

Sentencing Snapshot

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

June 2008
No. 50

Indecent Act With a
Child Under 16

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of indecent act with a child under 16 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 is involved in any act in indecent circumstances, with or in the presence of a child under 16, is guilty of the offence of committing an indecent act with a child under the age of 16.³ This offence is an indictable offence which carries a maximum penalty of 10 years' imprisonment⁴ and/or a fine of 1200 penalty units.⁵

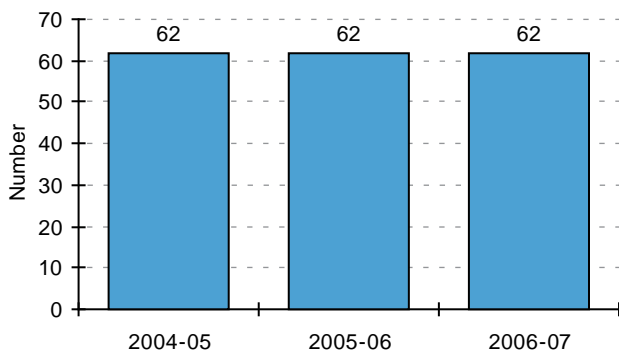
This offence may be heard summarily in the Magistrates' Court if the court considers it appropriate and the defendant consents. This tends to occur where the offence is seen by the court as being less serious in nature. Where an offence is tried summarily, the matter will be heard before a magistrate rather than a judge and a jury. Where indecent act with a child under 16 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 indecent act with a child under 16, 56.9% had their cases heard in the Magistrates' Court. The remaining cases were heard in the Children's Court and higher courts.⁷ Indecent act with a child under 16 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, 186 people were sentenced for the principal offence of indecent act with a child under 16 in the Magistrates' Court. In 2006-07, there were 62 people who were sentenced for the principal proven offence of indecent act with a child under 16. This remained stable with the previous two years.

Figure 1: The number of people sentenced for indecent act with a child under 16, 2004-05 to 2006-07



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for indecent act with a child under 16 during 2004-05 to 2006-07. Over the three-year period, just over half of those sentenced for indecent act with a child under 16 received a non-custodial sentence (99 people or 53.2%), including 53 people who received a community-based order (28.5%) and 30 people who received an adjourned undertaking (16.1%).

There were also 44 people who received a non-immediate custodial sentence (23.7%), including 28 people who received a wholly suspended sentence (15.1%) and 16 people who received an intensive correction order (8.6%).

In some circumstances, when sentencing an offender the court may decide whether to record a conviction.⁸ Of the 62 people sentenced for indecent act with a child under 16 in 2006-07, 80.6% had a conviction recorded (50 people).⁹

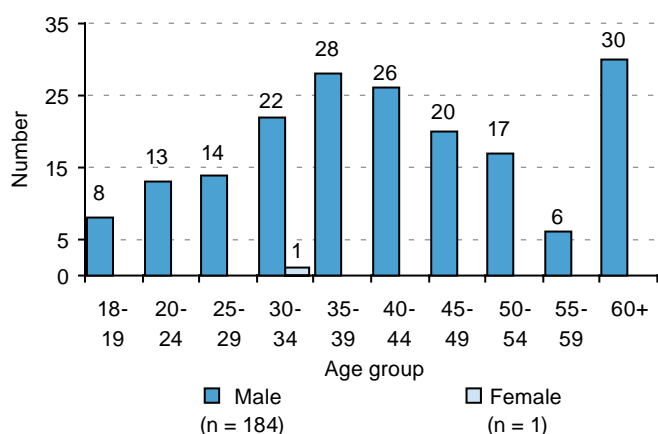
Table 1: The number and percentage of people sentenced for indecent act with a child under 16 by sentence type, 2004-05 to 2006-07

Sentence Type	Total	%
Immediate custodial	43	23.1
Imprisonment	35	18.8
Partially suspended sentence	7	3.8
Youth justice centre order	1	0.5
Other custodial	44	23.7
Wholly suspended sentence	28	15.1
Intensive correction order	16	8.6
Non-custodial	99	53.2
Community-based order	53	28.5
Fine	16	8.6
Adjourned undertaking	30	16.1
People sentenced	186	100.0

