

# Sentencing Snapshot

Sentencing trends  
in the higher courts  
of Victoria  
2005–06 to 2009–10

June 2011  
No. 113

## Indecent act with a child under 16

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of indecent act with a child under 16 and details the age and gender<sup>2</sup> of people sentenced for this offence in the County Court<sup>3</sup> of Victoria between 2005–06 and 2009–10.<sup>4</sup>

A person who is involved in any act in indecent circumstances with or in the presence of a child under the age of 16 is guilty of the offence of committing an indecent act with a child under 16.<sup>5</sup>

Committing an indecent act with a child under 16 is an indictable offence that carries a maximum penalty of 10 years' imprisonment<sup>6</sup> and/or a fine of 1200 penalty units.<sup>7</sup> Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Committing an indecent act with a child under 16 can also be tried summarily by the Magistrates' Court<sup>8</sup> if the Magistrates' Court considers it appropriate and the defendant consents.<sup>9</sup>

Indecent act with a child under 16 was the principal offence in 1.5% of cases sentenced in the higher courts between 2005–06 and 2009–10.

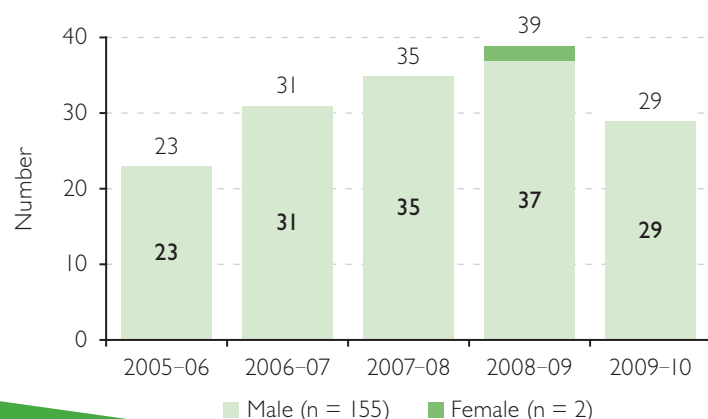
As with previous publications in this series, this report presents a snapshot of first instance sentences in the higher courts of Victoria. The Council is now collecting data on all sentence appeals. A section on appeals has been included immediately before the Summary section of this report. Information on sentences that have changed on appeal is also noted in other sections of the report. Unless otherwise noted, the data represent sentences imposed at first instance.

### People sentenced

Figure 1 shows the number of people sentenced for the principal offence of indecent act with a child under 16 for the period 2005–06 to 2009–10. As shown, 157 people were sentenced for indecent act with a child under 16 over the five-year period. There were 29 people sentenced for this offence in 2009–10, down by 10 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (98.7% or 155 of 157 people), including all of the 29 people sentenced in 2009–10.

Figure 1: The number of people sentenced for indecent act with a child under 16, by gender, 2005–06 to 2009–10



### Sentence types and trends

Figure 2 shows the total number of people sentenced for indecent act with a child under 16 and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.<sup>10</sup> Over the five-year period, 65% of people were given an immediate custodial sentence. This peaked at 83% (24 of 29) in 2009–10 after a low of 55% (17 of 31) in 2006–07.

Figure 2: The number of people sentenced for indecent act with a child under 16 and the number who received an immediate custodial sentence, 2005–06 to 2009–10

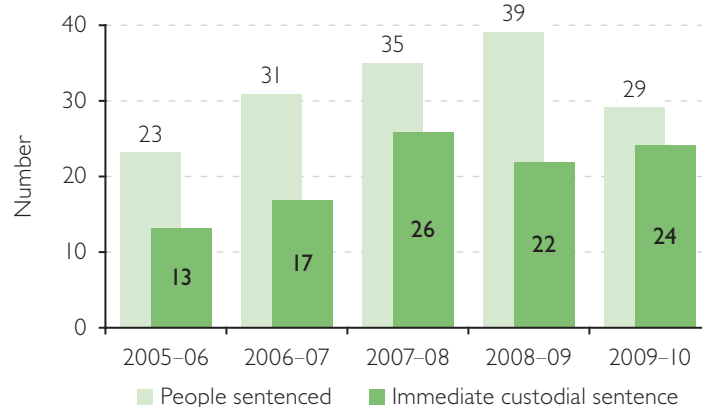


Table 1 shows the number of people sentenced for indecent act with a child under 16 from 2005–06 to 2009–10 by the types of sentences imposed.

Over the five-year period, around half of the people sentenced for indecent act with a child under 16 received a period of imprisonment (54% or 85 of 157 people), while 18% received a wholly suspended sentence of imprisonment<sup>11</sup> and 10% received a partially suspended sentence of imprisonment.

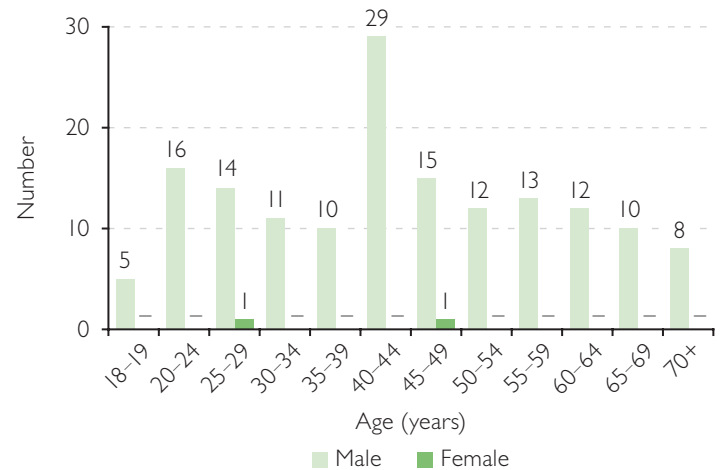
The number of people given a sentence of imprisonment was lowest during 2005–06 (11 people) and highest during both 2007–08 and 2009–10 (21 people each). The percentage of people receiving imprisonment was lowest during 2008–09 (18 of 39 people, or 46%) and highest during 2009–10 (21 of 29 people, or 72%).

The number and percentage of people receiving a wholly suspended sentence of imprisonment were lowest during 2009–10 (1 of 29 people, or 3%). The number of people receiving a wholly suspended sentence was highest during 2008–09 (10 people), while the percentage was highest during both 2006–07 and 2008–09 (26% each).

## Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for indecent act with a child under 16 grouped by their age<sup>13</sup> between 2005–06 and 2009–10. The average age of people sentenced for indecent act with a child under 16 was 44 years and 1 month. There were no juveniles sentenced over this period.<sup>14</sup>

**Figure 3:** The number of people sentenced for indecent act with a child under 16, by gender and age, 2005–06 to 2009–10



**Table 1:** The number and percentage of people sentenced for indecent act with a child under 16 by sentence type, 2005–06 to 2009–10<sup>12</sup>

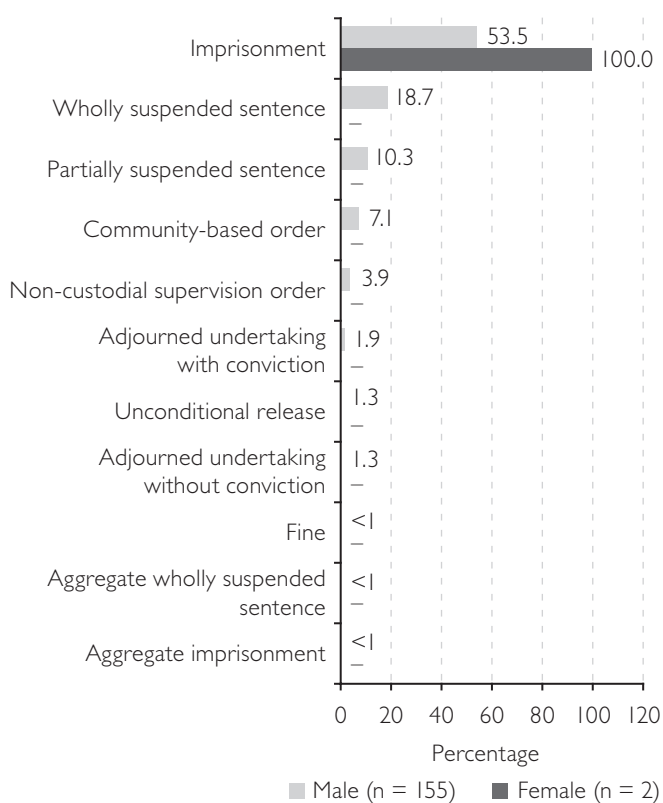
Sentence type	2005–06	2006–07	2007–08	2008–09	2009–10
Imprisonment	11 (48%)	14 (45%)	21 (60%)	18 (46%)	21 (72%)
Wholly suspended sentence	4 (17%)	8 (26%)	6 (17%)	10 (26%)	1 (3%)
Partially suspended sentence	2 (9%)	2 (6%)	5 (14%)	4 (10%)	3 (10%)
Community-based order	2 (9%)	2 (6%)	2 (6%)	4 (10%)	1 (3%)
Non-custodial supervision order	0 (–)	1 (3%)	0 (–)	3 (8%)	2 (7%)
Adjourned undertaking with conviction	2 (9%)	1 (3%)	0 (–)	0 (–)	0 (–)
Unconditional release	2 (9%)	0 (–)	0 (–)	0 (–)	0 (–)
Adjourned undertaking without conviction	0 (–)	1 (3%)	0 (–)	0 (–)	1 (3%)
Fine	0 (–)	0 (–)	1 (3%)	0 (–)	0 (–)
Aggregate wholly suspended sentence	0 (–)	1 (3%)	0 (–)	0 (–)	0 (–)
Aggregate imprisonment	0 (–)	1 (3%)	0 (–)	0 (–)	0 (–)
<b>People sentenced</b>	<b>23</b>	<b>31</b>	<b>35</b>	<b>39</b>	<b>29</b>

## Sentence types by gender

Figure 4 and Table 2 show the types of sentence imposed for indecent act with a child under 16 grouped by gender.

A high percentage of men received a sentence of imprisonment (53.5%), a wholly suspended sentence (18.7%) or a partially suspended sentence (10.3%). Only 2 women were sentenced for the principal proven offence of committing an indecent act with a child under 16. Both women received a sentence of imprisonment (100.0%).

**Figure 4:** The percentage of people sentenced for indecent act with a child under 16, by sentence type and gender, 2005–06 to 2009–10



**Table 2:** The number and percentage of people sentenced for indecent act with a child under 16, by gender, 2005–06 to 2009–10

Sentence type	Male	Female	Total
Imprisonment	83 (54%)	2 (100%)	85 (54%)
Wholly suspended sentence	29 (19%)	0 (–)	29 (18%)
Partially suspended sentence	16 (10%)	0 (–)	16 (10%)
Community-based order	11 (7%)	0 (–)	11 (7%)
Non-custodial supervision order	6 (4%)	0 (–)	6 (4%)
Adjourned undertaking with conviction	3 (2%)	0 (–)	3 (2%)
Unconditional release	2 (1%)	0 (–)	2 (1%)
Adjourned undertaking without conviction	2 (1%)	0 (–)	2 (1%)
Fine	1 (<1%)	0 (–)	1 (<1%)
Aggregate wholly suspended sentence	1 (<1%)	0 (–)	1 (<1%)
Aggregate imprisonment	1 (<1%)	0 (–)	1 (<1%)
<b>People sentenced</b>	<b>155</b>	<b>2</b>	<b>157</b>

## Sentence types by age

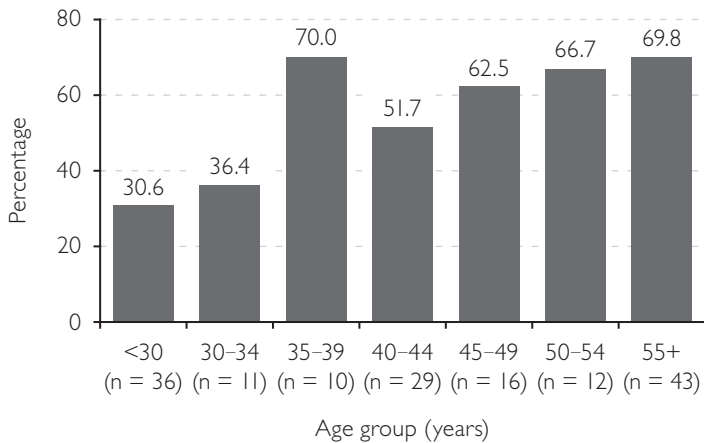
As shown in Table 2, the four most common sentence types were imprisonment, wholly suspended sentences of imprisonment, partially suspended sentences of imprisonment and community-based orders. The following analysis examines these sentence types by the offender's age group.

