

Sentencing Snapshot

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

June 2011
No. 114

**Sexual penetration of a child aged between
10 and 16**

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of sexual penetration of a child aged between 10 and 16 and details the age and gender² of people sentenced for this offence in the County Court³ of Victoria between 2005–06 and 2009–10.⁴

A person who takes part in an act of sexual penetration with a child aged between 10 and 16 is guilty of an indictable offence.⁵ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. The maximum penalty for this offence is 10 years' imprisonment⁶ and/or a fine of 1200 penalty units.⁷

Sexual penetration of a child aged between 10 and 16 was the principal offence in 3.6% of cases sentenced in the higher courts between 2005–06 and 2009–10.

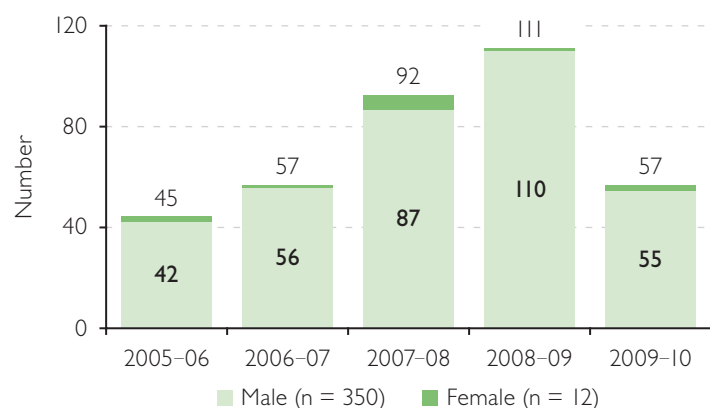
As with previous publications in this series, this report presents a snapshot of first instance sentences in the higher courts of Victoria. The Council is now collecting data on all sentence appeals. A section on appeals has been included immediately before the Summary section of this report. Information 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 sexual penetration of a child aged between 10 and 16 for the period 2005–06 to 2009–10. As shown, 362 people were sentenced for sexual penetration of a child aged between 10 and 16 over the five-year period. There were 57 people sentenced for this offence in 2009–10, down by 54 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (96.7% or 350 of the 362 people), including 55 of the 57 people sentenced in 2009–10.

Figure 1: The number of people sentenced for sexual penetration of a child aged between 10 and 16, by gender, 2005–06 to 2009–10



Sentence types and trends

Figure 2 shows the total number of people sentenced for sexual penetration of a child aged between 10 and 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.⁸ Over the five-year period, 51% of people were given an immediate custodial sentence. This peaked at 62% (28 of 45) in 2005–06 before decreasing to 42% (24 of 57) in 2006–07. In 2009–10, 56% of people sentenced (32 of 57) were given an immediate custodial sentence.

Figure 2: The number of people sentenced for sexual penetration of a child aged between 10 and 16 and the number who received an immediate custodial sentence, 2005–06 to 2009–10

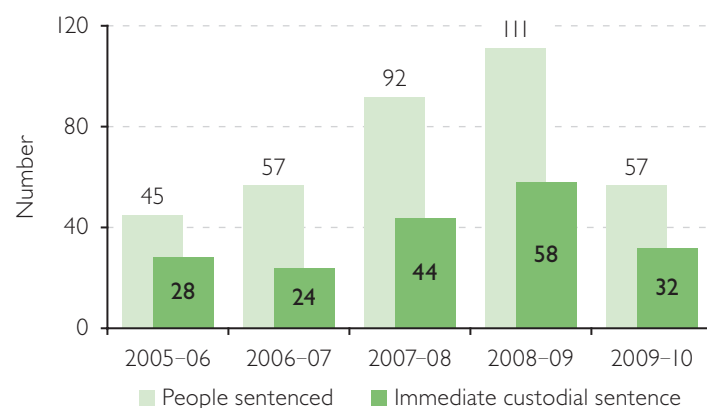


Table 1 shows the number of people sentenced for sexual penetration of a child aged between 10 and 16 from 2005–06 to 2009–10 by the types of sentences imposed.

Over the five-year period, around 4 in 10 people sentenced for sexual penetration of a child aged between 10 and 16 received a period of imprisonment (41% or 149 of 362 people), while 23% received a wholly suspended sentence of imprisonment,⁹ 14% received a community-based order and 9% received a partially suspended sentence of imprisonment.

The number and percentage of people receiving a sentence of imprisonment were lowest during 2006–07 (18 of 57 people, or 32%). The number of people receiving a sentence of imprisonment was highest during 2008–09 (50 people), while the percentage was highest during 2005–06 (21 of 45 people, or 47%).

The number and percentage of people receiving a wholly suspended sentence of imprisonment were lowest during 2005–06 (7 of 45 people, or 16%) and highest during 2008–09 (32 of 111 people, or 29%).

The number and percentage of people given a community-based order were lowest during 2005–06 (5 of 45 people, or 11%). The number was highest during 2007–08 (15 people) while the percentage was highest during 2006–07 (10 of 57 people, or 18%).

Table 1: The number and percentage of people sentenced for sexual penetration of a child aged between 10 and 16 by sentence type, 2005–06 to 2009–10

