

## No. 26: Sentencing trends for rape in the higher courts of Victoria, 2001-02 to 2005-06

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of rape and details the age and gender<sup>2</sup> of people sentenced for this offence in the County and Supreme Courts of Victoria between 2001-02 and 2005-06<sup>3</sup>.

A person who intentionally sexually penetrates another person without that person's consent is guilty of the offence of rape<sup>4</sup>. Sexual penetration includes oral, anal and vaginal penetration<sup>5</sup> 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 which carries a maximum penalty of 25 years' imprisonment<sup>6</sup> and/or a fine of 3000 penalty units<sup>7</sup>.

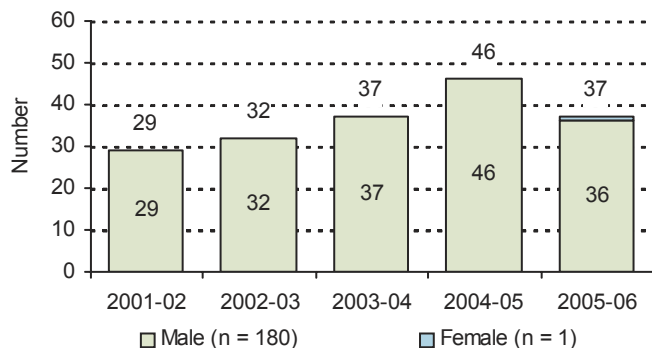
All rape offences were heard in the County or Supreme Court. Rape was the principal offence in 1.8% of cases sentenced in the higher courts between 2001-02 and 2005-06.

### People sentenced

Figure 1 shows the number of people sentenced for rape for the period 2001-02 to 2005-06. As shown, 181 people were sentenced for rape over the five year period. There were 37 people sentenced for this offence in 2005-06, down by 9 people from the previous year.

Over the five years depicted, all but one of those sentenced were men (99.4% or 180 of 181 people)<sup>8</sup>, including 36 of the 37 people sentenced in 2005-06.

Figure 1: The number of people sentenced for rape by gender, 2001-02 to 2005-06



### Sentence types and trends

Figure 2 shows the total number of people sentenced for rape and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention<sup>9</sup>. Over the five year period, 88% of people were given a custodial sentence. This peaked at 95% (35 of 37) in 2003-04 after a low of 81% (26 of 32) in 2002-03. In 2005-06, 89% of people sentenced (33 of 37) were given a custodial sentence.

Figure 2: The number of people sentenced for rape and the number who received a custodial sentence, 2001-02 to 2005-06