### Imprisonment

Sentences of imprisonment were most likely to be given to people aged 35–39 years old (70% or 7 of the 10 people in this age group) followed by people aged 55 years and older (70% or 30 of the 43 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 30 years (31% or 11 of the 36 people in this age group).

**Figure 5:** The percentage of people who received a period of imprisonment for indecent act with a child under 16, by age group, 2005–06 to 2009–10

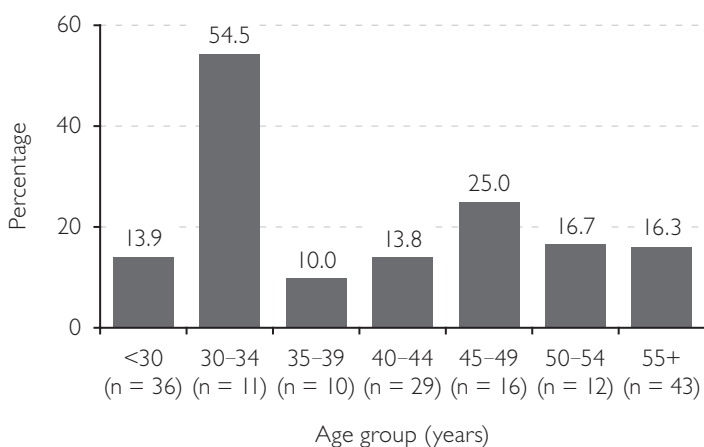


### Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 30–34 years (55% or 6 of the 11 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 35–39 years (10% or 1 of the 10 people in this age group).

**Figure 6:** The percentage of people who received a wholly suspended sentence of imprisonment for indecent act with a child under 16, by age group, 2005–06 to 2009–10

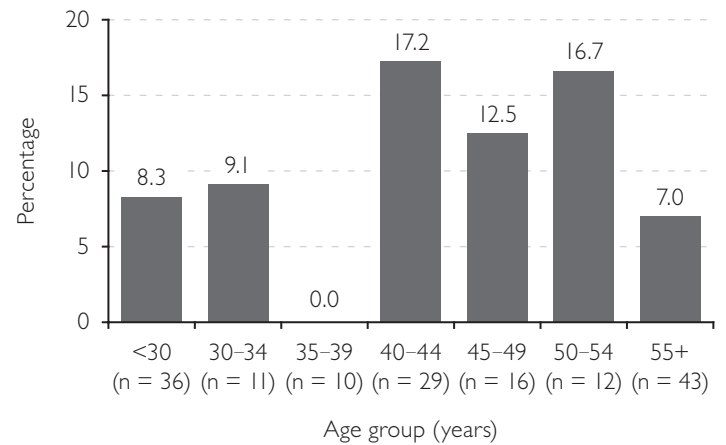


### Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 40–44 years (17% or 5 of the 29 people in this age group) followed by people aged 50–54 years (17% or 2 of the 12 people in this age group).

Conversely, none of the 10 people aged 35–39 years received a partially suspended sentence of imprisonment.

**Figure 7:** The percentage of people who received a partially suspended sentence of imprisonment for indecent act with a child under 16, by age group, 2005–06 to 2009–10

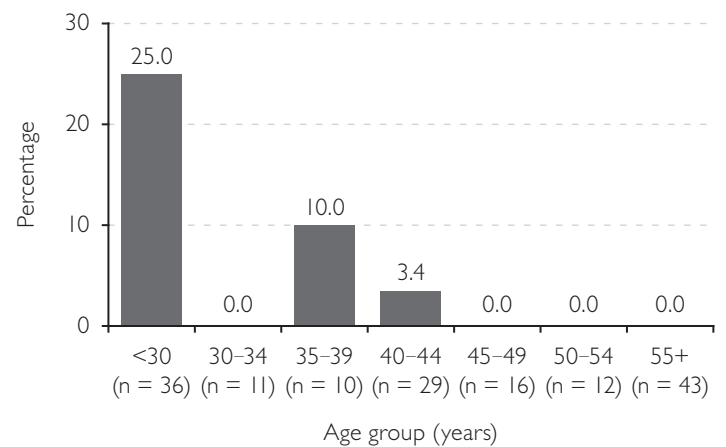


### Community-based orders

Community-based orders were most likely to be given to people aged under 30 years (25% or 9 of the 36 people in this age group).

Conversely, community-based orders were not given to anyone aged 30–34 years, or 45 years or older.

**Figure 8:** The percentage of people who received a community-based order for indecent act with a child under 16 by age group, 2005–06 to 2009–10



### Principal and total effective sentences

There are two methods for describing sentence types and lengths – the principal sentence and the total effective sentence.

The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a *total effective sentence*. The total effective sentence aggregates the principal sentence handed down for each charge and takes into account whether sentences are ordered by the court to be served concurrently (at the same time) or cumulatively.

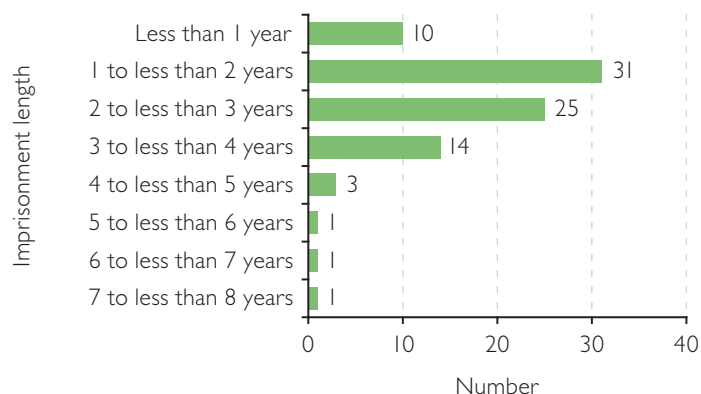
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for indecent act with a child under 16 must be considered in this broader context. The following sections analyse the use of imprisonment for indecent act with a child under 16 from 2005–06 to 2009–10.

#### Principal sentence of imprisonment

Figure 9 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2005–06 and 2009–10 by the length of the imprisonment term. Imprisonment terms ranged from 2 months to 7 years, while the median length of imprisonment was 2 years (meaning that half of the imprisonment terms were shorter than 2 years and half were longer).

