

## Sentencing snapshot: Child sexual assault, 2009-2010

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**Aim:** To describe the penalties imposed on adult offenders convicted of child sexual assault.

**Summary:** Over the two year period 2009 and 2010, 431 offenders were convicted of child sexual assault. Ninety-seven per cent of those convicted were male and 67 per cent of offenders had no prior convictions for child or adult sexual assault in the preceding five years. The most common penalty imposed on an offender convicted of child sexual assault was a prison sentence. Prison penalties were imposed on 75 per cent of offenders convicted of an offence of aggravated child sexual assault, with an average aggregate sentence of 68 months, and an average minimum term of 39 months.

**Keywords:** child sexual assault, penalty, prison, sentence length

### Introduction

This Bureau Brief describes sentencing outcomes for adult offenders convicted of child sexual assault<sup>1</sup> between 2009 and 2010 in the NSW Local and Higher Criminal Courts. Offences committed by children are not included in this brief.

Child sexual assault is an offence that takes many forms. Under the *Crimes Act 1900*, the maximum penalty for sexual assault against a child varies from between two years for an act of indecency to life imprisonment for an aggravated sexual assault of a child aged under 10 years. There are specific offences relating to offences against children aged under 10 years and children aged 10 to 16 years. Offenders may also be charged under the general sexual offence provisions which are not restricted by age where an absence of consent can be established.

For the purpose of this brief, we distinguish between three groups of offences. Associated law codes and descriptions are included in the Appendix. The first group (referred to as 'Aggravated child sexual assault' throughout the remainder of this brief) includes offences that might commonly be referred to as rape of a child. The biggest subcategories in this group are 'sexual intercourse with person under the age of 10 years' and 'having sexual intercourse with person aged between 14 years and less than 16 years'. Each of these offence subcategories accounted for 20 per cent of offenders in this group. Also included in this group are significant numbers of offenders convicted of 'aggravated sexual assault against a person aged

under 16 years' (17% of offenders in this group) or offenders convicted of 'sexual intercourse with a person aged between 10 years and less than 14 years' (10% of offenders in this group). The maximum penalty for the most serious offences in this group is life imprisonment. If the offence involves sexual assault of a child aged between 10 and 16 years, but no circumstances of aggravation, the maximum penalties range from 10 to 16 years. In circumstances of aggravation, the penalty range increases to 12 to 20 years. If the offender is charged under the general offences, the maximum penalty is 14 years in the absence of circumstances of aggravation. If aggravation can be established, the maximum penalty is life.

The second group (referred to as 'Indecent child assault' throughout the remainder of this brief) consists primarily of what might be referred to as indecent assault offences against children, some with circumstances of aggravation such as where the offender was in a position of authority over the victim. The vast majority (38%) of offenders in this group were convicted of aggravated indecent assault of victims aged under 16 years, which carries a maximum of 10 years imprisonment. For all offences included in this group, the maximum penalty ranges from two to 10 years imprisonment.

The third group (referred to as 'Other child sexual assault') consists of offences of grooming or procuring a child for unlawful sexual activity. Maximum penalties for these offences range from 12 to 15 years.

## Age, gender and prior record of offenders

Over the years 2009 and 2010, 431 adult offenders, 418 males and 13 females, were convicted of child sexual assault.<sup>2</sup> Almost all (98.6%) of these convictions were for aggravated child sexual assault or indecent child assault. Table 1 shows the distribution of adult offenders convicted of child sexual assault by age and gender of the offender.

It can be seen that over 65 per cent of offenders convicted of child sexual assault were aged 35 years or over. The average age of offenders convicted of child sexual assault was 43 years. The average age of offenders convicted of aggravated child sexual assault was 40 years.

Table 1 shows there were six offenders convicted of other child sexual assault offences. Because of the small number in this category, this category has been excluded from the analyses below. However these offenders are still included in the totals when calculating percentages.

Table 2 shows the number of prior convictions over the preceding five years for offenders convicted child sexual assault.

