

Sentencing Snapshot

Sentencing trends
in the Magistrates'
Court of Victoria
2004–05 to 2007–08

April 2009
No. 73

Driving while suspended

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of driving while suspended and details the age and gender² of people sentenced for this offence in the Magistrates' Court of Victoria between 2004–05 and 2007–08.

A person commits the offence of driving while suspended if he or she drives during a period in which his or her licence or permit has been suspended.³ The penalty prescribed for a first offence is 30 penalty units⁴ or imprisonment for 4 months, or for a subsequent offence imprisonment for a minimum of 1 month and a maximum of 2 years.⁵

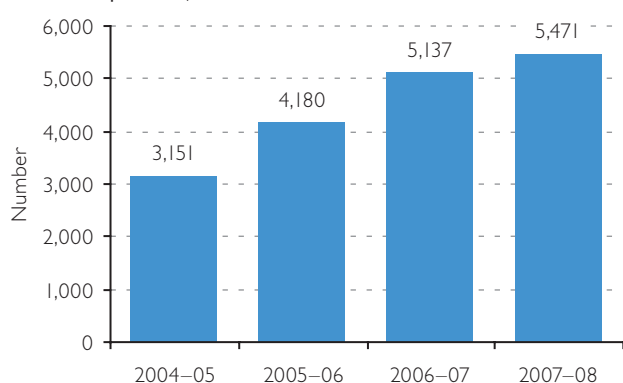
Driving while suspended is a summary offence and is thus triable in the Magistrates' Court, though it may be tried alongside more serious charges in a higher court.

Driving while suspended was the principal offence in 6.5% of cases sentenced in the Magistrates' Court between 2004–05 and 2007–08.

People sentenced

Over the four-year period, the Magistrates' Court sentenced 17,939 people for the principal offence of driving while suspended. In 2007–08, there were 5,471 people who were sentenced for the principal proven offence of driving while suspended.⁶ This is a 6.5% increase from 5,137 in 2006–07, continuing an increase from the previous two years.

Figure 1: The number of people sentenced for driving while suspended, 2004–05 to 2007–08



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for driving while suspended during 2004–05 to 2007–08. Over the four-year period, the majority of those sentenced for driving while suspended received a non-custodial sentence (13,048 people or 72.7%), including 12,435 people who received a fine (69.3%).

There were also 4,295 people who received a non-immediate custodial sentence (23.9%), including 3,701 people who received a wholly suspended sentence (20.6%).

An additional 31 people participated in the criminal justice diversion program. These people are not counted towards the total number of people sentenced and are not included in any further analyses in this paper (unless stated).⁷

Table 1: The number and percentage of people sentenced for driving while suspended by sentence type, 2004–05 to 2007–08

Sentence Type	Total	%
Immediate custodial	596	3.3
Imprisonment	504	2.8
Partially suspended sentence	84	0.5
Combined custody and treatment order	1	0.0
Youth justice centre order	7	0.0
Other custodial	4,295	23.9
Drug treatment order	3	0.0
Home detention order	11	0.1
Wholly suspended sentence	3,701	20.6
Intensive correction order	580	3.2
Non-custodial	13,048	72.7
Community-based order	154	0.9
Fine	12,435	69.3
Adjourned undertaking	429	2.4
Convicted and discharged (s 73 SA)	16	0.1
Dismissed (s 76 SA)	14	0.1
People sentenced	17,939	100.0
Criminal justice diversion program	31	
Total dispositions	17,970	

Sentencing outcomes by year

Table 3 shows the number and percentage of people sentenced each year from 2004–05 to 2007–08 for driving while suspended by the type of sentence imposed.

