

Sentencing Snapshot

Sentencing trends
in the Magistrates'
Court of Victoria
2004-05 to 2006-07

June 2008
No. 51

Knowingly Possess
Child Pornography

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of knowingly possess child pornography and details the age and gender² of people sentenced for this offence in the Magistrates' Court of Victoria between 2004-05 and 2006-07.

A person who knowingly possesses child pornography is guilty of the offence of possession of child pornography.³ Possession of child pornography is an indictable offence which carries a maximum penalty of 5 years' imprisonment⁴ and/or a fine of 600 penalty units.⁵

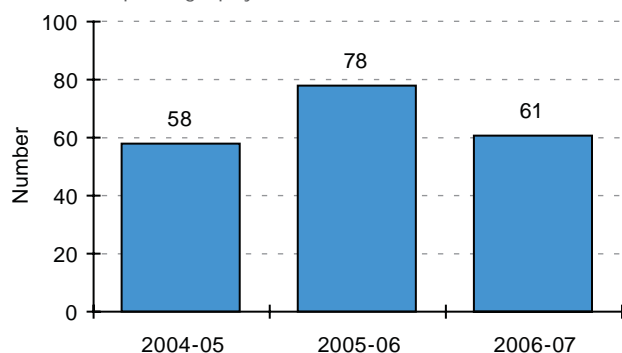
This offence may be heard summarily in the Magistrates' Court if the court considers it appropriate and the defendant consents. This tends to occur where the offence is seen by the court as being less serious in nature. Where an offence is tried summarily, the matter will be heard before a magistrate rather than a judge and a jury. Where knowingly possess child pornography is heard summarily, it carries a maximum penalty of 2 years' imprisonment and/or a fine of 240 penalty units.⁶

Of all people sentenced for the principal offence of knowingly possess child pornography, 95.2% had their cases heard in the Magistrates' Court. The remaining cases were heard in the Children's Court and higher courts. Knowingly possess child pornography was the principal offence in 0.1% of cases sentenced in the Magistrates' Court between 2004-05 and 2006-07.

People sentenced

Over the three year period, 197 people were sentenced for the principal offence of knowingly possess child pornography in the Magistrates' Court. In 2006-07, there were 61 people who were sentenced for the principal proven offence of knowingly possess child pornography.⁷ This is a 21.8% decrease from 78 in 2005-06, reversing an increase from the previous year.

Figure 1: The number of people sentenced for knowingly possess child pornography, 2004-05 to 2006-07



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for knowingly possess child pornography during 2004-05 to 2006-07. Over the three-year period, less than half of those sentenced for knowingly possess child pornography received a non-custodial sentence (90 people or 45.7%), including 56 people who received a community-based order (28.4%).

There were also 60 people who received a non-immediate custodial sentence (30.5%), including 40 people who received a wholly suspended sentence (20.3%) and 20 people who received an intensive correction order (10.2%).

In some circumstances, when sentencing an offender the court may decide whether to record a conviction.⁸ Of the 61 people sentenced for knowingly possess child pornography in 2006-07, 95.1% had a conviction recorded (58 people).⁹

Table 1: The number and percentage of people sentenced for knowingly possess child pornography by sentence type, 2004-05 to 2006-07

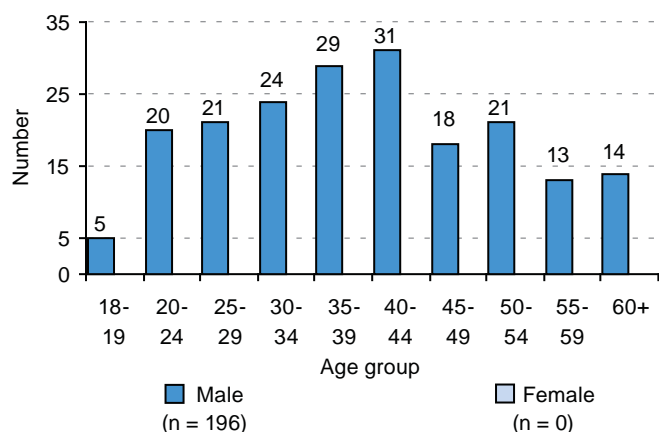
Sentence Type	Total	%
Immediate custodial	47	23.9
Imprisonment	30	15.2
Partially suspended sentence	17	8.6
Other custodial	60	30.5
Wholly suspended sentence	40	20.3
Intensive correction order	20	10.2
Non-custodial	90	45.7
Community-based order	56	28.4
Fine	18	9.1
Adjourned undertaking	16	8.1
People sentenced	197	100.0
Criminal justice diversion program	3	
Total dispositions	200	

An additional 3 people participated in the criminal justice diversion program. These people are not counted towards the total number of people sentenced and are not included in any further analyses in this paper (unless stated).¹⁰

Age and gender

Over the three-year period, all 197 people sentenced were men.¹¹ The age of people sentenced for knowingly possess child pornography ranged from 18 years to 73 years, while the median age was 39 years (meaning that half of the people were aged 39 years or younger and half were 39 years or older).¹²

Figure 2: The number of people sentenced for knowingly possess child pornography by gender and age, 2004-05 to 2006-07



Sentencing outcomes by gender and age group

Table 2 shows the number and percentage of people who were sentenced for knowingly possess child pornography by sentence type. The first two columns show sentence types by gender, while the next four columns show the sentence types by age group.

