

## Offenders sentenced to time already served in custody

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**Aim:** A proportion of remandees who receive a penalty of imprisonment are immediately released from custody because the duration of their sentence is equivalent to the time they have already spent in custody on remand; this is referred to as 'being sentenced to time-served'. This report summarises recent trends in patterns for defendants sentenced to time already served in custody.

**Method:** Descriptive analysis of adult prison sentences imposed by the Criminal Courts from July 2013 to June 2018.

**Results:** The number of persons sentenced to time-served has increased by 65 percent over the five years to June 2018 (up from 472 in 2013/14 to 781 in 2017/18). The proportion of all sentences received by remandees that are time-served has also increased, up one percentage point from 8.3 per cent in 2013/14 to 9.3 per cent in 2017/18. The median time spent on remand for those sentenced to time-served also increased, up from 60 days in 2013/14 to 88 days in 2017/18.

**Conclusion:** It is reasonable to assume that some fraction of people sentenced to time-served spend longer in prison on remand than the duration of the prison sentence they would have received had they not been remanded. Unfortunately we cannot tell how many extra days in prison these offenders are spending as we do not know what sentence they would have received had they not been held on remand. The results do, however, suggest that more people are serving longer in custody than they would have if sentenced immediately. The primary reason for the increase is the large rise in the remand population since 2013.

**Keywords:** time-served, sentencing, remand, imprisonment, custody

### Introduction

In mid-2018 the prison population of New South Wales (NSW) rose to record levels. In June 2018 the population reached 13,630, a 38% increase in five years (up from 9,855 in June 2013). This rise has been attributed in part to a large growth in the number of prisoners on remand (that is, prisoners awaiting trial or sentence), which has risen by 62.6 per cent since July 2013 from 2,769 to 4,502 (compared to a 28.8% rise in the sentenced prisoner population over the same period from 7,086 to 9,128).

Three factors contributing to the growth in the remand population are 1) an increase in the proportion of defendants refused bail by the courts after the new Bail Act (and show cause amendments) was introduced in early 2015 (see Yeong & Poynton 2018), 2) an increase in the volume of defendants coming to court (up from 122,945 in 2013/14 to 141,084 in 2017/18, see Criminal Court Statistics 2018) and 3) an increase in court delay particularly in the District Court with the median

time between arrest and case finalisation for defended cases where the offender was bail refused up in the District Court from 528 days in 2013/14 to 684 days in 2017/18.<sup>1</sup>

With a record number of prisoners on remand and an increase in court delay, one question of particular interest is whether more offenders are being sentenced to time already served in custody, where essentially time on remand is the entirety of their sentence.

Time-served describes a sentence where the defendant is sentenced to a period of imprisonment equivalent to the length of time already spent on remand awaiting their court hearing. For example, defendant A spends 180 days on remand awaiting trial and is then found guilty by the court and sentenced to 180 days imprisonment (i.e. time already served in custody). In this instance, defendant A is released immediately after the verdict having effectively served their sentence on remand.

For the purpose of this paper, we assume that a person has been sentenced to time-served if they are convicted and given a custodial sentence but released from remand within 7 days of their conviction date.

The specific questions addressed by the report are as follows:

- What number and proportion of remandees are sentenced to time-served and has this changed over the last five years?
- What is the average sentence length imposed on these individuals ( i.e. length of time spent on remand?)
- Do these sentences vary by court jurisdiction?

## Trends in time-served

Figure 1 shows the trend in the number of defendants sentenced to time-served by month. It also shows the proportion that these sentences represent (i.e. the number of remandees sentenced to time-served as a proportion of the total number sentenced after being on remand). Over the last five years the number of defendants sentenced to time-served has increased by 65 per cent (up from 472 in 2013/14 to 781 in 2017/18).

Figure 1 shows this increase occurred between 2014/15 and 2015/16 ; this synchronises with a substantial increase in the remand population due to changes to the NSW Bail Act which took effect in January 2015.