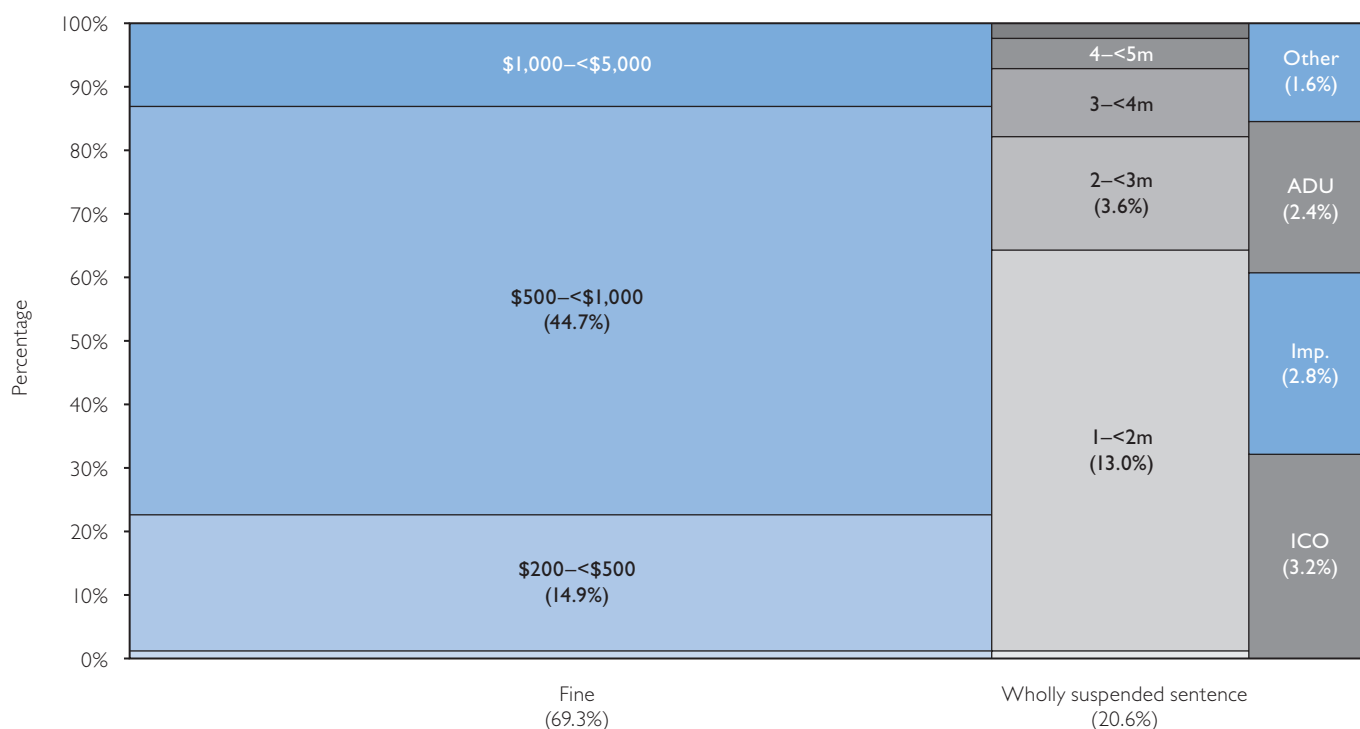
While the number of people who received an immediate custodial sentence increased from 120 people in 2004–05 to 151 people in 2007–08, the percentage of people decreased from 3.8% to 2.8% over the past three years.

The number and percentage of people who received a non-immediate custodial sentence increased each year from 697 people and 22.1% in 2004–05 to 1,435 people and 26.2% in 2007–08. While the number of people who received a non-custodial sentence increased from 2,334 people in 2004–05 to 3,885 people in 2007–08, the percentage of people decreased from 74.1% to 71.0% over this period.

Sentencing Map

Figure 3 presents both the sentencing outcomes and the quanta for those outcomes for people sentenced for driving while suspended. For example, 69.3% of people sentenced received a fine, including 44.7% who received a fine of \$500 to less than \$1,000. The right most column of the graph presents the least common sentencing outcomes without showing the quantum information.

Figure 3: Sentencing Map: The percentage of people sentenced for driving while suspended by sentencing outcomes and sentencing quanta, 2004–05 to 2007–08¹²



Note: ICO refers to intensive correction order; Imp. refers to imprisonment and ADU refers to adjourned undertaking. Other includes community-based order; partially suspended sentence, convicted and discharged (s 73 SA), dismissed (s 76 SA), home detention order; youth justice centre order; drug treatment order and combined custody and treatment order.