A higher percentage of the people in the 18-24 year-old age group received non-custodial sentences, including community based orders and adjourned undertakings.

A higher percentage of those aged 25-39 received immediate custodial sentences, including imprisonment, while a higher percentage of those aged 40 years or older received a partially suspended sentence and an intensive correction order.

Table 2: The number and percentage of people sentenced for knowingly possess child pornography by sentence type, gender and age group, 2004-05 to 2006-07

Sentencing outcome	Gender		Age				All People
	Male	Female	<18	18-24	25-39	40+	
Immediate custodial	47 (23.9%)	0	0	0	23 (31.1%)	24 (24.7%)	37 (23.9%)
Imprisonment	30 (15.2%)	0	0	0	17 (23.0%)	13 (13.4%)	30 (15.2%)
Partially suspended sentence	17 (8.6%)	0	0	0	6 (8.1%)	11 (11.3%)	17 (8.6%)
Other custodial	60 (30.5%)	0	0	6 (24.0%)	23 (31.1%)	31 (32.0%)	60 (30.5%)
Wholly suspended sentence	40 (20.3%)	0	0	4 (16.0%)	17 (23.0%)	19 (19.6%)	40 (20.3%)
Intensive correction order	20 (10.2%)	0	0	2 (8.0%)	6 (8.1%)	12 (12.4%)	20 (10.2%)
Non-custodial	90 (45.7%)	0	0	19 (76.0%)	28 (37.8%)	42 (43.3%)	90 (45.7%)
Community-based orders	56 (28.4%)	0	0	9 (36.0%)	20 (27.0%)	27 (27.8%)	56 (28.4%)
Fine	18 (9.1%)	0	0	3 (12.0%)	7 (9.5%)	8 (8.2%)	18 (9.1%)
Adjourned undertaking	16 (8.1%)	0	0	7 (28.0%)	1 (1.4%)	7 (7.2%)	16 (8.1%)
People sentenced	197 (100.0%)	0	0	25 (100.0%)	74 (100.0%)	97 (100.0%)	197 (100.0%)

Sentencing outcomes by year

Table 3 shows the number and percentage of people sentenced each year from 2004-05 to 2006-07 for knowingly possess child pornography by the type of sentence imposed.

The number and percentage of people who received an immediate custodial sentence fluctuated from a low of 10 people (16.4%) in 2006-07 to 25 people (32.1%) in 2005-06.

The number and percentage of people who received a non-custodial sentence increased from 26 people and 44.8% in 2004-05 to 32 people and 52.5% in 2006-07.