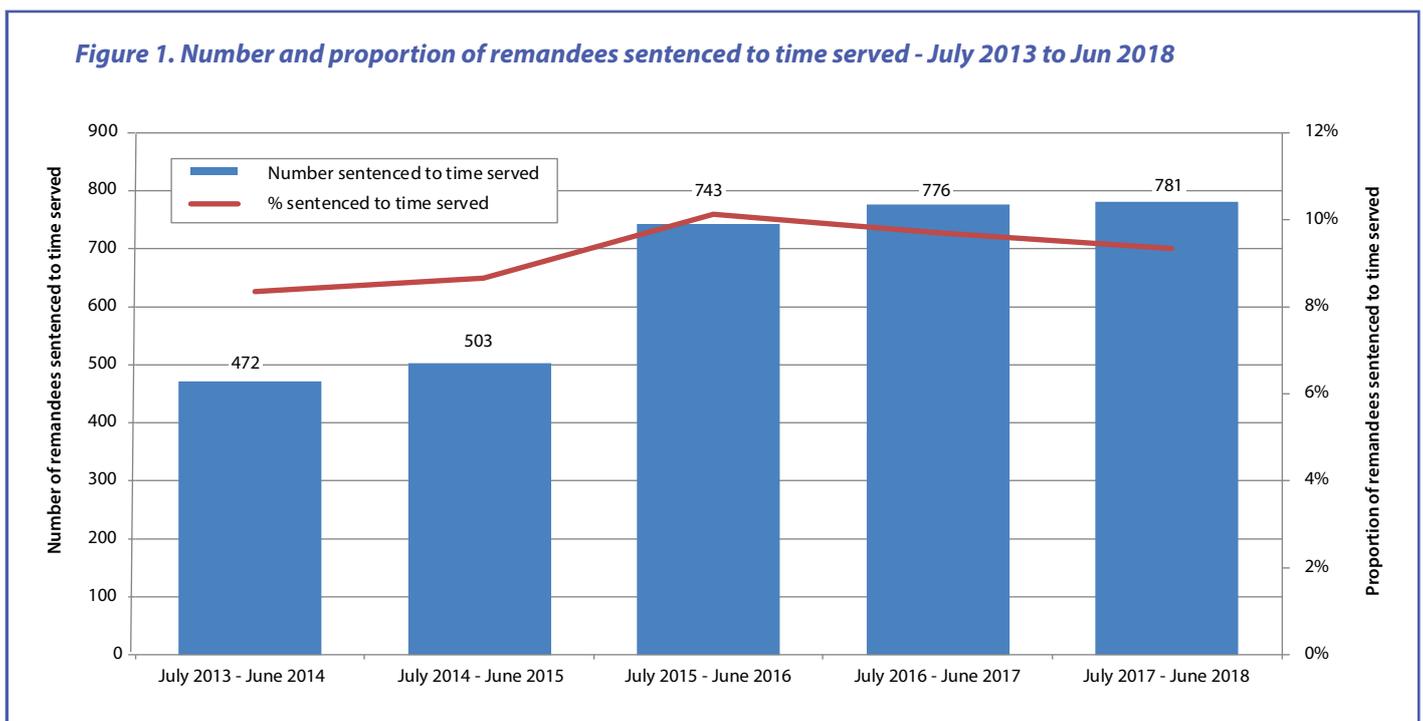
The increase in people sentenced to time served equates to an increase of approximately 26 additional defendants per month,

(up from an average of 39 defendants per month in 2013/14 to 65 defendants per month in 2017/18).

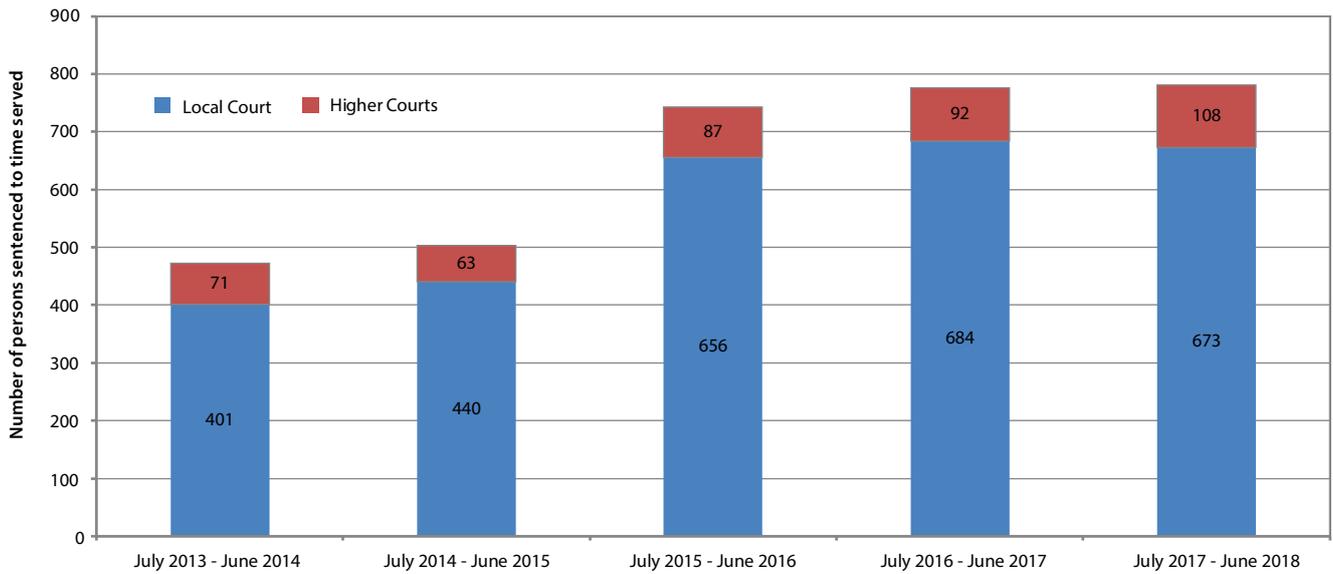
These types of sentences account for about one in ten (9.3%) sentences received by those on remand. This proportion has also slightly increased; up 12 per cent in the five years to June 2018 (from an average of 8.3% to 9.3%).