Table 3: The number and percentage of people sentenced for driving while suspended by sentence type and year, 2004–05 to 2007–08¹¹

Sentence Type	2004–05	2005–06	2006–07	2007–08
Immediate custodial	120 (3.8%)	150 (3.6%)	175 (3.4%)	151 (2.8%)
Imprisonment	105 (3.3%)	130 (3.1%)	134 (2.6%)	135 (2.5%)
Partially suspended sentence	14 (0.4%)	18 (0.4%)	38 (0.7%)	14 (0.3%)
Combined custody and treatment order	0 –	1 (<0.1%)	0 –	0 –
Youth justice centre order	1 (<0.1%)	1 (<0.1%)	3 (<0.1%)	2 (<0.1%)
Other custodial	697 (22.1%)	926 (22.2%)	1,237 (24.1%)	1,435 (26.2%)
Drug treatment order	0 –	1 (<0.1%)	1 (<0.1%)	1 (<0.1%)
Home detention order	4 (0.1%)	0 –	4 (<0.1%)	3 (<0.1%)
Wholly suspended sentence	611 (19.4%)	809 (19.4%)	1,042 (20.3%)	1,239 (22.6%)
Intensive correction order	82 (2.6%)	116 (2.8%)	190 (3.7%)	192 (3.5%)
Non-custodial	2,334 (74.1%)	3,104 (74.3%)	3,725 (72.5%)	3,885 (71.0%)
Community-based order	24 (0.8%)	36 (0.9%)	60 (1.2%)	34 (0.6%)
Fine	2,250 (71.4%)	2,966 (71.0%)	3,542 (69.0%)	3,677 (67.2%)
Adjourned undertaking	58 (1.8%)	97 (2.3%)	114 (2.2%)	160 (2.9%)
Convicted and discharged (s 73 SA)	2 (<0.1%)	5 (0.1%)	2 (<0.1%)	7 (0.1%)
Dismissed (s 76 SA)			7 (0.1%)	7 (0.1%)
People sentenced	3,151	4,180	5,137	5,471

Principal sentence

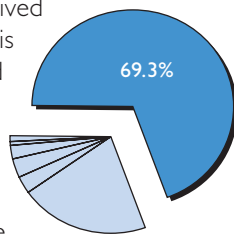
This section examines the use of the two most common principal sentencing outcomes for this offence.¹³ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided.¹⁴ Finally, where relevant, the details of the sentence (length of order or fine amount) are examined.¹⁵

The two most common sentences imposed for driving while suspended are fine and wholly suspended sentence.

Fine

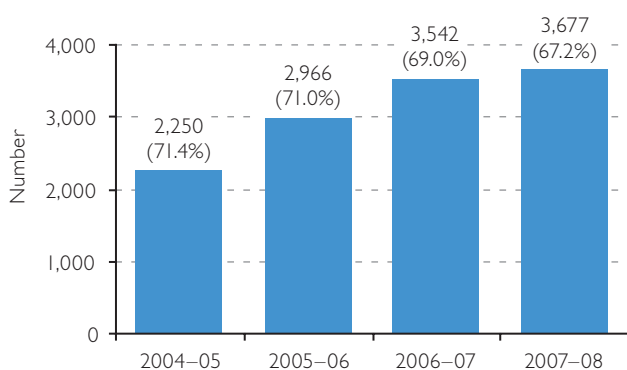
Trends

There were 12,435 people who received a fine for driving while suspended. This represented 69.3% of all people sentenced for this offence. Of the 7,219 people who received a fine in 2006–07 and 2007–08, 84.3% also had a conviction recorded (6,086 people). Figure 4 shows the trends in the number and percentage of people who received a fine for driving while suspended.



In 2007–08, 3,677 people received a fine for the principal proven offence of driving while suspended. This has increased each of the past three years from 2,250 people in 2004–05. However, the proportion of people who received a fine for driving while suspended decreased each of the past three years from 71.4% in 2004–05 to 67.2% in 2007–08.

