

Smart Justice

“Smart action for a safer community”

Overview of the criminal justice system in Victoria

Most people form their views about crime and justice from the mainstream media. Research shows that mass media crime coverage focuses disproportionately on a small number of dramatic and violent cases and leaves out relevant information about offenders that judges use to give an appropriate sentence.¹ This leads to the public having a “grossly inaccurate” picture of crime and justice.²

Our Smart Justice factsheets address misconceptions about crime and justice and provide accessible information about what works to reduce crime and create safer communities. This factsheet provides an introductory overview of the criminal justice system.

State governments are largely responsible for criminal justice issues

Criminal justice issues are largely the responsibility of state governments, although the Federal Government and the Australian Federal Police have roles in relation to some offences such as drug trafficking and terrorism. In Victoria, the Victorian Parliament makes most of our criminal justice laws on issues like crimes, penalties and police powers. The Victorian Government manages funding for police and courts, legal assistance and the prison and parole system. Victoria Police are funded by the Victorian Government and the Chief Commissioner is appointed by the Police Minister.

Overall crime is dropping and the majority of crime is property crime

Victoria Police detect and investigate crime and also have a crime prevention role. Not all crime is reported to police, especially sexual assault and family violence, which can affect the accuracy of police crime statistics.³

In 2010/11, 359,073 offences were recorded by Victoria Police. Police dealt with 161,627 alleged offenders over the same period, around 3% of the Victorian population.⁴

Police statistics show that overall crime in Victoria per head of population has dropped 30% over the past 10 years. This is largely due to a drop in property crime such as theft and burglary. Property crime makes up 70% of offences reported to police and violent crime makes up only 14%. Assaults have increased over 10 years while homicide has dropped.⁵

Charging and prosecution

For some minor offences, police can caution or fine a person. For other offences, police will charge them. The police and the Office of Public

Prosecutions (OPP) prosecute charges. Prosecution is the process of presenting evidence in court which seeks to prove that a person committed crime they are charged with. The OPP is an independent government-funded agency which prosecutes serious crimes while police prosecutors prosecute less serious crimes.

Police and the OPP have discretion to charge and prosecute someone.⁶ In broad terms, they will charge a person if it is reasonably likely the court will find them guilty and it is in the public interest to charge them.

A person charged with a crime can plead guilty or not guilty. The prosecution can in some circumstances agree to accept a guilty plea to a less serious charge. Victoria Legal Aid and some community legal centres can provide legal assistance to people who can't afford a lawyer to defend them.⁷

Bail and remand

For some offences, the police will arrest the suspected offender and take them into custody. Bail is the release of the person from custody upon their agreement to return to court to respond to the charges against them. Bail conditions can be imposed, such as not approaching the alleged victim or paying money that will be lost if the person does not attend court. If a person is granted bail but does not attend court, they can be arrested and may be charged with an additional offence.

Police will refuse bail for serious offences and the person must apply to a court for bail. The court will look at a range of factors, but in broad terms the main factor is the risk that the person will not attend court to respond to the charge. If the court refuses bail, the accused person will remain in custody. They are known as a “remand” prisoner and will

be held in custody until they successfully apply for bail or until the end of their trial - where they may be found guilty and sentenced to prison. Remand prisoners are innocent until proven guilty at trial. 18% of Victorian prisoners are on remand, with the remaining 82% serving prison sentences.⁸

The large majority of offences are handled by the Magistrates Court and most result in a guilty finding

If someone pleads not guilty, a court trial will determine whether the person committed the crime they are accused of. The prosecution must prove beyond reasonable doubt that the accused person committed the crime and the accused person can present evidence seeking to show they did not commit the crime.

Trials of less serious offences are heard in the Magistrates Court without a jury. The judge decides the facts and whether the person is guilty. 92% of alleged offenders are dealt with by the Magistrates Court.

Trials of serious offences like murder and rape are heard in the Supreme Court or the County Court. A jury hears the evidence, decides the facts and applies the facts to the law, as directed by the judge, to determine whether the accused person is guilty. Juries are made up of citizens randomly selected from the Victorian community. Only around 2% of alleged offenders are dealt with by the Supreme or County Courts.