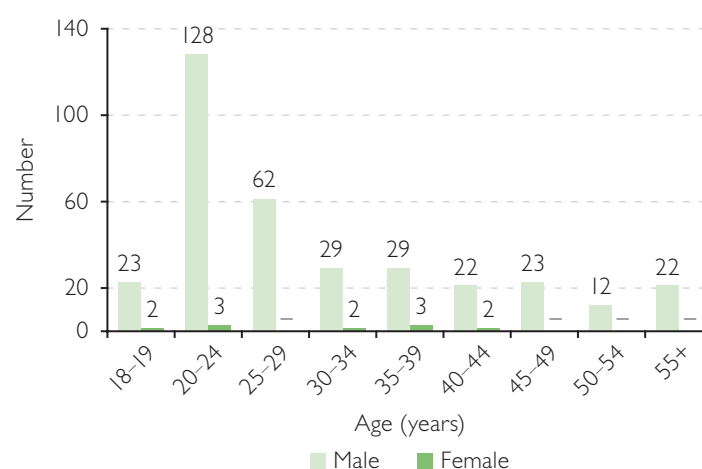
Sentence type	2005–06	2006–07	2007–08	2008–09	2009–10
Imprisonment	21 (47%)	18 (32%)	36 (39%)	50 (45%)	24 (42%)
Wholly suspended sentence	7 (16%)	14 (25%)	17 (18%)	32 (29%)	14 (25%)
Community-based order	5 (11%)	10 (18%)	15 (16%)	13 (12%)	7 (12%)
Partially suspended sentence	6 (13%)	5 (9%)	8 (9%)	7 (6%)	6 (11%)
Adjourned undertaking without conviction	3 (7%)	2 (4%)	5 (5%)	0 (–)	2 (4%)
Intensive correction order	0 (–)	3 (5%)	1 (1%)	4 (4%)	1 (2%)
Adjourned undertaking with conviction	0 (–)	1 (2%)	5 (5%)	2 (2%)	0 (–)
Mix (wholly suspended sentence and fine)	0 (–)	3 (5%)	1 (1%)	0 (–)	0 (–)
Mix (community-based order and fine)	1 (2%)	0 (–)	2 (2%)	0 (–)	0 (–)
Youth justice centre order*	1 (2%)	0 (–)	0 (–)	1 (<1%)	0 (–)
Residential treatment order	0 (–)	0 (–)	0 (–)	0 (–)	2 (4%)
Aggregate wholly suspended sentence	0 (–)	0 (–)	1 (1%)	0 (–)	1 (2%)
Non-custodial supervision order	0 (–)	0 (–)	0 (–)	1 (<1%)	0 (–)
Good behaviour bond	0 (–)	0 (–)	0 (–)	1 (<1%)	0 (–)
Fine	1 (2%)	0 (–)	0 (–)	0 (–)	0 (–)
Custodian supervision order	0 (–)	1 (2%)	0 (–)	0 (–)	0 (–)
Aggregate intensive correction order	0 (–)	0 (–)	1 (1%)	0 (–)	0 (–)
People sentenced	45	57	92	111	57

*Prior to 23 April 2007, a 'youth justice centre order' was referred to as a 'youth training centre order'.

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for sexual penetration of a child aged between 10 and 16 grouped by their age¹⁰ between 2005–06 and 2009–10. The average age of people sentenced for sexual penetration of a child aged between 10 and 16 was 31 years and 1 month. Men sentenced over this period were older than women (an average age of 31 years and 1 month for men compared to 30 years and 5 months for women). There were no juveniles sentenced over this period.¹¹

Figure 3: The number of people sentenced for sexual penetration of a child aged between 10 and 16, by gender and age, 2005–06 to 2009–10



Sentence types by gender

Figure 4 and Table 2 show the types of sentence imposed for sexual penetration of a child aged between 10 and 16 grouped by gender. As shown, a higher percentage of men received a community-based order (14.3% compared to no women) and a period of imprisonment (41.4% compared to 33.3%). Conversely, a higher percentage of women received an adjourned undertaking without conviction (16.7% compared to 2.9% of men), a wholly suspended sentence of imprisonment (33.3% compared to 22.9%) and a partially suspended sentence of imprisonment (16.7% compared to 8.6%).

Figure 4: The percentage of people sentenced for sexual penetration of a child aged between 10 and 16 by sentence type and gender, 2005–06 to 2009–10

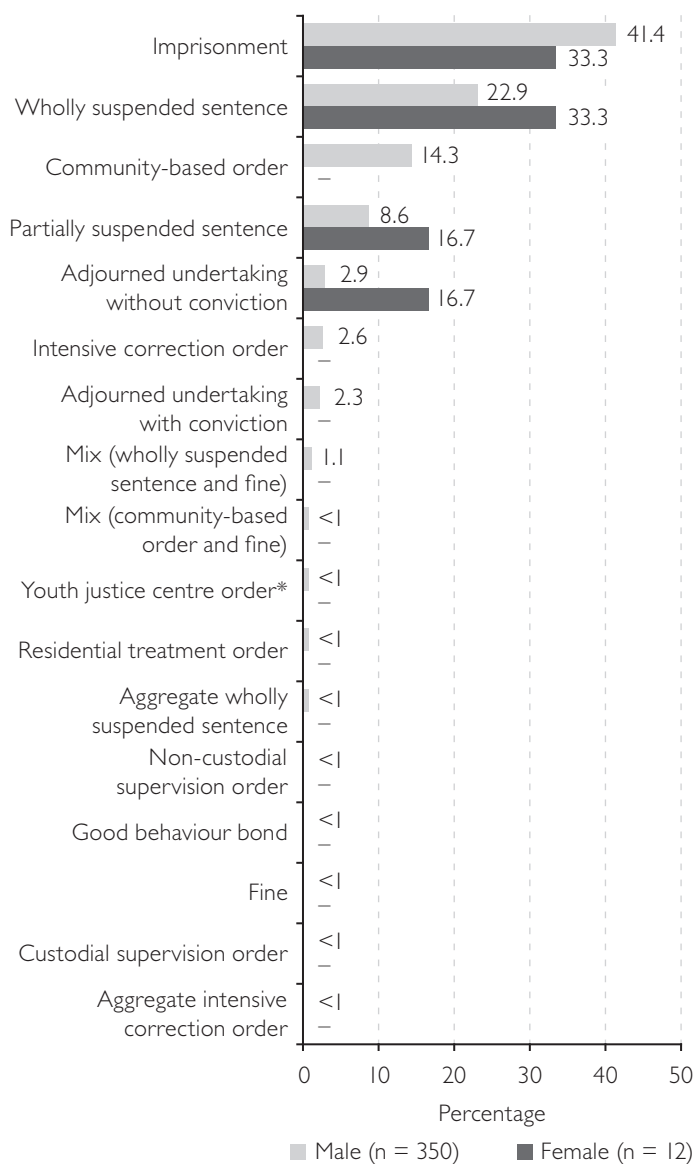


Table 2: The number and percentage of people sentenced for sexual penetration of a child aged between 10 and 16, by gender, 2005–06 to 2009–10