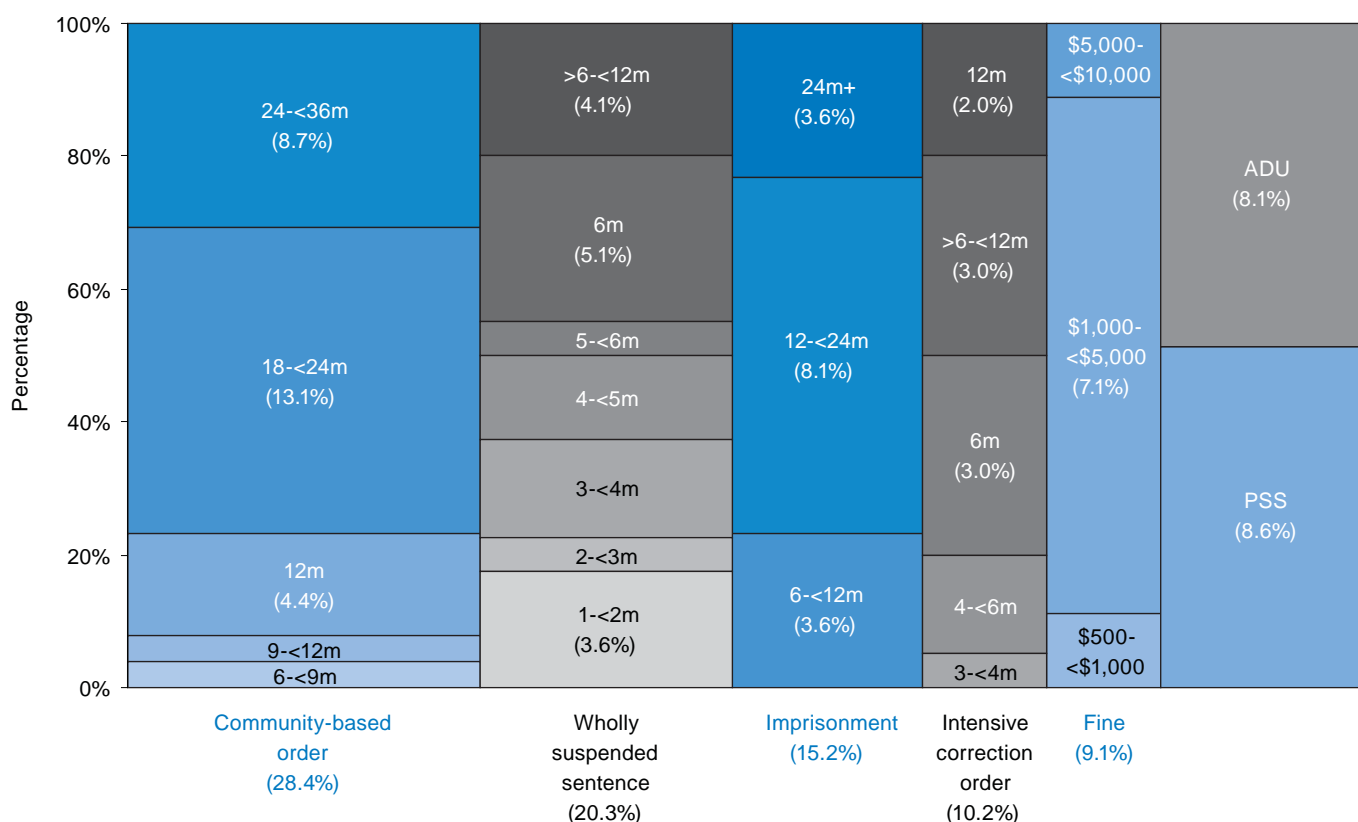
Sentencing map

Figure 3 presents both the sentencing outcome and the quantum for that outcome for people sentenced for knowingly possess child pornography. For example, 28.4% of people sentenced received a community-based order including 13.1% who received a community-based order of 18 to 24 months. The right most column of the graph presents the least common sentencing outcomes without showing the quantum information.

Table 3: The number and percentage of people sentenced for knowingly possess child pornography by sentence type and year, 2004-05 to 2006-07¹³

Sentence Type	2004-05	2005-06	2006-07
Immediate custodial	12 (20.7%)	25 (32.1%)	10 (16.4%)
Imprisonment	7 (12.1%)	18 (23.1%)	5 (8.2%)
Partially suspended sentence	5 (8.6%)	7 (9.0%)	5 (8.2%)
Other custodial	20 (34.5%)	21 (26.9%)	19 (31.1%)
Wholly suspended sentence	12 (20.7%)	15 (19.2%)	13 (21.3%)
Intensive correction order	8 (13.8%)	6 (7.7%)	6 (9.8%)
Non-custodial	26 (44.8%)	32 (41.0%)	32 (52.5%)
Community-based order	13 (22.4%)	17 (21.8%)	26 (42.6%)
Fine	6 (10.3%)	8 (10.3%)	4 (6.6%)
Adjourned undertaking	7 (12.1%)	7 (9.0%)	2 (3.3%)
People sentenced	58	78	61

Figure 3: Sentencing map: The percentage of people sentenced for knowingly possess child pornography by sentencing outcomes and sentencing quanta, 2004-05 to 2006-07¹⁴



Note: PSS refers to partially suspended sentence and ADU refers to adjourned undertaking.

Principal sentence

This section examines the use of the four most common principal sentencing outcomes for this offence.¹⁵ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided. Finally, where relevant, the details of the sentence (length of order) are examined.¹⁶

The four most common sentences imposed for knowingly possess child pornography are community-based order, wholly suspended sentence, imprisonment and intensive correction order.

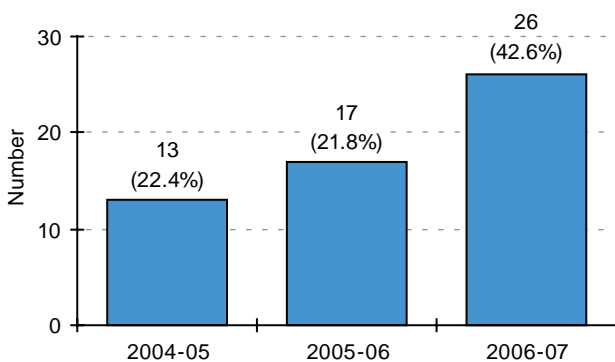
Community-based order

Trends

Over the three years, there were 56 people who received a community-based order for knowingly possess child pornography. This represented 28.4% of all people sentenced for this offence. Figure 4 shows the trends in the number and percentage of people sentenced who received a community-based order for knowingly possess child pornography.

