

No. 23: Sentencing trends for indecent assault in the higher courts of Victoria, 2001-02 to 2005-06

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of indecent assault and details the age and gender² of people sentenced for this offence in the County Court of Victoria between 2001-02 and 2005-06³.

A person who causes another to be in fear of immediate and unlawful violence⁴, in indecent circumstances and without that person's consent, is guilty of the offence of indecent assault⁵. Indecent assault is an indictable offence which carries a maximum penalty of 10 years' imprisonment⁶ and/or a fine of 1200 penalty units⁷.

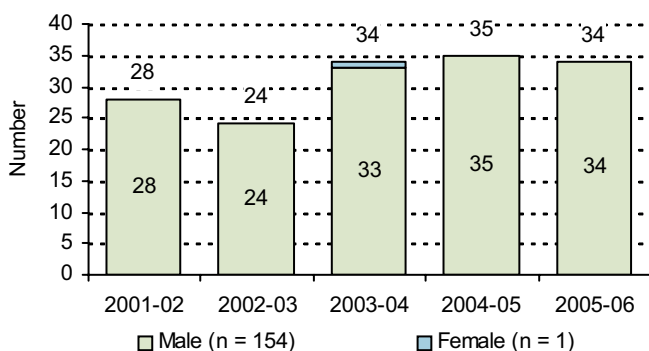
Of all people sentenced for the principal offence of indecent assault, 19.6% had their cases heard in the higher courts. The remaining cases were heard in the Children's and Magistrates' Court⁸. Indecent assault was the principal offence in 1.6% of all cases sentenced in the higher courts between 2001-02 and 2005-06.

People sentenced

Figure 1 shows the number of people sentenced for indecent assault for the period 2001-02 to 2005-06. As shown, 155 people were sentenced for indecent assault over the five year period. There were 34 people sentenced for this offence in 2005-06, down by 1 person from the previous year.

Over the five years depicted, only one female was sentenced⁹. In 2005-06, all of the 34 people sentenced were men.

Figure 1: The number of people sentenced for indecent assault by gender, 2001-02 to 2005-06



Sentence types and trends

Figure 2 shows the total number of people sentenced for indecent assault and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention¹⁰. Over the five year period, 43% of people were given a custodial sentence. This peaked at 53% (18 of 34) in 2003-04 before decreasing to 31% (11 of 35) in 2004-05. In 2005-06, 41% of people sentenced (14 of 34) were given a custodial sentence.

Figure 2: The number of people sentenced for indecent assault and the number who received a custodial sentence, 2001-02 to 2005-06