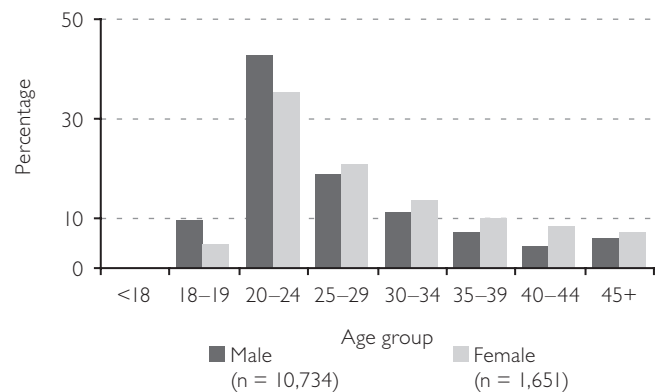
Figure 4: The number and percentage of people who received a fine for driving while suspended, 2004–05 to 2007–08



Age and gender

Of the 12,435 people who received a fine, 86.7% were men. Figure 5 shows the age groups of people who received a fine for driving while suspended by gender. The median age of these people was 24 years, while women were generally older than their male counterparts (a median age of 27 years compared to 24 years).

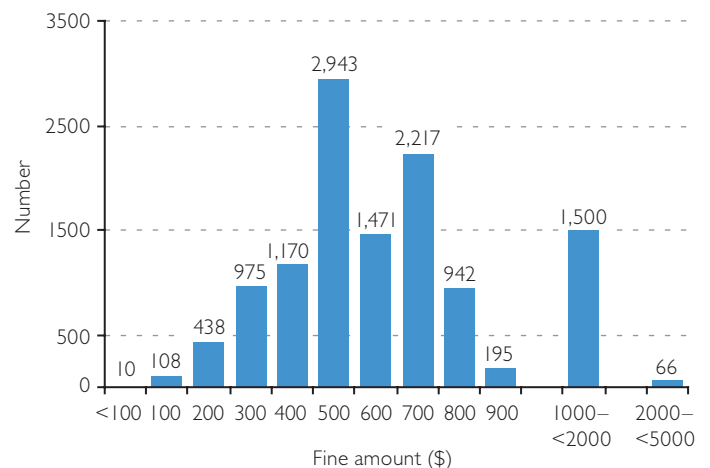
Figure 5: The percentage of people who received a fine for driving while suspended by age and gender, 2004–05 to 2007–08



Fine Amount

Figure 6 shows the number of people who received a fine for driving while suspended by the amount of the fine. While the amount of the fine ranged from \$25 to \$3,500, the median was \$600. Aggregate fines were imposed for 34.7% of people who received a fine.¹⁶

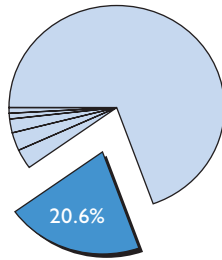
Figure 6: The number of people who received a fine for driving while suspended by the amount of the fine, 2004–05 to 2007–08



Wholly suspended sentence

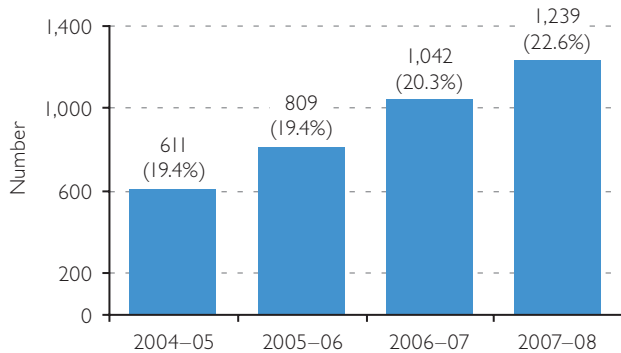
Trends

There were 3,701 people who received a wholly suspended sentence for driving while suspended. This represented 20.6% of all people sentenced for this offence. Figure 7 shows the trends in the number and percentage of people who received a wholly suspended sentence for driving while suspended.



