

Introduction

This publication presents statistics on criminal matters dealt with by the Victorian Higher (Supreme and County) Courts for the five years from 2001/02 – 2005/06. This report has been designed to satisfy two main goals. The first is to describe the main features of the criminal work of the Victorian Higher Courts in a manner that is accessible to a wide readership. The second goal of this report is to provide detailed statistics about sentencing patterns to assist those working in legal and judicial roles with comprehensive and accessible information about variations in sentencing across different offences and over time.

Chapter 1 presents statistics on the workflow within the Higher Courts including the number of matters committed and the number of defendants found guilty. Chapters 2, 3, 4 and 5 present statistics on the sentencing trends for offences against the person, property, drug and other offences. Chapter 6 outlines details such as length and amount of sentencing outcomes for defendants sentenced to orders other than imprisonment. Chapter 7 focuses on breaches of sentencing orders and Chapter 8 presents statistics on the top 35 principal proven offences over the period of the publication.

The data presented in this publication builds upon the previously published reports titled Victorian Higher Courts Sentencing Statistics 1997/98 – 2001/02 and 2002/03 produced by Court Services, Department of Justice.

An explanation of the criminal process within the Higher Courts, and the definitions and counting rules used to compile the data contained in this report have been provided. It is strongly recommended that the explanations and definitions provided be referred to when examining data included in this report, to assist in correct interpretation.

Data Source and Counting Rules

Scope

The scope of this report is the criminal jurisdiction of the Supreme and County Courts. These Courts deal with the most serious (indictable) offences, while less serious (summary) offences are heard in the Magistrates' Courts. If an offender is convicted of a mix of both indictable and summary offences, these summary offences may be heard by the Higher Courts¹. The Higher Courts hear cases relating to both State and Commonwealth legislation. In general, this report makes no distinction in relation to offences or sentences between State and Commonwealth matters. These sentencing statistics do not include matters that were disposed of by way of a *nolle prosequi* or where the defendant was acquitted, nor do they include orders relating to licences, compensation, restitution, forfeiture or forensic procedures.

Only matters heard in the original jurisdiction of the Courts are included. Summary matters heard by the County Court on appeal, or indictable matters referred to the Court of Appeal are not within the scope of these statistics.

Data source

At present, there is no single source of court statistical data that covers all issues of interest about criminal court case flows and sentencing. As a result, the statistics in this report have been compiled from two sources.

Sentencing statistics, including statistics on the characteristics of defendants sentenced, have been derived from Return of Prisoners Convicted forms (conviction returns). These conviction returns are completed by judicial officers from the Supreme and County Courts of Victoria after an offender has been found guilty and sentenced. The information contained in the conviction returns is entered into the Higher Courts Sentencing database which is maintained by Court Services, Department of Justice.

Information about the flows of criminal cases through the committal process to the Higher Courts has been derived from the Courtlink information system maintained by the Victorian Magistrates' Court.

¹ *Crimes Act 1958* s. 359AA

Data Source and Counting Rules, continued

Previous reports

The statistics in this report may differ to other reports available to the public because unique counting rules are employed by different agencies.

The statistics in this report follow on from the Victorian Higher Courts Sentencing Statistics 1997/98 – 2001/02 and 2002/03 which have previously been prepared by Court Services, Department of Justice. Due to the dynamic nature of the Higher Courts Sentencing Database, some variations between this report and the 1997/98 – 2000/01 and 2002/03 reports are evident. These variations are as a result of changed data entry practices, changes to counting rules and extensive data cleansing undertaken in 2005/06.

Counting Rules

A single criminal case may involve one or more defendants, each charged with one or more offences. Defendants may be found guilty of all, some or none of the charges they face, and receive one or more sentences for each offence of which they are found guilty. In order to simplify what may be an extremely complex pattern of defendants and charges, this publication presents information in terms of three basic counting units. These are:

- *Criminal matters are counted by the number of defendants involved.* A case where three defendants are tried jointly and found guilty of offences derived from a single course of criminal conduct (for example, a bank robbery) is counted as three distinct matters.
- *The principal proven offence is used to describe a defendant or sentence in terms of a single offence.* The principal proven offence is the offence for which the defendant received the most severe penalty in the sentencing hierarchy as set out under sections 5 and 7 of the *Sentencing Act 1991*². There is one principal proven offence per defendant. Note that some tables in this publication count all proven charges, and the principal proven offence counting rule does not apply.