Sentence type	Male	Female	Total
Imprisonment	145 (41%)	4 (33%)	149 (41%)
Wholly suspended sentence	80 (23%)	4 (33%)	84 (23%)
Community-based order	50 (14%)	0 (-)	50 (14%)
Partially suspended sentence	30 (9%)	2 (17%)	32 (9%)
Adjourned undertaking without conviction	10 (3%)	2 (17%)	12 (3%)
Intensive correction order	9 (3%)	0 (-)	9 (2%)
Adjourned undertaking with conviction	8 (2%)	0 (-)	8 (2%)
Mix (wholly suspended sentence and fine)	4 (1%)	0 (-)	4 (1%)
Mix (community-based order and fine)	3 (<1%)	0 (-)	3 (<1%)
Youth justice centre order*	2 (<1%)	0 (-)	2 (<1%)
Residential treatment order	2 (<1%)	0 (-)	2 (<1%)
Aggregate wholly suspended sentence	2 (<1%)	0 (-)	2 (<1%)
Non-custodial supervision order	1 (<1%)	0 (-)	1 (<1%)
Good behaviour bond	1 (<1%)	0 (-)	1 (<1%)
Fine	1 (<1%)	0 (-)	1 (<1%)
Custodial supervision order	1 (<1%)	0 (-)	1 (<1%)
Aggregate intensive correction order	1 (<1%)	0 (-)	1 (<1%)
People sentenced	350	12	362

*Prior to 23 April 2007, a 'youth justice centre order' was referred to as a 'youth training centre order'.

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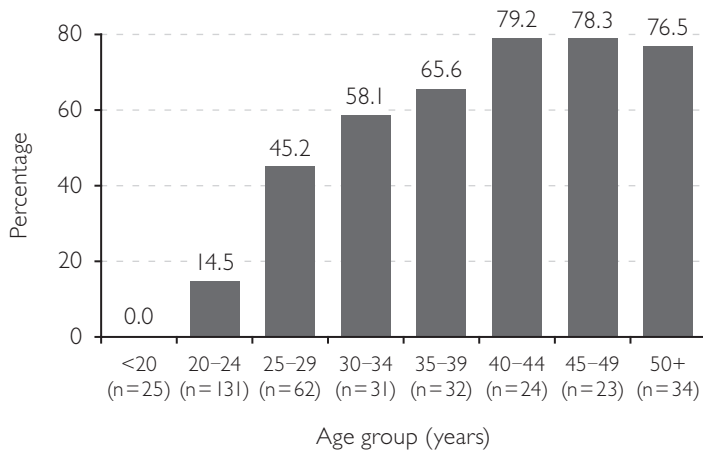
Sentence types by age

As shown in Table 2, the four most common sentence types were imprisonment, wholly suspended sentences of imprisonment, community-based orders and partially suspended sentences of imprisonment. 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 40 years and over, with the greatest percentage given to people who were 40–44 years old (79% or 19 of the 24 people in this age group). Conversely, imprisonment was rarely used on people below the age of 25 (14.5% of people aged 20–24 years, and 0% of people aged younger than 20 years).

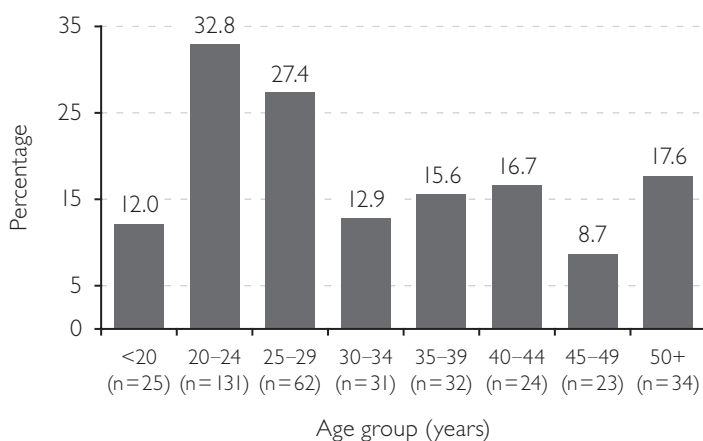
Figure 5: The percentage of people who received a period of imprisonment for sexual penetration of a child aged between 10 and 16, by age group, 2005–06 to 2009–10



Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 20–24 years old (33% or 43 of the 131 people in this age group), followed by people aged 25–29 years (27% or 17 of the 62 people in this age group). Conversely, wholly suspended sentences of imprisonment were least common for those aged 45–49 years (9% or 2 of the 23 people in this age group).

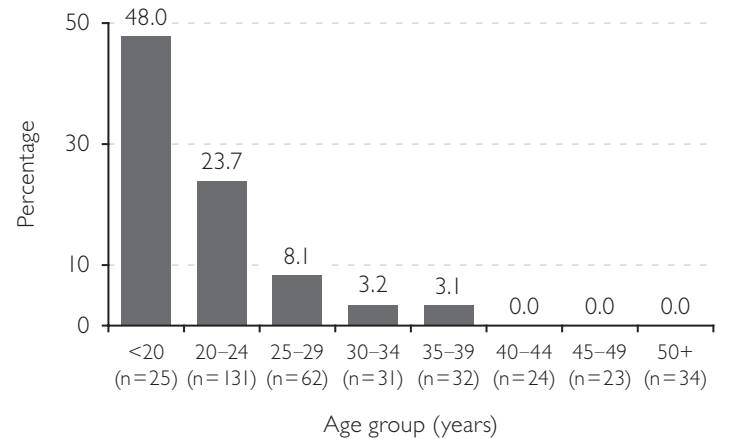
Figure 6: The percentage of people who received a wholly suspended sentence of imprisonment for sexual penetration of a child aged between 10 and 16 by age group, 2005–06 to 2009–10



Community-based orders

Community-based orders were most likely to be given to people aged under 20 years (48% or 12 of the 25 people in this age group). Conversely, community-based orders were not given to anyone above the age of 39.