In 2007–08, 1,239 people received a wholly suspended sentence for the principal proven offence of driving while suspended. This has increased each of the past three years from 611 people in 2004–05. Also, the proportion of people who received a wholly suspended sentence for driving while suspended increased over the past four years from 19.4% to 22.6%.

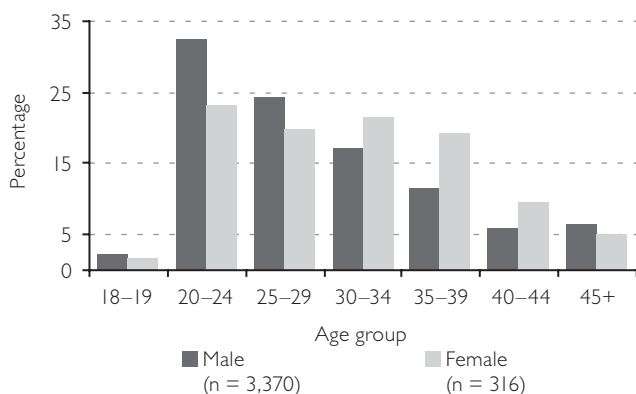
Figure 7: The number and percentage of people who received a wholly suspended sentence for driving while suspended, 2004–05 to 2007–08



Age and gender

Of the 3,701 people who received a wholly suspended sentence, 91.5% were men. Figure 8 shows the age groups of people who received a wholly suspended sentence for driving while suspended by gender. The median age of these people was 28 years, while women were generally older than their male counterparts (a median age of 31 years compared to 28 years).

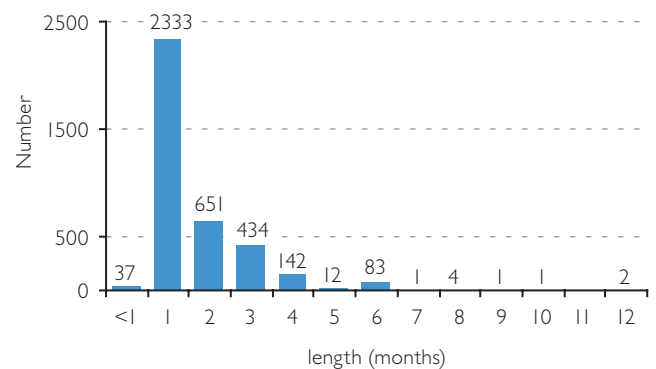
Figure 8: The percentage of people who received a wholly suspended sentence for driving while suspended by age and gender, 2004–05 to 2007–08



Length of sentence

Figure 9 shows the number of people who received a wholly suspended sentence for driving while suspended by the length of the sentence. While the length of wholly suspended sentences ranged from one day to one year, the median was one month (meaning that half were shorter than one month and half were longer than one month). Aggregate wholly suspended sentences were imposed for 16.7% of people who received a wholly suspended sentence.¹⁷ The majority of operational periods were 12 months (62.0%).

Figure 9: The number of people who received a wholly suspended sentence for driving while suspended by the length of sentence of imprisonment, 2004–05 to 2007–08

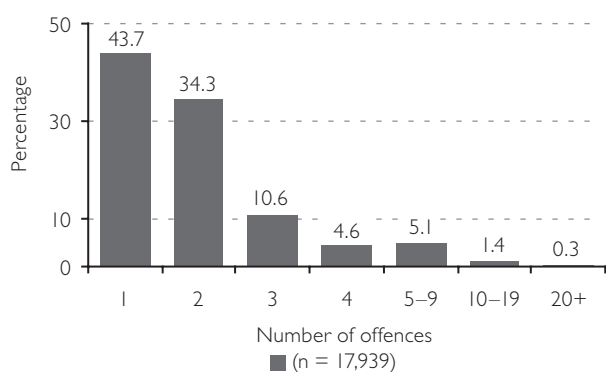


Other offences finalised at the same hearing

Often people prosecuted for driving while suspended 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 driving while suspended.

