

# Sentencing trends for rape in Victoria

*Sentencing trends for rape in Victoria, Sentencing Snapshot No. 7, Sentencing Advisory Council, December 2005.*

Reviewed by Melanie Heenan

The Sentencing Advisory Council was established in Victoria in 2004 as an independent statutory body by the *Sentencing (Amendment) Act 2003* to advise the Victorian Attorney-General on sentencing issues. Its main functions are to:

- provide statistical information on sentencing, including information on current sentencing practices;
- conduct research and disseminate information on sentencing matters;
- gauge public opinion on sentencing;
- consult on sentencing matters; and,
- provide the Court of Appeal with the Court's written views on the giving, or review, of a guideline judgement.

The first task of the Council, in response to a request by Victoria's Attorney General, the Honourable Rob Hulls MP, was to provide advice on the use of suspended sentences in Victoria and to consider possible reform options. This announcement came soon after there was public outcry over a convicted rapist being given a wholly suspended sentence by a County Court judge. A rally attended by several thousand people in Melbourne called for Parliament to abolish the use of suspended sentences for rape offences (*The Age* Newspaper, 15 December 2005), and to reassure the public that rape offenders were being treated seriously by the courts.

As part of a broader exercise, the Sentencing Council has been investigating the use of suspended sentences across particular categories of offences. Here, ACSSA considers the key findings reported in the *Sentencing Snapshot* that the Council prepared in relation to sentencing outcomes for the offence of rape. The report can be downloaded in full from the Sentencing Advisory Council's web site at: <http://www.sentencingcouncil.vic.gov.au>

The *Sentencing Snapshot* (hereafter 'the Snapshot') takes account of all sentencing outcomes for people sentenced for the *principal offence* of rape in the Supreme and County Court of Victoria between 1999/2000 and 2003/2004. This includes both people who pleaded guilty to rape, or were found guilty by a jury. In Victoria, the maximum penalty for rape is 25 years imprisonment.

## Snapshot of sentencing 'types' for rape offences

The Council found that a total of 166 people had been sentenced for rape between 1999/2000 and 2003/2004<sup>1</sup>. All 166 were male. Custodial sentences were given in a clear majority of cases over the five-year period. For example, in 2003/2004, 94 per cent of convicted rapists received a custodial sentence.

Imprisonment is the most likely type of custodial sentence that is handed down to a convicted rape offender. Just over three quarters (77 per cent) of the 166 men who were sentenced for rape received a sentence of immediate imprisonment. Just under a quarter of people sentenced for rape (23 per cent) received a sentence type other than a gaol term, including:

1 Over this same five-year period, Victoria Police recorded over 4,500 reports of rape. See Victoria Police Crime Statistics Reports.

- wholly (6 per cent) or partially (5 per cent) suspended sentences;
- intensive correction (2 per cent), community-based (3 per cent) orders, and adjourned undertakings (1 per cent);
- detention in a youth training centre (3 per cent);
- hospital and treatment-based orders (2.4 per cent).

The average age of the 166 offenders who were sentenced for rape offences between 1999/2000 and 2003/2004 was 36 years.

### Suspended sentences for rape offenders

Over one in ten offenders sentenced for rape (11 per cent) was found to have received a wholly or partially suspended prison term during the five-year period under review. According to the Snapshot, the courts were ordering more partially, than wholly suspended prison terms for rape in 2003/2004, than they had been in the previous four years. Based on the limited nature of the data systems available to them, they were unable to say what factors might influence this fluctuation.

### Rape sentencing – terms of imprisonment

The Snapshot distinguishes between two methods in describing sentence type. First, the Council refers to the *principal sentence* which is the sentence imposed in relation to the most serious individual offence of rape (that is, only the sentence for this offence will be considered). Second, they refer to the *total effective sentence*, which takes account of other offences related to the principal offence on which the offender may also have been convicted (for example, in addition to the offence of rape, an offender may be convicted of non-sexual assaults such as causing serious injury or unlawfully detaining a person; a judge will arrive at a sentence that reflects the totality of the seriousness of the offences).