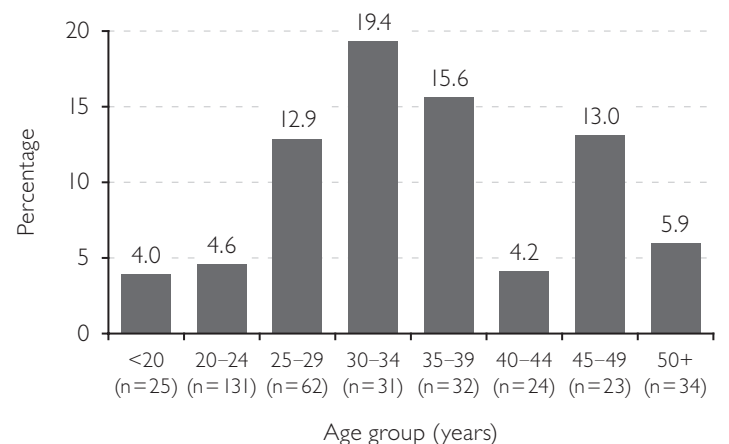
Figure 7: The percentage of people who received a community-based order for sexual penetration of a child aged between 10 and 16, by age group, 2005–06 to 2009–10



Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 30–34 years old (19% or 6 of the 31 people in this age group). Conversely, partially suspended sentences of imprisonment were rarely used for people below the age of 25 (5% of people aged 20–24 years, and 4% of people younger than 20 years) or for people aged 40–44 years (4% or 1 of the 24 people in this age group).

Figure 8: The percentage of people who received a partially suspended sentence of imprisonment for sexual penetration of a child aged between 10 and 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.

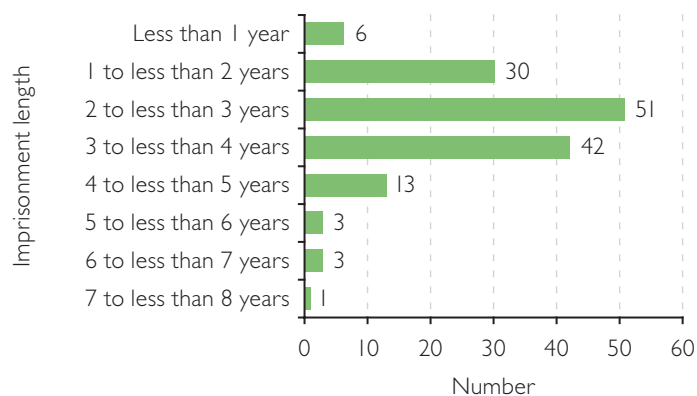
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for sexual penetration of a child aged between 10 and 16 must be considered in this broader context. The following sections analyse the use of imprisonment for sexual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

Principal sentence of imprisonment

Figure 9 shows the number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 between 2005–06 and 2009–10 by the length of the imprisonment term. Imprisonment terms ranged from 6 months to 7 years, while the median length of imprisonment was 2 years and 6 months (meaning that half of the imprisonment terms were shorter than 2 years and 6 months and half were longer).

The most common length of imprisonment imposed was 2 years (51 people).

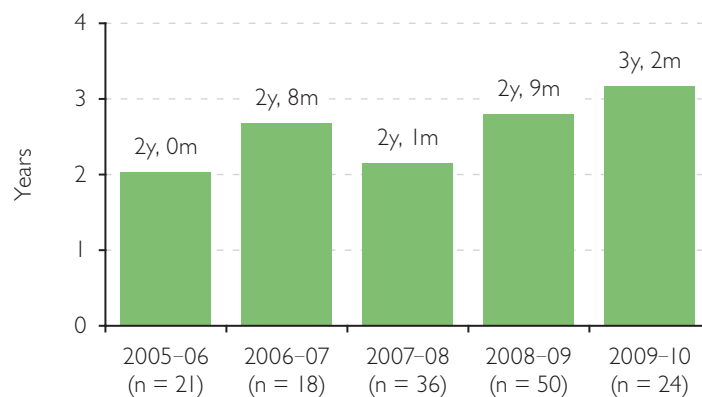
Figure 9: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 by length of imprisonment term, 2005–06 to 2009–10



As shown in Figure 10, the average length of imprisonment term imposed on people sentenced for sexual penetration of a child aged between 10 and 16 ranged from 2 years in 2005–06 to 3 years and 2 months in 2009–10.

From 2005–06 to 2009–10, the majority of those people who received a term of imprisonment for sexual penetration of a child aged between 10 and 16 were men (145 people or 97.3%). Over the five-year period, men received a longer average term of imprisonment (2 years and 7 months compared to 2 years for women).

Figure 10: The average length of imprisonment term imposed on people sentenced for sexual penetration of a child aged between 10 and 16, 2005–06 to 2009–10

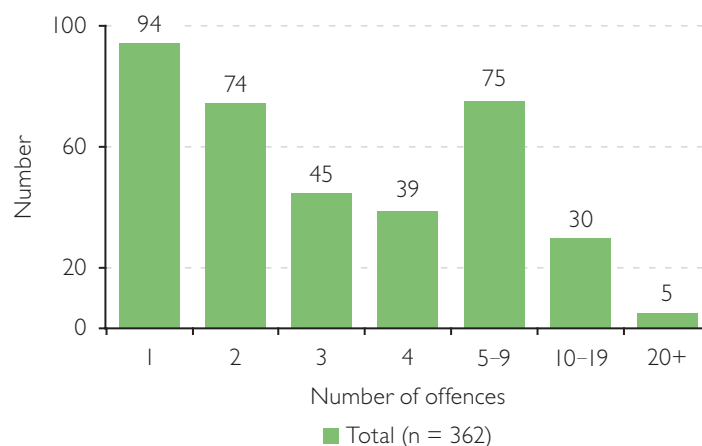


Other offences finalised at the same hearing

Often people prosecuted for sexual penetration of a child aged between 10 and 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 sexual penetration of a child aged between 10 and 16.

Figure 11 shows the number of people sentenced for the principal offence of sexual penetration of a child aged between 10 and 16 by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 25, while the median was 3 offences. There were 94 people (26.0%) sentenced for the single offence of sexual penetration of a child aged between 10 and 16. The average number of offences per person sentenced for sexual penetration of a child aged between 10 and 16 was 4.24.

Figure 11: The number of people sentenced for the principal offence of sexual penetration of a child aged between 10 and 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 sexual penetration of a child aged between 10 and 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, 126 of the total 362 people (34.8%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 2.90 counts of indecent act with a child under 16.