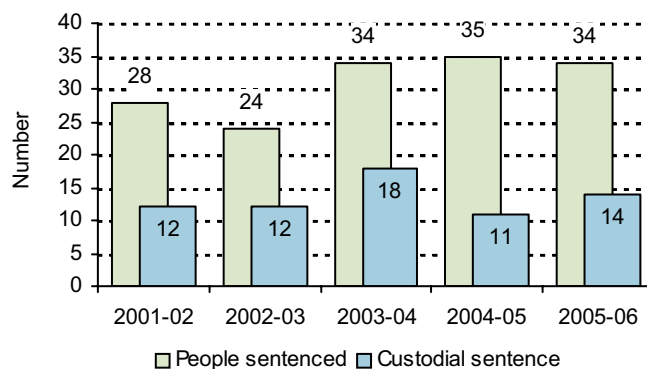


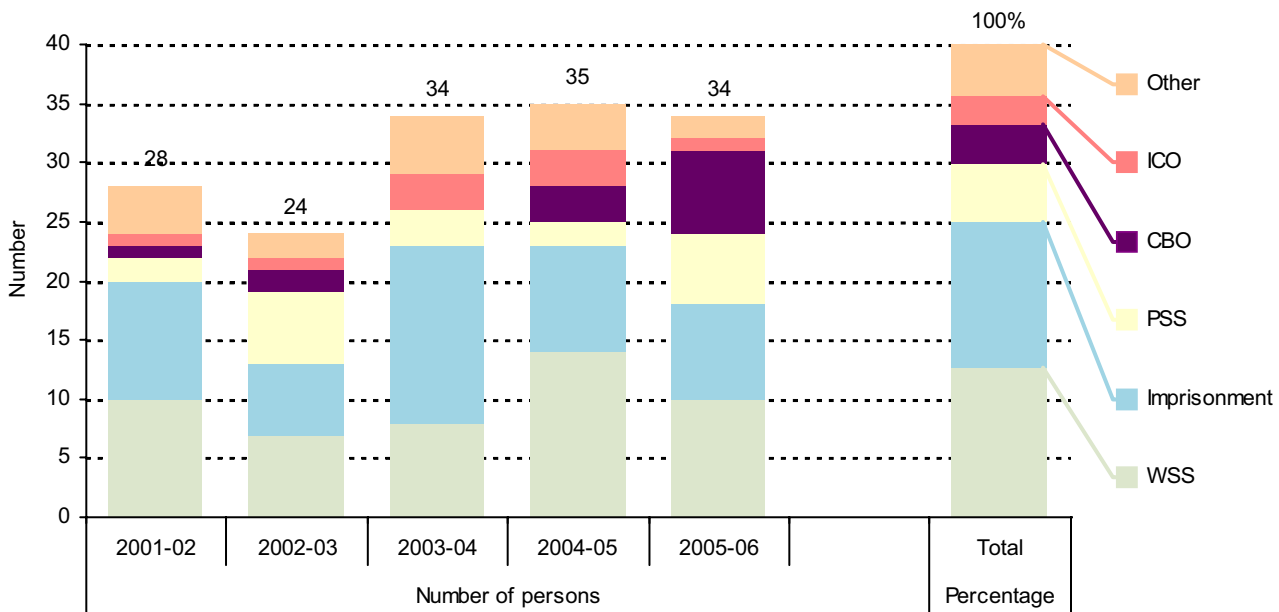
Figure 3 and Table 1 show the number of people sentenced for indecent assault from 2001-02 to 2005-06 by the types of sentences imposed.

Over the five year period, around one third of the people sentenced for indecent assault received a wholly suspended sentence of imprisonment (32% or 49 of 155 people), while 31% received a period of imprisonment, 12% received a partially suspended sentence of imprisonment and 8% received a community based order.

The number of people who were given a wholly suspended sentence of imprisonment fluctuated each year ranging from 7 in 2002-03 to 14 in 2004-05.

Over the first four years of the period, there was a total of six community based orders imposed, while there seven in 2005-06 alone.

Figure 3: The number of people sentenced for indecent assault by sentence type, 2001-02 to 2005-06



Note: WSS refers to wholly suspended sentence of imprisonment, PSS refers to partially suspended sentence of imprisonment, CBO refers to community based order and ICO refers to intensive correction order. Other includes adjourned undertaking with conviction, fine, unconditional release, adjourned undertaking without conviction, youth supervision order, mix (fine & adjourned undertaking) and mix (community based order & fine).

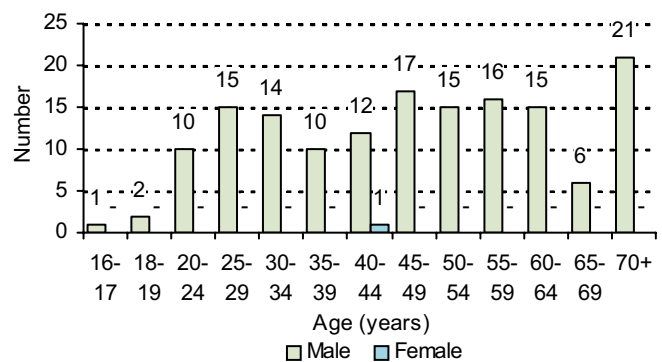
Table 1: The number and percentage of people sentenced for indecent assault by sentence type, 2001-02 to 2005-06

Sentence type	01-02	02-03	03-04	04-05	05-06
Wholly suspended sentence	10 36%	7 29%	8 24%	14 40%	10 29%
Imprisonment	10 36%	6 25%	15 44%	9 26%	8 24%
Partially suspended sentence	2 7%	6 25%	3 9%	2 6%	6 18%
Community based order	1 4%	2 8%	0 -	3 9%	7 21%
Intensive correction order	1 4%	1 4%	3 9%	3 9%	1 3%
Adjourned undertaking with conviction	2 7%	0 -	3 9%	2 6%	0 -
Fine	1 4%	1 4%	0 -	0 -	1 3%
Unconditional release	0 -	1 4%	0 -	1 3%	0 -
Adjourned undertaking without conviction	1 4%	0 -	0 -	1 3%	0 -
Youth supervision order	0 -	0 -	1 3%	0 -	0 -
Mix (fine & adjourned undertaking)	0 -	0 -	0 -	0 -	1 3%
Mix (community based order & fine)	0 -	0 -	1 3%	0 -	0 -
People sentenced	28	24	34	35	34

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for indecent assault grouped by their age¹¹ between 2001-02 and 2005-06. The average age of people sentenced for indecent assault was forty-eight years. One male juvenile was sentenced over this period.

