

The effect of judge-alone trials on criminal justice outcomes

Jonathan Gu

SUMMARY

CRIME AND JUSTICE BULLETIN
NUMBER 264 | MARCH 2024

BACKGROUND

The proportion of judge-alone criminal trials in the NSW District Court and Supreme Court (higher courts) has increased from 6% of trials in 1999 to 18% of trials in 2019.

We estimate the association between judge-alone trials and the probability of acquittal, probability of imprisonment, trial length and sentence severity. We do this by comparing acquittal rates, imprisonment rates, prison sentences and trial lengths for 5,064 jury and 805 judge-alone trials in NSW higher courts between January 2011 and December 2019.

We adjust for relevant observable characteristics using an entropy balancing approach and regression modelling. We also provide estimates for two subsets of offences: violent offences and offences with a higher likelihood of having prejudicial elements or complex evidence (prejudicial and complex offences).

To identify factors motivating judge-alone applications that may affect outcomes, we also interviewed 12 legal practitioners including judges, defence lawyers and prosecutors.

KEYWORDS

Court statistics

Judicial decisions

Convictions

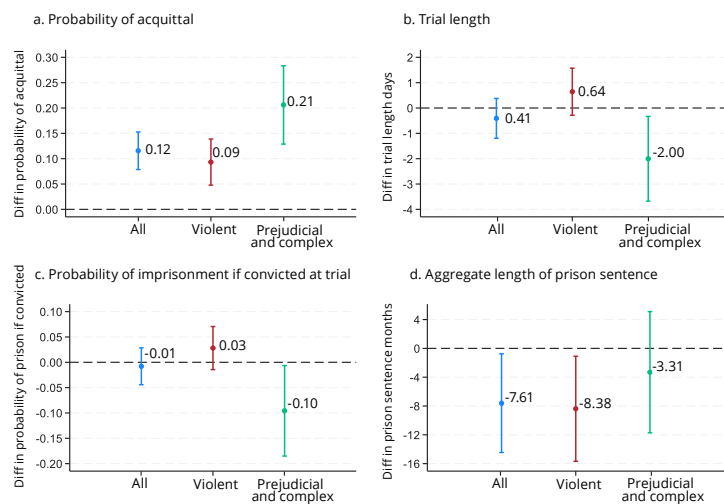
Court processes

Sentencing

Juries

KEY FINDINGS

Figure 1. The estimated association between judge-alone trials for all offences, violent offences and prejudicial/complex offences



Judge-alone trials were associated with a statistically significant 12 percentage point increase in the probability of acquittal and a significant decrease in average aggregate prison sentences (if convicted) of 7.6 months. Judge-alone trials were also associated with an average decrease of two days among cases with *prejudicial and complex offences*. No statistically significant associations for trial length were found for *all offences* or *violent offences*. We are unable to determine whether these outcomes are caused by judge-alone trials, or by factors that affect whether a trial ‘goes judge-alone’.

Interviewed legal practitioners noted that differences in acquittals could be linked to how judges must write verdicts with reasons that can be appealed (compared to juries, who do not give reasons in their verdicts) or weaker prosecution cases going judge-alone. For trial length, interviewees unanimously believed that judge-alone trials were shorter, due to increased use of written evidence (which can partly replace in-person testimony), flexible scheduling, and quicker presentations of evidence, particularly for complex expert evidence.

CONCLUSION

Compared with jury trials, judge-alone trials were associated with an increase in the probability of acquittal and a decrease in average sentence length on conviction. For *prejudicial and complex offences*, judge-alone trials were associated with shorter trial lengths.