Table 3: The number and percentage of people sentenced for the principal offence of sexual penetration of a child aged between 10 and 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.
1 Sexual penetration of a child under 16*	362	100.0	2.51
2 Indecent act with a child under 16	126	34.8	2.90
3 Produce child pornography	21	5.8	1.71
4 Possess child pornography	20	5.5	1.00
5 Indecent assault	18	5.0	3.39
6 Attempted sexual penetration of a child under 16†	6	1.7	1.17
7 Attempted sexual penetration of a child under 16†	6	1.7	1.00
8 Possess a drug of dependence	4	1.1	1.75
9 Supply a drug of dependence to a child	4	1.1	1.25
10 Theft	4	1.1	1.00
People sentenced	362	100.0	4.24

*Due to incomplete offence information on this offence (see endnote 4) the average number of offences committed may also include offences that fall under section 45(2)(a) or section 45(2)(b).

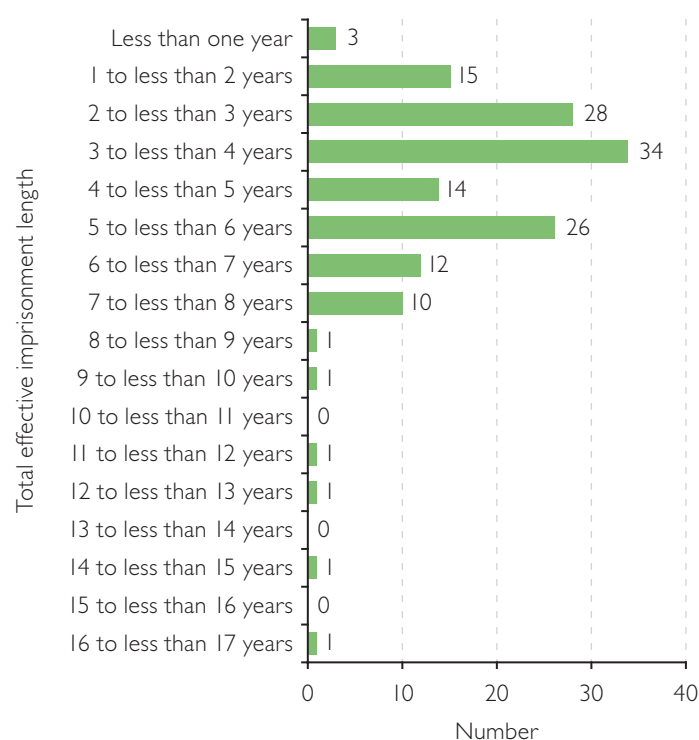
† The 6th ranked offence is charged under section 321M of the *Crimes Act 1958* (Vic), while the 7th ranked offence is charged under section 45.1 of the *Crimes Act 1958* (Vic).

Total effective sentence of imprisonment

There were 148 people given a total effective sentence of imprisonment.¹² Figure 12 shows the number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 between 2005–06 and 2009–10 by length of total effective sentence. The length of total effective sentences ranged from 8 months to 16 years and 6 months,¹³ while the median total effective length of imprisonment was 3 years, 6 months and 15 days (meaning that half of the total effective sentence lengths were below 3 years, 6 months and 15 days and half were above). When adjusted for successful appeals, the median was 3 years and 6 months.

The most common total effective imprisonment length was 3 years (34 people).

Figure 12: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16, by total effective length of imprisonment term, 2005–06 to 2009–10



Non-parole period

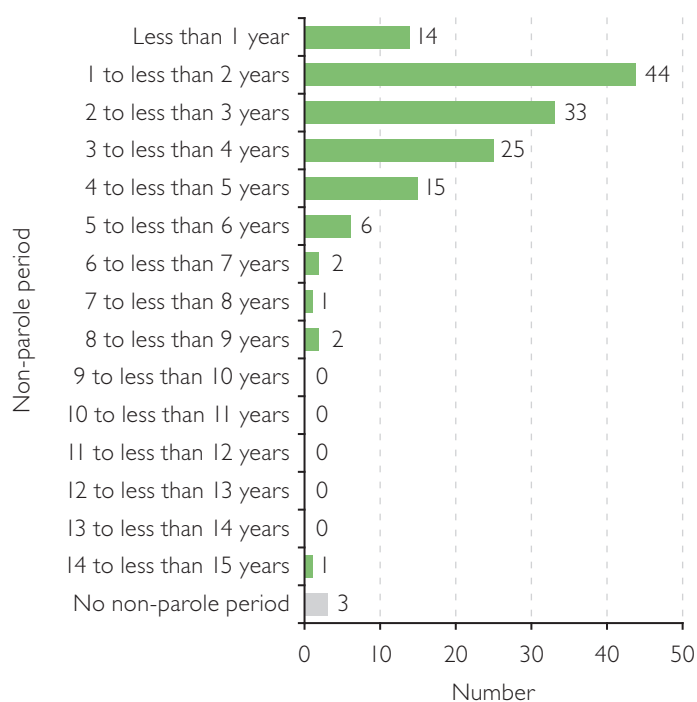
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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 sexual penetration of a child aged between 10 and 16. Sentences and non-parole periods must be considered in this broader context.

Of the 148 people who were sentenced to imprisonment for sexual penetration of a child aged between 10 and 16, 145 were eligible to have a non-parole period fixed.¹⁴ Of these people, 143 were given a non-parole period (99%).¹⁵ Figure 13 shows the number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 between 2005–06 and 2009–10 by length of non-parole period. Non-parole periods ranged from 6 months to 14 years,¹⁶ while the median length of the non-parole period was 2 years and 3 months (meaning that half of the non-parole periods were below 2 years and 3 months and half were above).

The most common non-parole period imposed was 1 year (44 people).

Figure 13: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16, by length of non-parole period, 2005–06 to 2009–10

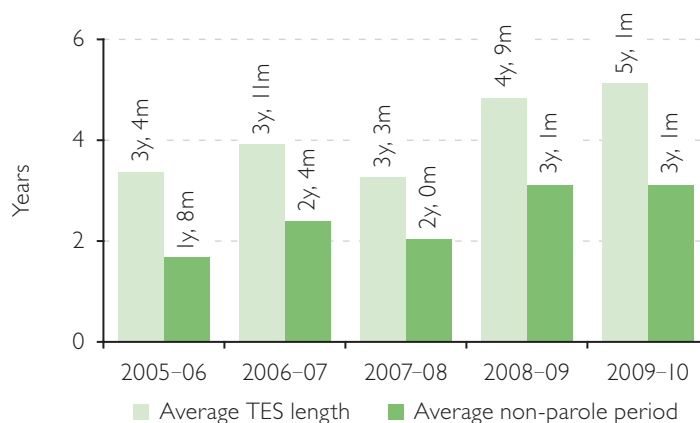


Total effective sentences of imprisonment and non-parole periods

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 sentences for all people ranged from 3 years and 3 months in 2007–08 to 5 years and 1 month in 2009–10. Over the same period, the average length of non-parole periods ranged from 1 year and 8 months in 2005–06 to 3 years and 1 month in 2008–09 and 2009–10.