The majority of offenders convicted of child sexual assault had no prior convictions in the preceding five years (67.3%). The average number of prior convictions in the last five years was less than one (average .7). Those convicted of aggravated child sexual assault had slightly more prior convictions (average .71) than those convicted of indecent child assault (average .65).

Figure 1 shows the proportion of offenders convicted of child sexual assault who have (a) no prior convictions, (b) prior convictions not of sexual assault or related offences against an adult or child, (c) prior convictions for sexual assault or related offences against an adult or child without imprisonment or (d) prior convictions for sexual assault or related offences against an adult or child with imprisonment.

Overall, eight per cent of offenders convicted of child sexual assault had prior convictions for sexual assault in the preceding five years. Approximately seven per cent of all offenders convicted of child sexual assault had received another sentence of imprisonment for sexual assault in the preceding five years. A quarter of offenders had prior convictions, but not for sexual assault or related offences.

## Sentence types

Table 3 shows the distribution of penalty types broken down by the type of child sexual assault.

Imprisonment was the most common penalty given to those convicted of aggravated child sexual assault and indecent child assault (75% and 48% respectively), followed by a suspended sentence (16% and 25% respectively), and then a bond (6% and 22% respectively). Four per cent of offenders convicted of child sexual assault received a bond without conviction or had no conviction recorded.

**Table 1. Age and gender of offenders convicted of child sexual assault**

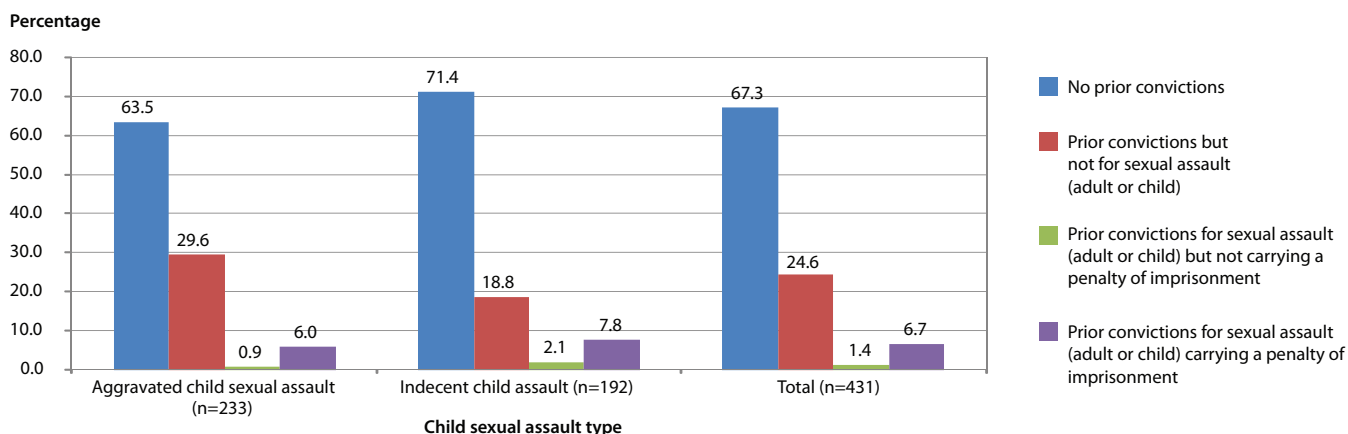
		Aggravated child sexual assault		Indecent child assault		Other child sexual assault		Total	
		n	%	n	%	n	%	n	%
<b>Total</b>		233	54.1	192	44.5	6	1.4	431	100.0
<b>Gender</b>	Male	222	95.3	190	99.0	6	100.0	418	97.0
	Female	11	4.7	2	1.0	0	0.0	13	3.0
<b>Age group</b>	18-24 years	48	20.6	21	10.9	1	16.7	70	16.2
	25-34 years	46	19.7	19	9.9	1	16.7	66	15.3
	35-44 years	51	21.9	53	27.6	1	16.7	105	24.4
	45-54 years	50	21.5	52	27.1	2	33.3	104	24.1
	55 years and over	38	16.3	47	24.5	1	16.7	86	20.0

**Table 2. Number of prior convictions over the preceding five years for offenders convicted of child sexual assault**

		Aggravated child sexual assault (n=233)		Indecent child assault (n=192)		Total <sup>a</sup> (n=431)	
		n	%	n	%	n	%
Prior convictions							
	0	148	63.5	137	71.4	290	67.3
	1	46	19.7	31	16.1	78	18.1
	2	18	7.7	7	3.6	25	5.8
	3+	21	9.0	17	8.9	38	8.8

<sup>a</sup> Includes offenders convicted of 'Other child sexual assault' offences.