Figure 4: The number of people sentenced for indecent assault by gender and age, 2001-02 to 2005-06



Sentence types by age

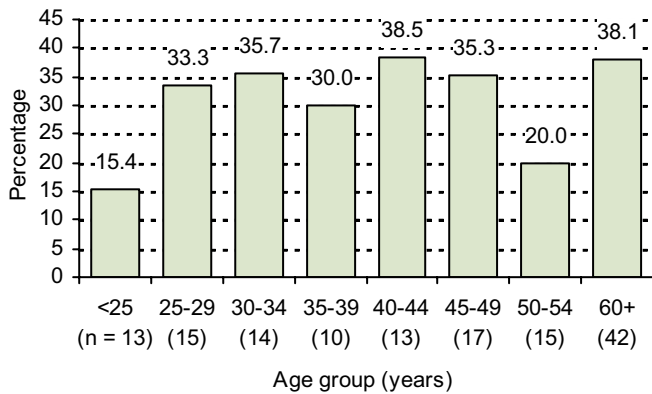
As shown in the table above, the four most common sentence types were wholly suspended sentences of imprisonment, imprisonment, partially suspended sentences of imprisonment and community based orders. The following analysis examines these sentence types by the offender's age group.

Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 40-44 years old (38% or five of the 13 people in this age group) followed by people aged 60 years and older (38% or 16 of the 42 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged under 25 years old (15% or two of the 13 people in this age group).

Figure 5: The percentage of people who received a wholly suspended sentence of imprisonment for indecent assault by age group, 2001-02 to 2005-06

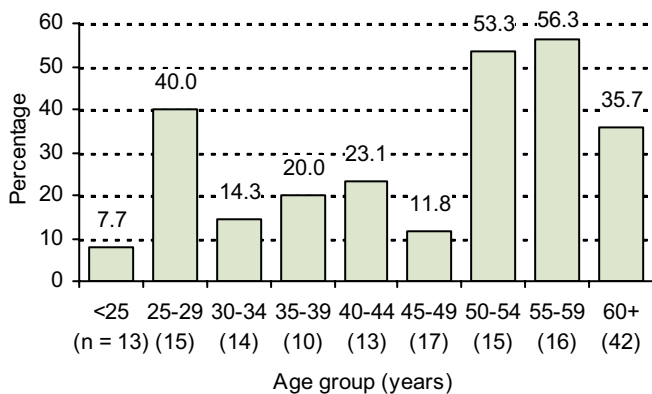


Imprisonment

Sentences of imprisonment were most likely to be given to people aged 55-59 years old (56% or nine of the 16 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 25 years old (8% or one of the 13 people in this age group).

Figure 6: The percentage of people who received a period of imprisonment for indecent assault by age group, 2001-02 to 2005-06

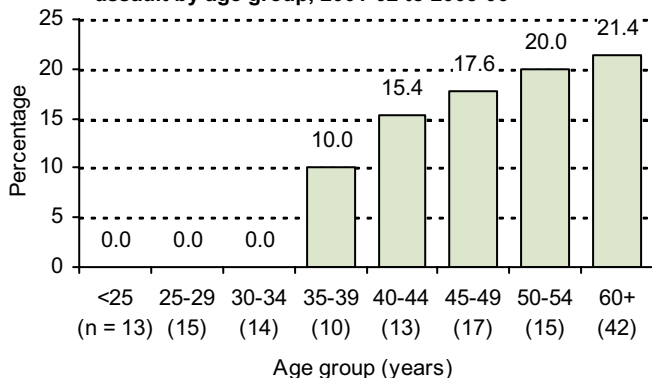


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 60 years and older (21% or nine of the 42 people in this age group).

Conversely, none of the 28 people aged under 35 years old received a partially suspended sentence of imprisonment.

Figure 7: The percentage of people who received a partially suspended sentence of imprisonment for indecent assault by age group, 2001-02 to 2005-06

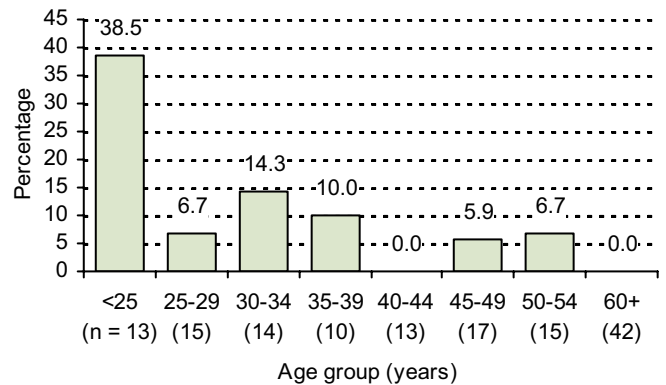


Community based orders

Community based orders were most likely to be given to people aged under 25 years (38% or five of the 13 people in this age group).