Figure 14: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16, 2005–06 to 2009–10

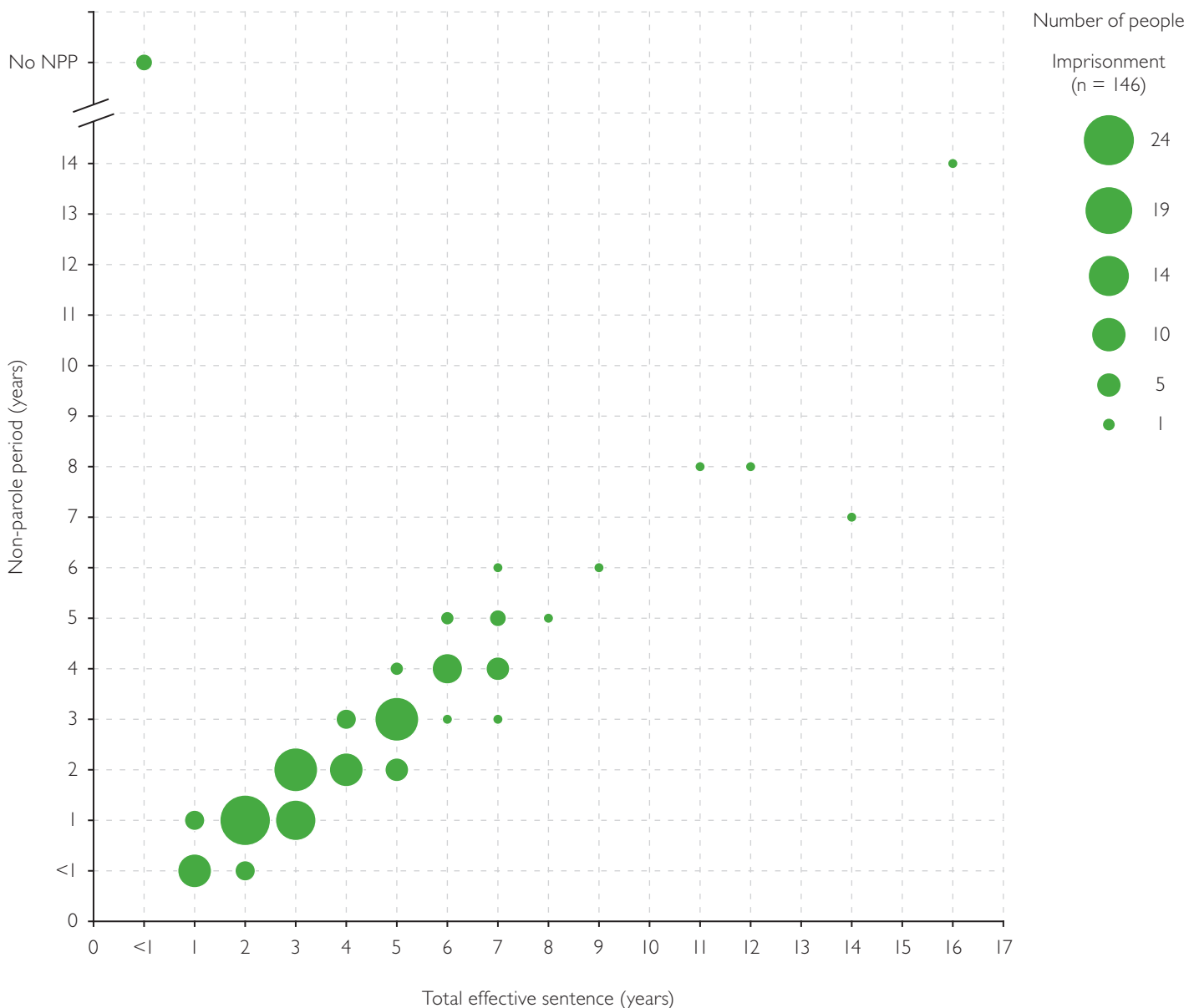


Total effective sentence of imprisonment by non-parole period

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 sexual penetration of a child aged between 10 and 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.¹⁷ 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 (24 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from 8 months with no non-parole period to 16 years and 6 months with a non-parole period of 14 years.¹⁸

Figure 15: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 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.

