

Executive Summary

Introduction

This study is a continuation of earlier work examining the various categories of culpable homicide, principally murder and manslaughter, and the sentences imposed for these offences. The study includes infanticide cases but excludes death from driving cases, which are not prosecuted as either murder or manslaughter, and murder–suicide cases which, by definition, cannot result in a sentence.

The Judicial Commission published the first study, *Sentenced Homicides in New South Wales 1990–1993*, in 1995. It analysed the sentences imposed on 256 offenders — 129 convicted of murder and 127 convicted of manslaughter. The present study is wider in scope. It analyses all first instance culpable homicide cases decided between 1 January 1994 and 31 December 2001 that resulted in the imposition of a sentence. In that 8-year period there were 421 homicide events involving 477 offenders, 469 victims and 536 convictions.

The primary data for the study were obtained from court files held by the New South Wales Supreme and District Court Registries. This information was supplemented by data held by the Judicial Commission and used as the basis of information contained in the Commission’s Judicial Information Research System.

Aim of the study

The study aims to determine whether there are distinct patterns or types of homicide offences that fall within particular sentencing ranges. While it is recognised that every case is unique and that offences can cover a very broad spectrum of culpability, patterns of similarity enable offences to be grouped or contrasted in a way that may assist the sentencing judge achieve consistency in sentencing.

Key findings

Number of convictions

- 216 offenders were convicted of murder as the principal offence (45.3% of offenders)
- 261 offenders were convicted of manslaughter as the principal offence (54.7% of offenders)

Gender

- Male homicide offenders outnumbered female homicide offenders by 411 (86.2%) to 66 (13.8%)
- Male victims outnumbered female victims by 315 (67.2%) to 154 (32.8%)
- Females were significantly under-represented in the murder category and over-represented in the manslaughter category — 15 females were convicted of murder

(22.7% of all female homicide offenders) while 51 females were convicted of manslaughter (77.3% of all female homicide offenders)

- Males, on the other hand, were convicted almost evenly of murder and manslaughter – 201 male offenders were convicted of murder (48.9% of all male homicide offenders) compared to 210 male offenders convicted of manslaughter (51.1% of all male homicide offenders)

Age of offenders

- The median age of all homicide offenders was 27 years
- Three-quarters of all offenders were 35 years of age or less
- There were 44 juvenile offenders (under 18 years of age), that is, 9.2% of all offenders

Age of victims

- The median age of all homicide victims was 31 years, although female victims tended to be slightly younger (median age 30 years) than male victims (median age 32 years)
- There were 69 known child victims (under 18 years of age), that is, 14.7% of all victims

Aboriginality

- There were 56 Aboriginal homicide offenders (11.7% of all offenders), an over-representation of approximately 5 to 6 times in relation to the number of Aboriginal persons in the general population
- There were 27 Aboriginal victims (5.8% of the total number of victims), 22 of whom were killed by Aboriginal offenders and 5 by non-Aboriginal offenders. Thus Aboriginal victims were mostly killed by Aboriginal offenders

Murder sentences

- All 216 murderers were sentenced to a term of imprisonment. The median term of imprisonment was 18 years and the median non-parole period was 13 years 6 months
- The range of head sentences imposed for murder was 9 years to life imprisonment
- 17 offenders received a sentence of life imprisonment, only one of whom was female

Manslaughter sentences

- 30 of the 261 manslaughter offenders did not receive full-time custodial sentences (11.5%)
- 231 manslaughter offenders were sentenced to a term of imprisonment (or penal servitude). The median term of imprisonment was 7 years and the median non-parole period was 4 years 3 months

Sentencing patterns

Gender: Female homicide offenders generally received less severe sentences than their male counterparts — the median head sentence for female murderers was 16 years compared to 18 years for males and the median head sentence for females sentenced for manslaughter was 6 years compared to 7 years for males.

Females also received 15 of the 30 non-custodial sentences imposed for manslaughter. Thus, female manslaughter offenders were more than 4 times more likely than male manslaughter offenders to receive a non-custodial sentence (29.4% compared to 7.1%).

Juvenile offenders: Of the 44 juvenile homicide offenders in this study, 22 were convicted of murder and 22 were convicted of manslaughter.

Juvenile offenders generally received shorter terms of imprisonment and non-parole periods. The median sentence for murder was 16 years head with a non-parole period of 10 years (compared to 18 years head and 14 years non-parole period for adults). The median sentence for manslaughter was 6 years imprisonment with a non-parole period of 3 years (compared to 7 years head and 4 years 6 months non-parole period for adults).

Aboriginal offenders: An examination of the cases involving 56 Aboriginal offenders revealed high levels of unemployment, alcohol abuse and prior violent offending. Aboriginal offenders as a whole received lower non-parole periods, otherwise the sentences imposed were not greatly dissimilar to the general pattern of sentences for murder and manslaughter generally.