Age and gender

Over the three-year period, all but one of those sentenced were men (185 people or 99.5%).¹⁰ The age of people sentenced for indecent act with a child under 16 ranged from 18 years to 77 years, while the median age was 41 years (meaning that half of the people were aged 41 years or younger and half were 41 years or older).¹¹

Figure 2: The number of people sentenced for indecent act with a child under 16 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 indecent act with a child under 16 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 those in the older age groups received an immediate custodial sentence, including an imprisonment term. Conversely, a higher percentage of those in the younger age groups received a non-custodial sentence, including a community-based order and adjourned undertaking.

Table 2: The number and percentage of people sentenced for indecent act with a child under 16 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	43 (23.3%)	0	0	2 (9.5%)	10 (15.4%)	31 (31.3%)	43 (23.1%)
Imprisonment	35 (18.9%)	0	0	0	10 (15.4%)	25 (25.3%)	35 (18.8%)
Partially suspended sentence	7 (3.8%)	0	0	1 (4.8%)	0	6 (6.1%)	7 (3.8%)
Youth justice centre order	1 (0.5%)	0	0	1 (4.8%)	0	0	1 (0.5%)
Other custodial	44 (23.8%)	0	0	1 (4.8%)	17 (26.2%)	25 (25.3%)	44 (23.7%)
Wholly suspended sentence	28 (15.1%)	0	0	1 (4.8%)	11 (16.9%)	15 (15.2%)	28 (15.1%)
Intensive correction order	16 (8.6%)	0	0	0	6 (9.2%)	10 (10.1%)	16 (8.6%)
Non-custodial	98 (53.0%)	1 (100.0%)	0	18 (85.7%)	38 (58.5%)	43 (43.4%)	99 (53.2%)
Community-based orders	52 (28.1%)	1 (100.0%)	0	8 (38.1%)	22 (33.8%)	23 (23.2%)	53 (28.5%)
Fine	16 (8.6%)	0	0	1 (4.8%)	6 (9.2%)	9 (9.1%)	16 (8.6%)
Adjourned undertaking	30 (16.2%)	0	0	9 (42.9%)	10 (15.4%)	11 (11.1%)	30 (16.1%)
People sentenced	185 (100.0%)	1 (100.0%)	0	21 (100.0%)	65 (100.0%)	99 (100.0%)	186 (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 indecent act with a child under 16 by the type of sentence imposed.

The number and percentage of people who received an immediate custodial sentence decreased each year from 18 people and 29.0% in 2004-05 to 9 people and 14.5% in 2006-07.

The number and percentage of people who received a non-custodial sentence increased each year from 29 people and 46.8% in 2004-05 to 38 people and 61.3% in 2006-07.

