 days and half were longer).

The most common length of imprisonment imposed was 1 to less than 2 years (8 people).

The average length of imprisonment term by financial year is not displayed due to low numbers of people.

Other offences finalised at the same hearing

Often people prosecuted for affray 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 affray.

Figure 4 shows the number of people sentenced for the principal offence of affray by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 7, while the median was 1 offence. There were 70 people (80.5%) sentenced for the single offence of affray. The average number of offences per person sentenced for affray was 1.32.

Figure 3: The number of people sentenced to imprisonment for affray by length of imprisonment term, 2010–11 to 2014–15

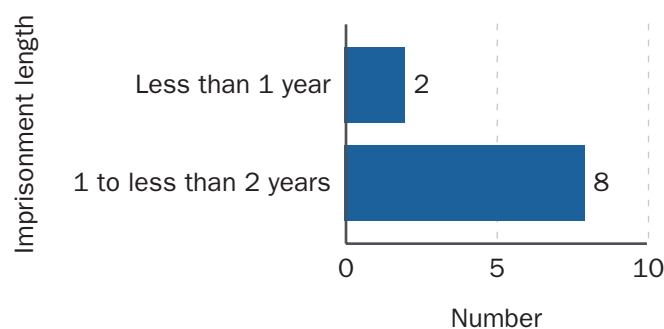
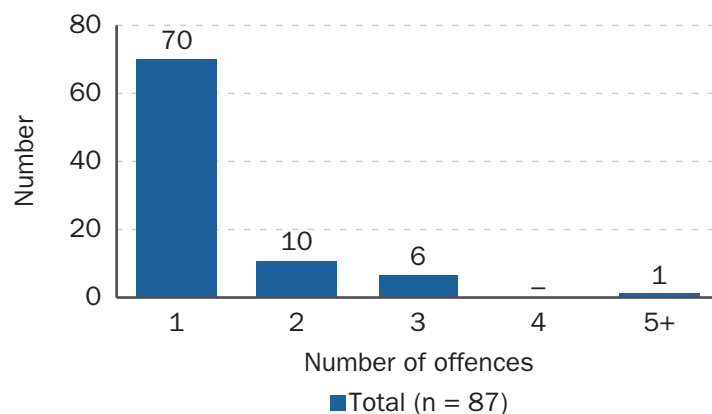


Figure 4: The number of people sentenced for the principal offence of affray by the number of sentenced offences per person, 2010–11 to 2014–15



While Figure 4 presents the number of sentenced offences for those sentenced for affray, Table 2 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the eight most common offences. The last column sets out the average number of offences sentenced per person. For example, 8 of the total 87 people (9.2%) also received sentences for common law assault. On average, they were sentenced for 1.25 counts of common law assault.

Table 2: The number and percentage of people sentenced for the principal offence of affray by the most common offences that were sentenced and the average number of those offences that were sentenced, 2010–11 to 2014–15⁸

Offence	Number of cases	Percentage of cases	Average number of offences per case
1. Affray	87	100.0	1.00
2. Common law assault	8	9.2	1.25
3. Causing injury recklessly	4	4.6	1.00
4. Causing injury intentionally	3	3.4	2.33
5. Fail to answer bail	2	2.3	1.50
6. Possess a drug of dependence	2	2.3	1.00
7. Intentionally destroy/damage property (criminal damage)	1	1.1	1.00
8. Aggravated burglary	1	1.1	1.00
People sentenced	87	100.0	1.32