Conversely, none of the 13 people aged 40-44 years old and none of the 42 people aged 60 years and older received a community based order.

Figure 8: The percentage of people who received a community based order for indecent assault by age group, 2001-02 to 2005-06



Principal and total effective sentences

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

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

In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for indecent assault must be considered in this broader context. The following sections analyse the use of imprisonment for indecent assault over 2001-02 to 2005-06.

Principal sentence of imprisonment

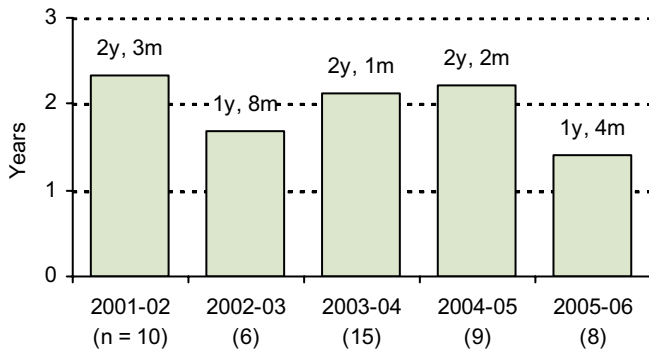
Figure 9 shows the number of people sentenced to imprisonment for indecent assault between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 3 months to six years, while the median length of imprisonment was 2 years (meaning that half of the imprisonment terms were shorter than 2 years and half were longer).

Figure 9: The number of people sentenced to imprisonment for indecent assault by length of imprisonment term, 2001-02 to 2005-06



As shown in Figure 10, the average length of imprisonment term imposed on people sentenced for indecent assault ranged from one year and four months in 2005-06 to two years and three months in 2001-02.

Figure 10: The average length of imprisonment term imposed on people sentenced for indecent assault, 2001-02 to 2005-06

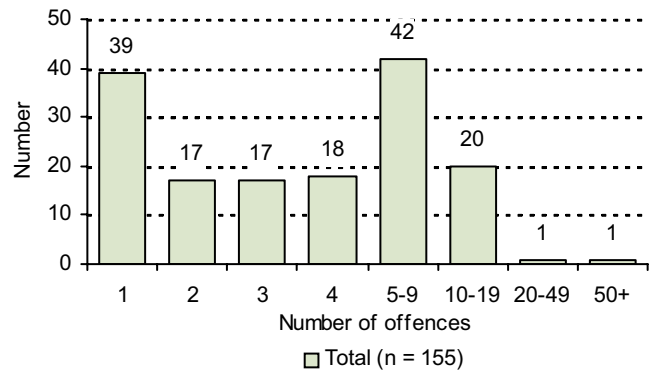


Other offences finalised at the same hearing

Often people prosecuted for indecent assault 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 assault.

Figure 11 shows the number of people sentenced for the principal offence of indecent assault by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 50, while the median was 4 offences. There were 39 people (25.2%) sentenced for the single offence of indecent assault alone. The average number of offences per person sentenced for indecent assault was 5.19.

Figure 11: The number of people sentenced for the principal offence of indecent assault by the number of sentenced offences per person, 2001-02 to 2005-06



While Figure 11 presents the number of sentenced offences for those sentenced to indecent assault, Figure 12 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, 15 of the total 155 people (9.7%) also received sentences for gross indecency with a child. On average, they were sentenced for 1.80 counts of gross indecency with a child.

Figure 12: The number and percentage of people sentenced for the principal offence of indecent assault by the most common offences that were sentenced and the average number of those offences that were sentenced, 2001-02 to 2005-06

Offence	No.	%	Avg.
1 indecent assault	155	100.0	3.87
2 gross indecency with a child	15	9.7	1.80
3 false imprisonment	12	7.7	1.08
4 indecent act with a child under 16	10	6.5	2.40
5 common law assault	9	5.8	1.11
6 causing injury	8	5.2	1.00
7 gross indecency	5	3.2	2.60
8 indecent assault of a male person	3	1.9	5.33
9 make threat to kill	3	1.9	2.00
10 possess child pornography	3	1.9	1.00
People sentenced	155	100.0	5.19

Total effective sentence of imprisonment

There were 45 people given a total effective sentence of imprisonment¹². Figure 13 shows the number of people sentenced to imprisonment for indecent assault between 2001-02 and 2005-06 by the length of their total effective sentence. The length of total effective sentences ranged from six months to thirteen years and six months¹³, while the median total effective length of imprisonment was three years and six months (meaning that half of the total effective sentence lengths were below three years and six months and half were above).