Trials of children and young people accused of crimes normally happen in the Children's Court which handles around 5% of alleged offenders.

Over 90% of criminal cases heard in Victorian courts result in a guilty finding – either through a guilty plea or a guilty finding after a trial.⁹

Courts are independent of Parliament and the Government.¹⁰

Victims of crime

The prosecution acts on behalf of the State of Victoria, not the victim of the crime, as all crimes are said to be committed against the state. However, there are range of support services for crime victims and witnesses. In Victoria, the Victims' Charter sets out the rights of victims in relation to the investigation and prosecution of crimes, including rights to be treated fairly, to be kept informed and to make a victim impact statement if the court decides a person is guilty.¹¹

Sentencing

If a person pleads guilty, or if the court finds them guilty, the judge will decide their penalty. The process of deciding a penalty is called sentencing. Under Victorian law, the five purposes of sentencing adults are to:

- *punish* the offender to an extent and in a manner that is just in all of the circumstances
- *deter* the offender or others from committing similar offences
- establish conditions that will facilitate the offender's *rehabilitation*
- make it clear that the court *denounces* the offender's behaviour
- *protect* the community from the offender.

The judge will take a range of factors into account in setting the penalty including:

- the maximum penalty
- current sentencing practices
- the nature of the offence
- any harm caused and the impact on the victim
- whether the offender pleaded guilty and at what stage
- the offender's responsibility for the offence
- the offender's character including any criminal history.

The court can impose a range of sentencing orders including:

- *diversion*: a process for some minor offences where the offender admits responsibility and takes action such as apologising to the victim or giving money to a charity
- *fine*: a monetary penalty paid to the state
- *community corrections order*: an order to do community work or other things
- *suspended sentence*: this option is being phased out
- *prison*
- *other orders* for certain crimes, like an order to pay compensation, to cancel the person's drivers licence or to put them on the sex offenders register.

Different processes apply to sentencing children and young people and people who are unfit to go through the trial process because of a mental impairment.

In 2004/05, Victorian courts sentenced 87,040 people in criminal cases. 15% received prison sentences and 85% received non-prison sentences like fines or community orders.¹²

Prison and parole

If the court punishes an offender with prison, in many cases it will set a minimum and maximum term. Prisoners become eligible for conditional release on parole after serving the minimum term. Parole is intended to supervise their reintegration into the community and has been shown to reduce reoffending.¹³ The Parole Board decides when someone is eligible for parole and what conditions apply to their parole and can cancel parole in some circumstances.

This factsheet was produced on 18 November 2011

1 Gelb, *Myths and Misconceptions* (2006), Sentencing Advisory Council, 15.

2 Gelb, *More Myths and Misconceptions* (2008), Sentencing Advisory Council, 5.

3 See Smart Justice Factsheet *Crime statistics – the real picture*.

4 Victoria Police, *Crime Statistics 2010/11*, 4 and ABS population figure for Victoria on 31 March 2011.

5 Victoria Police, *Crime Statistics 2010/11*, 7 and 2001/02, 12.

6 Office of Public Prosecutions *The Prosecutorial Discretion Policy 2.1*: www.opp.vic.gov.au/.

7 See www.legalaid.vic.gov.au or www.community-law.org.au.

8 Department of Justice, *Statistical Profile of the Victorian Prison System 2005-06 to 2009-10* (2010), 15-16.

9 Sentencing Advisory Council, *The Victorian criminal justice system 2004/05*, 4-5.

10 For more information on courts and juries see: www.courts.vic.gov.au/.

11 For more information see www.justice.vic.gov.au/victimsofcrime/.

12 Sentencing Advisory Council, *The Victorian criminal justice system 2004/05*, 6. For more information on sentencing see: www.sentencingcouncil.vic.gov.au.

13 Ellis & Marshall, 'Does Parole Work? A Post-Release Comparison of Reconviction Rates for Paroled and Non-Paroled Prisoners' (2000) 33(3) *Australian and New Zealand Journal of Criminology*, 300-317.