

Sentencing Snapshot

Sentencing trends
in the higher courts
of Victoria
2003–04 to 2007–08

June 2009
No. 81

Indecent act with a child under 16

Introduction

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 County Court of Victoria between 2003–04 and 2007–08.³

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 16.⁴

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 units.⁶ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

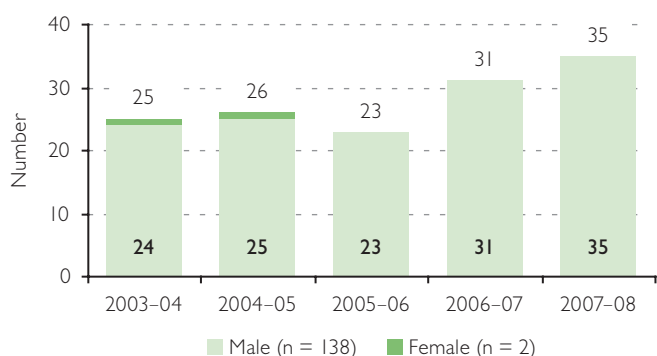
Indecent act with a child under 16 was the principal offence in 1.3% of cases sentenced in the higher courts between 2003–04 and 2007–08.

People sentenced

Figure 1 shows the number of people sentenced for the principal proven offence of indecent act with a child under 16 for the period 2003–04 to 2007–08. As shown, 140 people were sentenced for indecent act with a child under 16 over the five year period. There were 35 people sentenced for this offence in 2007–08, up by 4 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (98.6% or 138 of 140 people), including all of the 35 people sentenced in 2007–08.

Figure 1: The number of people sentenced for indecent act with a child under 16 by gender, 2003–04 to 2007–08



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 an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.⁷ Over the five year period, 55% of people were given an immediate custodial sentence. This peaked at 74% (26 of 35) in 2007–08 after a low of 31% (8 of 26) in 2004–05.

Figure 2: The number of people sentenced for indecent act with a child under 16 and the number who received an immediate custodial sentence, 2003–04 to 2007–08

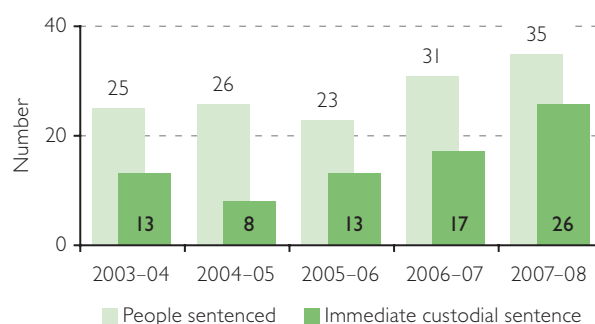


Table 1 shows the number of people sentenced for indecent act with a child under 16 from 2003–04 to 2007–08 by the types of sentences imposed.

Over the five year period, around four in ten people sentenced for indecent act with a child under 16 received a period of imprisonment (43% or 60 of 140 people), while 28% received a wholly suspended sentence of imprisonment⁸ and 11% received a partially suspended sentence of imprisonment.

The number of people sentenced to imprisonment increased over the past four years from 6 people (23%) in 2004–05 to 21 people (60%) in 2007–08. Over the same period, the use of wholly suspended sentences decreased from 13 people (50%) to 6 people (17%).

Table 1: The number and percentage of people sentenced for indecent act with a child under 16 by sentence type, 2003–04 to 2007–08

Sentence type	2003–04	2004–05	2005–06	2006–07	2007–08
Imprisonment	8 (32%)	6 (23%)	11 (48%)	14 (45%)	21 (60%)
Wholly suspended sentence	8 (32%)	13 (50%)	4 (17%)	8 (26%)	6 (17%)
Partially suspended sentence	4 (16%)	2 (8%)	2 (9%)	2 (6%)	5 (14%)
Community-based order	3 (12%)	2 (8%)	2 (9%)	2 (6%)	2 (6%)
Adjourned undertaking with conviction	0 (–)	1 (4%)	2 (9%)	1 (3%)	0 (–)
Non-custodial supervision order	0 (–)	2 (8%)	0 (–)	1 (3%)	0 (–)
Unconditional release	0 (–)	0 (–)	2 (9%)	0 (–)	0 (–)
Intensive correction order	1 (4%)	0 (–)	0 (–)	0 (–)	0 (–)
Hospital security order	1 (4%)	0 (–)	0 (–)	0 (–)	0 (–)
Fine	0 (–)	0 (–)	0 (–)	0 (–)	1 (3%)
Aggregate wholly suspended sentence	0 (–)	0 (–)	0 (–)	1 (3%)	0 (–)
Aggregate imprisonment	0 (–)	0 (–)	0 (–)	1 (3%)	0 (–)
Adjourned undertaking without conviction	0 (–)	0 (–)	0 (–)	1 (3%)	0 (–)
People sentenced	25	26	23	31	35

