

No. 24: Sentencing trends for indecent act with a child aged under 16 in the higher courts of Victoria, 2001-02 to 2005-06

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of indecent act with a child aged under 16 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 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 16⁴.

Indecent act with a child under the age of 16 is an indictable offence which carries a maximum penalty of 10 years' imprisonment⁵ and/or a fine of 1200 penalty units⁶. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

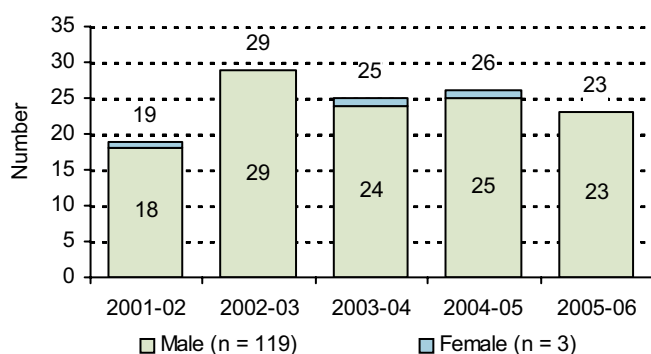
Of all people sentenced for the principal offence of indecent act with a child under 16, 19.1% had their cases heard in the higher courts. The remaining cases were heard in the Children's and Magistrates' Court⁷. Indecent act with a child under 16 was the principal offence in 1.2% of all cases sentenced in the higher courts between 2001-02 and 2005-06.

People sentenced

Figure 1 shows the number of people sentenced for indecent act with a child under 16 for the period 2001-02 to 2005-06. As shown, 122 people were sentenced for indecent act with a child under 16 over the five year period. There were 23 people sentenced for this offence in 2005-06, down by 3 people from the previous year.

Over the five years depicted, all but three of those sentenced were men (97.5% or 119 of 122 people), including all of the 23 people sentenced in 2005-06.

Figure 1: The number of people sentenced for indecent act with a child under 16 by gender, 2001-02 to 2005-06



Sentence types and trends

Figure 2 shows the total number of people sentenced for indecent act with a child under 16 and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention⁸. Over the five year period, 51% of people were given a custodial sentence. This peaked at 69% (20 of 29) in 2002-03 before decreasing to 31% (8 of 26) in 2004-05. In 2005-06, 57% of people sentenced (13 of 23) were given a custodial sentence.

Figure 2: The number of people sentenced for indecent act with a child under 16 and the number who received a custodial sentence, 2001-02 to 2005-06