In 2006-07, 26 people received a community-based order for the principal proven offence of knowingly possess child pornography. This is an increase from 17 people in 2005-06, continuing an increase from the previous year. Also, the proportion of people who received a community-based order increased to 42.6% in 2006-07 from 22.4% in 2004-05 and from 21.8% in 2005-06.

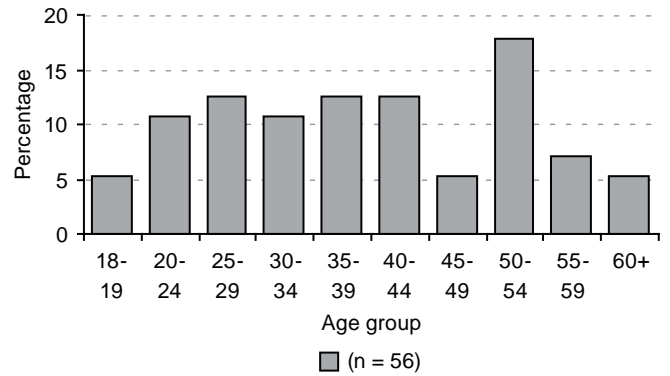
Figure 4: The number and percentage of people who received a community-based order for knowingly possess child pornography, 2004-05 to 2006-07



Age and gender

Figure 5 shows the age groups of people who received a community-based order for knowingly possess child pornography. The median age of these people was 38 years.

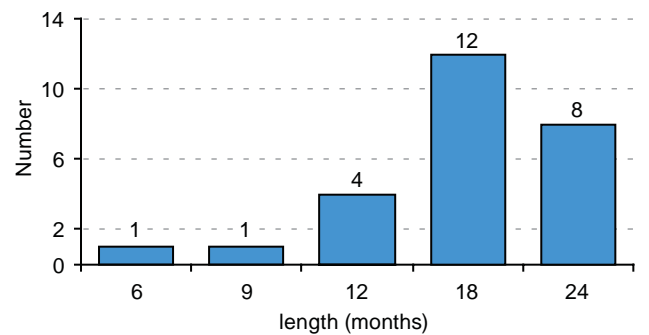
Figure 5: The percentage of people who received a community-based order for knowingly possess child pornography by age, 2004-05 to 2006-07¹⁷



Length of sentence

Figure 6 shows the number of people who received a community-based order for knowingly possess child pornography by the length of the sentence. While the length of community-based orders ranged from six months to two years, the median was one year and six months (meaning that half were shorter than one year and six months and half were longer than one year and six months).

Figure 6: The number of people who received a community-based order for knowingly possess child pornography by the length of order, 2006-07



Wholly suspended sentence

Trends

Over the three years, there were 40 people who received a wholly suspended sentence for knowingly possess child pornography. This represented 20.3% of all people sentenced for this offence. Figure 7 shows the trends in the number and percentage of people sentenced who received a wholly suspended sentence for knowingly possess child pornography.

In 2006-07, 13 people received a wholly suspended sentence for the principal proven offence of knowingly possess child pornography. This is a slight decrease from 15 people in 2005-06, reversing an increase from the previous year. The proportion of people who received a wholly suspended sentence increased to 21.3% in 2006-07 from 19.2% in 2005-06.

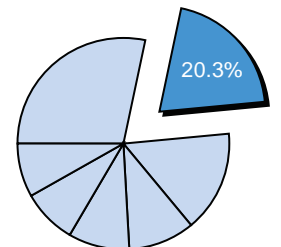
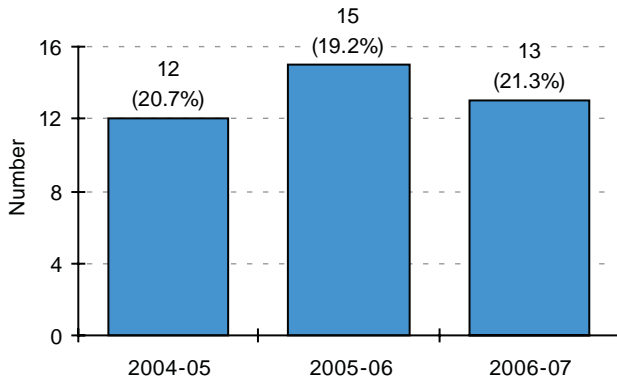