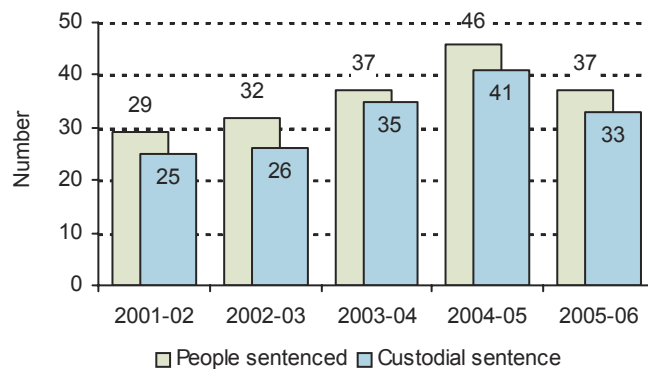
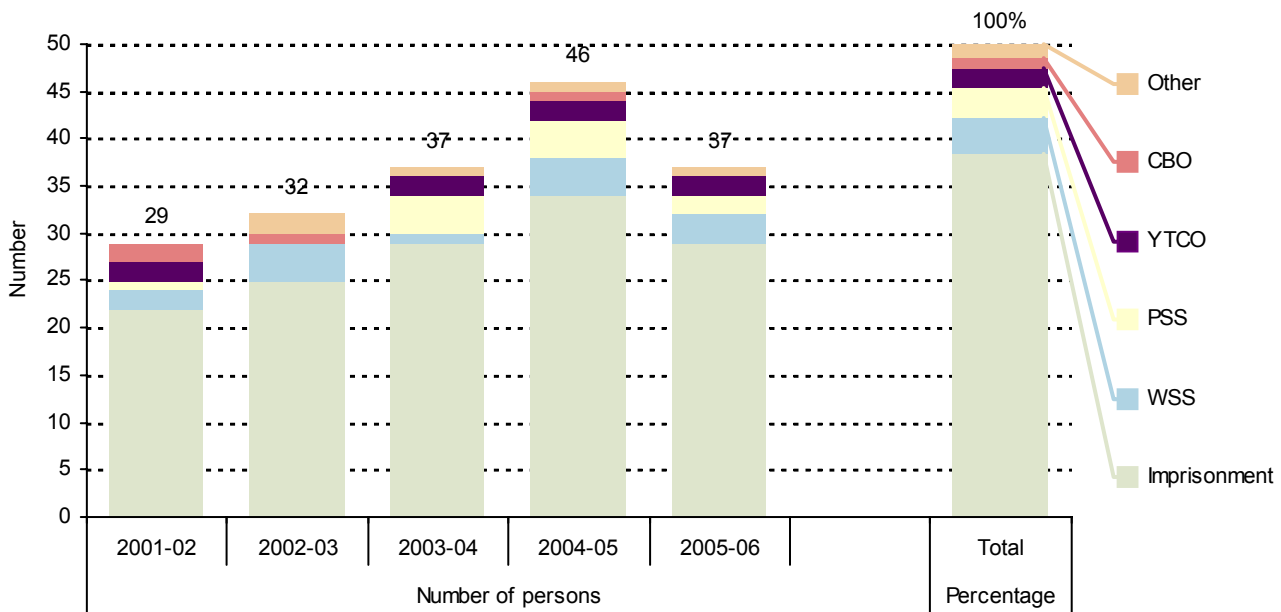


Figure 3 and Table 1 show the number of people sentenced for rape from 2001-02 to 2005-06 by the types of sentences imposed.

Around three quarters of the people sentenced for rape received a period of imprisonment (77%). This remained relatively stable each year, ranging from 74% in 2004-05 to 78% in 2002-03, 2003-04 and 2005-06.

There were also 14 people who were given a wholly suspended period of imprisonment and 11 who received a partially suspended sentence of imprisonment over the five year period.

Figure 3: The number of people sentenced for rape by sentence type, 2001-02 to 2005-06



Note: WSS refers to wholly suspended sentence of imprisonment, PSS refers to partially suspended sentence of imprisonment, YTCO refers to youth training centre order and CBO refers to community based order. Other includes non-custodial supervision order, intensive correction order, indefinite term, hospital security order and adjourned undertaking with conviction.

Table 1: The number and percentage of people sentenced for rape by sentence type, 2001-02 to 2005-06

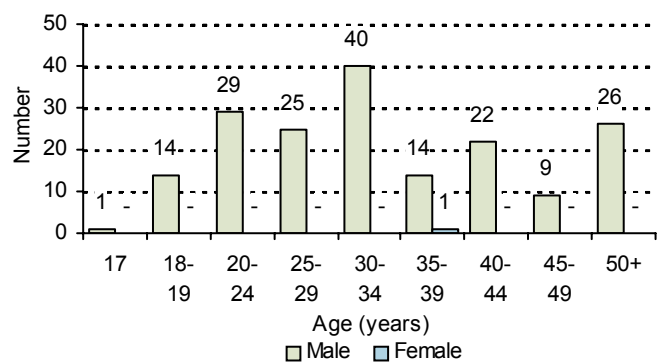
Sentence type	01-02	02-03	03-04	04-05	05-06
Imprisonment	22	25	29	34	29
Wholly suspended sentence	2	4	1	4	3
Partially suspended sentence	1	0	4	4	2
Youth training centre order	2	0	2	2	2
Community based order	2	1	0	1	0
Non-custodial supervision order	0	0	0	0	1
Intensive correction order	0	0	1	0	0
Indefinite term	0	1	0	0	0
Hospital security order	0	0	0	1	0
Adjourned undertaking with conviction	0	1	0	0	0
<b>People sentenced</b>	<b>29</b>	<b>32</b>	<b>37</b>	<b>46</b>	<b>37</b>

### Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for rape grouped by their age<sup>10</sup> between 2001-02 and 2005-06. The average age of people sentenced for rape was thirty-four years and five months. One male juvenile was sentenced over this period.