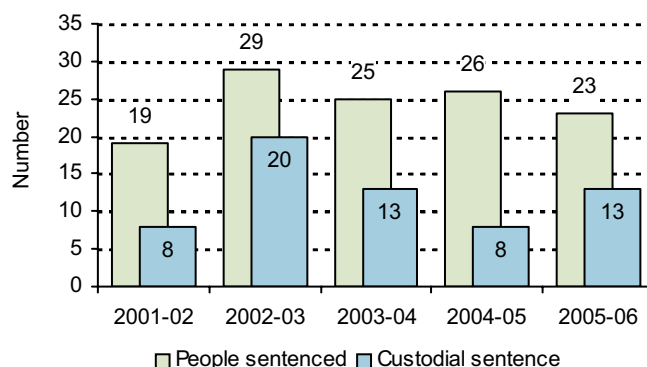


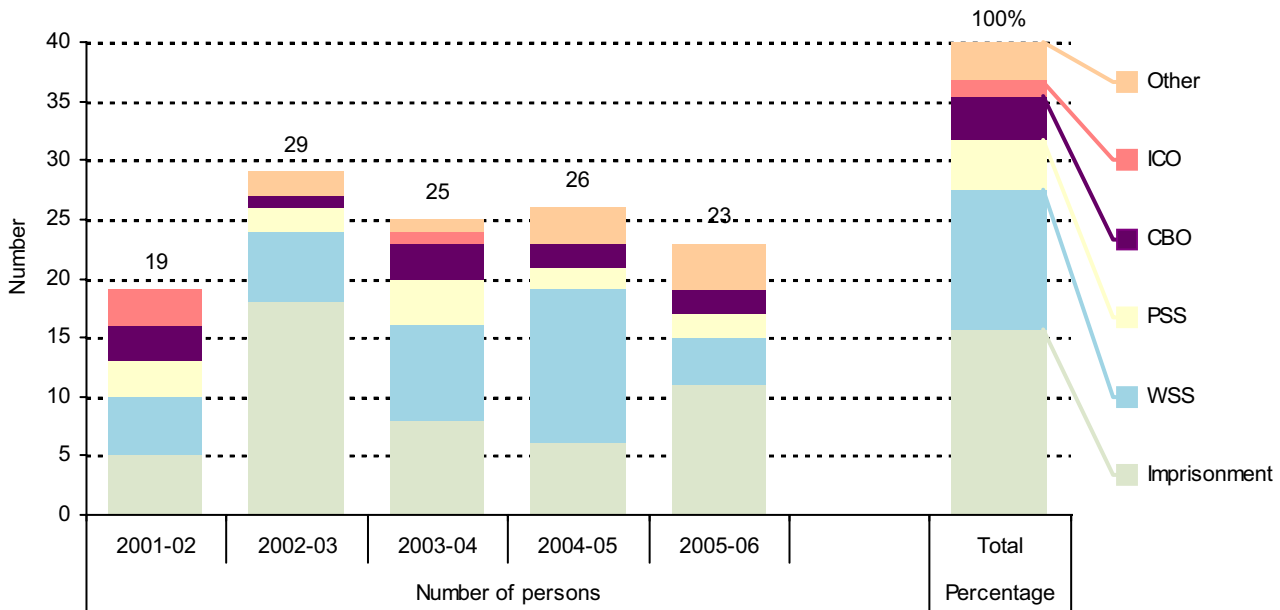
Figure 3 and Table 1 show the number of people sentenced for indecent act with a child under 16 from 2001-02 to 2005-06 by the types of sentences imposed.

Over the five year period, around four in ten people sentenced for indecent act with a child under 16 received a period of imprisonment (39% or 47 of 122 people), while 30% received a wholly suspended sentence of imprisonment, 11% received a partially suspended sentence of imprisonment and 9% received a community based order.

The number of people sentenced to imprisonment fluctuated over the five year period, ranging from 5 people (26%) in 2001-02 to 18 (62%) in 2002-03. Similarly, the number of people who received wholly suspended sentences of imprisonment fluctuated ranging from 4 people (17%) in 2005-06 to 13 people (50%) in 2004-05.

The number of people who received either a partially suspended sentence of imprisonment or a community based order remained relatively stable over the five year period.

Figure 3: The number of people sentenced for indecent act with a child under 16 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, unconditional release, non-custodial supervision order, adjourned undertaking without conviction and hospital security order.

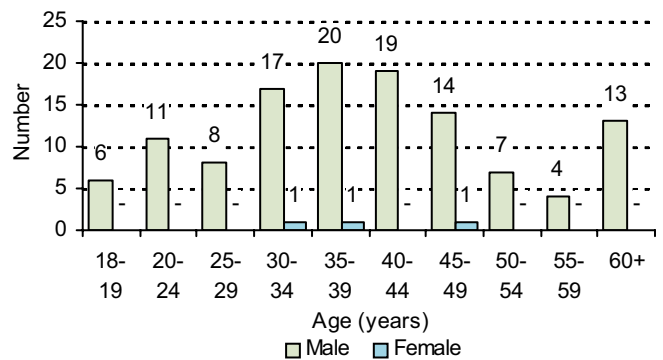
Table 1: The number and percentage of people sentenced for indecent act with a child under 16 by sentence type, 2001-02 to 2005-06

Sentence type	01-02	02-03	03-04	04-05	05-06
Imprisonment	5	18	8	6	11
	26%	62%	32%	23%	48%
Wholly suspended sentence	5	6	8	13	4
	26%	21%	32%	50%	17%
Partially suspended sentence	3	2	4	2	2
	16%	7%	16%	8%	9%
Community based order	3	1	3	2	2
	16%	3%	12%	8%	9%
Intensive correction order	3	0	1	0	0
	16%	-	4%	-	-
Adjourned undertaking with conviction	0	0	0	1	2
	-	-	-	4%	9%
Unconditional release	0	0	0	0	2
	-	-	-	-	9%
Non-custodial supervision order	0	0	0	2	0
	-	-	-	8%	-
Adjourned undertaking without conviction	0	2	0	0	0
	-	7%	-	-	-
Hospital security order	0	0	1	0	0
	-	-	4%	-	-
People sentenced	19	29	25	26	23

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for indecent act with a child under 16 grouped by their age⁹ between 2001-02 and 2005-06. The average age of people sentenced for indecent act with a child under 16 was thirty-nine years and ten months. Men sentenced over this period were older than women (an average age of thirty-nine years and ten months for men compared to thirty-eight years and four months for women). There were no juveniles sentenced over this period.