The most common length of imprisonment imposed was 1 year (31 people).

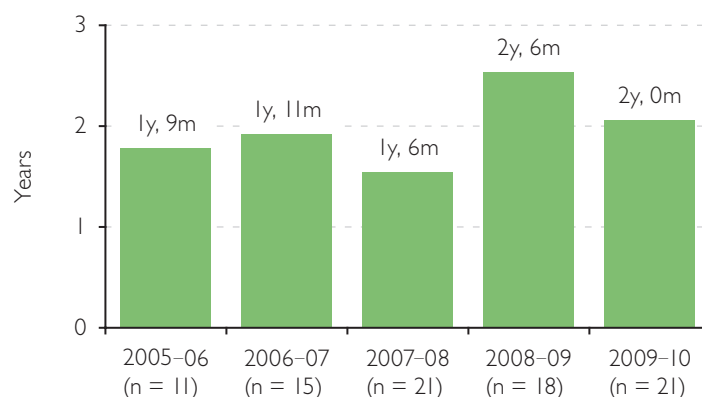
**Figure 9:** The number of people sentenced to imprisonment for indecent act with a child under 16 by length of imprisonment term, 2005–06 to 2009–10



As shown in Figure 10, the average length of imprisonment term imposed on people sentenced for indecent act with a child under 16 ranged from 1 year and 6 months in 2007–08 to 2 years and 6 months in 2008–09.

From 2005–06 to 2009–10, the majority of those people who received a term of imprisonment for indecent act with a child under 16 were men (84 people or 97.7%). Over the five-year period, men received a shorter average term of imprisonment (1 year and 11 months compared to 2 years and 3 months for women).

**Figure 10:** The average length of imprisonment term imposed on people sentenced for indecent act with a child under 16, 2005–06 to 2009–10

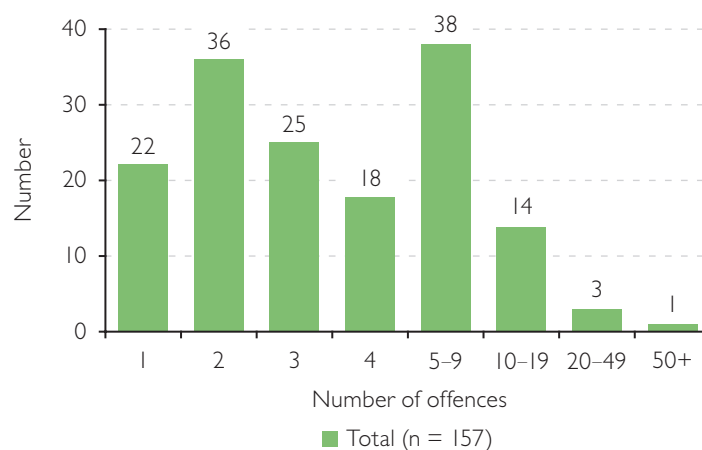


#### Other offences finalised at the same hearing

Often people prosecuted for indecent act with a child under 16 face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of indecent act with a child under 16.

Figure 11 shows the number of people sentenced for the principal offence of indecent act with a child under 16 by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 61, while the median was 3 offences. There were 22 people (14.0%) sentenced for the single offence of indecent act with a child under 16. The average number of offences per person sentenced for indecent act with a child under 16 was 5.18.

**Figure 11:** The number of people sentenced for the principal offence of indecent act with a child under 16, by the number of sentenced offences per person, 2005–06 to 2009–10



While Figure 11 presents the number of sentenced offences for those sentenced for indecent act with a child under 16, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences. The last column sets out the average number of offences sentenced per person. For example, 21 of the total 157 people (13.4%) also received sentences for sexual penetration of a child aged under 16.<sup>15</sup> On average, they were sentenced for 2.76 counts of sexual penetration of a child under 16.

**Table 3:** The number and percentage of people sentenced for the principal offence of indecent act with a child under 16, by the most common offences that were sentenced and the average number of those offences that were sentenced, 2005–06 to 2009–10

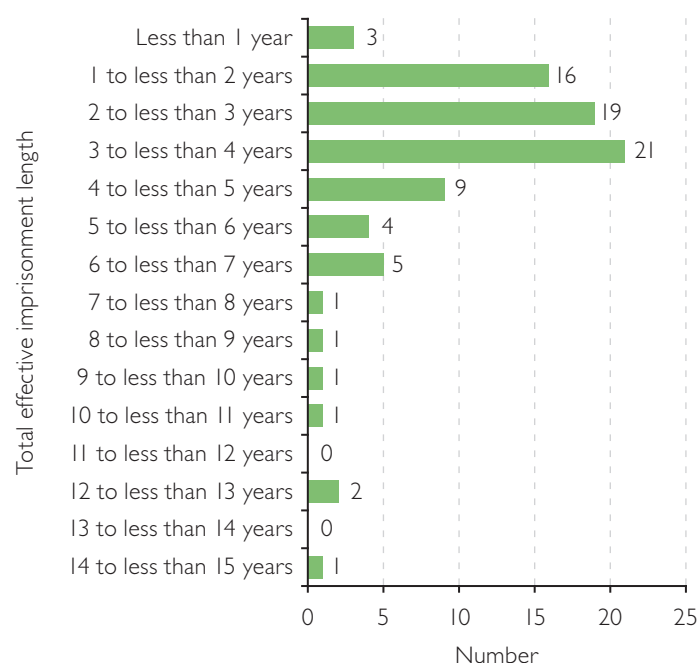
Offence	No.	%	Avg.
<b>1 Indecent act with a child under 16</b>	<b>157</b>	<b>100.0</b>	<b>3.95</b>
2 Sexual penetration of a child under 16	21	13.4	2.76
3 Indecent assault	17	10.8	2.47
4 Produce child pornography	7	4.5	1.14
5 Possess child pornography	5	3.2	1.00
6 Incest – with child, lineal descendant or step-child	4	2.5	1.50
7 Indecent act with child 16–17 yrs under care, supervision or authority	3	1.9	2.67
8 Sexual penetration of a child between 10 and 16	3	1.9	1.67
9 False imprisonment	3	1.9	1.33
10 Incest – person aged 18 or over commit incest with parent/step-parent	2	1.3	4.00
<b>People sentenced</b>	<b>157</b>	<b>100.0</b>	<b>5.18</b>

### Total effective sentence of imprisonment

There were 84 people given a total effective sentence of imprisonment.<sup>16</sup> Figure 12 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2005–06 and 2009–10 by length of total effective sentence. The length of total effective sentences ranged from 3 months to 14 years and 6 months, while the median total effective length of imprisonment was 3 years (meaning that half of the total effective sentence lengths were below 3 years and half were above).