Figure 10 shows the percentage of people sentenced for the principal offence of driving while suspended by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 95, while the median was 2 offences. There were 7,844 people (43.7%) sentenced for the single offence of driving while suspended alone. The average number of offences per person sentenced for driving while suspended was 2.22.

Figure 10: The percentage of cases where driving while suspended was the principal offence by the number of offences where a sentence was imposed in that case, 2004–05 to 2007–08



While Figure 10 presents the number of sentenced offences for those sentenced for driving while suspended, Table 4 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 3,223 of the total 17,939 people (18.0%) also received sentences for using an unregistered vehicle. On average, they were sentenced for 1.23 charges of using an unregistered vehicle. The first row indicates that the average number of charges of driving while suspended offences sentenced per person was 1.19.

Table 4: The number and percentage of people sentenced for the principal offence of driving while suspended by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004–05 to 2007–08

Offence	No.	%	Avg.
1 drive while disqualified	17,939	100.0	1.19
2 use an unregistered vehicle	3,223	18.0	1.23
3 drive at speed over the speed limit	1,576	8.8	1.05
4 exceed signed speed limit – 100 kph	1,312	7.3	1.04
5 driver fail to wear seatbelt	761	4.2	1.02
6 use hand held phone whilst driving	596	3.3	1.01
7 drive without P plates displayed	408	2.3	1.04
8 failing to appear on bail	382	2.1	1.42
9 drink driving (s 49.1(f) RSA)	380	2.1	1.16
10 use vehicle – not safe/not roadworthy	368	2.1	1.08
People sentenced	17,939	100.0	2.22

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of driving while suspended. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.¹⁸

Table 5 shows the percentages of the six most common sentence types imposed in cases in the Magistrates' Court from 2004–05 to 2007–08 where the principal proven offence was driving while suspended, by the other sentence types also imposed in the case. For example, of the 15,629 people who received a fine as part of their total effective sentence, 15.4% also received a wholly suspended sentence.

Common sentence types imposed in conjunction with another sentence type include:

- a fine with an intensive correction order (65.1% of the 581 people who received an intensive correction order);
- a fine with an imprisonment term (64.9% of the 515 people);
- a fine with a wholly suspended sentence (64.1% of the 3,745 people);
- a wholly suspended sentence with a community-based order (47.7% of the 327 people);
- a fine with a community-based order (37.0% of the 327 people);
- a fine with an adjourned undertaking (25.9% of the 703 people); and
- a wholly suspended sentence with an adjourned undertaking (15.8% of the 703 people).

Table 5: The percentage of selected sentence types used in conjunction with other sentence types imposed in the same case, 2004–05 to 2007–08

	Fine	WSS	ADU	ICO	Imp.	CBO
Fine	100%	64.1%	25.9%	65.1%	64.9%	37.0%
WSS	15.4%	100%	15.8%	2.6%	4.5%	47.7%
ADU	1.2%	3.0%	100%	2.6%	0.4%	3.7%
ICO	2.4%	0.4%	2.1%	100%	0.2%	2.1%
Imp.	2.1%	0.6%	0.3%	0.2%	100%	3.1%
CBO	0.8%	4.2%	1.7%	1.2%	1.9%	100%
Total	15,629	3,745	703	581	515	327

Note: WSS refers to wholly suspended sentence, ADU refers to adjourned undertaking, ICO refers to intensive correction order, Imp. refers to imprisonment and CBO refers to community-based order.

Total effective sentence of imprisonment and non-parole period

The total effective sentence of imprisonment aggregates the sentences of imprisonment imposed for each charge in a case and takes into account whether the court orders sentences to be served concurrently (at the same time) or cumulatively. 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 the court does not set a non-parole period, the person must serve the entirety of the imprisonment term.

There were 266 people given a total effective sentence of imprisonment in 2006–07 and 2007–08.¹⁹ There were 6 people eligible for a non-parole period in 2006–07 and 2007–08, of whom 5 were given a non-parole period. This makes up 1.9% of all those who were given a total effective sentence of imprisonment.