Figure 4: The number of people sentenced for indecent act with a child under 16 by gender and age, 2001-02 to 2005-06



Sentence types by age

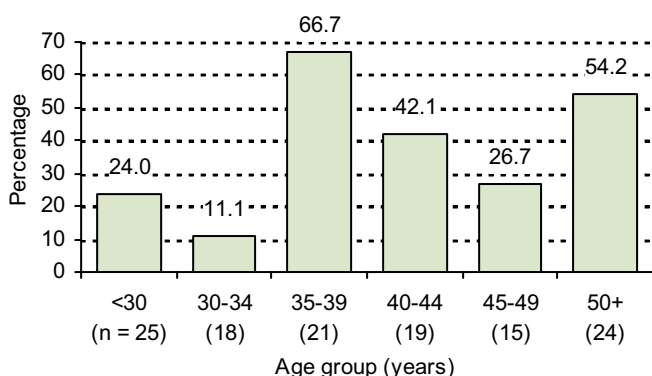
As shown in the table above, the four most common sentence types were imprisonment, wholly suspended sentences of imprisonment, partially suspended sentences of imprisonment and community based orders. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 35-39 years old (67% or 14 of the 21 people in this age group).

Conversely, sentences of imprisonment were least common for those aged 30-34 years old (11% or two of the 18 people in this age group).

Figure 5: The percentage of people who received a period of imprisonment for indecent act with a child under 16 by age group, 2001-02 to 2005-06

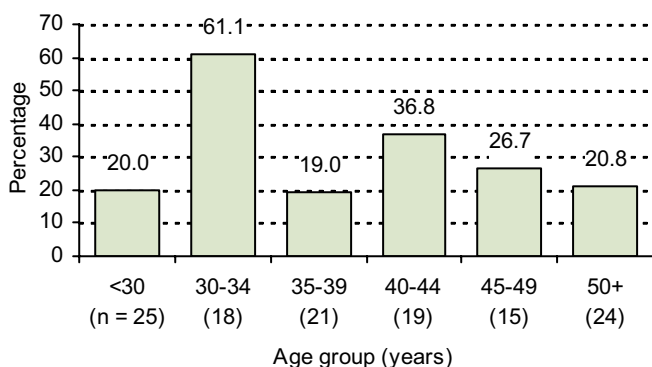


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 30-34 years old (61% or 11 of the 18 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 35-39 years old (19% or four of the 21 people in this age group).

Figure 6: The percentage of people who received a wholly suspended sentence of imprisonment for indecent act with a child under 16 by age group, 2001-02 to 2005-06

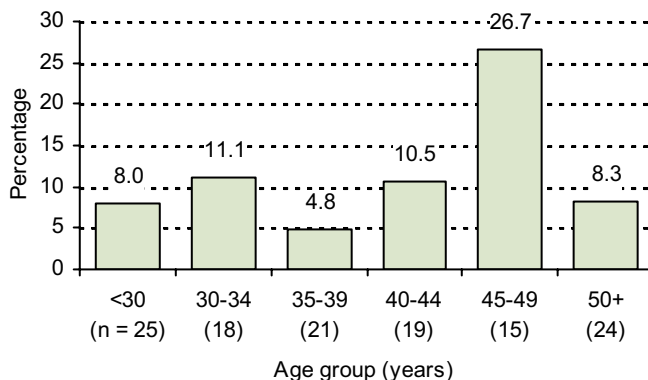


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 45-49 years old (27% or four of the 15 people in this age group).

Conversely, partially suspended sentences of imprisonment were least common for those aged 35-39 years old (5% or one of the 21 people in this age group).