The median sentence for murder by Aboriginal offenders was 18 years with a non-parole period of 12 years (compared to 18 years head and 13 years 6 months non-parole period for non-Aboriginal offenders). The median sentence for manslaughter was 7 years head with a non-parole period of 3 years 3 months (compared with 7 years head and 4 years 6 months non-parole period for non-Aboriginal offenders).

Child killing: There were 73 offenders who killed 69 children (those under 18 years of age). Two distinct categories emerged within this group with each having about the same number of victims and offenders. The first of these was infants killed by parents or the mother's male partner. The second was older children (typically 16 or 17-years-old) getting killed in fights or drunken altercations, such as those commonly encountered in adult patterns of violence.

The murder of children tended to attract higher sentences: the median for murder was 19 years 6 months with a non-parole period of 14 years 6 months (compared with 18 years head and 13 years 6 months non-parole period for murder of adult victims).

In the case of manslaughter, however, the median sentence for child killers was almost exactly the same as for offenders who killed adults: 7 years with a non-parole period of 4 years 4.5 months (compared with 7 years head and 4 years 6 months non-parole period for manslaughter of adult victims). This group contained a lot of mothers of victims, suggesting a degree of sympathy that offset the aggravating fact of killing one's own baby, while the presence of diminished responsibility and the offence of infanticide also acted to reduce culpability in many of these otherwise very serious offences.

Life sentences: The 17 cases attracting natural life sentences were, by hypothesis, objectively the most serious cases and often involved offenders who were regarded as the most likely to reoffend (that is, the offenders were considered dangerous). These offenders' claims to leniency were often sparse and appeared to fall into insignificance when compared with the enormity of their crime or crimes.

Other sentencing factors

Guilty plea: Offenders convicted of manslaughter pleaded guilty in two out of three cases (67.8% of the time). Conversely only one in three (32.2%) pleaded not guilty. For manslaughter, a guilty plea increased the likelihood of a non-custodial sentence (15.3% with a guilty plea compared to 4.6% with a not guilty plea). Further, the median custodial terms for manslaughter were 7 years head term with a non-parole period of 4 years with a plea of guilty, compared to 7 years with a non-parole period of 4 years 6 months with a plea of not guilty.

Offenders convicted of murder pleaded guilty less often, with 37.5% of murderers pleading guilty compared with 62.5% pleading not guilty. The median sentence when the offender pleaded guilty to murder was 18 years with a non-parole period of 12 years; for those pleading not guilty the median head sentence was also 18 years but the non-parole period was 14 years.

Form 1 matters: Cases presenting with Form 1 matters (that is, where other offences were taken into account with the homicide offence) showed a slight increase in the median sentences imposed for both murder and manslaughter.

This increase was more noticeable for murderers, where the median sentence was 21 years 4 months with a non-parole period of 15 years. This should be compared with the median sentence for murder when there were no Form 1 matters taken into account: imprisonment for 18 years with a non-parole period of 13 years 6 months.

The increase in the median was only slight when manslaughter offenders presented with Form 1 matters: 7 years 6 months head and a non-parole period of 4 years 6 months with Form 1 matters, compared to 7 years head and a non-parole period of 4 years 3 months without Form 1 matters. No manslaughter offender with Form 1 matters received a non-custodial sentence.

Prior convictions: Of the 477 homicide offenders, 214 had no prior convictions (44.9%). The balance of 263 offenders with priors were divided into those with a record of non-violent offences only (131 or 27.5% of the total number of offenders in the study) and those with a violent offence record (132 or 27.7% of the total number of offenders).

The existence of a prior record involving violence had a marked impact on the outcome of cases. For example, of the 30 offenders who received non-custodial sentences, 25 had no priors, 5 had non-violent priors, while none had violent priors. Further, those with a record of prior violent offences tended to get higher sentences than the norm, as the following median figures revealed:

- murder with no priors — 18 years imprisonment with a non-parole period of 13 years 3 months
- murder with non-violent priors — 18 years imprisonment with a non-parole period of 12 years
- murder with violent priors — 20 years imprisonment with a non-parole period of 15 years.

Similarly the median sentences for manslaughter were:

- manslaughter with no priors — 7 years imprisonment with a non-parole period of 4 years
- manslaughter with non-violent priors — 7 years imprisonment with a non-parole period of 4 years 3 months
- manslaughter with violent priors — 8 years imprisonment with a non-parole period of 5 years.

Future trends

The present study provides a detailed analysis of the severity of sentences imposed for murder and manslaughter over a period of 8 years ending 31 December 2001. These cases must now be considered in the light of the *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* (NSW). That Act commenced on 1 February 2003 and introduced the concept of the standard minimum non-parole period for certain specified offences. Murder is one such specified offence and it is unique in that it carries two standard non-parole periods: 20 and 25 years imprisonment.

The higher non-parole period applies to cases of murder where the victim is a public figure exercising public or community functions and the offence has arisen because of the victim's occupation. In all other cases of murder a 20-year standard minimum non-parole period applies.

Of course those standard minimum sentences are subject to adjustment depending on the circumstances of the particular case, but it will nevertheless be interesting to compare future trends in sentencing homicide offenders with those outlined in this study.

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