The most common total effective imprisonment length was 3 years (21 people).

**Figure 12:** The number of people sentenced to imprisonment for indecent act with a child under 16 by total effective length of imprisonment term, 2005–06 to 2009–10



### Non-parole period

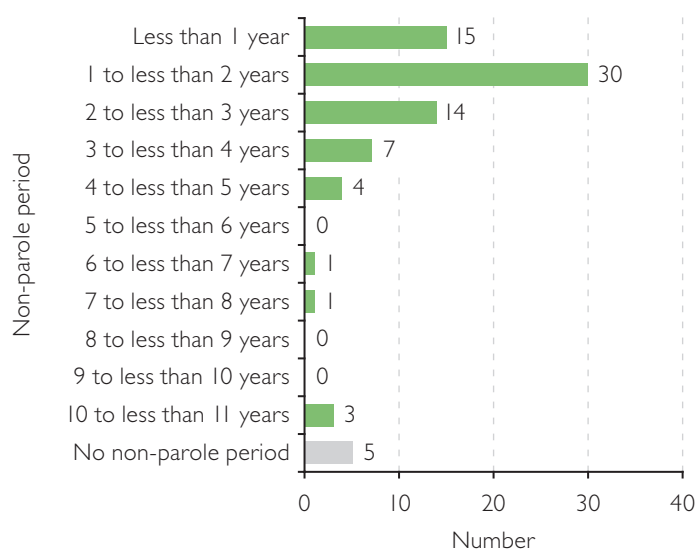
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under section 11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be longer than the individual principal sentence for indecent act with a child under 16. Sentences and non-parole periods must be considered in this broader context.

Of the 84 people who were sentenced to imprisonment for indecent act with a child under 16, 81 were eligible to have a non-parole period fixed.<sup>17</sup> Of these people, 75 were given a non-parole period (93%).<sup>18</sup> Figure 13 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2005–06 and 2009–10 by length of non-parole period. Non-parole periods ranged from 4 months to 10 years and 6 months, while the median length of the non-parole period was 1 year and 6 months (meaning that half of the non-parole periods were below 1 year and 6 months and half were above).

The most common non-parole period imposed was 1 year (30 people).

**Figure 13:** The number of people sentenced to imprisonment for indecent act with a child under 16, by length of non-parole period, 2005–06 to 2009–10

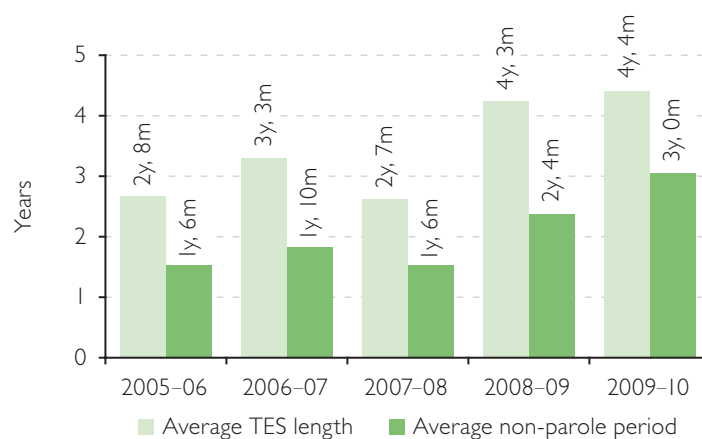


### Total effective sentences of imprisonment and non-parole periods

Figure 14 presents the average length of total effective sentences of imprisonment compared to the average length of non-parole periods for all people from 2005–06 to 2009–10.

From 2005–06 to 2009–10, the average length of total effective sentence for all people ranged from 2 years and 7 months in 2007–08 to 4 years and 4 months in 2009–10. Over the same period, the average length of non-parole period ranged from 1 year and 6 months in 2005–06 and 2007–08 to 3 years in 2009–10.

**Figure 14:** The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for indecent act with a child under 16, 2005–06 to 2009–10