**Figure 1. Nature of prior convictions in the preceding five years of offenders convicted of child sexual assault**



**Table 3. Principal penalty imposed on offenders convicted of child sexual assault**

Penalty	Aggravated child sexual assault		Indecent child assault		Total <sup>a</sup>	
	(n=233)		(n=192)		(n=431)	
	n	%	n	%	n	%
Imprisonment	174	74.7	93	48.4	272	63.1
Suspended sentence	36	15.5	47	24.5	84	19.5
Bond	13	5.6	42	21.9	55	12.8
Bond without conviction/no conviction recorded	9	3.9	6	3.1	15	3.5
Other <sup>b</sup>	1	0.4	4	2.1	5	1.2

<sup>a</sup> Includes offenders convicted of 'Other child sexual assault' offences.

<sup>b</sup> Includes periodic detention, community service orders, probation without supervision and no action taken.

**Figure 2. Percentage of child sexual assault offenders imprisoned by prior convictions for any offence**

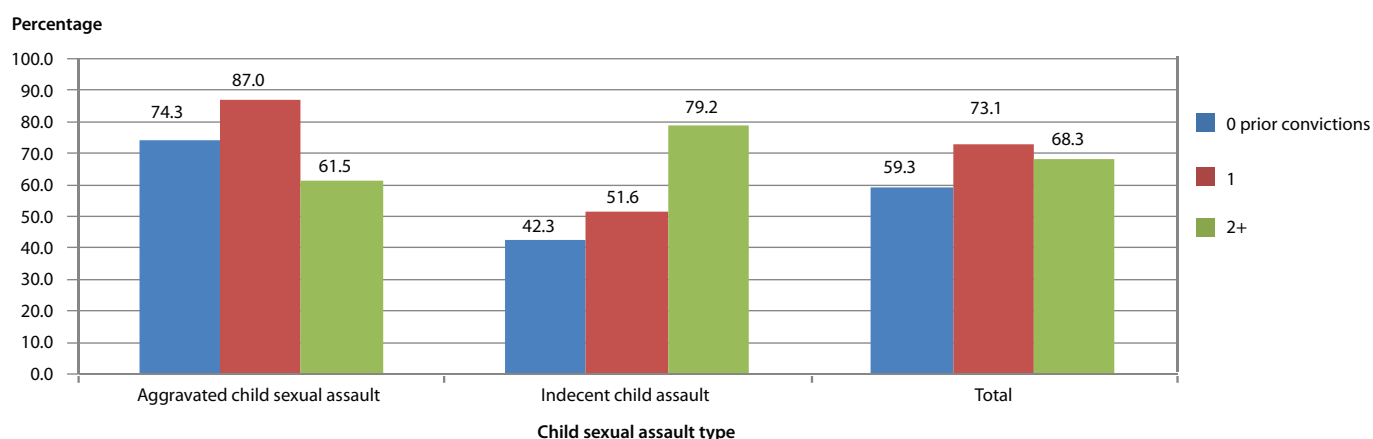


Figure 2 shows the percentage of offenders convicted of child sexual assault who were given a sentence of imprisonment broken down by the number of prior convictions for any offence in the preceding five years.

Just over two thirds (68%) of offenders convicted of child sexual assault offences who had two or more prior convictions for any offence in the preceding five years were sentenced to prison. Almost 60 per cent of those with no prior convictions received a prison sentence.