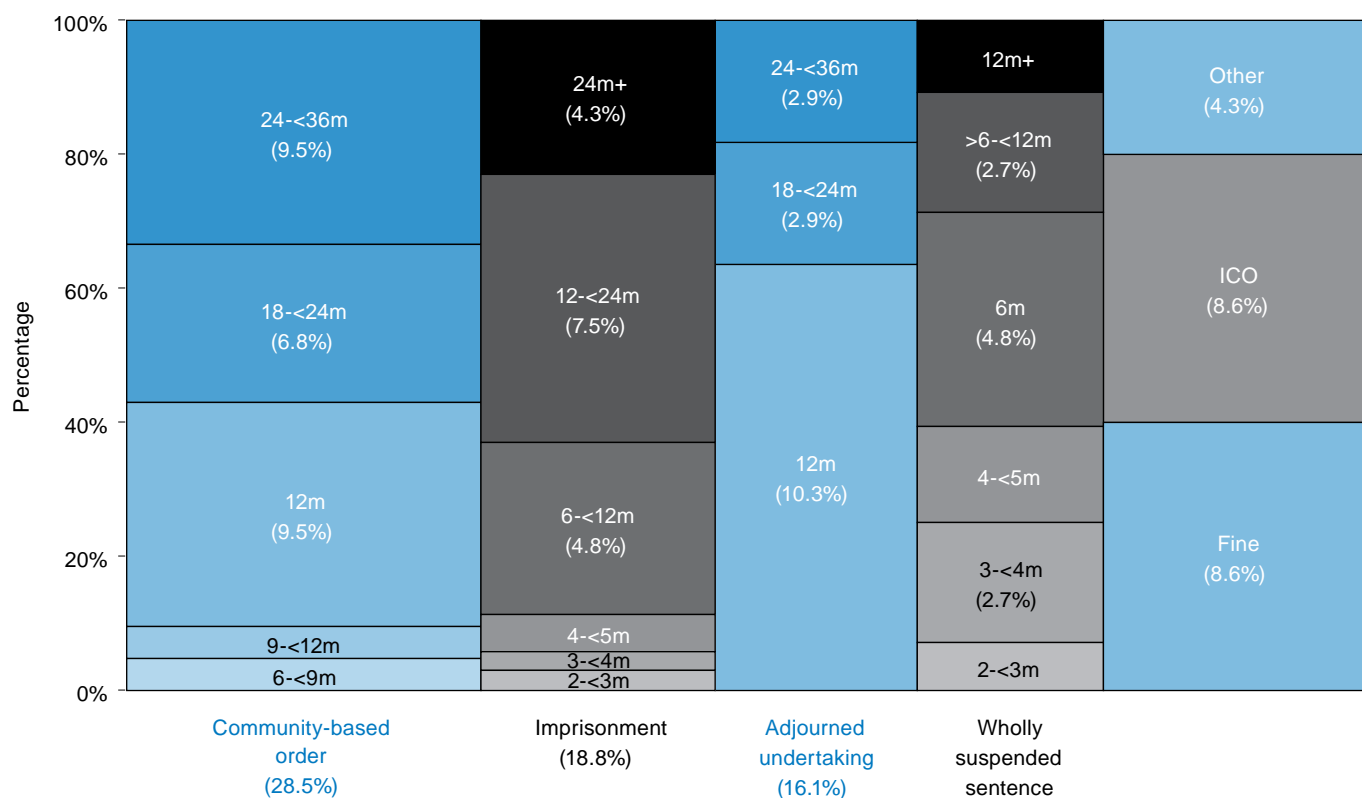
Sentencing map

Figure 3 presents both the sentencing outcome and the quantum for that outcome for people sentenced for indecent act with a child under 16. For example, 28.5% of people sentenced received a community-based order including 9.5% who received a community-based order of 12 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 indecent act with a child under 16 by sentence type and year, 2004-05 to 2006-07

Sentence Type	2004-05	2005-06	2006-07
Immediate custodial	18 (29.0%)	16 (25.8%)	9 (14.5%)
Imprisonment	17 (27.4%)	12 (19.4%)	6 (9.7%)
Partially suspended sentence	1 (1.6%)	4 (6.5%)	2 (3.2%)
Youth justice centre order	0 -	0 -	1 (1.6%)
Other custodial	15 (24.2%)	14 (22.6%)	15 (24.2%)
Wholly suspended sentence	9 (14.5%)	10 (16.1%)	9 (14.5%)
Intensive correction order	6 (9.7%)	4 (6.5%)	6 (9.7%)
Non-custodial	29 (46.8%)	32 (51.6%)	38 (61.3%)
Community-based order	13 (21.0%)	19 (30.6%)	21 (33.9%)
Fine	5 (8.1%)	5 (8.1%)	6 (9.7%)
Adjourned undertaking	11 (17.7%)	8 (12.9%)	11 (17.7%)
People sentenced	62	62	62

Figure 3: Sentencing map: The percentage of people sentenced for indecent act with a child under 16 by sentencing outcomes and sentencing quanta, 2004-05 to 2006-07¹²



Note: ICO refers to intensive correction order. Other includes partially suspended sentence and youth justice centre order.