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for indecent act with a child under 16 grouped by their age⁹ between 2003–04 and 2007–08. The average age of people sentenced for indecent act with a child under 16 was forty-two years. There were no juveniles sentenced over this period.

Sentence types by gender

Table 2 shows the types of sentence imposed for indecent act with a child under 16 grouped by gender. As shown, nearly half of the men were sentenced to imprisonment (43%) while nearly one third received a partially suspended sentence of imprisonment (28%). The two women sentenced received a sentence of imprisonment and a community-based order.

Figure 3: The number of people sentenced for indecent act with a child under 16 by gender and age, 2003–04 to 2007–08

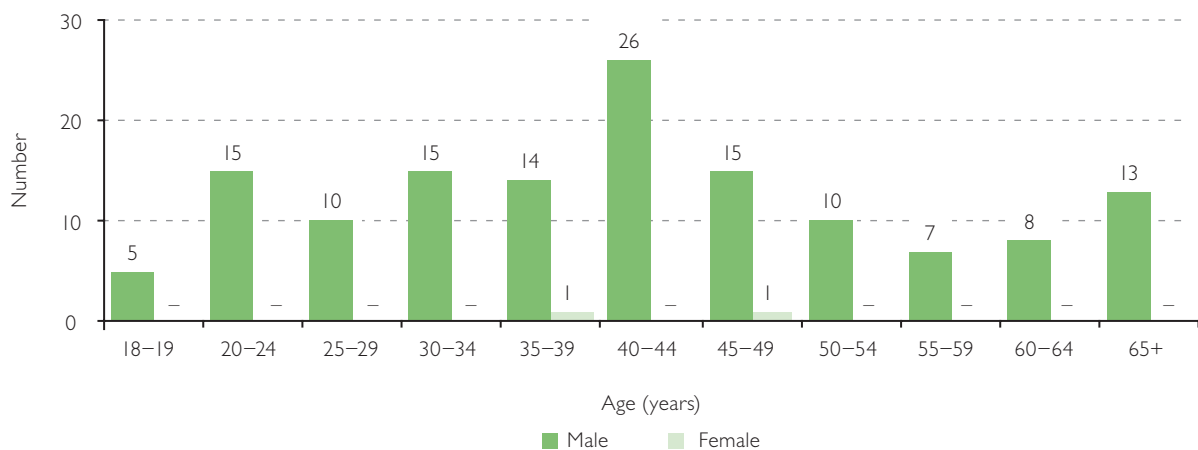


Table 2: The number and percentage breakdown of people sentenced for indecent act with a child under 16 by gender, 2003–04 to 2007–08

Sentence type	Male	Female	Total
Imprisonment	59 (43%)	1 (50%)	60 (43%)
Wholly suspended sentence	39 (28%)	0 (–)	39 (28%)
Partially suspended sentence	15 (11%)	0 (–)	15 (11%)
Community-based order	10 (7%)	1 (50%)	11 (8%)
Adjourned undertaking with conviction	4 (3%)	0 (–)	4 (3%)
Non-custodial supervision order	3 (2%)	0 (–)	3 (2%)
Unconditional release	2 (1%)	0 (–)	2 (1%)
Intensive correction order	1 (<1%)	0 (–)	1 (<1%)
Hospital security order	1 (<1%)	0 (–)	1 (<1%)
Fine	1 (<1%)	0 (–)	1 (<1%)
Aggregate wholly suspended sentence	1 (<1%)	0 (–)	1 (<1%)
Aggregate imprisonment	1 (<1%)	0 (–)	1 (<1%)
Adjourned undertaking without conviction	1 (<1%)	0 (–)	1 (<1%)
People sentenced	138	2	140