The most common total effective imprisonment length was 2 years (11 people).

Figure 13: The number of people sentenced to imprisonment for indecent assault by total effective length of imprisonment term, 2001-02 to 2005-06



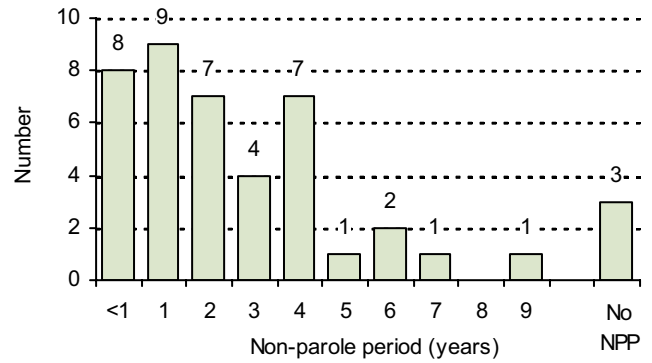
Non-parole period

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 s.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 lengthier than the individual principal sentence for indecent assault. Sentences and non-parole periods must be considered in this broader context.

Of the 45 people who were sentenced to imprisonment for indecent assault, 44 were eligible for parole¹⁴. Of these people, 40 were given a non-parole period (91%)¹⁵. Figure 14 shows the number of people sentenced to imprisonment for indecent assault between 2001-02 and 2005-06 by the length of their non-parole period. Non-parole periods ranged from five months to nine years, while the median length of the non-parole period was two years and one month (meaning that half of the non-parole periods were below two years and one month and half were above).

Figure 14: The number of people sentenced to imprisonment for indecent assault by length of non-parole period, 2001-02 to 2005-06



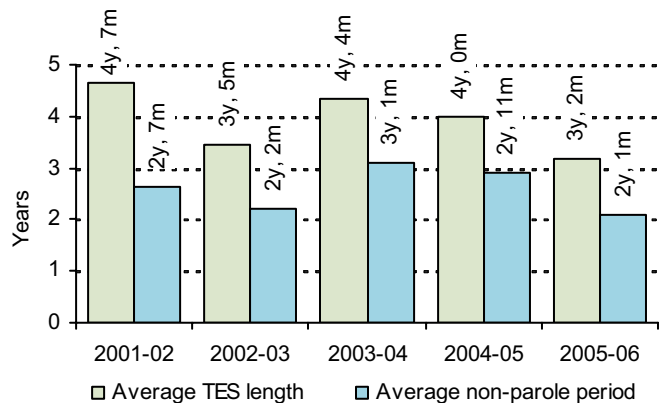
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

Total effective sentences of imprisonment and non-parole periods

Figure 15 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all people from 2001-02 to 2005-06¹⁶.

From 2001-02 to 2005-06, the average length of total effective sentence for all people ranged from three years and two months in 2005-06 to four years and seven months in 2001-02. Over the same period, the average length of non-parole period ranged from two years and one month in 2005-06 to three years and one month in 2003-04.

Figure 15: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for indecent assault, 2001-02 to 2005-06