Principal sentence

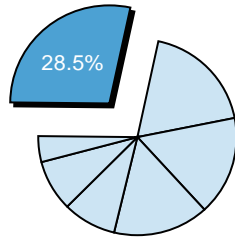
This section examines the use of the four most common principal sentencing outcomes for this offence.¹³ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided. Finally, where relevant, the details of the sentence (length of order) are examined.¹⁴

The four most common sentences imposed for indecent act with a child under 16 are community-based order, imprisonment, adjourned undertaking and wholly suspended sentence.

Community-based order

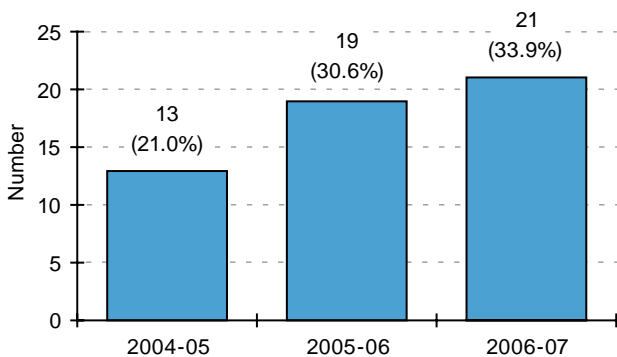
Trends

Over the three years, there were 53 people who received a community-based order for indecent act with a child under 16. This represented 28.5% 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 indecent act with a child under 16.



In 2006-07, 21 people received a community-based order for the principal proven offence of indecent act with a child under 16. This is a slight increase from 19 people in 2005-06, continuing an increase from the previous year. A similar trend was evident when expressed as a percentage of all people sentenced for indecent act with a child under 16 (33.9% received a community-based order in 2006-07).

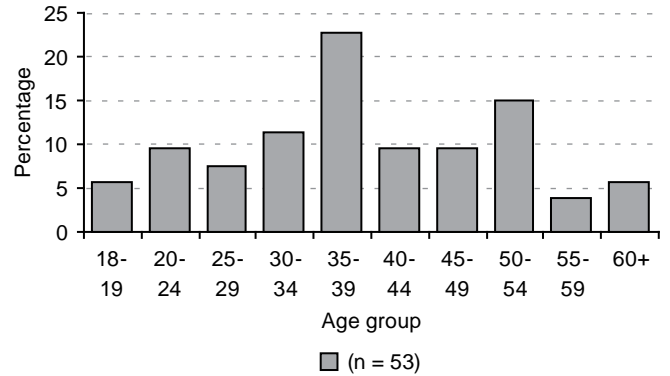
Figure 4: The number and percentage of people who received a community-based order for indecent act with a child under 16, 2004-05 to 2006-07



Age and gender

Of the 53 people who received a community-based order, 98.1% were men. Figure 5 shows the age groups of people who received a community-based order for indecent act with a child under 16. The median age of these people was 38 years.

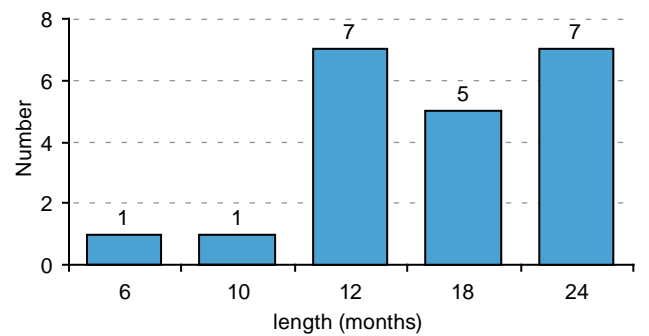
Figure 5: The percentage of people who received a community-based order for indecent act with a child under 16 by age, 2004-05 to 2006-07¹⁵



Length of sentence

Figure 6 shows the number of people who received a community-based order for indecent act with a child under 16 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).