Only one female out of 181 people was sentenced for rape over the 5 year period.

Figure 4: The number of people sentenced for rape by gender and age, 2001-02 to 2005-06



## Sentence types by age

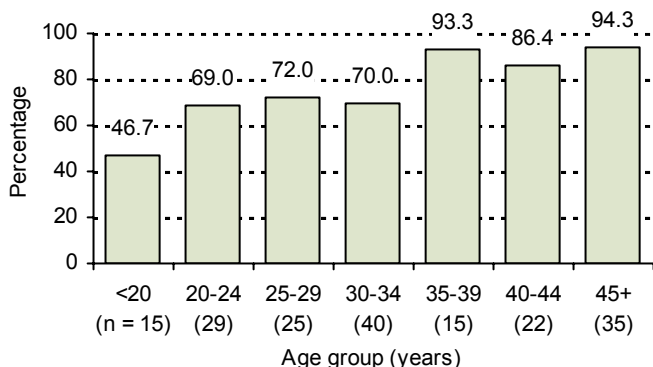
As shown in the table above, the two most common sentence types were imprisonment and wholly suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

### Imprisonment

Sentences of imprisonment were most likely to be given to people aged 45 years and older (94% or 33 of the 35 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 20 years (47% or 7 of the 15 people in this age group).

**Figure 5: The percentage of people who received a period of imprisonment for rape by age group, 2001-02 to 2005-06**

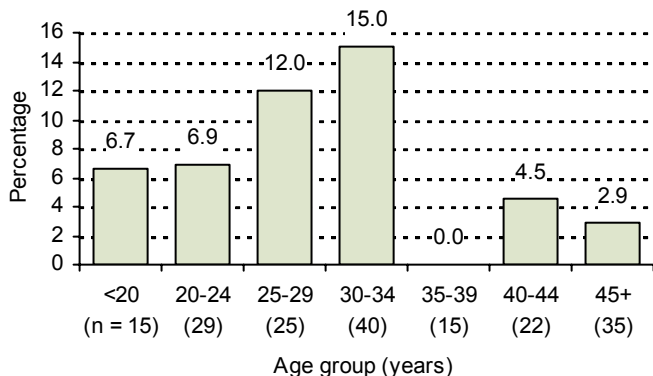


### Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 30-34 years old (15% or six of the 40 people in this age group).

Conversely, none of the 15 people aged 35-39 years old received a wholly suspended sentence of imprisonment.

**Figure 6: The percentage of people who received a wholly suspended sentence of imprisonment for rape by age group, 2001-02 to 2005-06**



## Principal and total effective sentences

There are two methods for describing sentence types and lengths - the principal sentence and the total effective sentence.

The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether sentences are ordered by the court to be served concurrently (at the same time) or cumulatively.

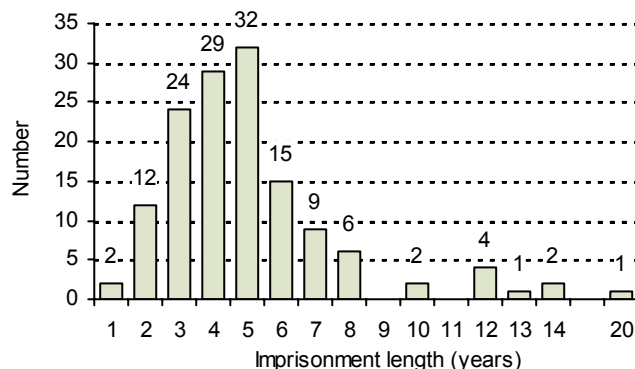
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for rape must be considered in this broader context. The following sections analyse the use of imprisonment for rape over 2001-02 to 2005-06.