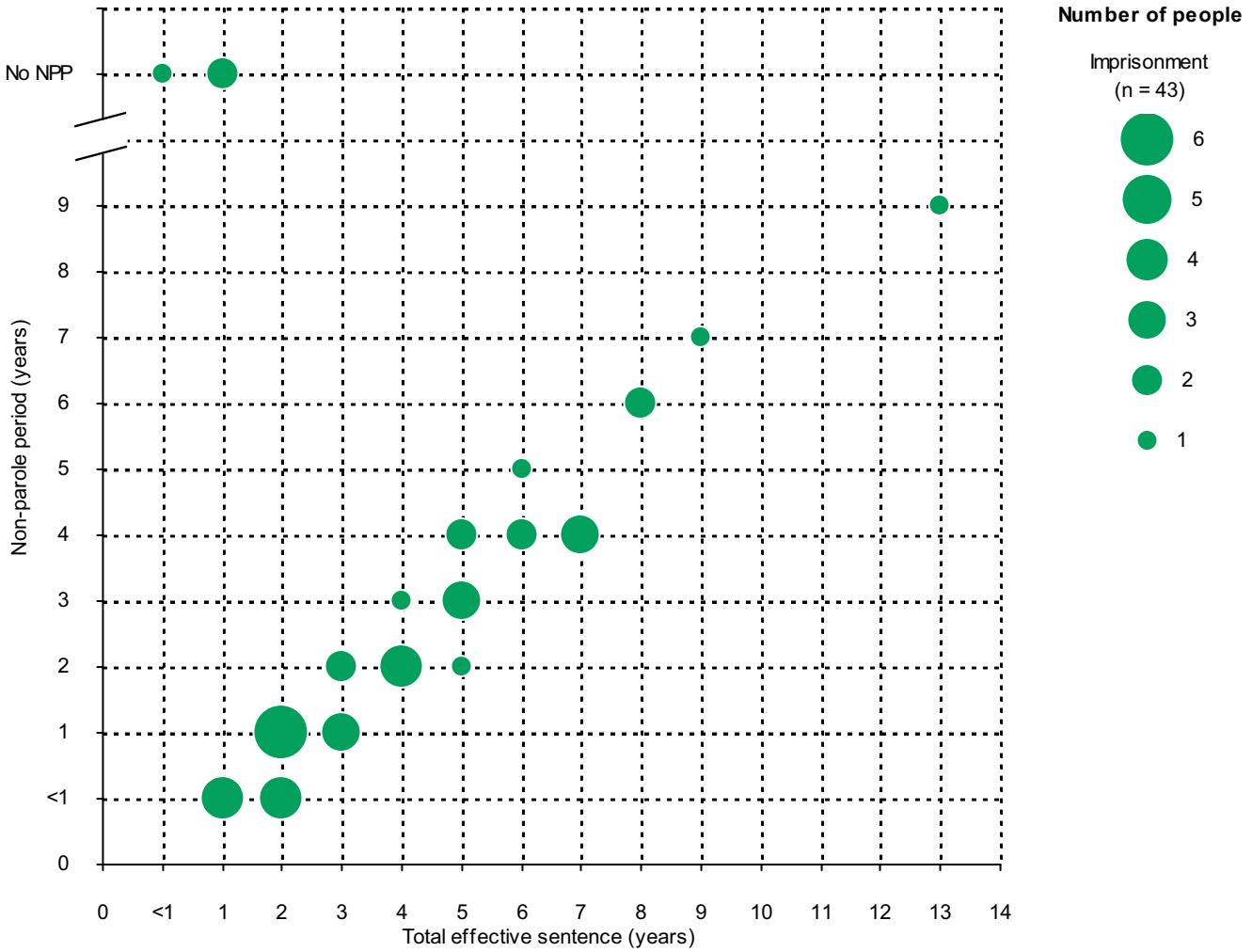


Total effective sentence of imprisonment by non-parole period

While Figure 13 and Figure 14 present the lengths of the total effective sentences and non-parole periods separately, Figure 16 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for indecent assault 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 combination¹⁷. As shown, the most common combination of imprisonment length and non-parole period imposed was two years with a non-parole period of one year (6 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from six months with no non-parole period to thirteen years and six months with a non-parole period of nine years¹⁸.

Figure 16: The number of people sentenced to imprisonment for indecent assault by the total effective sentence and the non-parole period imposed, 2001-02 to 2005-06¹⁹