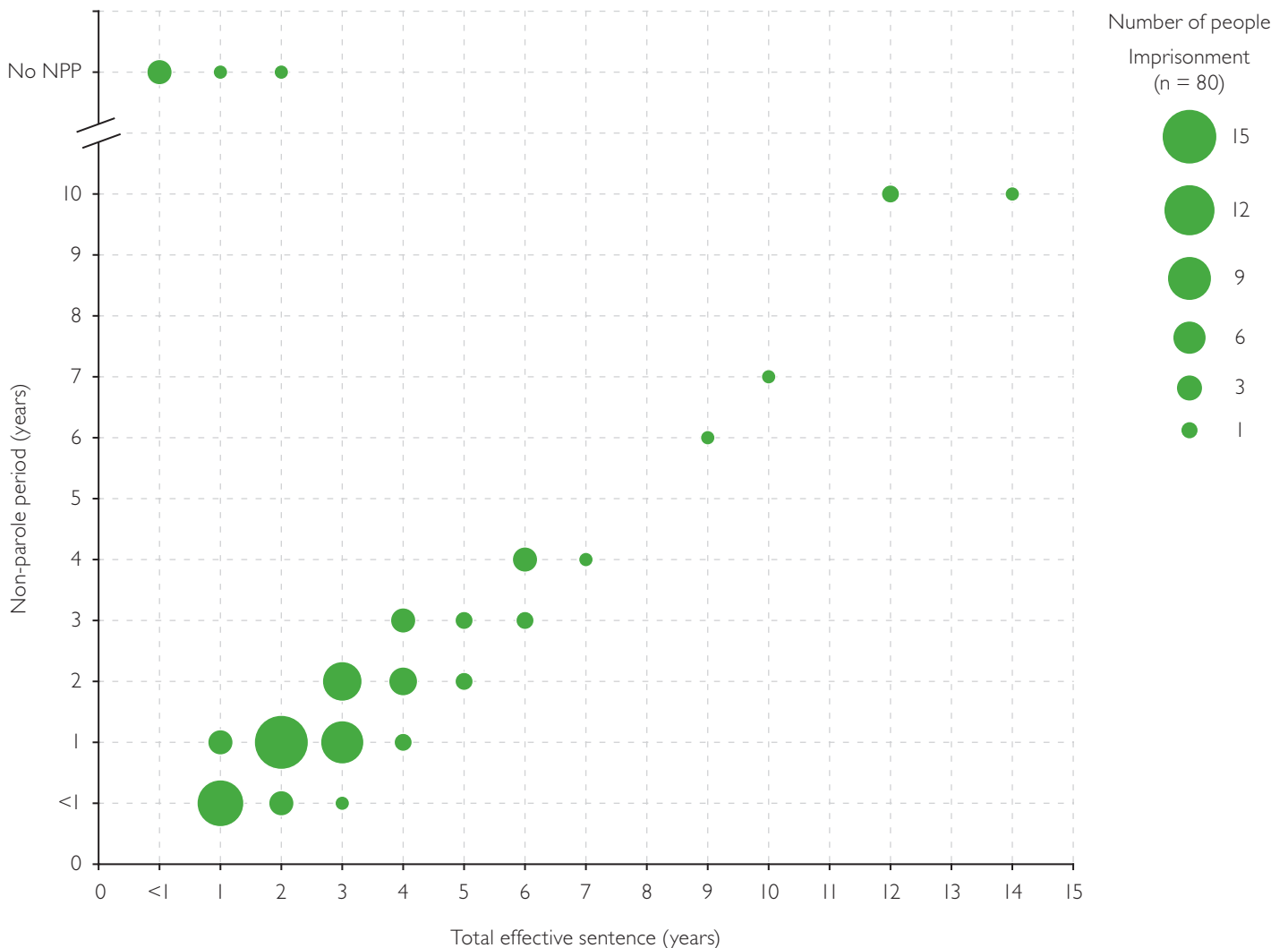


### Total effective sentence of imprisonment by non-parole period

While Figures 12 and 13 present the lengths of the total effective sentences and non-parole periods separately, Figure 15 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for indecent act with a child under 16 for each individual person.

The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the 'bubble' reflects the number of people who received that particular combination.<sup>19</sup> As shown, the most common combination of imprisonment length and non-parole period imposed was 2 years with a non-parole period of 1 year (15 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from 3 months with no non-parole period to 14 years and 6 months with a non-parole period of 10 years and 6 months.

**Figure 15:** The number of people sentenced to imprisonment for indecent act with a child under 16 by the total effective sentence and the non-parole period imposed, 2005–06 to 2009–10



Note: No NPP refers to no non-parole period.

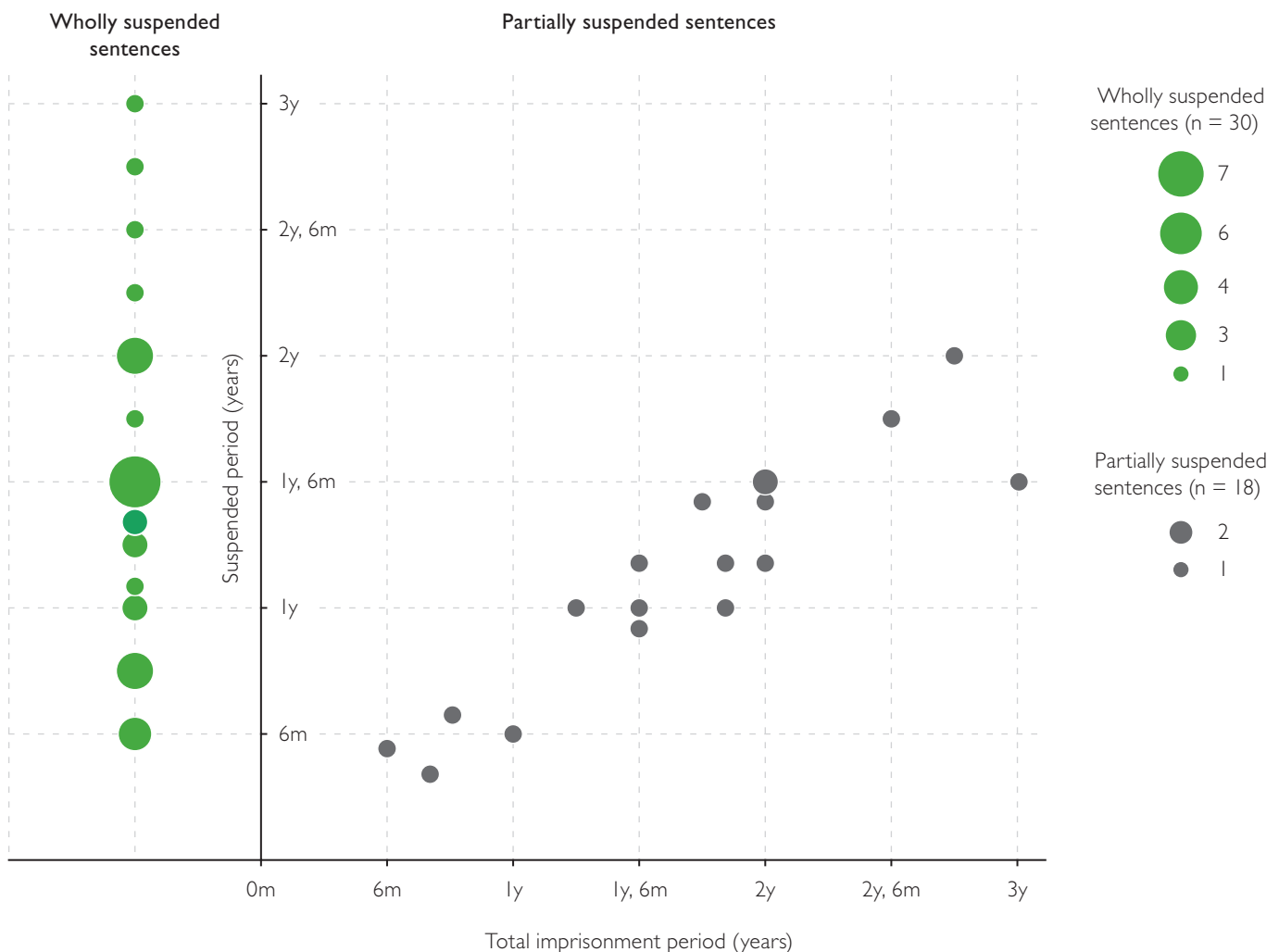
### Suspended sentences of imprisonment

There were 48 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 30 people had their prison sentence wholly suspended and 18 received a partially suspended sentence of imprisonment. Figure 16 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the suspended sentence type and length of sentence. The green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the grey 'bubbles' to the right of the vertical axis show the combination of total imprisonment length and the suspended period for those sentenced to a partially suspended sentence. The size of the bubble reflects the number of people who received either the wholly or partially suspended prison term.