Figure 7: The percentage of people who received a partially suspended sentence of imprisonment for indecent act with a child under 16 by age group, 2001-02 to 2005-06

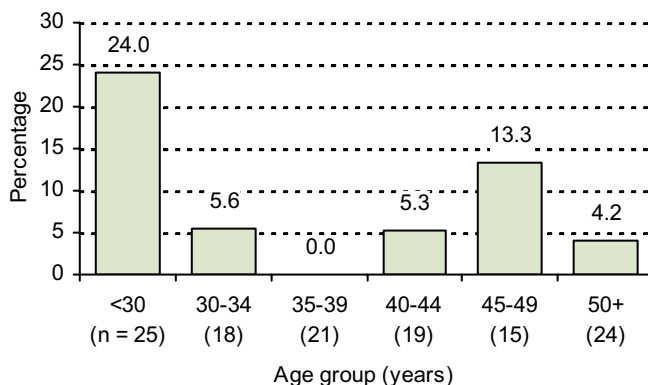


Community based orders

Community based orders were most likely to be given to people aged under 30 years (24% or six of the 25 people in this age group).

Conversely, none of the 21 people aged 35-39 years old received a community based order.

Figure 8: The percentage of people who received a community based order for indecent act with a child under 16 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.

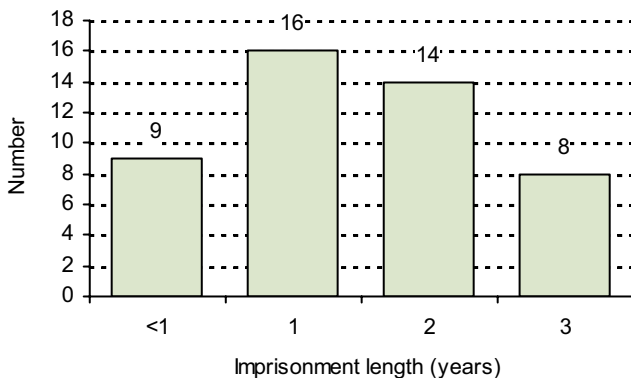
The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether 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 act with a child under 16 must be considered in this broader context. The following sections analyse the use of imprisonment for indecent act with a child under 16 over 2001-02 to 2005-06.

Principal sentence of imprisonment

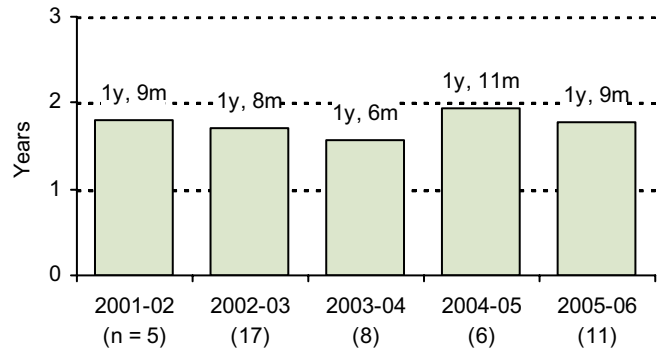
Figure 9 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 3 months to three years and six months, while the median length of imprisonment was 1 year and six months (meaning that half of the imprisonment terms were shorter than 1 year and six months and half were longer).

Figure 9: The number of people sentenced to imprisonment for indecent act with a child under 16 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 act with a child under 16 ranged from one year and six months in 2003-04 to one year and eleven months in 2004-05.

Figure 10: The average length of imprisonment term imposed on people sentenced for indecent act with a child under 16, 2001-02 to 2005-06

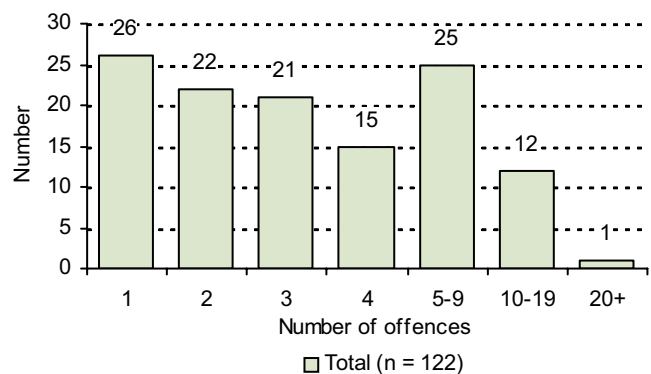


Other offences finalised at the same hearing

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

Figure 11 shows the number of people sentenced for the principal offence of indecent act with a child under 16 by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 42, while the median was 3 offences. There were 26 people (21.3%) sentenced for the single offence of indecent act with a child under 16 alone. The average number of offences per person sentenced for indecent act with a child under 16 was 4.43.