Sentence types by age

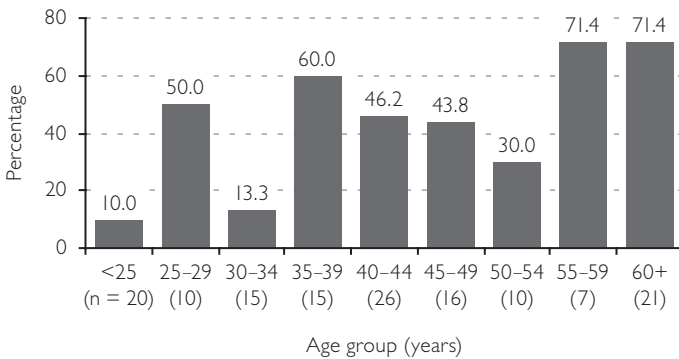
As shown in the table above, the four most common sentence types were imprisonment, wholly suspended sentences of imprisonment, partially suspended sentences of imprisonment and community-based orders. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 55 years and older (71% or 20 of the 28 people in this age group).

Conversely, sentences of imprisonment were least common for those aged less than 25 years old (10% or two of the 20 people in this age group).

Figure 4: The percentage of people who received a period of imprisonment for indecent act with a child under 16 by age group, 2003–04 to 2007–08

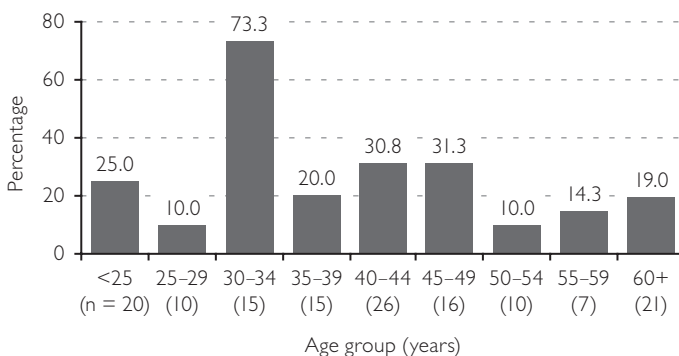


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 30–34 years old (73% or 11 of the 15 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged 25–29 years old (10% or one of the 10 people in this age group) and people aged 50–54 years old (10% or one of the 10 people in this age group).

Figure 5: The percentage of people who received a wholly suspended sentence of imprisonment for indecent act with a child under 16 by age group, 2003–04 to 2007–08

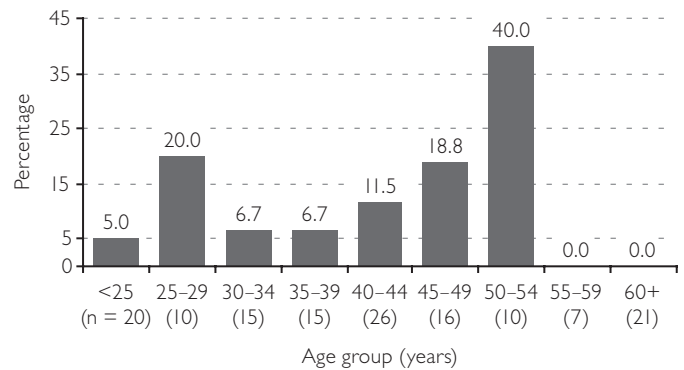


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 50–54 years old (40% or four of the 10 people in this age group).

Conversely, none of the 7 people aged 55–59 years old and none of the 21 people aged 60 years and older received a partially suspended sentence of imprisonment.

Figure 6: The percentage of people who received a partially suspended sentence of imprisonment for indecent act with a child under 16 by age group, 2003–04 to 2007–08

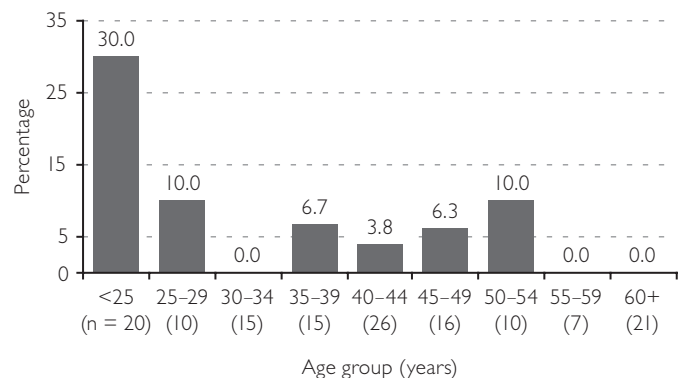


Community-based orders

Community-based orders were most likely to be given to people aged under 25 years (30% or six of the 20 people in this age group).