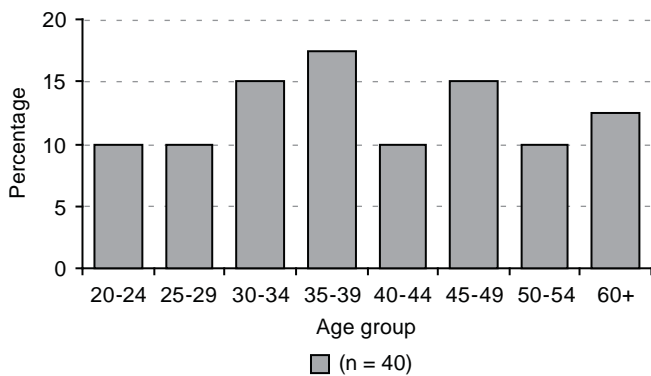
Figure 7: The number and percentage of people who received a wholly suspended sentence for knowingly possess child pornography, 2004-05 to 2006-07



Age and gender

Figure 8 shows the age groups of people who received a wholly suspended sentence for knowingly possess child pornography. The median age of these people was 38 years and six months.

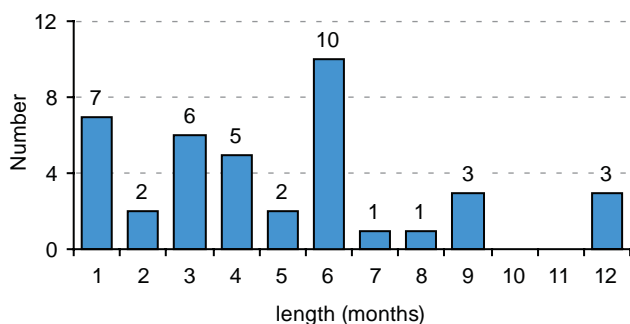
Figure 8: The percentage of people who received a wholly suspended sentence for knowingly possess child pornography by age, 2004-05 to 2006-07¹⁸



Length of sentence

Figure 9 shows the number of people who received a wholly suspended sentence for knowingly possess child pornography by the length of the sentence. While the length of wholly suspended sentences ranged from one month to one year, the median was four months and fifteen days (meaning that half were shorter than four months and fifteen days and half were longer than four months and fifteen days).

Figure 9: The number of people who received a wholly suspended sentence for knowingly possess child pornography by the length of order, 2004-05 to 2006-07

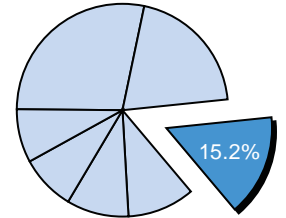


Imprisonment

Trends

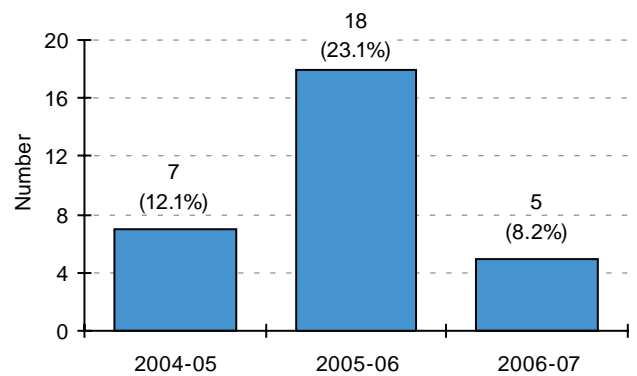
Over the three years, there were 30 people who were sentenced to imprisonment for knowingly possess child pornography. This represented 15.2% of all people sentenced for this offence.

Figure 10 shows the trends in the number and percentage of people sentenced who were sentenced to imprisonment for knowingly possess child pornography.



In 2006-07, 5 people were sentenced to imprisonment for the principal proven offence of knowingly possess child pornography. This is a decrease from 18 people in 2005-06, reversing an increase from the previous year. A similar trend was evident when expressed as a percentage of all people sentenced for knowingly possess child pornography (8.2% were sentenced to imprisonment in 2006-07).

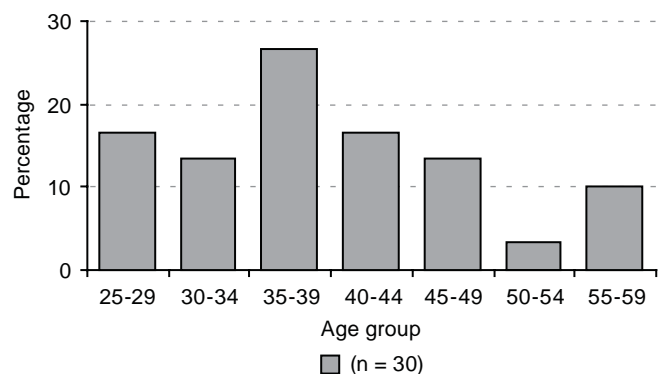
Figure 10: The number and percentage of people who were sentenced to imprisonment for knowingly possess child pornography, 2004-05 to 2006-07



Age and gender

Figure 11 shows the age groups of people who were sentenced to imprisonment for knowingly possess child pornography. The median age of these people was 38 years.