Figure 11 shows the number of people sentenced to imprisonment for driving while suspended during 2006–07 and 2007–08 by the length of their total effective sentence. The right side of the graph also shows the length of non-parole periods for people who were sentenced to a period of 12 months' imprisonment or more. 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.²⁰

Total effective imprisonment lengths ranged from one day to two years with no non-parole period, while the most common length was 1 month (100 people).

Summary

The Magistrates' Court sentenced 17,939 people for the principal offence of driving while suspended between 2004–05 and 2007–08. Over this period, the majority of those sentenced were men (15,731 people or 87.7%), while 39% were aged between 20 and 25 years.

Most people sentenced for driving while suspended received a non-custodial sentence (13,048 people or 72.7%), including 12,435 people who received a fine (69.3%). A conviction was recorded with the principal sentence for 87.3% of people sentenced.

Men were more likely to receive wholly suspended sentences. Conversely, women were more likely to receive fines.

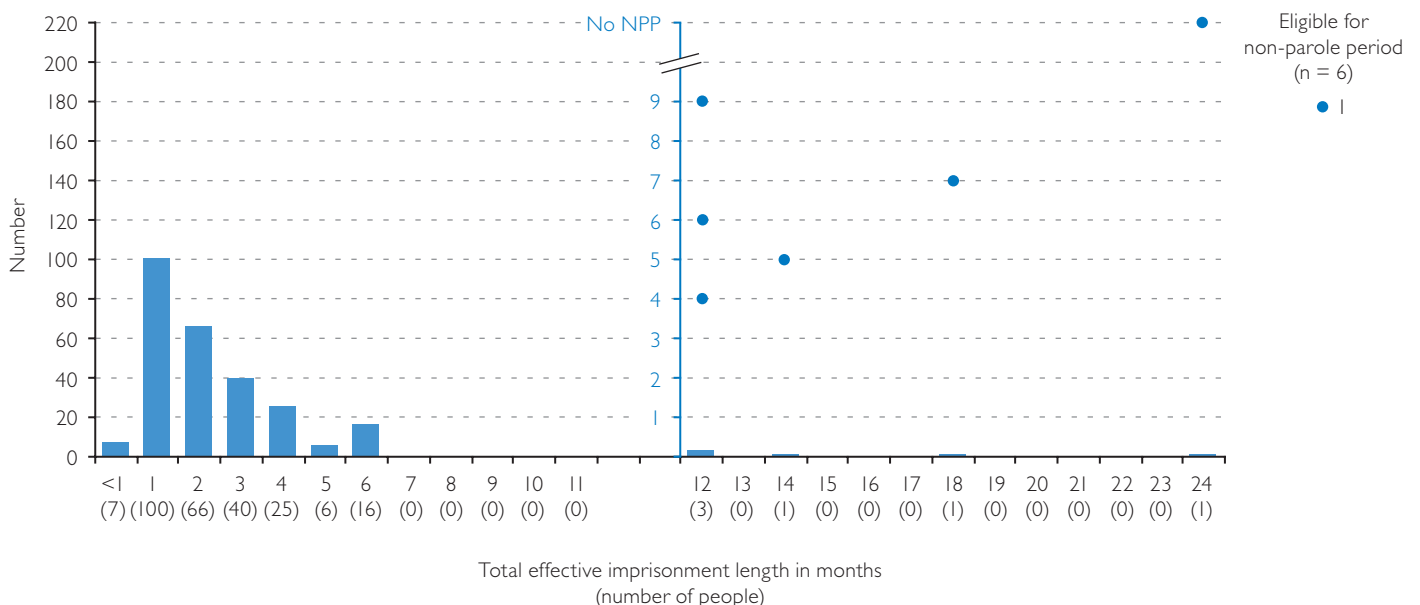
A higher percentage of older people received an immediate custodial sentence, including an imprisonment term, and a non-immediate custodial sentence, including a wholly suspended sentence and an intensive correction order. Conversely, a higher percentage of younger people received a non-custodial sentence, including a fine.

Each of the 17,939 people was sentenced for an average of 2.22 offences, including 1.19 offences of driving while suspended. The most common offence finalised in conjunction with driving while suspended was using an unregistered vehicle (18.0% of all cases).