Conversely, none of the 15 people aged 30–34 years old, none of the 7 people aged 55–59 years old and none of the 21 people aged 60 years and older received a community-based order.

Figure 7: The percentage of people who received a community-based order for indecent act with a child under 16 by age group, 2003–04 to 2007–08



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.

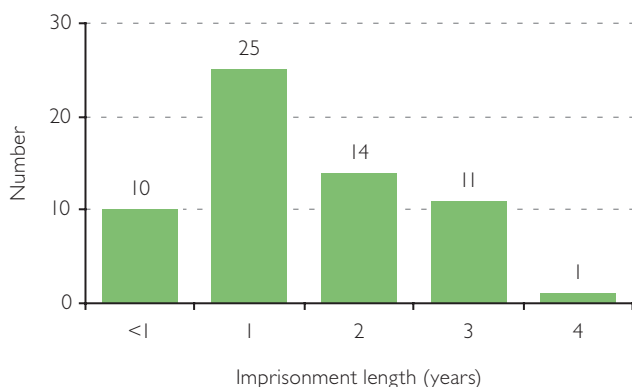
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for indecent act with a child under 16 must be considered in this broader context. The following sections analyse the use of imprisonment for indecent act with a child under 16 over 2003–04 to 2007–08.

Principal sentence of imprisonment

Figure 8 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from 2 months to four years, while the median length of imprisonment was one year and six months (meaning that half of the imprisonment terms were shorter than one year and six months and half were longer).

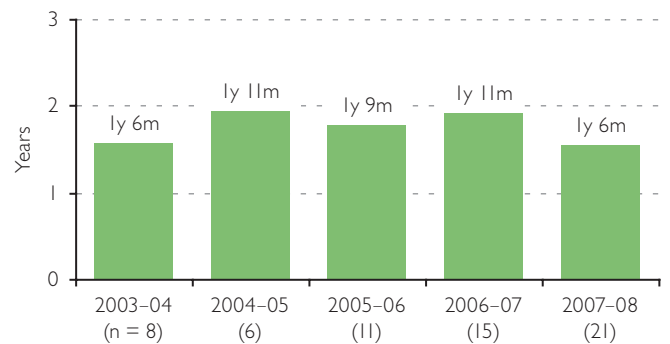
The most common length of imprisonment imposed was 1 year (25 people).

Figure 8: The number of people sentenced to imprisonment for indecent act with a child under 16 by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 9, 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 and 2007–08 to one year and eleven months in 2004–05 and 2006–07.

Figure 9: The average length of imprisonment term imposed on people sentenced for indecent act with a child under 16, 2003–04 to 2007–08

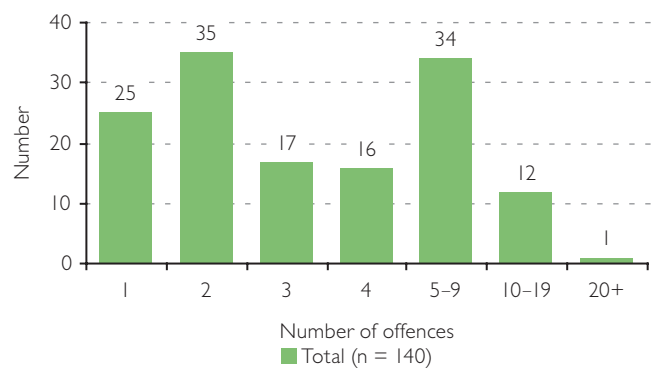


Other offences finalised at the same hearing

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 10 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 25 people (17.9%) sentenced for the single offence of indecent act with a child under 16. The average number of offences per person sentenced for indecent act with a child under 16 was 4.39.