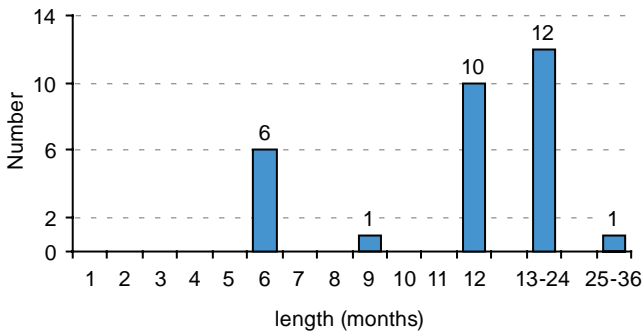
Figure 11: The percentage of people who were sentenced to imprisonment for knowingly possess child pornography by age, 2004-05 to 2006-07¹⁹



Length of sentence

Figure 12 shows the number of people who were sentenced to imprisonment for knowingly possess child pornography by the length of the sentence. While the length of imprisonment ranged from six months to two years and six months, the median was one year (meaning that half were shorter than one year and half were longer than one year).

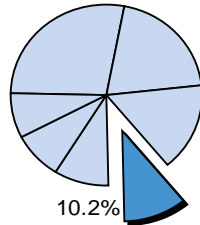
Figure 12: The number of people who were sentenced to imprisonment for knowingly possess child pornography by the length of order, 2004-05 to 2006-07



Intensive correction order

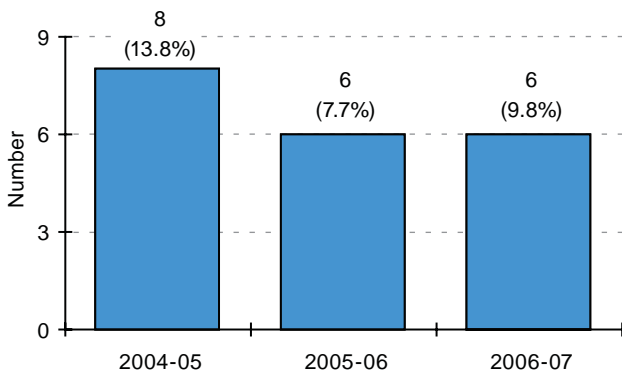
Trends

Over the three years, there were 20 people who received an intensive correction order for knowingly possess child pornography. This represented 10.2% of all people sentenced for this offence. Figure 13 shows the trends in the number and percentage of people sentenced who received an intensive correction order for knowingly possess child pornography.



In 2006-07, 6 people received an intensive correction order for the principal proven offence of knowingly possess child pornography. This remained stable with the previous year.

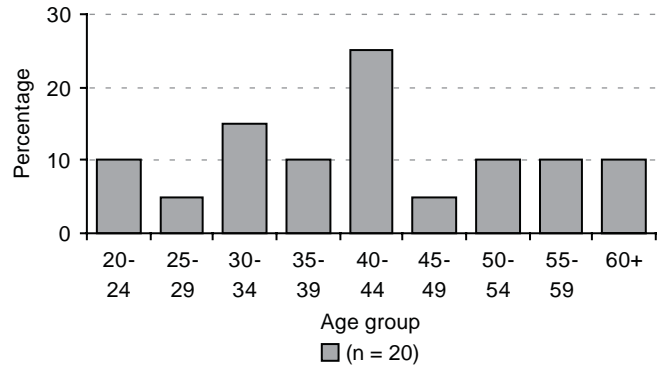
Figure 13: The number and percentage of people who received an intensive correction order for knowingly possess child pornography, 2004-05 to 2006-07



Age and gender

Figure 14 shows the age groups of people who received an intensive correction order for knowingly possess child pornography. The median age of these people was 41 years.

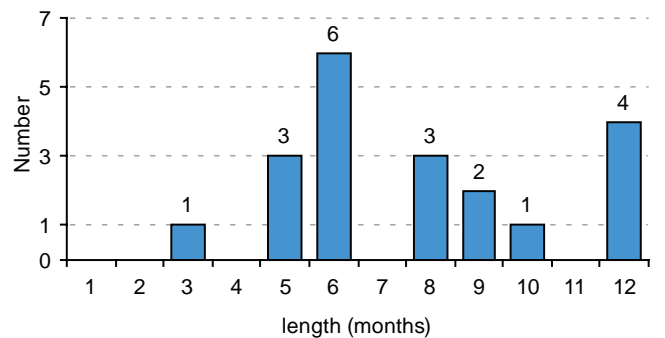
Figure 14: The percentage of people who received an intensive correction order for knowingly possess child pornography by age, 2004-05 to 2006-07²⁰



Length of sentence

Figure 15 shows the number of people who received an intensive correction order for knowingly possess child pornography by the length of the sentence. While the length of intensive correction orders ranged from three months to one year, the median was seven months and fifteen days (meaning that half were shorter than seven months and fifteen days and half were longer than seven months and fifteen days).