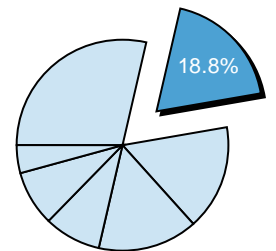
Figure 6: The number of people who received a community-based order for indecent act with a child under 16 by the length of order, 2006-07



Imprisonment

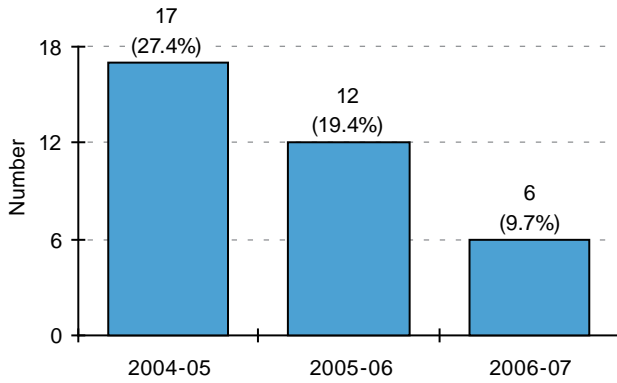
Trends

Over the three years, there were 35 people who were sentenced to imprisonment for indecent act with a child under 16. This represented 18.8% of all people sentenced for this offence. Figure 7 shows the trends in the number and percentage of people sentenced who were sentenced to imprisonment for indecent act with a child under 16.



In 2006-07, 6 people were sentenced to imprisonment for the principal proven offence of indecent act with a child under 16. This is a decrease from 12 people in 2005-06, continuing a decrease from the previous year. A similar trend was evident when expressed as a percentage of all people sentenced for indecent act with a child under 16 (9.7% were sentenced to imprisonment in 2006-07).

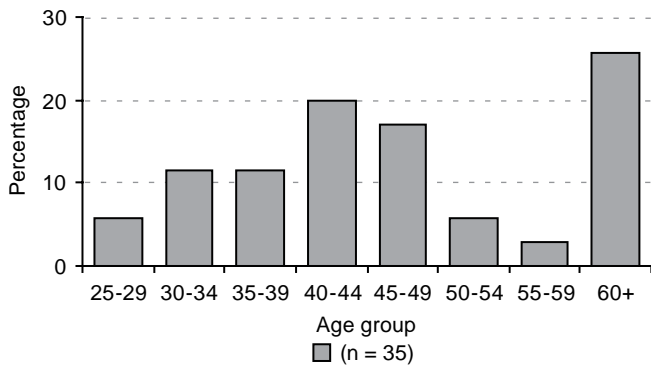
Figure 7: The number and percentage of people who were sentenced to imprisonment for indecent act with a child under 16, 2004-05 to 2006-07



Age and gender

Of the 35 people who received a period of imprisonment, all were men. Figure 8 shows the age groups of people who were sentenced to imprisonment for indecent act with a child under 16. The median age of these people was 46 years, while over one quarter were aged 60 years or older.

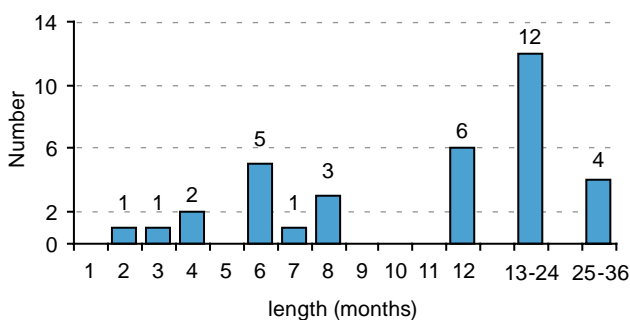
Figure 8: The percentage of people who were sentenced to imprisonment for indecent act with a child under 16 by age, 2004-05 to 2006-07¹⁶



Length of sentence

Figure 9 shows the number of people who were sentenced to imprisonment for indecent act with a child under 16 by the length of the sentence. While the length of imprisonment ranged from two months to three years, the median was one year (meaning that half were shorter than one year and half were longer than one year).