With no prior convictions, almost three quarters (74%) of offenders convicted of aggravated child sexual assault were sentenced to prison, compared with less than half (42%) of offenders convicted of indecent child assault. For offenders having one prior conviction, the majority (87%) of offenders convicted of aggravated child sexual assault were sentenced to prison, compared with approximately half (52%) of offenders convicted of indecent child assault. In contrast, for offenders having two or more prior convictions, 62 per cent of offenders convicted of aggravated child sexual assault were sentenced to prison, compared with 79 per cent of offenders convicted of indecent child assault.

Thus, Table 3 shows the proportion of offenders imprisoned for aggravated child sexual is higher than the proportion convicted for indecent assault, but Figure 2 reveals the relationship with number of prior convictions is less clear. For those convicted of indecent child assault, the proportion of offenders sentenced to imprisonment increased with increasing numbers of prior convictions. This, however, was not apparent for offenders convicted of aggravated child sexual assault. It is important to bear in mind that these prior convictions are for any offence, not necessarily sexual offences.

## Sentence length

Table 4 shows the minimum, maximum, median and average prison sentences for offenders convicted of child sexual assault offences. The upper panel shows descriptive statistics for aggregate or total prison terms (i.e. the longest period an offender can spend in custody). The lower panel shows the minimum prison terms or non-parole period (i.e. the shortest period an offender can spend in custody).

As expected, the lengths of prison sentences were longer for aggravated child sexual assault than for indecent child assault. The average aggregate sentence was 68 months for aggravated child sexual assault and 29 months for indecent child assault. Aggregate sentences ranged from 4 months to 18.5 years. The average minimum term was 39 months for aggravated child sexual assault and 16 months for indecent child assault. Average minimum terms ranged from no months to 14 years. Note that although some minimum terms recorded are very short (0 months), this is unlikely to reflect the actual minimum time spent in custody, as offenders are often incarcerated whilst awaiting trial and this time is taken into account when the sentence is set.

## Conclusion

Over the two year period 2009 and 2010, 431 adult offenders were convicted of child sexual assault in NSW Local and Higher Criminal Courts. The average age of those convicted was 43 years and almost all were male. Two thirds of offenders had no prior convictions in the preceding five years. The most common penalty imposed on an offender convicted of child sexual assault was a prison sentence. Prison penalties were imposed on 75 per cent of offenders convicted of an offence of aggravated child sexual assault, with an average aggregate sentence of 68 months, and an average minimum term of 39 months. While the proportion of offenders imprisoned for aggravated child sexual was higher than the proportion convicted for indecent assault, the relationship with number of prior convictions is less clear. For those convicted of indecent child assault the proportion of offenders sentenced to imprisonment increased with increasing numbers of prior convictions. This, however, was not apparent for offenders convicted of aggravated child sexual assault. It may be the case that the probability of imprisonment increases as the number of sexual offences increases.

## Notes

1. Under the NSW *Crimes Act 1900*. Excluded from the analysis were two people convicted under the Commonwealth *Crimes Act 1914* of committing an act of indecency on a person aged less than 16 years outside Australia.
2. Data presented throughout this brief relate to finalised court appearances with a principal offence of sexual assault. The principal offence of an appearance is defined as the offence which received the most serious penalty.

## Acknowledgments

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**Table 4. Descriptive statistics on length of prison sentences**

		<b>n</b>	<b>Mean</b>	<b>Median</b>	<b>Min</b>	<b>Max</b>
Aggregate sentence (months)	Aggravated child sexual assault	174	68.0	60.0	4.0	222.0
	Indecent child assault	93	29.0	24.0	4.0	78.0
	Total	272	54.0	42.0	4.0	222.0
Minimum term (months)	Aggravated child sexual assault	174	39.4	30.0	0.0	168.0
	Indecent child assault	93	15.9	12.0	2.0	54.0
	Total	272	30.9	23.0	0.0	168.0

## Appendix

**Table A1. Classification of child sexual offences by lawpart for Australian and New Zealand Standard Offence Classification (ANZSOC) code 311 (Aggravated sexual assault)**