Figure 15: The number of people who received an intensive correction order for knowingly possess child pornography by the length of order, 2004-05 to 2006-07

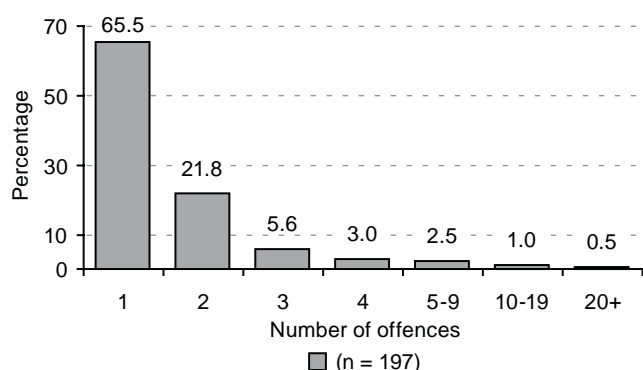


Other offences finalised at the same hearing

Often people prosecuted for knowingly possess child pornography 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 knowingly possess child pornography.

Figure 16 shows the number of people sentenced for the principal offence of knowingly possess child pornography by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 34. There were 129 people (65.5%) sentenced for the single offence of knowingly possess child pornography. The average number of offences per person was 1.83.

Figure 16: The percentage of cases where knowingly possess child pornography was the principal offence by the number of offences where a sentence was imposed in that case, 2004-05 to 2006-07



While Figure 16 presents the number of sentenced offences for those sentenced for knowingly possess child pornography, Table 4 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the ten most common offences. The last column sets out the average number of offences sentenced per person. For example, 26 of the total 197 people (13.2%) also received sentences for make/produce child pornography. On average, they were sentenced for 1.85 charges of make/produce child pornography. The first row indicates that the average number of charges of knowingly possess child pornography sentenced per person was 1.25.

Table 4: The number and percentage of people sentenced for the principal offence of knowingly possess child pornography by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004-05 to 2006-07

Offence	No.	%	Avg.
1 knowingly possess child pornography	197	100.0	1.25
2 make/produce child pornography	26	13.2	1.85
3 use of on-line info to publish child porn	7	3.6	1.00
4 use of a drug of dependence	4	2.0	1.75
5 publication or transmission of objectionable material	4	2.0	1.00
6 possession of a drug of dependence	3	1.5	2.33
7 possess prohibited weapon	3	1.5	1.67
8 handling stolen goods	3	1.5	1.00
9 carry imitation general category handgun	2	1.0	2.00
10 possess, carry or use a category A longarm	2	1.0	1.00
People sentenced	197	100.0	1.83

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of knowingly possess child pornography. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.²¹

Table 5 shows the percentages of the six most common sentence types imposed in cases in the Magistrates' Court from 2004-05 to 2006-07 where the principal proven offence was knowingly possess child pornography, by the other sentence types also imposed in the case. For example, of the 64 people who received a community-based order as part of their total effective sentence, 15.6% also received a fine.

The most common sentence types imposed in conjunction with another sentence type were:

- a community-based order with a fine (25.0% of the 40 people who received a fine);
- a fine with a wholly suspended sentence (19.5% of the 41 people);
- a fine with an imprisonment term (12.9% of the 31 people); and
- a community-based order with a wholly suspended sentence (12.2% of the 41 people).

Table 5: The percentage of selected sentence types used in conjunction with other sentence types imposed in the same case, 2004-05 to 2006-07

	CBO	Fine	WSS	Imp.	ICO	PSS
CBO	100%	25.0%	12.2%	0.0%	5.0%	11.8%
Fine	15.6%	100%	19.5%	12.9%	0.0%	5.9%
WSS	7.8%	20.0%	100%	0.0%	5.0%	0.0%
Imp.	0.0%	10.0%	0.0%	100%	0.0%	5.9%
ICO	1.6%	0.0%	2.4%	0.0%	100%	0.0%
PSS	3.1%	2.5%	0.0%	3.2%	0.0%	100%
Total	64	40	41	31	20	17

Note: CBO refers to community-based order, WSS refers to wholly suspended sentence, Imp. refers to imprisonment, ICO refers to intensive correction order and PSS refers to partially suspended sentence.