Figure 11: The number of people sentenced for the principal offence of indecent act with a child under 16 by the number of sentenced offences per person, 2001-02 to 2005-06



While Figure 11 presents the number of sentenced offences for those sentenced to indecent act with a child under 16, 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, 8 of the total 122 people (6.6%) also received sentences for sexual penetration of a child aged under 16. On average, they were sentenced for 2.00 counts of sexual penetration of a child aged under 16.

Figure 12: The number and percentage of people sentenced for the principal offence of indecent act with a child under 16 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2001-02 to 2005-06

Offence	No.	%	Avg.
1 indecent act with a child under 16	122	100.0	3.40
2 sexual penetration of a child under 16	9	7.4	2.00
3 indecent assault	7	5.7	2.14
4 possess a drug of dependence	4	3.3	1.00
5 gross indecency with a child	3	2.5	8.00
6 possess child pornography	3	2.5	1.00
7 theft	2	1.6	8.00
8 incest	2	1.6	4.50
9 burglary	2	1.6	2.00
10 false imprisonment	2	1.6	1.00
People sentenced	122	100.0	4.43

Total effective sentence of imprisonment

There were 46 people given a total effective sentence of imprisonment¹⁰. Figure 13 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2001-02 and 2005-06 by the length of their total effective sentence. The length of total effective sentences ranged from three months to ten years, while the median total effective length of imprisonment was three years (meaning that half of the total effective sentence lengths were below three years and half were above).

The most common total effective imprisonment length was 2 years (12 people).

Figure 13: The number of people sentenced to imprisonment for indecent act with a child under 16 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.

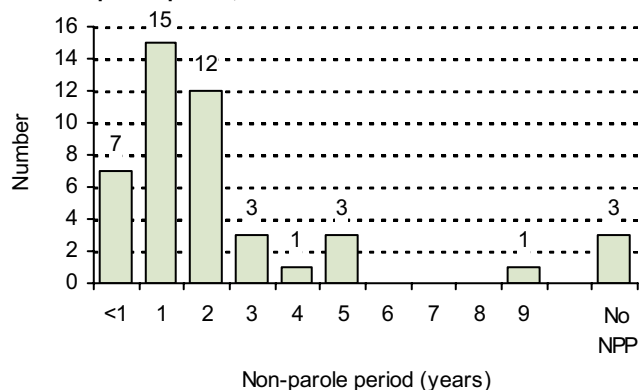
Under s.11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be lengthier than the individual principal sentence for

indecent act with a child under 16. Sentences and non-parole periods must be considered in this broader context.

Of the 46 people who were sentenced to imprisonment for indecent act with a child under 16, 43 were eligible for parole¹¹. Of these people, 42 were given a non-parole period (95%)¹². Figure 14 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2001-02 and 2005-06 by the length of their non-parole period. Non-parole periods ranged from six months to nine years, while the median length of the non-parole period was one year and eight months (meaning that half of the non-parole periods were below one year and eight months and half were above).

The most common non-parole period imposed was 1 year (15 people).

Figure 14: The number of people sentenced to imprisonment for indecent act with a child under 16 by length of non-parole period, 2001-02 to 2005-06



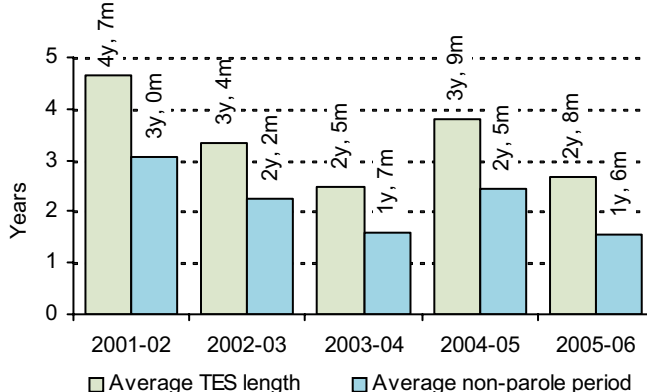
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

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 2005-06¹³.