The Council also provided figures on *non-parole periods* where the court imposes a period of imprisonment beyond which a person may become eligible for parole. The following figures provide the terms for offenders who received an immediate term of imprisonment during the five-year period under review, and for the most recent year examined by the Council.

Terms of imprisonment	Average	Most recent year examined - 2003/2004
Principal offence of rape	5 years, 1 month	5 years, 7 months
Total effective sentence where rape is principal offence	6 years, 10 months	7 years, 8 months
Non-parole period	4 years, 9 months	5 years, 5 months

It is important to note that the Snapshot exclusively reports the *means*, or average, terms of imprisonment, without also reporting the *medians*, that is: the mid-point or 50th percentile. The median would have been particularly helpful in this context because it takes account of the extremes at either end of the sentencing spectrum, and is a better reflection of the most common outcome<sup>2</sup>. For example, where a convicted serial rapist may attract a total effective sentence of some 20 years or longer, an offender who is found guilty of raping an acquaintance may receive a total effective sentence of 4 years. Examining the median terms alongside the average would have therefore helped to moderate this range and provide figures that don't over-inflate, or under-state, the nature and status of the majority of sentencing outcomes where a prison term is set.

In 1997, sentencing figures reported by researchers undertaking an evaluation of Victoria's law reform activity following the introduction of changes to rape laws and procedures, demonstrated this difference

2 Taking house prices as an illustrative example: the median price of houses in a particular location is usually reported, rather than the mean. As one expensive house sale can "artificially" push up the mean price, medians are considered a better reflection of the price of a typical house. The same dynamic is in operation when examining sentencing means.

(Heenan & McKelvie, 1997). The authors reported both the average and median sentences given to 74 offenders who had pleaded guilty or been found guilty of a rape offence during their 18-month study period, between January 1992 and June 1993. The median terms were considerably lower than the means for both the total effective sentence and the non-parole periods.

For offenders who had pleaded guilty to rape, the average (mean) total effective sentence was 6 years and 8 months with a non-parole period of 5 years. The corresponding median figures for the total effective sentence given to offenders who had pleaded guilty was 5 years with a non-parole period of 3 years and 6 months (Heenan & McKelvie, 1997, pp. 242-243). However, it is also possible that, with a different sample of cases, or that since that time, there might be a closer association between the mean and median terms set. Unpublished research by the Council reveals a closer association between the mean and the median in recent years.

### What stage is the reference on suspended sentences at now?

Quite apart from the sentencing trends for rape reported in this *Sentencing Snapshot*, the Council has looked broadly at the issue of suspended sentences across all offence categories. Their *Preliminary information paper* on suspended sentences was published in March 2005, with a *Discussion Paper* published soon after in April 2005 (used to inform community debate and aid consultations about the role of suspended sentences in Victoria). The Council's proposals have been tabled in their *Suspended sentences: Interim report* of October 2005, and include 46 recommendations aimed at simplifying and modernising sentencing orders in Victoria. One of the key recommendations in this report is to remove the power of the court to wholly or partially suspend a prison sentence. The *Interim report* also recommends introducing sentencing options that will allow courts to issue new orders, particularly to young offenders aged between 18 and 25 years that do not include terms of imprisonment.

The Victorian Attorney-General is expecting the Council's *Final report* on this subject to be submitted by the end of 2006.

In the coming year, the Council intends to release similar snapshots on sexual offences other than rape.

The *Sentencing Snapshot*, and other reports referred to in this review, can be downloaded in full from the Sentencing Advisory Council's website at: <http://www.sentencingcouncil.vic.gov.au>

The *What's New* page of the ACSSA website also contains regular updates and links to this and other recently released reports relevant to sexual assault: <http://www.aifs.gov.au/acssa/whatsnew.html>

Reports are later archived in our *Research Collection*: <http://www.aifs.gov.au/acssa/research/docs menu.html>

### Reference

Heenan, M & McKelvie, H (1997). The Crimes (Rape) Act 1991: An evaluation report, Rape Law Reform Evaluation Project, Report No. 2. Melbourne, Victoria:

Attorney-General's Legislation and Policy Branch, Department of Justice.

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