### Principal sentence of imprisonment

Figure 7 shows the number of men sentenced to imprisonment for rape between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to twenty years<sup>11</sup>, 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).

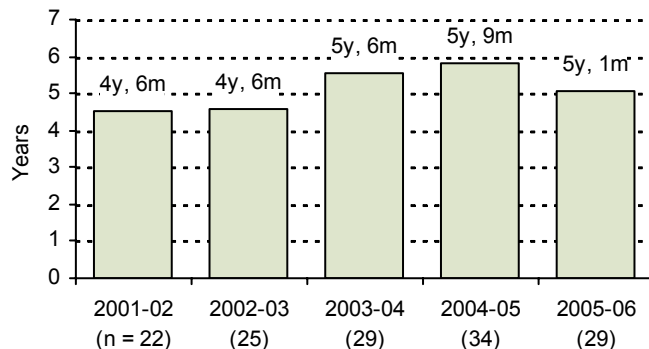
The most common length of imprisonment imposed was 5 years (32 men).

**Figure 7: The number of men sentenced to imprisonment for rape by length of imprisonment term, 2001-02 to 2005-06**



As shown in Figure 8, the average length of imprisonment term imposed on men sentenced for rape ranged from four years and six months in 2001-02 and 2002-03 to five years and nine months in 2004-05.

**Figure 8: The average length of imprisonment term imposed on men sentenced for rape, 2001-02 to 2005-06**

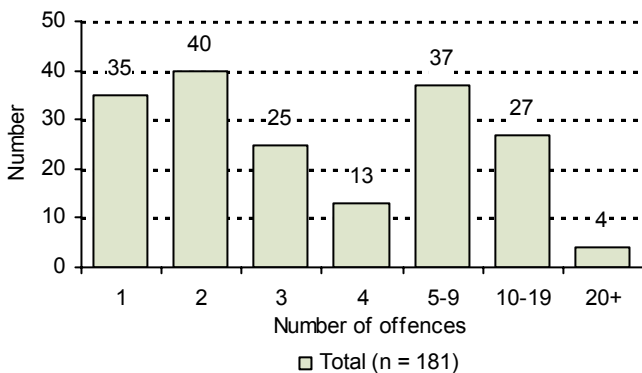


## Other offences finalised at the same hearing

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 9 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 41, while the median was 3 offences. There were 35 people (19.3%) sentenced for a single offence of rape alone. The average number of offences per person sentenced for rape was 5.15.

**Figure 9: The number of people sentenced for the principal offence of rape by the number of sentenced offences per person, 2001-02 to 2005-06**



While Figure 9 presents the number of sentenced offences for those sentenced for rape, Figure 10 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, 63 of the total 181 people (34.8%) also received sentences for indecent assault. On average, they were sentenced for 2.30 counts of indecent assault.

**Figure 10: 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, 2001-02 to 2005-06**

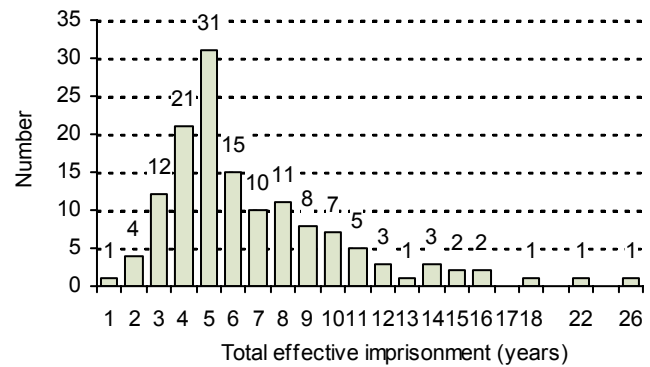
Offence	No.	%	Avg
1 rape	181	100.0	2.23
2 indecent assault	63	34.8	2.30
3 false imprisonment	29	16.0	1.21
4 causing injury	20	11.0	1.20
5 aggravated burglary	17	9.4	1.12
6 common law assault	16	8.8	3.06
7 attempted rape	15	8.3	1.13
8 make threat to kill	15	8.3	1.27
9 theft	14	7.7	1.14
10 indecent act with a child under 16	13	7.2	3.00
<b>People sentenced</b>	<b>181</b>	<b>100.0</b>	<b>5.15</b>