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

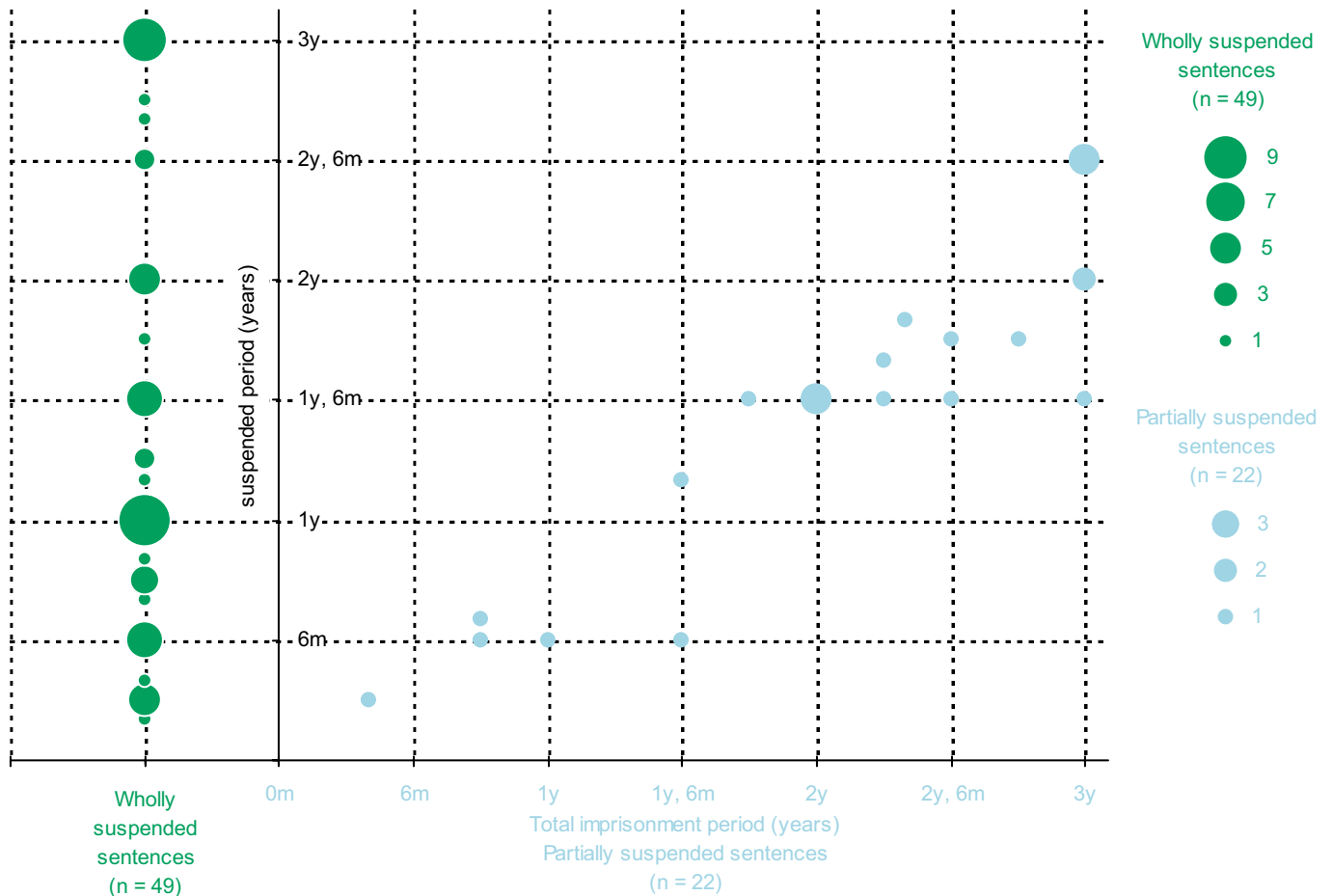
Suspended sentences of imprisonment

There were 71 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 49 people had their prison sentence wholly suspended and 22 received a partially suspended sentence of imprisonment²⁰. Figure 17 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 blue '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 sentence²¹. 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 two months to three years. The most common wholly suspended sentence length was one year (9 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combinations were two years with one year and six months suspended and three years with two years and six months suspended (3 people each - as represented by the two largest blue 'bubbles' on the chart).

Figure 17: The number of people given a wholly or partially suspended sentence of imprisonment for indecent assault by sentence type and length, 2001-02 to 2005-06

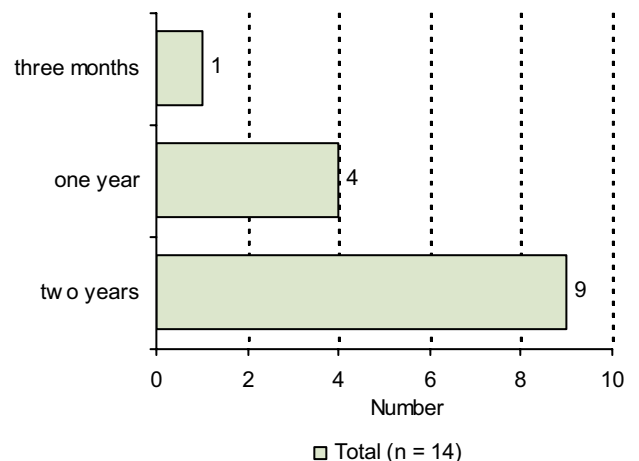


Community based orders

There were 14 people given a community based order as their total effective sentence.