Wholly suspended sentence lengths ranged from 6 months to 3 years. The most common wholly suspended sentence length was 1 year and 6 months (7 people – as represented by the largest green 'bubble' on the chart).

Partially suspended sentences ranged from 6 months imprisonment with 5 months suspended to 3 years imprisonment with 1 year and 6 months suspended. The most common partially suspended sentence combination was 2 years with 1 year and 6 months suspended (2 people – as represented by the largest grey 'bubble' on the chart).

Figure 16: The number of people given a wholly or partially suspended sentence of imprisonment for indecent act with a child under 16, by sentence type and length, 2005–06 to 2009–10

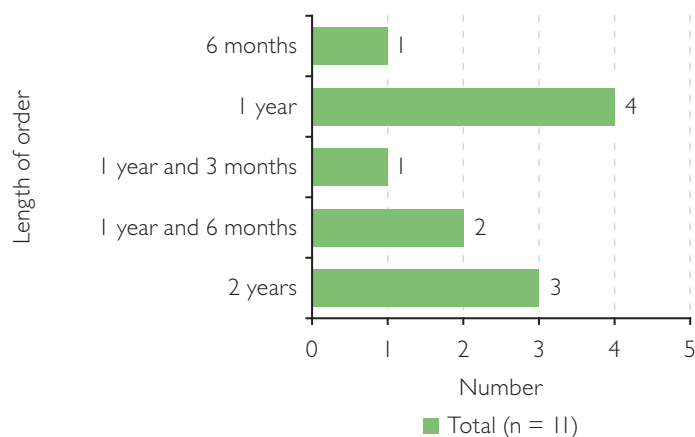


## Community-based orders

There were 11 people given a community-based order as their total effective sentence.

The length of community-based order for indecent act with a child under 16 ranged from 6 months to 2 years, while the most common length was one year (4 people).

**Figure 17:** The number of people sentenced to a community-based order for indecent act with a child under 16, by length of order imposed, 2005–06 to 2009–10



## Appeals

A sentence imposed on a person may be appealed<sup>20</sup> by that person or by the Crown. A person sentenced may also appeal against their conviction. All appeals made in relation to people sentenced in the higher courts are determined by the Court of Appeal.

Up to June 2010, one person sentenced for a principal offence of indecent act with a child under 16 in the period 2005–06 to 2009–10 successfully appealed their conviction (that person was acquitted). The total effective imprisonment term for this successful conviction appeal was 4 years. Thus, the number of people sentenced from 2005–06 to 2009–10 for a principal offence of indecent act with a child under 16 was reduced to 156 people once appeals are considered.

As a result of successful appeals against sentence, the total effective sentence and/or the non-parole period changed for 3 people. Two of these appeals were made by the person sentenced and resulted in a sentence reduction. The longest total effective imprisonment term to be reduced was a sentence of 7 years, which decreased to 4 years. One successful sentence appeal was made by the Crown. It resulted in an increase in total effective imprisonment term from 1 year and 10 months to 3 years.

The principal sentence changed for 3 people as a result of a successful appeal. The longest principal sentence of imprisonment reduced was 3 years, which decreased to 1 year. One principal sentence of imprisonment increased from 1 year to 2 years.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term was unchanged at 14 years and 6 months, while the adjusted median length remained 3 years. The adjusted longest non-parole period remained 10 years and 6 months, and the median remained 1 year and 6 months.

The adjusted longest principal sentence of imprisonment was unchanged at 7 years, and the adjusted median imprisonment term remained 2 years.

## Summary

Between 2005–06 and 2009–10, 157 people were sentenced for indecent act with a child under 16 in the higher courts. Over this period, the majority of those sentenced were men (99%), while 52% were between 40 to 64 years of age.

Around half of the people sentenced for indecent act with a child under 16 received a period of imprisonment (54%), while 18% received a wholly suspended sentence of imprisonment and 10% received a partially suspended sentence of imprisonment.

Imprisonment was more common for those older than 35 years of age, wholly suspended sentences of imprisonment were more common for those aged between 30 and 34 years and partially suspended sentences of imprisonment were more common for those between 40 and 54 years of age.

Each of the 157 people was sentenced for an average of 5.18 offences, including 3.95 offences of indecent act with a child under 16. The most common offence finalised in conjunction with indecent act with a child under 16 was sexual penetration of a child under 16 (13.4% of all cases). The number and range of offences for which people with a principal offence of indecent act with a child under 16 were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 3 years, while the median principal imprisonment length was 2 years.

Total effective imprisonment lengths ranged from 3 months with no non-parole period to 14 years and 6 months with a non-parole period of 10 years and 6 months. The most common sentence of imprisonment was 2 years with a non-parole period of 1 year.

A small number of people were able to successfully appeal against their sentences. When the results of the appeal outcomes are incorporated into the original sentencing data, the range of both total effective imprisonment lengths and principal imprisonment sentence lengths was unchanged.

The most common partially suspended sentence length was 2 years with 1 year and 6 months suspended, while the most common wholly suspended sentence length was 1 year and 6 months.

## Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of indecent act with a child under 16 in the County Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for indecent act with a child under 16 who received a more serious sentence for another offence forming part of the same presentment or indictment. There were 508 people sentenced from 2005–06 to 2009–10 for 1,840 offences of committing an indecent act with a child under 16. Indecent act with a child under 16 was the principal proven offence for 157 of these people.