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

Figure 15: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for indecent act with a child under 16, 2001-02 to 2005-06

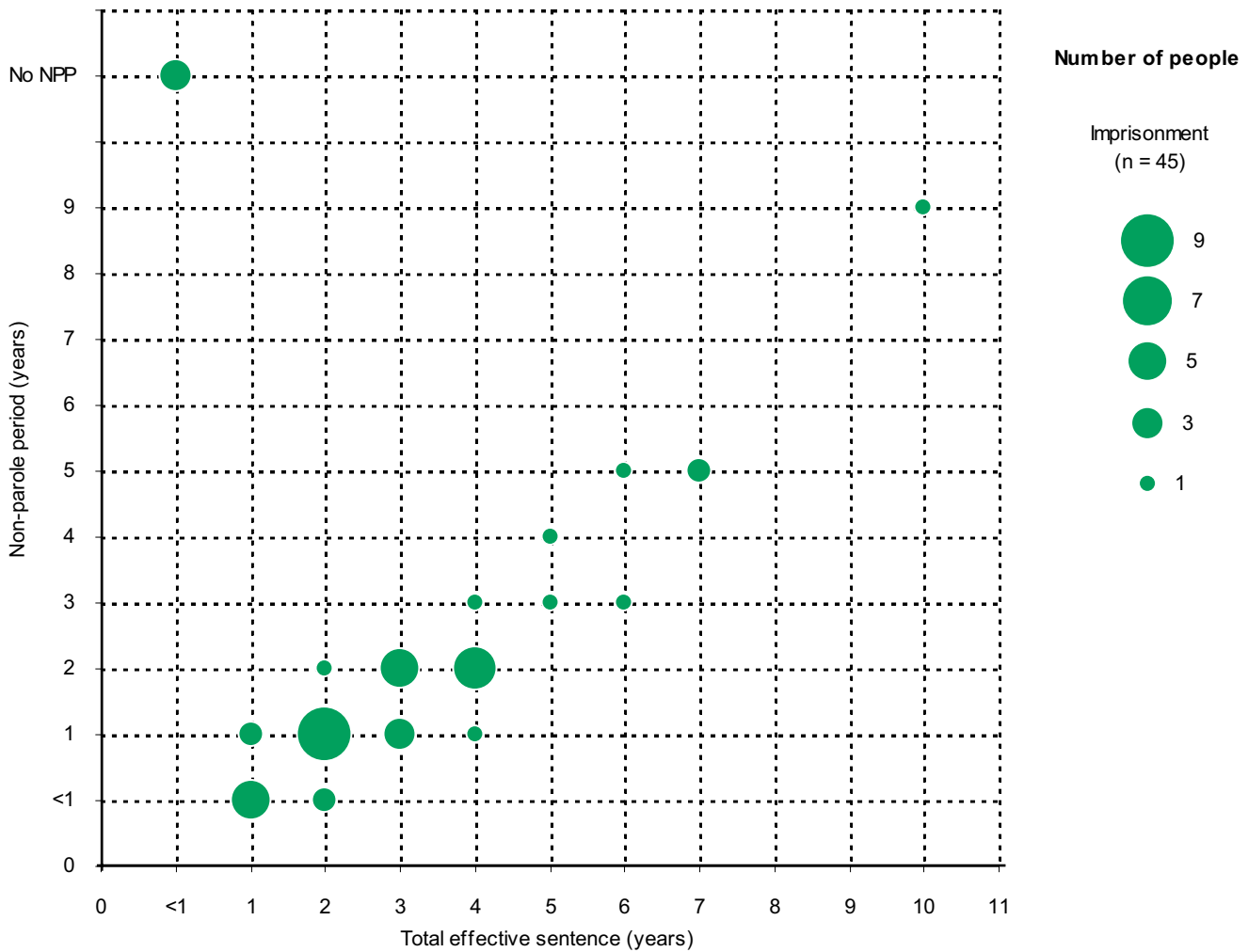


Total effective sentence of imprisonment by non-parole period

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 act with a child under 16 for each individual person.

The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the bubble reflects the number of people who received that particular combination¹⁴. 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 (9 people - as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from three months with no non-parole period to ten years with a non-parole period of nine years¹⁵.