Data Source and Counting Rules, continued

- *All charges found proven is used to describe the total number of charges found proven by the Court, as there may be more than one charge per defendant.*

Sentence Length

A court may impose distinct sentences for each offence for which a defendant is convicted, and these distinct sentences may be combined at the direction of the court. In this report, two distinct sentence length measures are used:

- The *principal sentence* (referred to as the sentence) is used to describe an offence or a defendant in terms of a single outcome or sentence. This is the longest period or greatest amount imposed for the sentencing outcome that is highest in the sentencing hierarchy under the *Sentencing Act 1991*. For example, if a defendant received a fine and a suspended sentence, the suspended sentence would be recorded as the principal sentence.
- The *total effective sentence* is the aggregate of all sentence components taking into account the court's directions regarding concurrent and cumulative sentencing. For example, an offender found guilty of robbery and theft might receive a term of 2 years imprisonment for the robbery offence, and 12 months imprisonment for the theft offence, with 6 months of the theft sentence to be served concurrently with the robbery term. The total effective sentence in this case is 2 years and 6 months.

² Refer to Appendix B of this report for further information regarding the sentencing hierarchy.

Higher Court Processes and Sentences

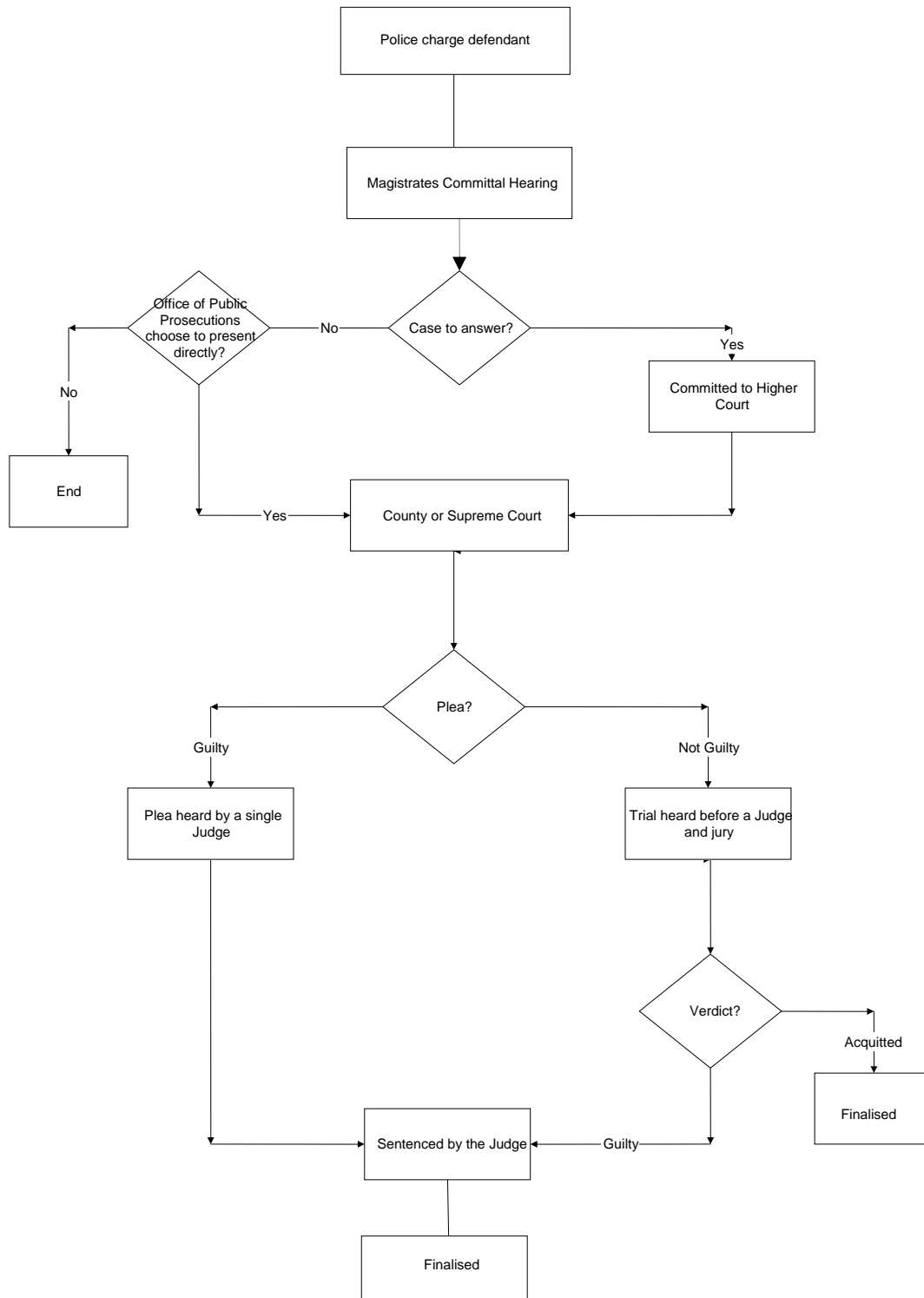
Case processing in the Higher Courts

The sentencing of a defendant in one of the Higher Courts is the conclusion of a legal process that begins when police lay charges (see Figure 1). If the offences charged are serious, and the matter cannot be resolved by a summary process, then the case goes to a committal hearing. The purpose of the committal process is to assess the strength of the evidence against the defendant. If the Magistrate sitting in the committal hearing finds that there is a case to answer, the matter is sent to the County or Supreme Court. Usually, if the committal hearing finds that the evidence against the defendant is inadequate, the case will not proceed further. In a small number of cases, the Director of Public Prosecutions may direct that the case should proceed directly to the County or Supreme Court.