Figure 2 shows the number of defendants sentenced to time-served by jurisdiction. The vast majority of defendants sentenced to time-served were sentenced by the Local Courts. This is to be expected because the vast majority of criminal cases (87%) are dealt with by the Local Court. The remaining 13 per cent were sentenced by either the District or Supreme Court (Higher Courts). In the 12 month period to June 2018, 673 defendants in the Local Court and 108 in the Higher Courts received a sentence equivalent to the length of time already spent on remand. This equates to an average of 57 defendants per month in the Local Court and nine defendants per month in the Higher Courts.

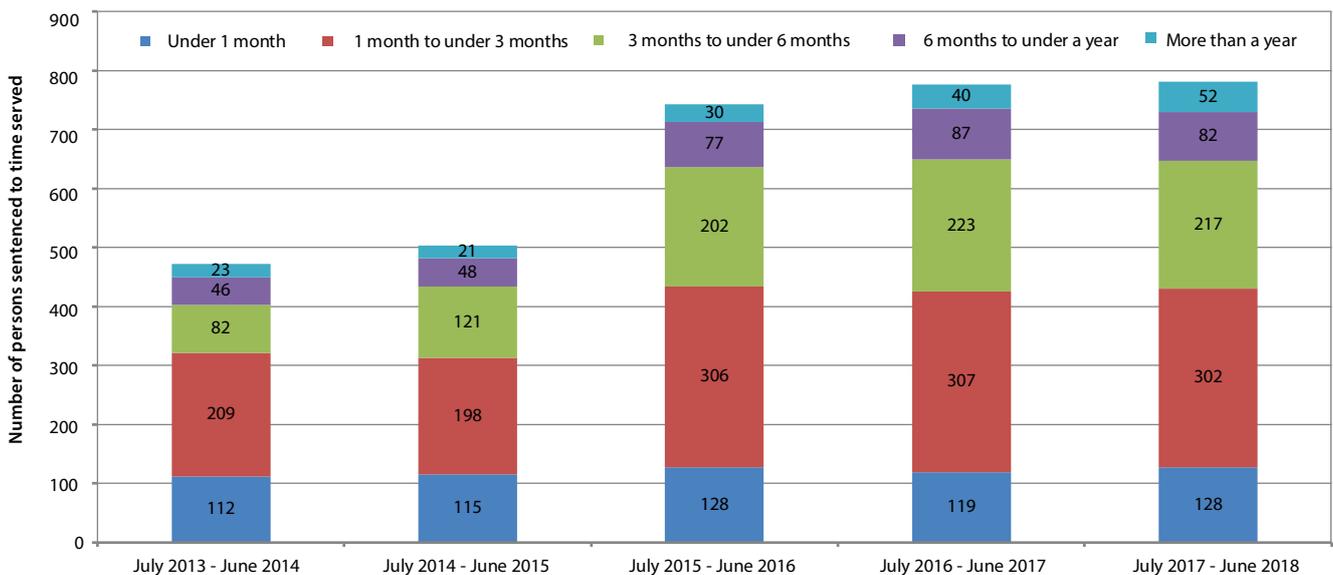
Over the last five years the number of defendants' sentenced to time-served in both jurisdictions has increased. The largest increase was in the Local Court; up by 68 per cent (from 401 in 2013/14 to 673 in 2017/18). The number of defendants sentenced to time-served by the Higher Courts was also higher; up 52 per cent from 71 defendants in 2013/14 to 108 defendants in 2017/18. This increase equates to approximately 23 additional defendants each month being sentenced to time-served in the Local Court and three additional defendants per month in the Higher Courts.