## Total effective sentence of imprisonment

There were 139 men given a total effective sentence of imprisonment<sup>12</sup>. Figure 11 shows the number of men sentenced to imprisonment for rape between 2001-02 and 2005-06 by the length of their total effective sentence. The length of total effective sentences ranged from one year and three months to twenty-six years<sup>13</sup>, while the median total effective length of imprisonment was six years (meaning that half of the total effective sentence lengths were below six years and half were above).

The most common total effective imprisonment length was 5 years (31 men).

**Figure 11: The number of men sentenced to imprisonment for rape by total effective length of imprisonment term, 2001-02 to 2005-06**



## Non-parole period

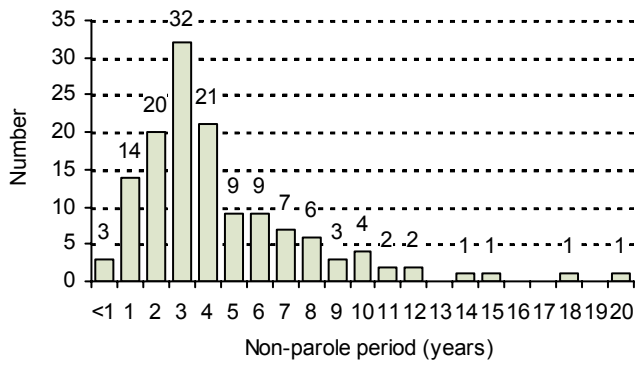
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person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

Under s.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 lengthier than the individual principal sentence for rape. Sentences and non-parole periods must be considered in this broader context.

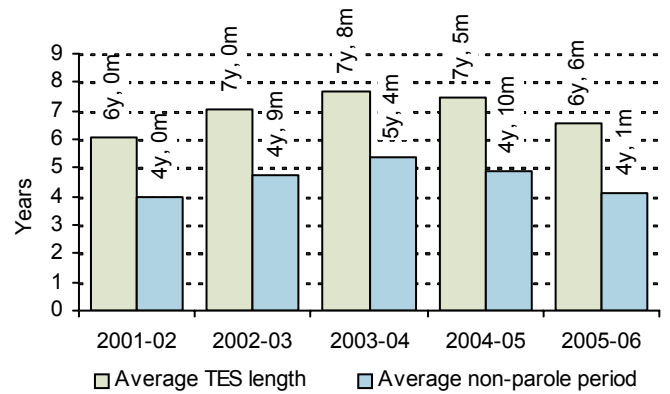
Of the 139 men who were sentenced to imprisonment for rape, all were eligible for parole. Of these men, 136 were given a non-parole period (98%)<sup>14</sup>. Figure 12 shows the number of men sentenced to imprisonment for rape between 2001-02 and 2005-06 by the length of their non-parole period. Non-parole periods ranged from six months to twenty years, while the median length of the non-parole period was three years and seven months (meaning that half of the non-parole periods were below three years and seven months and half were above).

The most common non-parole period imposed was 3 years (32 men).

**Figure 12: The number of men sentenced to imprisonment for rape by length of non-parole period, 2001-02 to 2005-06**



**Figure 13: The average total effective sentence and the average non-parole period imposed on men sentenced to imprisonment for rape, 2001-02 to 2005-06**



**Total effective sentences of imprisonment and non-parole periods**

Figure 13 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all men from 2001-02 to 2005-06<sup>15</sup>.