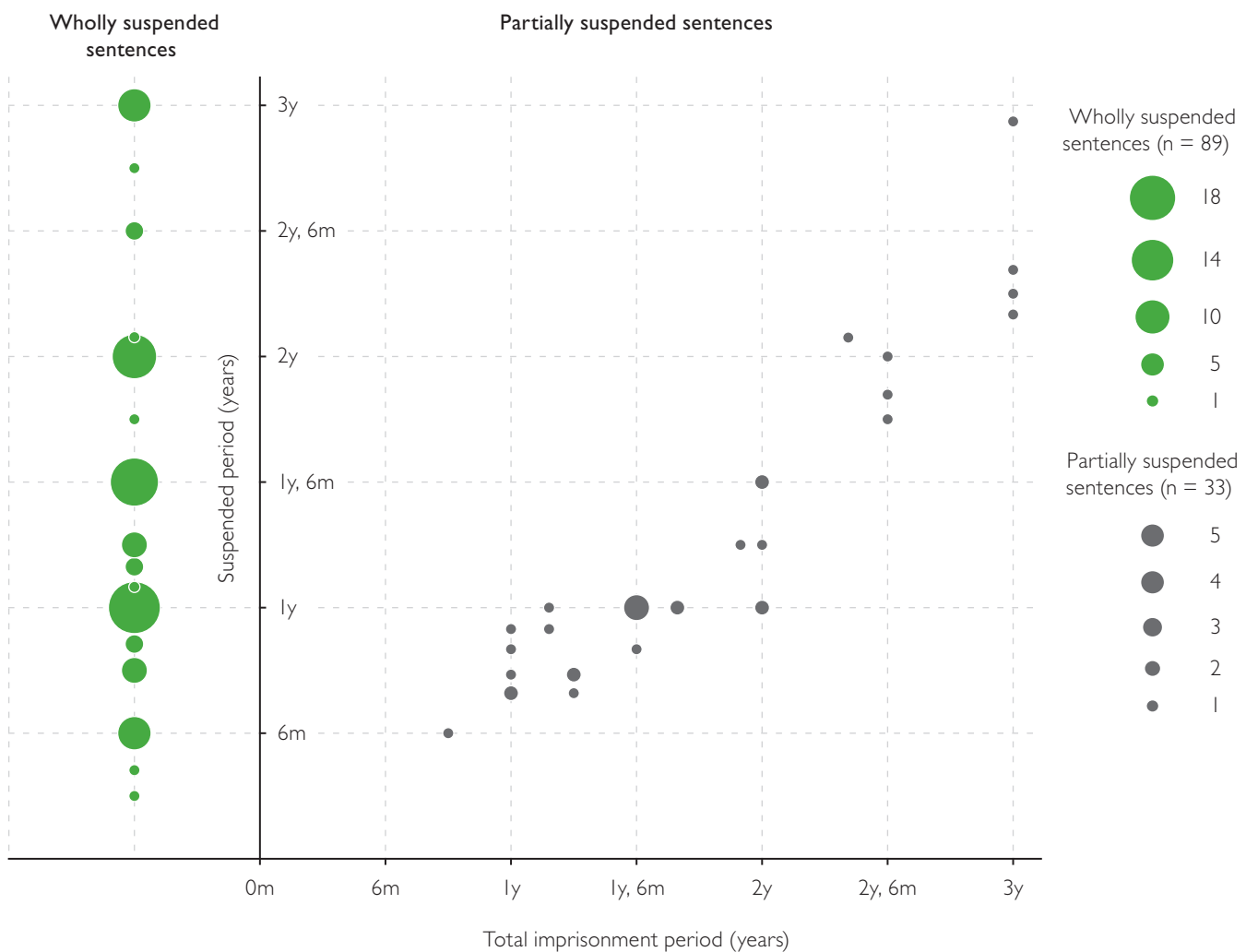
Suspended sentences of imprisonment

There were 122 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 89 people had their prison sentence wholly suspended and 33 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 3 months to 3 years. The most common wholly suspended sentence length was 1 year (18 people – as represented by the largest green 'bubble' on the chart).

Partially suspended sentences ranged from 9 months imprisonment with 6 months suspended to 3 years imprisonment with 2 years and 11 months suspended. The most common partially suspended sentence combination was 1 year and 6 months with 1 year suspended (5 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 sexual penetration of a child aged between 10 and 16, by sentence type and length, 2005–06 to 2009–10

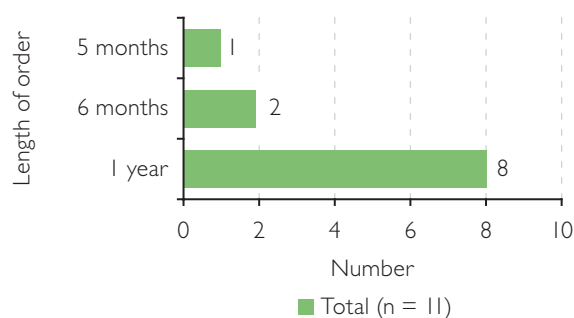


Intensive correction orders

There were 11 people given an intensive correction order as their total effective sentence.

The length of intensive correction orders for sexual penetration of a child aged between 10 and 16 ranged from 5 months to 1 year, while the most common length was 1 year (8 people).

Figure 17: The number of people sentenced to an intensive correction order for sexual penetration of a child aged between 10 and 16, by length of order imposed, 2005–06 to 2009–10

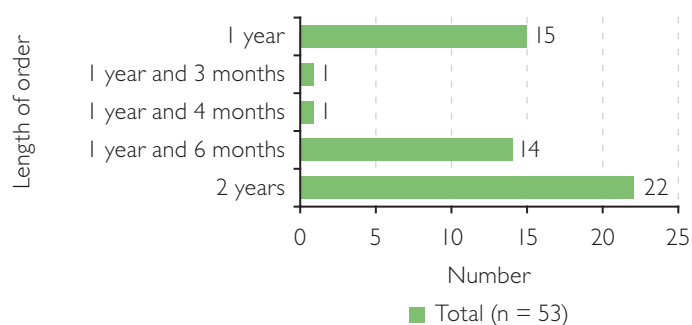


Community-based orders

There were 53 people given a community-based order as their total effective sentence.

The lengths of community-based orders for sexual penetration of a child aged between 10 and 16 ranged from 1 year to 2 years, while the most common length was 2 years (22 people).

Figure 18: The number of people sentenced to a community-based order for sexual penetration of a child aged between 10 and 16, by length of order imposed, 2005–06 to 2009–10



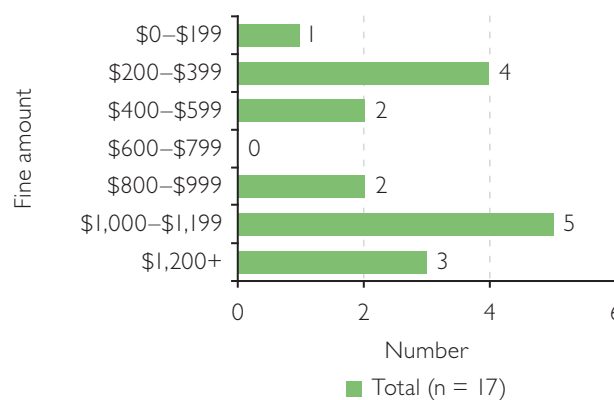
Fines

This analysis includes all fines that were imposed for cases where sexual penetration of a child aged between 10 and 16 was the principal offence. Fines were imposed on 17 people.

The fine amount imposed ranged from \$175 to \$5,000, with a median of \$800 (meaning that half of the values fell below \$800 and half of the values were above \$800).

The average fine amount was \$1,014. Fines were only imposed against men.