Figure 16: The number of people sentenced to imprisonment for indecent act with a child under 16 by the total effective sentence and the non-parole period imposed, 2001-02 to 2005-06¹⁶



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

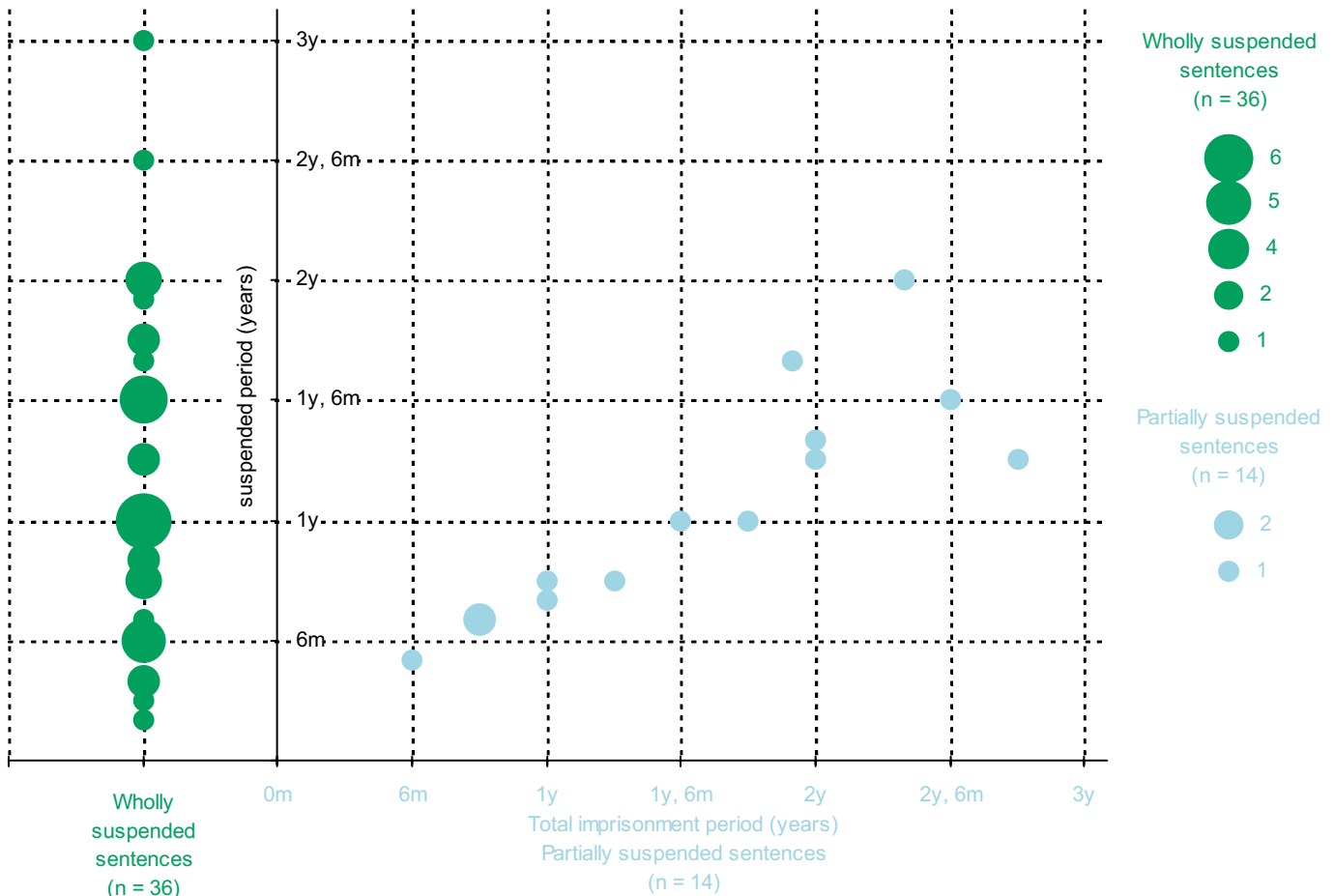
Suspended sentences of imprisonment

There were 50 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 36 people had their prison sentence wholly suspended and 14 received a partially suspended sentence of imprisonment. 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 sentence¹⁷. 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 (6 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combination was nine months with seven months suspended (2 people - as represented by the largest blue 'bubble' on the chart).