Total effective sentence of imprisonment

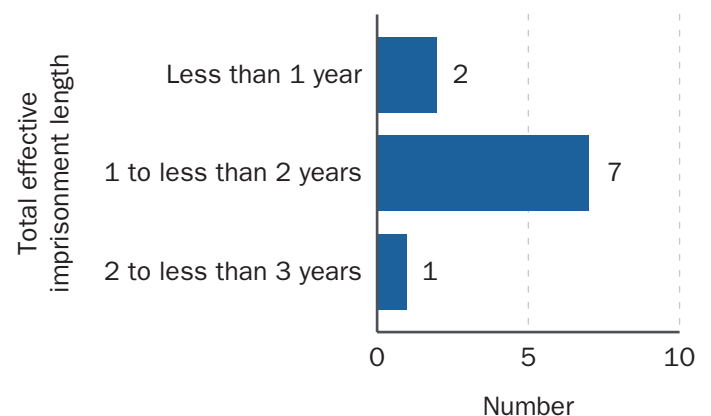
Figure 5 shows the number of people sentenced to imprisonment for affray between 2010–11 and 2014–15 by length of total effective sentence. The length of total effective sentences ranged from 3 months to 2 years, while the median total effective length of imprisonment was 1 year, 3 months and 15 days (meaning that half of the total effective sentence lengths were below 1 year, 3 months and 15 days and half were above).

The most common total effective imprisonment length was 1 to less than 2 years (7 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.

Figure 5: The number of people sentenced to imprisonment for affray by length of total effective imprisonment term, 2010–11 to 2014–15



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

Of the 10 people who were sentenced to imprisonment for affray, 8 were eligible to have a non-parole period fixed.⁹ Of these people, 3 were given a non-parole period (38%).¹⁰ Figure 6 shows the number of people sentenced to imprisonment for affray between 2010–11 and 2014–15 by length of non-parole period. Non-parole periods ranged from 4 months to 1 year and 3 months, while the median length of the non-parole period was 6 months (meaning that half of the non-parole periods were below 6 months and half were above).

The majority of people did not receive a minimum non-parole period (7 people).

Total effective sentences of imprisonment and non-parole periods

The average length of total effective sentences of imprisonment and non-parole periods by financial year is not displayed due to low numbers of people.

Total effective sentence of imprisonment by non-parole period

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

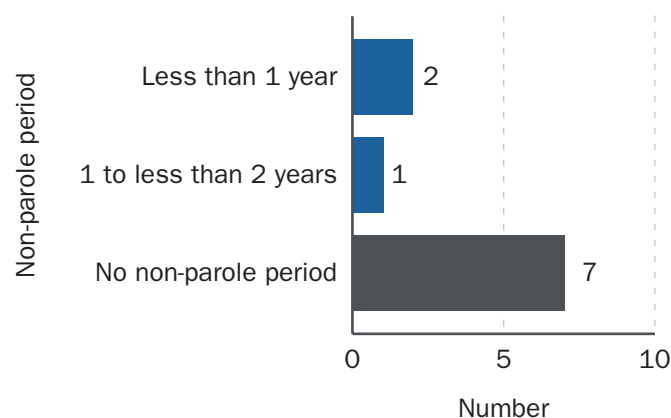
Summary

Between 2010–11 and 2014–15, 87 people were sentenced for affray in the higher courts. Of these people, 21 (24%) were given a wholly suspended sentence, 19 (22%) were given a community correction order, and 10 (11%) were given a principal sentence of imprisonment.

The median principal imprisonment length and the total effective imprisonment length were identical at 1 year, 3 months and 15 days.

Total effective imprisonment lengths ranged from 3 months to 2 years and non-parole periods (where imposed) ranged from 4 months to 1 year and 3 months.

Figure 6: The number of people sentenced to imprisonment for affray by length of non-parole period, 2010–11 to 2014–15



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, these orders 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. 166, which describes sentencing trends for affray between 2008–09 and 2012–13.
2. Data on first-instance sentence outcomes presented in this Snapshot were obtained from the Strategic Analysis and Review Team at Court Services Victoria. Data on appeal outcomes were collected by the Sentencing Advisory Council from the [Australasian Legal Information Institute](#), and also were provided by the Victorian Court of Appeal. The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.
3. Affray is a common law offence. Maximum penalties for affray and other common law offences are listed in section 320 of the *Crimes Act 1958* (Vic).
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 sentence includes imprisonment, partially suspended sentence and youth justice centre order.
7. Refer to endnote 5.
8. There were only 8 co-sentenced offences during 2010–11 to 2014–15.
9. A total of 2 people were not eligible for parole because they were given a total effective sentence length of less than 1 year.
10. A non-parole period was not set for 5 people who were eligible for a non-parole period.

SACStat – Higher Courts Affray

http://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_LAW_1.html

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