Common sentence types imposed in conjunction with another sentence type included a fine with an intensive correction order (65.1% of the 581 people who received an intensive correction order), a fine with an imprisonment term (64.9% of the 515 people), a fine with a wholly suspended sentence (64.1% of the 3,745 people), a wholly suspended sentence with a community-based order (47.7% of the 327 people), a fine with a community-based order (37.0% of the 327 people) and a fine with an adjourned undertaking (25.9% of the 703 people).

Lengths of total effective sentences ranged from one day to two years with no non-parole period. The most common length was 1 month (100 people).

Figure 11: The number of people sentenced to imprisonment for driving while suspended by the total effective sentence length and the non-parole period imposed, 2006–07 and 2007–08



- 1 The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision.

This report presents sentencing outcomes for people sentenced for the principal offence of driving while suspended in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for driving while suspended who received a more serious sentence for another offence on the same charge sheet.

- 2 The data used for analysis in this report contain information on age and gender characteristics. Indigenous status was unknown for 99.1% of people sentenced over this period. Therefore no analyses are presented on Indigenous status.

- 3 *Road Safety Act 1986* (Vic) s 30(1).

- 4 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>.

- 5 *Road Safety Act 1986* (Vic) s 30(1).

- 6 The number of people sentenced excludes those who participated in the criminal justice diversion program.

Only the people who had charges that were dismissed in 2006–07 and 2007–08 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (*Children, Youth and Families Act 2005* (Vic) s 360(1)(a)) or 'dismissed' (*Sentencing Act 1991* (Vic) s 76). The charges that were dismissed in 2004–05 and 2005–06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the four-year period could be an under-representation. In 2007–08, 7 people had charges that were dismissed pursuant to this legislation. This made up 0.1% of people sentenced in that year.

- 7 The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.

- 8 *Sentencing Act 1991* (Vic) s 7, 8.

In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social wellbeing or on his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).

- 9 Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004–05 and 2005–06.

- 10 The age was unknown for 65 men and 8 women sentenced for driving while suspended (0.4%). These people are excluded from all age analyses in this report.

- 11 Refer fn. 6.

- 12 Aggregate sentence lengths are shown for people who received an aggregate sentence.

- 13 The principal sentence is the individual sentence imposed for a single charge. The principal sentence is the most serious sentence in the case. If more than one type of sentence is imposed for a single charge, only the most serious sentence is counted.

- 14 Where there are sufficient numbers of both males and females sentenced for each sentencing outcome, the age groups are shown by gender. Otherwise the age groups are shown independent of gender. Also, the age was unknown for 73 people sentenced for driving while suspended. These people are excluded from these analyses.

- 15 Aggregate sentence lengths are shown for people who received an aggregate sentence. Fine amounts lower than \$1,000 are rounded up to the nearest \$100, while fine amounts equal to or over \$1,000 are grouped into categories. Sentence lengths shorter than one year are rounded up to the nearest month, while sentence lengths equal to or over one year are grouped into categories of years. Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006–07 and 2007–08.

- 16 The amount of non-aggregate fines ranged from \$25 to \$3,000, with a median of \$500, while the amount of aggregate fines ranged from \$50 to \$3,500, with a median of \$700.

- 17 The length of non-aggregate wholly suspended sentences ranged from one day to one year, with a median of one month, while the length of aggregate wholly suspended sentences ranged from thirteen days to ten months, with a median of two months.

- 18 While a total of 515 people were sentenced to at least one period of imprisonment in the case, 504 people had imprisonment listed against their principal proven offence. There were 11 people sentenced to a period of imprisonment, but who received a partially suspended sentence of imprisonment for the principal proven offence.

Only sentence types that were imposed on the same date as the sentence imposed for the principal proven offence are included.

- 19 Total effective imprisonment lengths and non-parole periods are only available for 2006–07 and 2007–08.

- 20 Non-parole periods are rounded down to the nearest month, while non-parole periods greater than one year are grouped into categories of years.

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