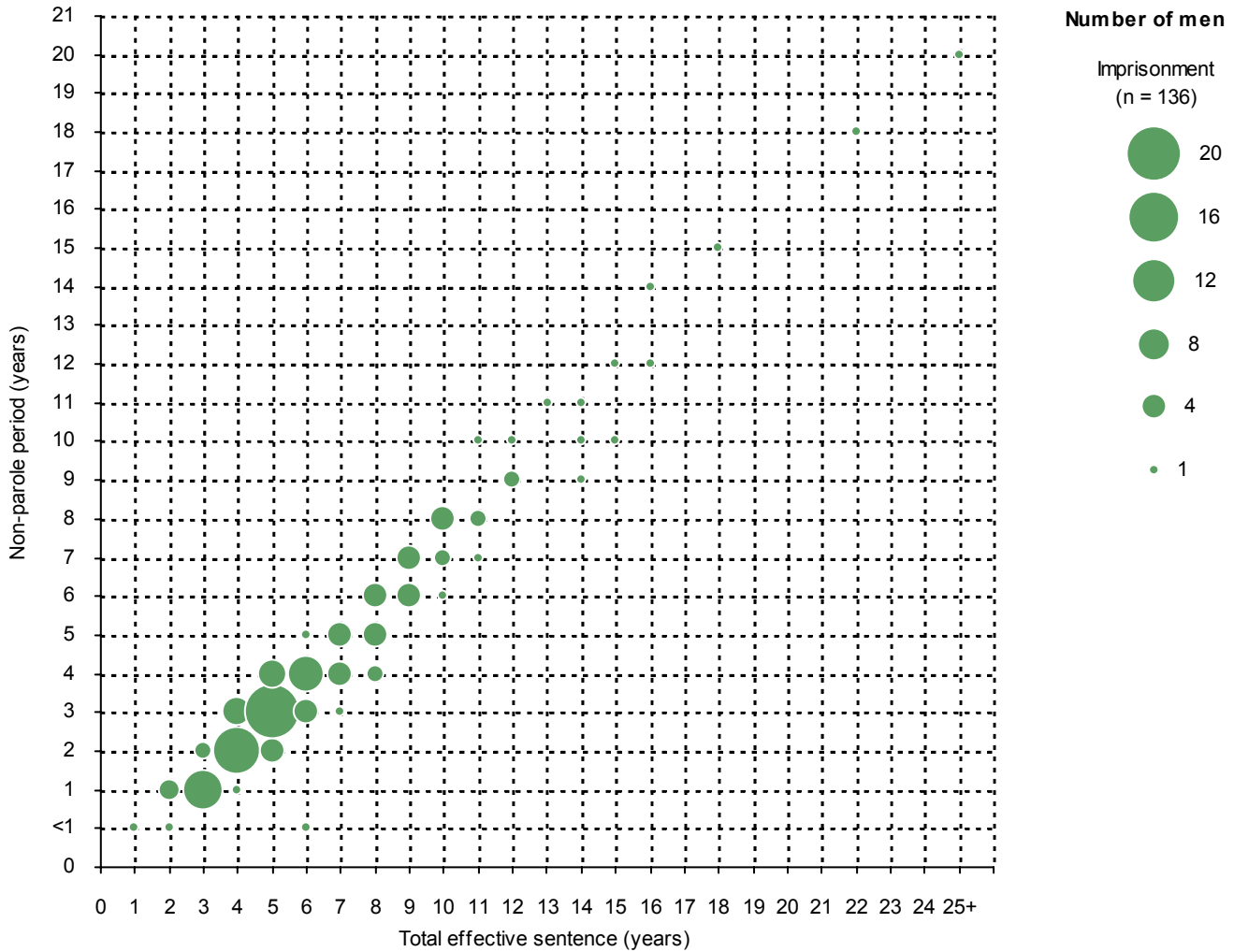
From 2001-02 to 2005-06, the average length of total effective sentence for all men ranged from six years in 2001-02 to seven years and eight months in 2003-04. Over the same period, the average length of non-parole period ranged from four years in 2001-02 to five years and four months in 2003-04.

### Total effective sentence of imprisonment by non-parole period

While Figure 11 and Figure 12 present the lengths of the total effective sentences and non-parole periods separately, Figure 14 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 man.

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 men who received that particular combination<sup>16</sup>. As shown, the most common combination of imprisonment length and non-parole period imposed was five years with a non-parole period of three years (20 men - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from one year and three months with a non-parole period of six months to twenty-six years with a non-parole period of twenty years<sup>17</sup>.