Summary

Between 2004-05 and 2006-07, 197 people were sentenced for the principal offence of knowingly possess child pornography in the Magistrates' Court. Over this period, all of those sentenced were men. The median age of people sentenced was 39 years, while 31% were aged between 35 and 45 years.

Less than half of the people sentenced for knowingly possess child pornography received a non-custodial sentence (90 people or 45.7%), including 56 people who received a community-based order (28.4%). A conviction was recorded with the principal sentence for 95.1% of people sentenced.

A higher percentage of those in the older age groups received a non-immediate custodial sentence.

Each of the 197 people was sentenced for an average of 1.83 offences, including 1.25 offences of knowingly possess child pornography. The most common offence finalised in conjunction with knowingly possess child pornography was make/produce child pornography (13.2% of all cases).

The most common sentence types imposed in conjunction with another sentence type were a community-based order with a fine (25.0% of the 40 people who received a fine), a fine with a wholly suspended sentence (19.5% of the 41 people), a fine with an imprisonment term (12.9% of the 31 people) and a community-based order with a wholly suspended sentence (12.2% of the 41 people).

- 1 The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision. This report presents sentencing outcomes for people sentenced for the principal offence of knowingly possess child pornography in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for knowingly possess child pornography who received a more serious sentence for another offence charged on the same charge sheet.
- 2 The data used for analysis in this report contain information on age and gender characteristics. No other demographic analysis is possible.
- 3 *Crimes Act 1958* (Vic) s 70(1).
- 4 *Crimes Act 1958* (Vic) s 70(1).
- 5 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).
- 6 Under section 113 of the *Sentencing Act 1991* (Vic) this general maximum term is prescribed for indictable offences triable summarily. Though section 113 does not specifically state the maximum number of penalty units that can be imposed for an indictable offence triable summarily, section 109 (3)(a) sets the proportion between the maximum term of imprisonment and the maximum fine.
- 7 The number of people sentenced excludes those who participated in the criminal justice diversion program. Only the people who were dismissed in 2006-07 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (s.360(1)(a) *Children, Youth and Families Act 2005* (Vic)) or 'dismissed' (s.76 *Sentencing Act, 1991* (Vic)). The people who were dismissed in 2004-05 and 2005-06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the three year period could be an under-representation. However, in 2006-07, no people were dismissed pursuant to this legislation.
- 8 *Sentencing Act 1991* (Vic) s 7 and s 8.
In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social well being or on the his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).
- 9 Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004-05 and 2005-06.
- 10 The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and a diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.
- 11 The age was unknown for 1 man sentenced for knowingly possess child pornography (0.5%). This person is excluded from all age analyses in this report.
- 12 The age is calculated as at the date of sentence. Sentencing outcomes counted in this snapshot may be imposed for offences committed substantially before the three year period covered by this snapshot.
- 13 Refer fn. 7.
- 14 Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006-07.
- 15 The principal sentence is the individual sentence imposed for a single charge. The principal sentence is the most serious sentence in the case. If more than one type of sentence is imposed for a single charge, only the most serious sentence is counted.
- 16 Sentence lengths shorter than one year are rounded up to the nearest month, while sentence lengths equal to or over one year are grouped into categories of years. Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006-07.
- 17 The age was unknown for 1 man sentenced for knowingly possess child pornography. This person is excluded from this analysis.
- 18 The age was unknown for 1 man sentenced for knowingly possess child pornography. This person is excluded from this analysis.
- 19 The age was unknown for 1 man sentenced for knowingly possess child pornography. This person is excluded from this analysis.
- 20 The age was unknown for 1 man sentenced for knowingly possess child pornography. This person is excluded from this analysis.
- 21 While a total of 31 people were sentenced to at least one period of imprisonment in the case, 30 people had imprisonment listed against their principal proven offence. There was one person who was sentenced to a period of imprisonment, but who received a partially suspended sentence of imprisonment for the principal proven offence. Only sentence types that were imposed on the same date as the sentence imposed for the principal proven offence are included.

This "Sentencing Snapshot" is part of a series presenting summary information on sentencing trends in Victoria. Copies of all the Sentencing Snapshots can be downloaded from our website at www.sentencingcouncil.vic.gov.au

Authored by Nick Turner, Senior Data Analyst, Sentencing Advisory Council.
Published by the Sentencing Advisory Council, Melbourne Victoria Australia.
© Copyright State of Victoria, Sentencing Advisory Council, June 2008.

ISSN 1832-6153

Authorised by Sentencing Advisory Council, 4/436 Lonsdale Street, Melbourne.
Printed by Bigprint, 50 Lonsdale Street, Melbourne.

Disclaimer: The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots are accurate at the time of publishing.