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

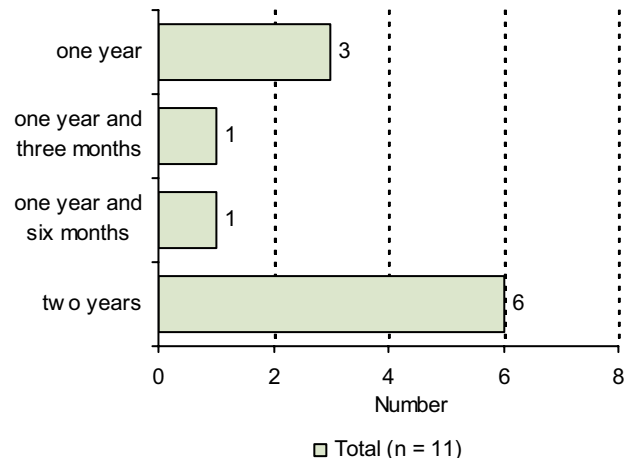


Community based orders

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

The length of community based orders for indecent act with a child under 16 ranged from one year 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 (6 people).

Figure 18: The number of people sentenced to a community based order for indecent act with a child under 16 by length of order imposed, 2001-02 to 2005-06



Summary

Between 2001-02 and 2005-06, 122 people were sentenced for indecent act with a child under 16 in the higher courts. Over this period, all but three of those sentenced were men (98%), while 60% were between the age of 30 and 50 years.

Around four in ten people sentenced for indecent act with a child under 16 received a period of imprisonment (39%), while 30% received a wholly suspended sentence of imprisonment, 11% received a partially suspended sentence of imprisonment and 9% received a community based order.

Imprisonment was more common for those aged between 35 and 40 years of age and wholly suspended sentences of imprisonment were more common for those aged between 30 and 35 years of age.

Each of the 122 people was sentenced for an average of 4.43 offences, including for 3.40 offences of indecent act with a child under 16. The most common offence finalised in conjunction with indecent act with a child under 16 was sexual penetration of a child aged under 16 (6.6% of all cases).

The number and range of offences for which people with a principal offence of indecent act with a child under 16 were sentenced 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, while the median principal imprisonment length was one year and six months.

Total effective imprisonment lengths ranged from three months with no non-parole period to ten years 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 length was nine months with seven 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 act with a child under 16 in the County Court of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for indecent act with a child under 16 who received a more serious sentence for another offence forming part of the same presentment. For example, in 2005-06, 317 people were sentenced for indecent act with a child under 16. Indecent act with a child under 16 was the principal offence for 23 of the 317 people.

2 The information source for sentencing outcomes for indecent act with a child under 16 only contains information on age and gender characteristics. No other demographic analysis is possible.

3 The statistical information presented here was provided by Court Services, Department of Justice (Vic). This report describes sentencing trends for indecent act with a child under 16 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 *Crimes Act 1958* (Vic) s 47.

5 *Crimes Act 1958* (Vic) s 47(1).

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

7 *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.

8 Custodial sentence includes imprisonment, partially suspended sentence, youth training centre order and hospital security order.

9 Age is as at the time of sentencing.

10 Of the 47 people who were given a principal sentence of imprisonment, 46 were also given a total effective sentence of imprisonment. There was one person who was given imprisonment as the principal sentence for indecent act with a child under 16 and a partially suspended sentence as a total effective sentence.

11 Three people were not eligible for parole because they were given a total effective sentence length of less than one year.

12 One person was 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 this case. The non-parole period for this person is excluded from the analysis. A non-parole period was not set for one person who was eligible for a non-parole period.

13 Due to the low number of women (1) who were imprisoned with a non-parole period, average lengths of imprisonment and non-parole periods by gender are not shown.

14 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.

15 In 2001-02, a man aged 69 years was given a total effective sentence of ten years' imprisonment with a nine year non-parole period. He was sentenced for eight offences including five counts of indecent act with a child aged under 16 and one count of administer/cause to be taken any substance capable of interfering substantially with the bodily functions of another person.

16 This graph includes the 45 people who were given a total effective sentence and a non-parole period that related to this case only.

17 Suspended sentence lengths are rounded to the nearest month.

This "Sentencing Snapshot" is part of a series presenting summary information on sentencing trends in Victoria.

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia, June, 2007.

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ISSN 1832-6153

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

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