**Figure 14: The number of men sentenced to imprisonment for rape by the total effective sentence and the non-parole period imposed, 2001-02 to 2005-06<sup>18</sup>**



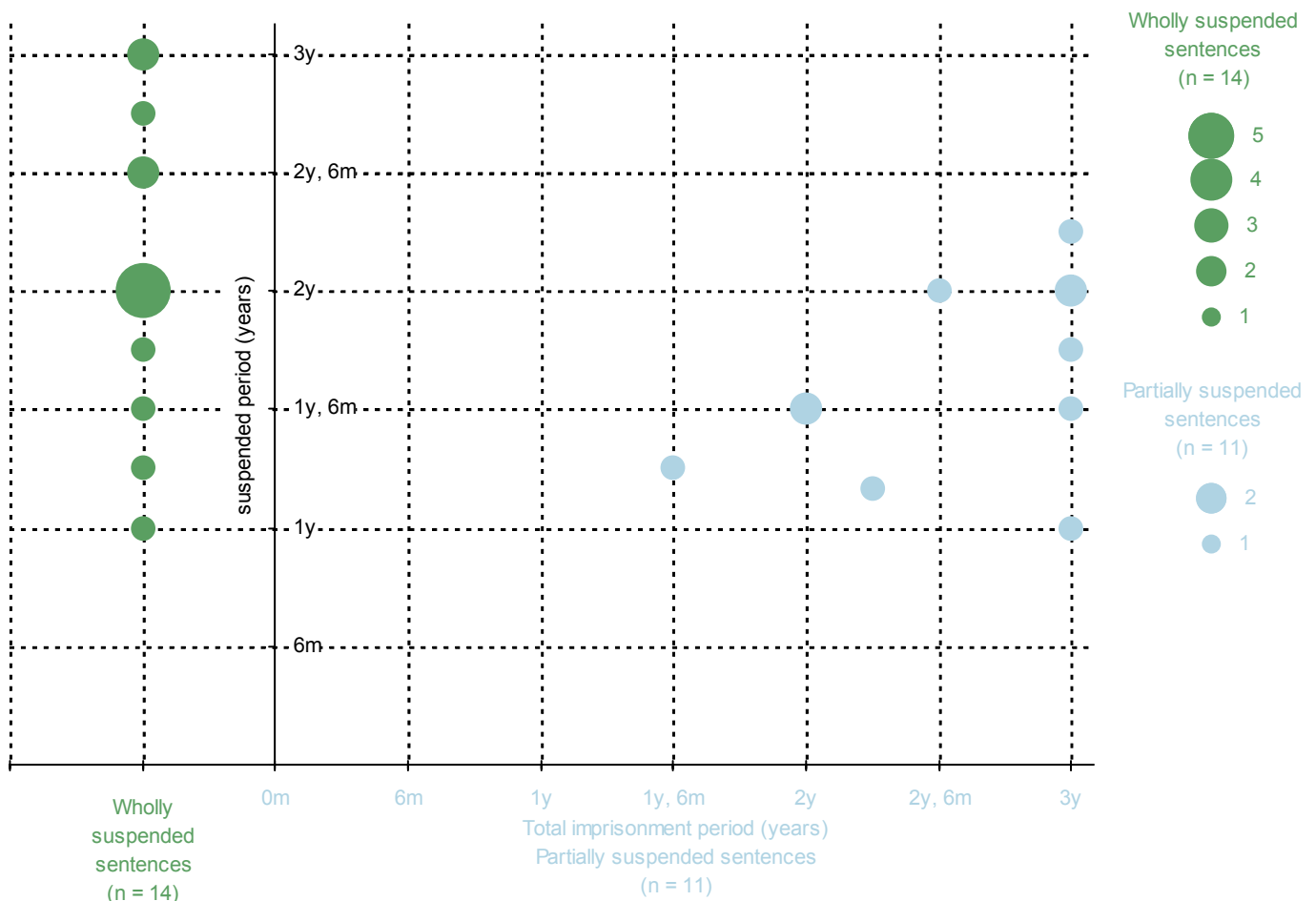
## Suspended sentences of imprisonment

There were 25 men given a suspended sentence of imprisonment as their total effective sentence. Of these, 14 men had their prison sentence wholly suspended and 11 received a partially suspended sentence of imprisonment. Figure 15 shows the number of men 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 blue '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<sup>19</sup>. The size of the bubble reflects the number of men who received either the wholly or partially suspended prison term.