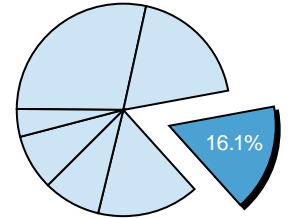
Figure 9: The number of people who were sentenced to imprisonment for indecent act with a child under 16 by the length of order, 2004-05 to 2006-07



Adjourned undertaking

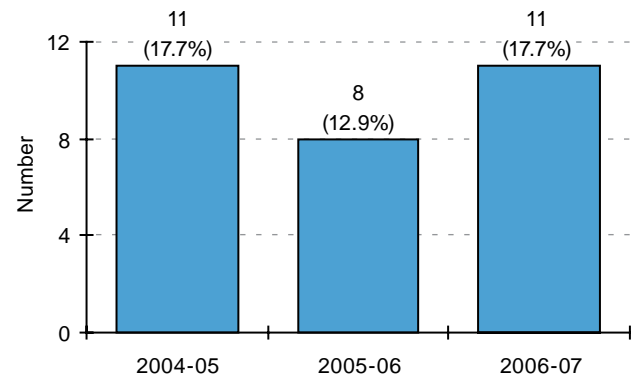
Trends

Over the three years, there were 30 people who received an adjourned undertaking for indecent act with a child under 16. This represented 16.1% of all people sentenced for this offence. Figure 10 shows the trends in the number and percentage of people sentenced who received an adjourned undertaking for indecent act with a child under 16.



In 2006-07, 11 people received an adjourned undertaking for the principal proven offence of indecent act with a child under 16. This is a slight increase from 8 people in 2005-06, reversing a decrease from the previous year. A similar trend was evident when expressed as a percentage of all people sentenced for indecent act with a child under 16 (17.7% received an adjourned undertaking in 2006-07).

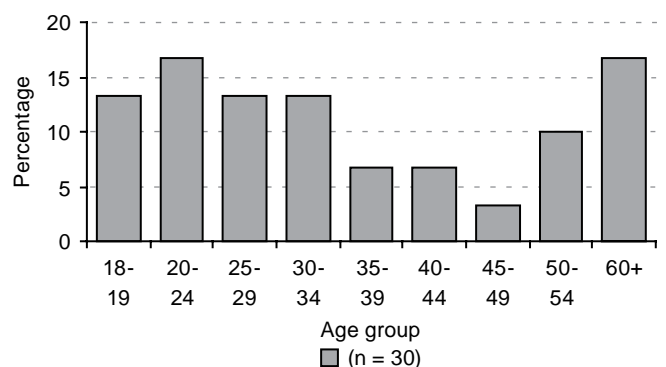
Figure 10: The number and percentage of people who received an adjourned undertaking for indecent act with a child under 16, 2004-05 to 2006-07



Age and gender

Of the 30 people who received an adjourned undertaking, all were men. Figure 11 shows the age groups of people who received an adjourned undertaking for indecent act with a child under 16. The median age of these people was 33 years.

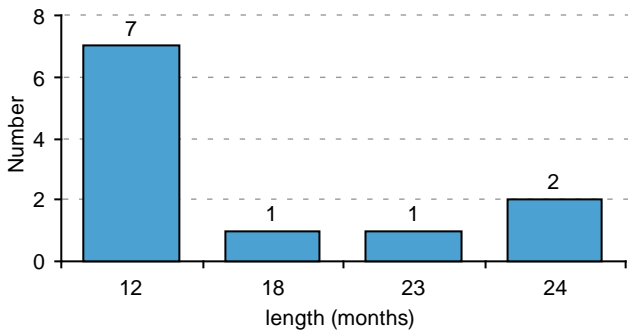
Figure 11: The percentage of people who received an adjourned undertaking for indecent act with a child under 16 by age, 2004-05 to 2006-07¹⁷



Length of sentence

Figure 12 shows the number of people who received an adjourned undertaking for indecent act with a child under 16 by the length of the sentence. While the length of adjourned undertakings ranged from one year to two years, the most common length was one year.

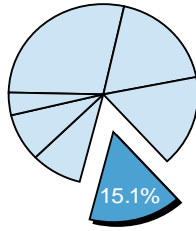
Figure 12: The number of people who received an adjourned undertaking for indecent act with a child under 16 by the length of order, 2006-07



Wholly suspended sentence

Trends

Over the three years, there were 28 people who received a wholly suspended sentence for indecent act with a child under 16. This represented 15.1% of all people sentenced for this offence. Figure 13 shows the trends in the number and percentage of people sentenced who received a wholly suspended sentence for indecent act with a child under 16.