When a case is committed to the Higher Courts, the defendant must choose to plead guilty, not guilty or to reserve their plea. At any stage up to the final hearing of the case, the defendant may change his or her plea. Usually, a change of plea involves a change from a plea of not guilty to guilty. If the defendant pleads guilty, the case is heard by a judge who imposes a sentence on the defendant. If the plea is not guilty, the case is heard by a judge and jury. The jury is responsible for determining whether or not the defendant is guilty. If the defendant is acquitted of all charges, he or she is discharged and the case goes no further. If the jury finds the defendant guilty on one or more charges, the judge passes sentence in relation to those charges. In the majority of cases, when a defendant pleads guilty or is found guilty, a conviction is recorded prior to the sentence being passed. However, courts have the power under certain circumstances to impose a penalty without recording a conviction. This most commonly occurs when the sentence imposed is an adjourned undertaking.

Higher Court Processes and Sentences, continued

Figure 1 Higher Court Case Process



Higher Court Processes and Sentences, continued

Sentencing Options in the Higher Courts

A judge in the Supreme or County Court has access to a wide range of sentencing options of different degrees of severity and satisfying different sentencing goals. Sentences are ranked in order of their severity according to a penalty scale set out in section 5 and section 7 of the *Sentencing Act 1991*. The hierarchy of sentencing orders applicable to child offenders is set out in section 138 of the *Children and Young Persons Act 1989*.

The most severe sentence available to courts is *imprisonment*. A judge may sentence a defendant to a fixed term of imprisonment, or may set a maximum term and a non-parole period. In the latter case, the defendant must serve the non-parole period in custody, but can apply to the Adult Parole Board for release subject to supervision by the Community Correctional Services. In these statistics the sentence category of imprisonment includes both fixed terms and terms with a non-parole period, combined custody and treatment orders and home detention.