The length of community based orders for indecent assault ranged from three months to two years, while the median length was two years (meaning that half of the lengths were shorter than or equal to two years and half were longer than or equal to two years). The most common length of community based order was two years (9 people).

Figure 18: The number of people sentenced to a community based order for indecent assault by length of order imposed, 2001-02 to 2005-06



Summary

Between 2001-02 and 2005-06, 155 people were sentenced for indecent assault in the higher courts. Over this period, all but one of those sentenced were men (99%), while 41% were between the age of 45 and 65 years.

Around one third of the people sentenced for indecent assault received a wholly suspended sentence of imprisonment (32%), while 31% received a period of imprisonment, 12% received a partially suspended sentence of imprisonment and 8% received a community based order.

Imprisonment was more common for those aged between 50 and 60 years of age and partially suspended sentences of imprisonment were more common for those aged older than 50 years of age.

Each of the 155 people was sentenced for an average of 5.19 offences, including for 3.87 offences of indecent assault. The most common offence finalised in conjunction with indecent assault was gross indecency with a child (9.7% of all cases).

The number and range of offences for which people with a principal offence of indecent assault were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was three years and six months, while the median principal imprisonment length was two years.

Total effective imprisonment lengths ranged from six months with no non-parole period to thirteen years and six months with a non-parole period of nine years. The most common sentence of imprisonment was two years with a one year non-parole period.

The most common partially suspended sentence lengths were two years with one year and six months suspended and three years with two years and six months suspended, while the most common wholly suspended sentence length was one year. The most common length of community based order was two years.

1 This report presents sentencing outcomes for people sentenced for the principal offence of indecent assault in the County Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for indecent assault who received a more serious sentence for another offence forming part of the same presentment. For example, in 2005-06, 208 people were sentenced for indecent assault. Indecent assault was the principal offence for 34 of the 208 people.

2 The information source for sentencing outcomes for indecent assault only contains information on age and gender characteristics. No other demographic analysis is possible.

3 The statistical information presented here was provided by Court Services, Department of Justice (Vic). This report describes sentencing trends for indecent assault since 2001-02. Court Services advises that sentencing data from the higher courts prior to 2000-01 may be unreliable due to changed data collection processes and counting rules.

4 *R v Knight* (1988) 35 A Crim R 314.

5 *Crimes Act 1958* (Vic) s 39(2).

6 *Crimes Act 1958* (Vic) s 39(1).

7 Indecent assault carries a maximum fine of 1200 penalty units and each penalty unit is worth \$107.43, Victorian Government Gazette, 6 April 2006.

8 *Magistrates' Court Act 1989* s.25 provides the Magistrates' Court with the jurisdiction to determine indictable matters triable summarily. The principal indictable offences triable summarily are listed in this Act under schedule 4. Under *Magistrates' Court Act 1989* (Vic) s.53 (1), an offence can only be heard summarily if the court is of the opinion that the charge is appropriate to be determined summarily and if the defendant consents.

9 In 2003-04, there was one woman aged 41 years sentenced for indecent assault. She was sentenced for only the one offence and was sentenced to an adjourned undertaking with conviction.

10 Custodial sentence includes imprisonment and partially suspended sentence.

11 Age is as at the time of sentencing.

12 Of the 48 people who were given a principal sentence of imprisonment, 45 were also given a total effective sentence of imprisonment. There were three people who were given imprisonment as the principal sentence for indecent assault and a partially suspended sentence as a total effective sentence.

13 In 2001-02, a man aged 37 years was sentenced to a total effective sentence of thirteen years and six months with a non-parole period of nine years. This case included sentencing of thirteen other offences including four counts of assault with intent to commit an indictable offence, two counts of detention, three counts of unlawful assault, two counts of make threat to kill, one count of cause injury recklessly and one count of false imprisonment.

14 One person was not eligible for parole because a total effective sentence length of less than one year was imposed.

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. A non-parole period was not set for two people who were eligible for a non-parole period.

16 There were no women imprisoned with a non-parole period over the reference period.

17 Sentence lengths that are longer than one year are rounded to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.

18 Refer fn. 13

19 This graph includes the 43 people who were given a total effective sentence and a non-parole period that related to this case only.

20 All of the 68 people who were given a suspended sentence as their principal sentence were also given a suspended sentence as their total effective sentence. There were a further three people who were sentenced to immediate imprisonment for their principal sentence and sentenced to a partially suspended sentence as their total effective sentence.

21 Suspended sentence lengths are rounded to the nearest month.

Authored by Nick Turner, Data Analyst, Sentencing Advisory Council

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