**Figure 2. Number of defendants sentenced to time served by jurisdiction - July 2013 to June 2018**



**Figure 3. Number of defendants sentenced to time served by length of sentence - July 2013 to June 2018**



## Length of sentence and length of time on remand

Figure 3 shows the length of time spent in custody for those defendants sentenced to time-served. The median time spent on remand for those sentenced to time-served increased from 60 days in 2013/14 to 88 days in 2017/18. In the 12 month period to June 2018, defendants sentenced to time-served had usually only spent a relatively short period on remand (more than half (55.3%) were sentenced to less than 3 months).

Although the number of defendants sentenced to time-served has increased across all sentence durations, the durations with the highest growth (in numbers) between 2013/14 and 2017/18 were among those with sentences of between three and six months (up 135 defendants), one to three months (up 93 defendants) and 6 months to under a year (up 36 defendants).

As expected, sentence length varied according to jurisdiction. More than 90 per cent (90.5%) of defendants sentenced to time-served in the Local Court received a duration of 6 months or less, while almost half (47.2%) of the defendants sentenced in the Higher Courts received a duration of more than one year.

## Summary

Over the last five years to June 2018 the number of remandees sentenced to time-served increased by 65 per cent from 472 in 2013/14 to 781 in 2017/18. This increase equates to approximately 23 additional defendants each month being sentenced to time-served in the Local Court (up from 33 in 2013/14 to 56 in 2017/18) and three additional defendants per month in the Higher Courts (up from 6 in 2013/14 to 9 in 2017/18).

Most of the time served increase is due to an increase in the number of people on remand at sentence. The number of remandees sentenced to time-served jumped sharply between 2014/15 and 2015/16 mirroring a rise in the remand population at that time. BOCSAR (Yeong & Poynton, 2018) has previously shown that the January 2015 bail reforms increased the probability of bail refusal by about 11% which resulted in an additional 1,500 bail refusals in the 3-year post reform period. It seems that most of the increase in people sentenced to time-served is related to this increase in the remand population.

A lesser proportion of the increase in people sentenced to time-served seems is due to an increase in court delay, primarily in the Higher court. This is consistent with the small but discernible increase in the proportion of all sentences received by remandees that are time-served, up one percentage point from 8.3 per cent in 2013/14 to 9.3 per cent in 2017/18. The median time spent on remand for those sentenced to time-served also rose from 60 days in 2013/14 to 88 days in 2017/18.

While only a small proportion of the increase in people sentenced to time served comes from the Higher Court, it is relevant that delay for remandees adjudicated in the Higher courts has risen considerably since 2013/14. In 2013/14 the median time from charge to finalisation for a defendant on remand awaiting trial was 528 days and 374 days for sentence matters; by 2017/18 median delay for remandees awaiting trial was 684 and 466 for sentence matters. In the Local Court, however, the median delay for remandees has increased only very slightly; from 136 days to 147 days from arrest to finalisation for sentence matters versus 245 days to 254 days for defended hearings.

It is inevitable that a proportion of offenders will be sentenced to time served. However, an increase in people sentenced to time-served is a problem if it means more people are being detained for longer than is necessary. It is likely that for some proportion of defendants sentenced to time-served, time on remand equates to exactly the sentence they would have received and so they are at no disadvantage by this outcome. However, some fraction of proven defendants released at the end of their time on remand will have spent longer in custody waiting for their court matter than the time they would have spent in prison had they been released on bail and were sentenced at conviction. The data presented here suggest that this is likely increasing resulting in extra prison demand.

## Notes

1. In the District Court, median delay for persons bail refused awaiting sentencing rose from 374 days in 2013/14 to 466 days in 2017/18 from arrest to finalisation. Delay increases in the Local Court have been modest rising from 245 days in 2013/14 to 254 days in 2017/18 for persons bail refused who proceeded to a defended hearing, from 136 days in 2013/14 to 147 days in 2017/18 for persons bail refused who proceeded to sentence (Criminal Courts Statistics 2018).

## References

- NSW Bureau of Crime Statistics and Research (2018). *Criminal Court Statistics 2017/18*. Sydney: NSW Bureau of Crime Statistics and Research.
- Yeong, S. and Poynton, S. (2018). *Did the 2013 Bail Act increase the risk of bail refusal?* (Crime and Justice Bulletin No. 212). Sydney: NSW Bureau of Crime Statistics and Research.