This series of reports includes custodial and non-custodial supervision orders imposed under part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders as they are imposed in cases where the defendant is not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot no. 81, which described sentencing trends for indecent act with a child under 16 between 2003–04 and 2007–08.
2. The information source for sentencing outcomes for indecent act with a child under 16 only contains information on age and gender characteristics. No other demographic analysis is possible.
3. There were no sentencing outcomes for the principal offence of indecent act with a child under 16 in the Supreme Court during the period between 2005–06 and 2009–10.
4. The source data for the statistical information presented in this Snapshot were provided by Court Statistical Services, Department of Justice (Vic). The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.
5. *Crimes Act 1958* (Vic) s 47.
6. *Crimes Act 1958* (Vic) s 47(1).
7. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website <[www.ocpc.vic.gov.au](http://www.ocpc.vic.gov.au)>.
8. *Criminal Procedure Act 2009* (Vic) s 28. Prior to the *Criminal Procedure Act 2009* (Vic) coming into effect, section 53 of the *Magistrates' Court Act 1989* (Vic) provided similar powers to allow the Magistrates' Court to hear this offence summarily.
9. *Criminal Procedure Act 2009* (Vic) s 29. Prior to the *Criminal Procedure Act 2009* (Vic) coming into effect, section 53 of the *Magistrates' Court Act 1989* (Vic) provided similar powers to allow the Magistrates' Court to hear this offence summarily.
10. Immediate custodial sentence includes imprisonment, partially suspended sentence and aggregate imprisonment.
11. Committing an indecent act with a child under the age of 16 is not defined as a 'serious offence' for the purposes of section 27(2B) of the *Sentencing Act 1991* (Vic). Section 27 (2B) provides that a court may impose a wholly suspended sentence for serious offences committed on or after 1 November 2006 only if there are found to be exceptional circumstances.
12. There were two people during the 2005–06 to 2009–10 time period who were granted an unconditional release under section 17(1)(c) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic). In one case the judge stated that the offending was 'very much at the lower end of the spectrum of heinousness', that the offender had 'no priors whatsoever' and the offender was already undergoing a supervised treatment program. In a separate case, the judge heard that the offender 'has now been placed in a nursing home, and is fairly heavily demented and really not very mobile or ambulatory, and likely to be confined to that nursing home from this time onwards' and that 'whilst he is there he is effectively under close supervision, in any event'.
13. Age is as at the time of sentencing.
14. Defendants who are under the age of 18 at the time of committing the alleged offence and who are not 19 years or older at the time proceedings commenced may be dealt with in the Children's Court of Victoria.
15. In some cases a person can have an indecent act as their principal proven offence, even if they were also sentenced for committing sexual penetration offences in the same presentment. The principal proven offence is the offence that is given the most severe sentence according to the sentencing hierarchy. If two or more offences in the same case are given the same type of sentence, and for the same duration or of the same amount, then the principal proven offence is the offence rated as the most severe within the National Offence Index, as provided by the Australian Bureau of Statistics. If two or more offences are still tied according to the National Offence Index, then the offence listed first on the presentment is considered the principal proven offence. In those cases where the indecent act is determined as the principal proven offence ahead of sexual penetration offences, it is due to both these offences receiving equally severe sentences, and, although they are rated as equally severe within the National Offence Index, the indecent act was the first listed offence on the presentment.
16. Of the 86 people who were given a principal sentence of imprisonment, 84 were also given a total effective sentence of imprisonment. There were 2 people who were given imprisonment as the principal sentence for indecent act with a child under 16 and a partially suspended sentence as a total effective sentence.
17. A total of 3 people were not eligible for parole because they were given a total effective sentence length of less than one year.
18. Four people were not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to these cases. The non-parole periods for these people are excluded from the analysis. A non-parole period was not set for 2 people who were eligible for a non-parole period.
19. Sentence lengths that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
20. Appeals data were collected by the Sentencing Advisory Council from transcripts of sentencing remarks of criminal appeals on the Australasian Legal Information Institute's website <[www.austlii.gov.au](http://www.austlii.gov.au)>.

## Sentencing Snapshots is a series presenting summary information on sentencing trends in Victoria

### *Sentencing trends in the higher courts, 2005–06 to 2009–10*

- 114 Sexual penetration of a child aged between 10 and 16
- 113 Indecent act with a child under 16
- 112 Making a threat to kill
- 111 Culpable driving causing death
- 110 Manslaughter
- 109 Murder
- 108 Obtaining property by deception
- 107 Obtaining a financial advantage by deception
- 106 Theft
- 105 Handling stolen goods

### *Sentencing trends in the higher courts, 2004–05 to 2008–09*

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- 103 Cultivating a non-commercial quantity of narcotic plants
- 102 Trafficking in a large commercial quantity of drugs
- 101 Trafficking in a commercial quantity of drugs
- 100 Trafficking in a non-commercial quantity of drugs
- 99 Incest
- 98 Aggravated burglary
- 97 Burglary
- 96 Affray
- 95 Causing injury
- 94 Causing serious injury recklessly
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### *Sentencing trends in the higher courts, 2003–04 to 2007–08*

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- 89 Sexual penetration of a child under care, supervision or authority
- 88 Sexual penetration of a child aged between 10 and 16
- 87 Making a threat to kill
- 86 Culpable driving causing death
- 85 Manslaughter
- 84 Murder
- 83 Rape
- 82 Maintain a sexual relationship with a child under 16

- 81 Indecent act with a child under 16
- 80 Indecent assault
- 79 Arson
- 78 Obtaining property by deception
- 77 Obtaining a financial advantage by deception
- 76 Theft
- 75 Handling stolen goods

### *Sentencing trends in the Magistrates' Court, 2004–05 to 2007–08*

- 74 Unlicensed driving
- 73 Driving while suspended
- 72 Driving while disqualified
- 71 Trafficking heroin
- 70 Trafficking ecstasy
- 69 Trafficking cannabis
- 68 Trafficking amphetamines
- 67 Possessing heroin
- 66 Possessing ecstasy
- 65 Possessing cannabis
- 64 Possessing amphetamines
- 63 Causing injury recklessly
- 62 Causing injury intentionally
- 61 Causing serious injury recklessly
- 60 Going equipped to steal
- 59 Handling stolen goods
- 58 Aggravated burglary
- 57 Burglary
- 56 Other theft
- 55 Theft of a bicycle
- 54 Theft from a shop
- 53 Theft from a motor vehicle
- 52 Theft of a motor vehicle

### *Sentencing trends in the Magistrates' Court, 2004–05 to 2006–07*

- 51 Knowingly possess child pornography
- 50 Indecent act with a child under 16
- 49 Indecent Assault

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