A court may impose an *intensive correction order* which is a sentence of imprisonment which is to be served in the community. Persons sentenced to an intensive correction order must comply with core conditions including stringent conditions to report to Community Correctional Services twice a week, as well as completing 8 hours per week of community service. They may also be required to undertake treatment or rehabilitative programs.

A court may also impose a sentence of imprisonment that is partially or wholly suspended (a *suspended sentence of imprisonment*). In this report a suspended sentence incorporates both partially and wholly suspended sentences. It also includes partially and wholly suspended sentences with a recognisance release order (previously known as Section 20(1)(b) Commonwealth bond).

If the defendant is a young person and the court imposes a sentence of imprisonment, the defendant may be detained in a Youth Training Centre, and decisions about parole and release are made by the Youth Parole Board. Where the defendant is under 15, he or she will be detained in a Youth Residential Centre. For the period of this publication all defendants were sentenced to a Youth Training Centre.

Higher Court Processes and Sentences, continued

A *community based order* is a sanction of intermediate severity. Persons sentenced to a community based order must comply with a range of core conditions, including reporting to the Community Correctional Services at prescribed intervals, and may also be required to carry out unpaid community work and undertake treatment or rehabilitative programs.

When sentencing young offenders the court may make a *youth supervision order* or *youth attendance order*. Persons sentenced to these orders must comply with a range of core conditions, including reporting at prescribed intervals, and may also be required to carry out unpaid community work and undertake treatment or rehabilitative programs.

The least severe sanctions used by the Higher Courts include fines and a range of undertakings that may be made either with or without a conviction being recorded. The Higher Courts have access to, but rarely use, a number of other sentences including conviction and discharge, unconditional discharge or dismissal.

The court may impose sentences under the Commonwealth Crimes Act 1914. These include partially and wholly suspended sentences with recognisance release order which can be found under the suspended sentences. Other Commonwealth orders include recognisances that may be made either with or without a conviction being recorded. These penalties are grouped in the *CWLTH bonds* category in these statistics.

Victorian courts also have access to a range of sentencing orders for defendants who are mentally impaired. These orders include hospital orders and hospital security orders. A court may also impose a custodial or non-custodial supervision order in cases where the defendant has been found not guilty on the grounds of mental impairment. These orders are counted in the *Other* category of sentences.

Interpreting Court Statistics

The nature and volume of the work of the criminal courts is determined by a range of social, criminal, procedural and legislative factors. In order to understand variations in statistics about workflows, defendants or sentencing, it is necessary to understand how these factors can affect court statistics. Some of the variation in court statistics arises from the variable nature of crime itself, or from changes in the rate of crime. Another major source of variability is the impact of changes in policy or legislation.

Variations in court work flows arising from changes in crime rates

The amount of crime in the community varies over time, and these variations can have a significant impact on the work of the courts. Crime rates are usually measured by statistics on crimes reported to or recorded by the police. There have been significant increases in the levels of some forms of crime since 2001/02, most notably justice procedures, which incorporates breaches of court orders and crimes against police, such as resist police.³ At the same time, other forms of crime have shown significant declines such as robbery, burglary and theft.

Variations in sentencing arising from changes in offence and defendant characteristics

The sentence passed by the court depends on a wide range of circumstances, including the specific characteristics of the offence and the defendant. In this report, statistics are grouped according to the category of the offence. However, the nature and circumstances of each case and the characteristics and history of the defendant will directly affect the sentence imposed by the court. In statistical terms, each offence category is not an aggregate of identical cases but rather of cases that share a single attribute (the category of the offence) but may differ in relation to other important characteristics that may influence the type and severity of the sentence.

Interpreting sentence lengths

The sentence lengths included in these statistics are those ordered by the sentencing court following a finding of guilt. The finding of guilt, or the sentence, or both may have been amended subsequently by the Court of Appeal. In the case of offenders who were already serving a term of imprisonment, the court may have ordered that the new sentence should be served concurrently (either wholly or partly) with the original sentence.

³ Victoria Police Crime Statistics 2004/05, Victoria Police, Melbourne.