Group	Law part code	Law part description	Frequency	
Aggravated child sexual assault	325	Sexual intercourse with person under the age of 10 years-SI	46	
	51430	Have sexual intercourse with person >=14 & <16 years-T1	46	
	274	Aggravated sex assault- victim under the age of 16 years-SI	39	
	51428	Have sexual intercourse with person >=10 & <14 years-SI	24	
	51429	Aggravated sexual intercourse person >=10 & <14 years-SI	11	
	255	Sexual assault (Cat 3) - person under 16 years of age	7	
	329	Sexual intercourse-person 10 & under 16-under authority-SI	7	
	51431	Aggravated sexual intercourse person >=14 & <16 years-SI	7	
	30625	Persistent sexual abuse of a child-SI	6	
	51432	Sexual intercourse with person under care >=16 & <17 yrs-SI	6	
	15738	Sexual intercourse with person 10 or over & under 16 yrs-SI	5	
	64835	Have sexual intercourse with person >=14 & <16 years (DV)-T1	5	
	344	Carnal knowledge father etc of girl >=10 & <17years-SI	3	
	362	Homosexual intercourse with male >= 10 & < 18 years-SI	2	
	67814	Sexual intercourse with person under the age of 10 years-SI	2	
	67838	Sexual intercourse person under 10-under authority (DV)-SI	2	
	257	Sex Assault (Cat 3) person <16 & under authority & no consent	1	
	263	Sex Assault (Cat 4) Indecent ass person <16 under authority	1	
	327	Attempt sexual intercourse with person under 10 years-SI	1	
	338	Carnal knowledge of girl 10 and under 16 years	1	
	367	Homosexual intercourse-teacher of pupil >= 10 & < 18-SI	1	
	419	Act as client with child >=14 & < 18 in prostitution -SI	1	
	15739	Sexual intercourse with person 14 or over & under 16 yrs-T1	1	
	15745	Attempt sexual intercourse-child 14 to <16 & under auth-T1	1	
	51433	Sexual intercourse with person under care >=17 & <18 yrs-SI	1	
	64786	Aggravated sex assault- victim under the age of 16 years (DV)-SI	1	
	64830	Sexual intercourse with person under age of 10 years (DV)-SI	1	
	64836	Aggravated sexual intercourse person >=14 & <16 yrs (DV)-SI	1	
	64845	Persistent sexual abuse of a child (DV)-SI	1	
	67813	Sexual intercourse with person under age of 10 years (DV)-SI	1	
	67831	Sexual intercourse person under 10-deprive liberty (DV)-SI	1	
	Indecent child assault	287	Aggravated indecent assault- victim under the age of 16 years-T1	73
		291	Indecent assault where victim under the age of 10 years-T1	31
67803		Indecent assault person under 16 years of age-T1	30	
294		Commit act of indecency with person under 16 years-T2	27	
350		Assault female & commit act of indecency age <16 yrs	7	
64807		Indecent assault victim under the age of 10 years (DV)-T1	4	
262		Sexual Assault (Cat 4)-Assault & act of indecency person <16	3	
300		Aggravated indecency-victim under 16 & under authority offender-T2	3	
314		Commit act of indecency with victim under 10 years-T1	3	
295		Incite person under 16 years to commit act of indecency-T2	2	
67804		Indecent assault person under 16 years of age (DV)-T1	2	
267		Sexual assault (Cat 4) incite indecent act person < 16	1	
269		Sex assault (Cat 4) incite indecent act, <16 & under auth-T1	1	
292		Commit act of indecency with/towards person < 16	1	
352		Commit act of indecency on female, under 16 years	1	
31650		Sexual assault (Cat 4) incite indecent act person >=14 & <16-T1	1	
31652		Sex assault (Cat 4) indecent act-under auth >= 14 & < 16-T1	1	
64802		Aggravated indecent assault- victim under the age of 16 yrs (DV)-T1	1	
Other child sexual assault		63329	Procure child for unlawful sexual activity-T2	2
		67841	Groom child for unlawful sexual activity-T1	2
	63331	Groom child for unlawful sexual activity-T2	1	
	67840	Procure child under 14 years for unlawful sexual activity-T1	1	