Wholly suspended sentence lengths ranged from one year to three years. The most common wholly suspended sentence length was two years (5 men - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combinations were two years with one year and six months suspended and three years with two years suspended (2 men each - as represented by the two largest blue 'bubbles' on the chart).

**Figure 15: The number of men given a wholly or partially suspended sentence of imprisonment by sentence type and length, 2001-02 to 2005-06**



## Summary

Between 2001-02 and 2005-06, 181 people were sentenced for rape in the higher courts. Over this period, all but one of those sentenced were men (99%), while 60% were between the age of 18 and 35 years.

The majority of the people sentenced for rape received a period of imprisonment (77%).

Imprisonment was more common for those aged older than 35 years of age, while wholly suspended sentences were most common for those aged below 35 years.

Each of the 181 people was sentenced for an average of 5.15 offences, including for 2.23 offences of rape. The most common offence finalised in conjunction with rape was indecent assault (33.1% of all cases).

The number and range of offences for which people with a principal offence of rape were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was six years, while the median principal imprisonment length was five years.

Total effective imprisonment lengths ranged from one year and three months with a non-parole period of six months to twenty-six years with a non-parole period of twenty years. The most common sentence of imprisonment was five years with a three year non-parole period.

1 This report presents sentencing outcomes for people sentenced for the principal offence of rape in the County and Supreme Courts of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for rape who received a more serious sentence for another offence forming part of the same presentment. For example, in 2005-06, 75 people were sentenced for rape. Rape was the principal offence for 37 of the 75 people.

This sentencing snapshot is an update of Sentencing Snapshot No. 7, which described the sentencing trends for rape in Victoria between 1999-2000 and 2003-04. This report is available for download from the Sentencing Advisory Council website ([www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au))

2 The information source for sentencing outcomes for rape only contains information on age and gender characteristics. No other demographic analysis is possible.

3 The statistical information presented here was provided by Court Services, Department of Justice (Vic). This report describes sentencing trends for rape since 2001-02. Court Services advises that sentencing data from the higher courts prior to 2000-01 may be unreliable due to changed data collection processes and counting rules.

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 Rape carries a maximum fine of 3000 penalty units and each penalty unit is worth \$107.43, Victorian Government Gazette, 6 April 2006.

8 In 2005-06, there was one woman aged 39 years sentenced for the principal offence of rape. She was also sentenced for two counts of causing injury intentionally, false imprisonment, aggravated burglary and common law assault. She was sentenced to a non-custodial supervision order.

9 Custodial sentence includes imprisonment, partially suspended sentence, youth training centre order, indefinite term and hospital security order.

10 Age is as at the time of sentencing.

11 In 2004-05, a man aged forty years was sentenced to twenty years for each of seven counts of rape. He was also sentenced to one count each of indecent assault, common law assault, false imprisonment and burglary. He was given a total effective sentence of twenty-six years with a twenty year non-parole period.

12 All of the 139 men who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.

13 Refer fn. 11

14 Three men 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 men are excluded from the analysis.

15 There were no women imprisoned with a non-parole period over the reference period.

16 Sentence lengths that are longer than one year are rounded to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.

17 Refer fn. 11

18 This graph includes the 136 men who were given a total effective sentence and a non-parole period that related to this case only.

19 Suspended sentence lengths are rounded to the nearest month.

This "Sentencing Snapshot" is part of a series presenting summary information on sentencing trends in Victoria.

Copies of all the Sentencing Snapshots can be downloaded from our website at

[www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au)

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia, June, 2007.

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ISSN 1832-6153

Authorised by Sentencing Advisory Council, 4/436 Lonsdale Street, Melbourne. Printed by Bigprint, 50 Lonsdale Street, Melbourne

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