In 2006-07, 9 people received a wholly suspended sentence for the principal proven offence of indecent act with a child under 16, remaining relatively stable with the two previous years.

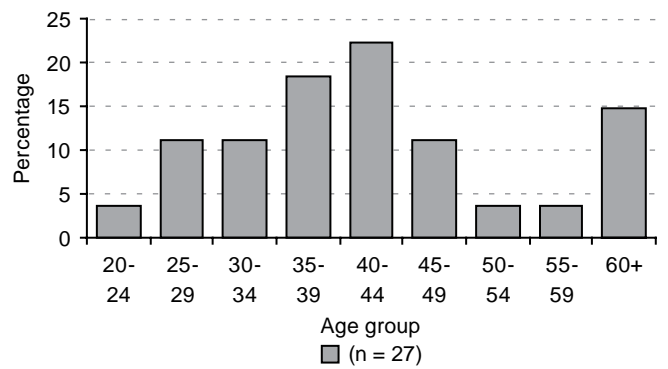
Figure 13: The number and percentage of people who received a wholly suspended sentence for indecent act with a child under 16, 2004-05 to 2006-07



Age and gender

Of the 28 people who received a wholly suspended sentence, all were men. Figure 14 shows the age groups of people who received a wholly suspended sentence for indecent act with a child under 16. The median age of these people was 42 years.

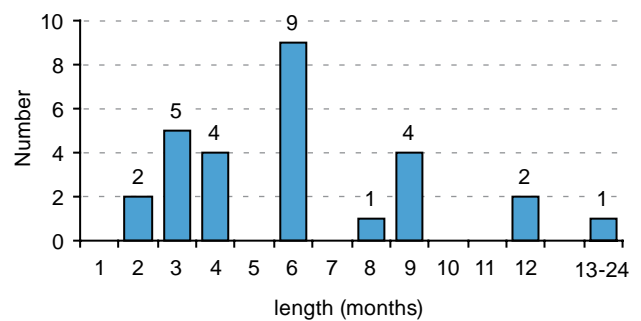
Figure 14: The percentage of people who received a wholly suspended sentence for indecent act with a child under 16 by age, 2004-05 to 2006-07¹⁸



Length of sentence

Figure 15 shows the number of people who received a wholly suspended sentence for indecent act with a child under 16 by the length of the sentence. While the length of wholly suspended sentences ranged from two months to one year and three months, the median was six months (meaning that half were shorter than six months and half were longer than six months).

Figure 15: The number of people who received a wholly suspended sentence for indecent act with a child under 16 by the length of order, 2006-07

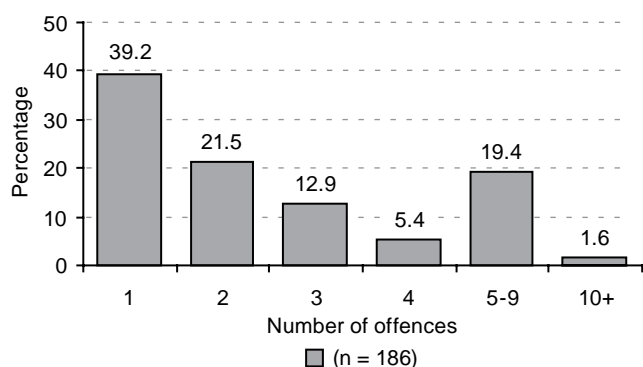


Other offences finalised at the same hearing

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 16 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 12, while the median was 2 offences. There were 73 people (39.2%) sentenced for the single offence of indecent act with a child alone. The average number of offences per person was 2.87.

Figure 16: The percentage of cases where indecent act with a child 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 indecent act with a child under 16, 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, 11 of the total 186 people (5.9%) also received sentences for indecent assault. On average, they were sentenced for 1.27 charges of indecent assault. The first row indicates that the average number of charges of indecent act with a child sentenced per person was 2.33.