Figure 19: The number of people who received a fine for sexual penetration of a child aged between 10 and 16, by fine amount, 2005–06 to 2009–10



Appeals

A sentence imposed on a person may be appealed¹⁹ 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, 8 people sentenced for a principal offence of sexual penetration of a child aged between 10 and 16 in the period 2005–06 to 2009–10 successfully appealed their conviction (a retrial was ordered for 7 people and 1 person was acquitted). The longest total effective imprisonment term for these successful conviction appeals was 8 years and 4 months. Thus, the number of people sentenced from 2005–06 to 2009–10 for a principal offence of sexual penetration of a child aged between 10 and 16 is reduced to 354 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. All 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 6 years and 6 months, which decreased to 3 years and 6 months.

The principal sentence changed for 2 people as a result of a successful appeal. The longest principal sentence of imprisonment reduced was 4 years, which decreased to 1 year and 6 months.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term remained 16 years and 6 months while the adjusted median length was 3 years and 6 months (previously 3 years, 6 months and 15 days). The adjusted longest non-parole period remained 14 years and the median remained 2 years and 3 months.

The adjusted longest principal sentence of imprisonment was unchanged at 7 years and the adjusted median imprisonment term remained 2 years and 6 months.

Summary

Between 2005–06 and 2009–10, 362 people were sentenced for sexual penetration of a child aged between 10 and 16 in the higher courts. Over this period, the majority of those sentenced were men (97%), while 53% were between the ages of 20 to 29.

Around 4 in 10 people sentenced for sexual penetration of a child aged between 10 and 16 received a period of imprisonment (41%), while 23% received a wholly suspended sentence of imprisonment, 14% received a community-based order and 9% received a partially suspended sentence of imprisonment.

Men were more likely than women to be sentenced to a community-based order or a period of imprisonment. Conversely, women were more likely to be sentenced to an adjourned undertaking without conviction, a wholly suspended sentence of imprisonment or a partially suspended sentence of imprisonment.

Imprisonment was more common for those older than 40 years of age, wholly suspended sentences of imprisonment were more common for those aged between 20 and 29 years and community-based orders were more common for those younger than 20 years of age.

Each of the 362 people was sentenced for an average of 4.24 offences, including 2.51 offences of sexual penetration of a child under 16. The most common offence finalised in conjunction with sexual penetration of a child aged between 10 and 16 was indecent act with a child under 16 (34.8% of all cases). The number and range of offences for which people with a principal offence of sexual penetration of a child aged between 10 and 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, 6 months and 15 days, while the median principal imprisonment length was 2 years and 6 months.

Total effective imprisonment lengths ranged from 8 months with no non-parole period to 16 years and 6 months with a non-parole period of 14 years. 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 1 year and 6 months with 1 year suspended, while the most common wholly suspended sentence length was 1 year.

Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of sexual penetration of a child aged between 10 and 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 sexual penetration of a child aged between 10 and 16 who received a more serious sentence for another offence forming part of the same presentment or indictment. Sexual penetration of a child aged between 10 and 16 was the principal proven offence for 362 people sentenced in the County Court during the period 2005–06 to 2009–10.

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. 88, which described sentencing trends for sexual penetration of a child aged between 10 and 16 between 2003–04 and 2007–08.

2. The information source for sentencing outcomes for sexual penetration of a child aged between 10 and 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 sexual penetration of a child aged between 10 and 16 in the Supreme Court during the period of 2005–06 to 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. The sentencing database used for this analysis was compiled using conviction returns. Due to incomplete offence information regarding sexual penetration offences on the conviction returns, a further classification exercise was undertaken to determine the specific offence types. This involved reading the sentencing remarks of the particular cases and determining if the offence was 'sexual penetration of a child aged between 10 and 16', 'sexual penetration of a child under care' or 'sexual penetration of a child aged under 10'. In total, there were 477 people sentenced for the principal proven offence of sexual penetration of a child over the five-year period 2005–06 to 2009–10. Sentencing remarks were located for 463 offences. The remaining 14 cases were excluded from the analysis because the offence could not be categorised adequately.
5. *Crimes Act 1958* (Vic) s 45(1) and 45(2)(c). Sexual penetration includes oral, anal and vaginal penetration (*Crimes Act 1958* (Vic) s 35).
6. *Crimes Act 1958* (Vic) s 45(2)(c). Separate penalties apply if the child is under 10 or if the child is under the care, supervision or authority of the accused (see Sentencing Snapshot no. 89 and no. 90). On 16 March 2010, section 45(2)(c) of the *Crimes Act 1958* (Vic) was amended so that the offence now covers acts of sexual penetration of children aged between 12 and 16. The new age limit only applies to offences committed after the amendment date. In the period between the amendment date and the end of this Snapshot's reference period (30 June 2010), no person was sentenced for a sexual penetration of a child offence that was committed after the amendment date.

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>.
8. Immediate custodial sentence includes imprisonment, partially suspended sentence, youth justice centre order, residential treatment order and custodial supervision order.
9. For offences committed on or after 1 November 2006, a court may impose a wholly suspended sentence only if the court is satisfied that it is appropriate because of the existence of exceptional circumstances and that it is in the interests of justice (*Sentencing Act 1991* (Vic) s 27 (2B)). Of the people who received a wholly suspended sentence for sexual penetration of a child under 16, half (51.2%) consisted of younger offenders aged between 20 to 24 at the time of sentencing, while three-quarters (75.0%) consisted of offenders aged 18 to 29 at the time of sentencing
10. Age is as at the time of sentencing.
11. 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.
12. Of the 149 people who were given a principal sentence of imprisonment, 148 were also given a total effective sentence of imprisonment. There was 1 person who was given imprisonment as the principal sentence for sexual penetration of a child aged between 10 and 16 and a partially suspended sentence as a total effective sentence.
13. In 2008–09, a 38 year old man was sentenced to a total effective sentence of imprisonment for 16 years and 6 months, with a non-parole period of 14 years. The judge remarked that the pattern of offending was 'amongst the most serious examples of offending of this nature' and 'represented the grossest abuse of trust'. The judge additionally mentioned that 'your responses in your records of interview demonstrate a disturbing lack of insight into the nature of your offending or the damage which such offending invariably causes'.
14. A total of 3 people were not eligible for parole because they were given a total effective sentence length of less than 1 year.
15. Two 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.
16. See endnote 13.
17. Sentence lengths that are longer than 1 year are rounded down to the nearest year of imprisonment, while sentence lengths of less than 1 year are grouped into the '<1 year' category.
18. See endnote 13.
19. 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>.

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

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