Table 4: The number and percentage of people sentenced for the principal offence of indecent act with a child 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 indecent act with a child under 16	186	100.0	2.33
2 indecent assault	11	5.9	1.27
3 wilful and obscene exposure in public	10	5.4	1.50
4 knowingly possess child pornography	7	3.8	1.00
5 unlawful assault	6	3.2	1.00
6 make/produce child pornography	5	2.7	1.00
7 stalk another person (<i>Crimes Act (1958)</i>)	4	2.2	1.25
8 use of a drug of dependence	4	2.2	1.00
9 convicted sex offender loiter near school etc	3	1.6	1.33
10 fail to appear on bail	3	1.6	1.00
People Sentenced	186	100.0	2.87

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of indecent act with a child under 16. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.¹⁹

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 indecent act with a child under 16, by the other sentence types also imposed in the case. For example, of the 68 people who received a community-based order as part of their total effective sentence, 16.2% also received a wholly suspended sentence.

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

- a community-based order with a wholly suspended sentence (36.7% of the 30 people who received a wholly suspended sentence);
- a community-based order with a fine (22.2% of the 27 people); and
- a community-based order with an intensive correction order (12.5% of the 16 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	WSS	Imp.	Fine	ADU	ICO
CBO	100%	36.7%	2.7%	22.2%	3.0%	12.5%
WSS	16.2%	100%	2.7%	3.7%	3.0%	6.3%
Imp.	1.5%	3.3%	100%	7.4%	3.0%	0.0%
Fine	8.8%	3.3%	5.4%	100%	0.0%	12.5%
ADU	1.5%	3.3%	2.7%	0.0%	100%	0.0%
ICO	2.9%	3.3%	0.0%	7.4%	0.0%	100%
Total	68	30	37	27	33	16

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

Summary

Between 2004-05 and 2006-07, 186 people were sentenced for the principal offence of indecent act with a child under 16 in the Magistrates' Court. Over this period, the majority of those sentenced were men (185 people or 99.5%), while 16% were aged 60 years or older.

Most people sentenced for indecent act with a child under 16 received a non-custodial sentence (99 people or 53.2%), including 53 people who received a community-based order (28.5%) and 30 people who received an adjourned undertaking (16.1%). A conviction was recorded with the principal sentence for 80.6% of people sentenced.

A higher percentage of those in the older age groups received an immediate custodial sentence, including an imprisonment term. Conversely, a higher percentage of those

in the younger age groups received a non-custodial sentence, including a community-based order.

Each of the 186 people was sentenced for an average of 2.87 offences, including 2.33 offences of indecent act with a child. The most common offence finalised in conjunction with indecent act with a child was indecent assault (5.9% of all cases).

The most common sentence types imposed in conjunction with another sentence type were a community-based order with a wholly suspended sentence (36.7% of the 30 people who received a wholly suspended sentence), a community-based order with a fine (22.2% of the 27 people) and a community-based order with an intensive correction order (12.5% of the 16 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 indecent act with a child under 16 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 indecent act with a child under 16 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 47.
- 4 *Crimes Act 1958* (Vic) s 47(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 For an analysis of sentencing outcomes for this offence in the higher courts, please refer to Sentencing Snapshot No. 24: Sentencing trends for indecent act with a child aged under 16 in the higher courts of Victoria, 2001-02 to 2005-06. This report is available for download from the Sentencing Advisory Council website (www.sentencingcouncil.vic.gov.au).
- 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 age was unknown for 1 man sentenced for indecent act with a child under 16 (0.5%). This person is excluded from all age analyses in this report.
- 11 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.
- 12 Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006-07.
- 13 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.
- 14 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.
- 15 The age was unknown for 1 man sentenced for indecent act with a child under 16. This person is excluded from this analysis.
- 16 The age was unknown for 1 man sentenced for indecent act with a child under 16. This person is excluded from this analysis.
- 17 The age was unknown for 1 man sentenced for indecent act with a child under 16. This person is excluded from this analysis.
- 18 The age was unknown for 1 man sentenced for indecent act with a child under 16 who received a wholly suspended sentence. This person is excluded from this analysis.
- 19 While a total of 37 people were sentenced to at least one period of imprisonment in the case, 35 people had imprisonment listed against their principal proven offence. There were 2 people who were 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

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