Figure 10: 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, 2003–04 to 2007–08



While Figure 10 presents the number of sentenced offences for those sentenced for indecent act with a child under 16, Table 3 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, 16 of the total 140 people (11.4%) also received sentences for sexual penetration of a child under 16. On average, they were sentenced for 2.13 counts of sexual penetration of a child under 16.

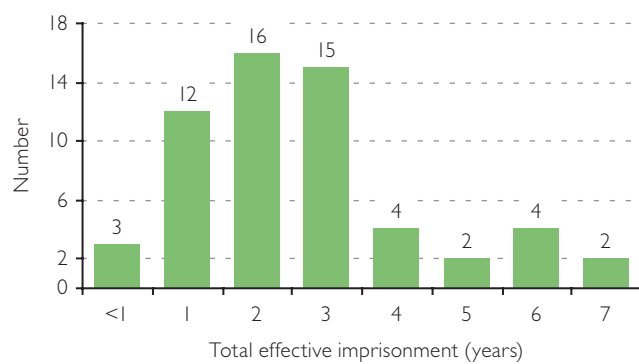
Table 3: The number and percentage of people sentenced for the principal offence of indecent act with a child under 16 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2003–04 to 2007–08

Offence	No.	%	Avg.
1 indecent act with a child under 16	140	100.0	3.51
2 sexual penetration of a child under 16	16	11.4	2.13
3 indecent assault	9	6.4	1.56
4 produce child pornography	5	3.6	1.00
5 false imprisonment	4	2.9	1.25
6 possess child pornography	4	2.9	1.00
7 possess a drug of dependence	3	2.1	1.00
8 Procure gross indecency	3	2.1	1.00
9 Fail to appear on bail	3	2.1	1.00
10 gross indecency with a child	2	1.4	11.50
People sentenced	140	100.0	4.39

Total effective sentence of imprisonment

There were 58 people given a total effective sentence of imprisonment.¹⁰ Figure 11 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2003–04 and 2007–08 by the length of their total effective sentence. The length of total effective sentences ranged from three months to seven years and six months, while the median total effective length of imprisonment was two years and six months (meaning that half of the total effective sentence lengths were below two years and six months and half were above).

Figure 11: The number of people sentenced to imprisonment for indecent act with a child under 16 by total effective length of imprisonment term, 2003–04 to 2007–08



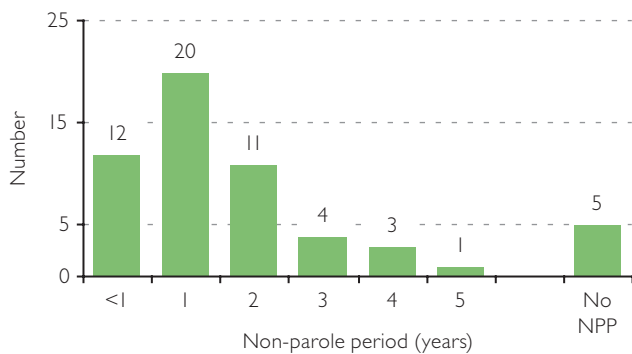
Non-parole period

When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under section 11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be longer than the individual principal sentence for indecent act with a child under 16. Sentences and non-parole periods must be considered in this broader context.

Of the 58 people who were sentenced to imprisonment for indecent act with a child under 16, 55 were eligible to have a non-parole period fixed.¹¹ Of these people, 51 were given a non-parole period (93%).¹² Figure 12 shows the number of people sentenced to imprisonment for indecent act with a child under 16 between 2003–04 and 2007–08 by the length of their non-parole period. Non-parole periods ranged from four months to five years and six months, while the median length of the non-parole period was one year, five months and fifteen days (meaning that half of the non-parole periods were below one year, five months and fifteen days and half were above).

Figure 12: The number of people sentenced to imprisonment for indecent act with a child under 16 by length of non-parole period, 2003–04 to 2007–08



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 13 presents the average length of total effective sentences of imprisonment compared to the average length of non-parole periods for all people from 2003–04 to 2007–08.¹³

From 2003–04 to 2007–08, the average length of total effective sentences for all people ranged from two years and five months in 2003–04 to three years and nine months in 2004–05. Over the same period, the average length of non-parole periods ranged from one year and six months in 2005–06 and 2007–08 to two years and five months in 2004–05.

Figure 13: 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, 2003–04 to 2007–08

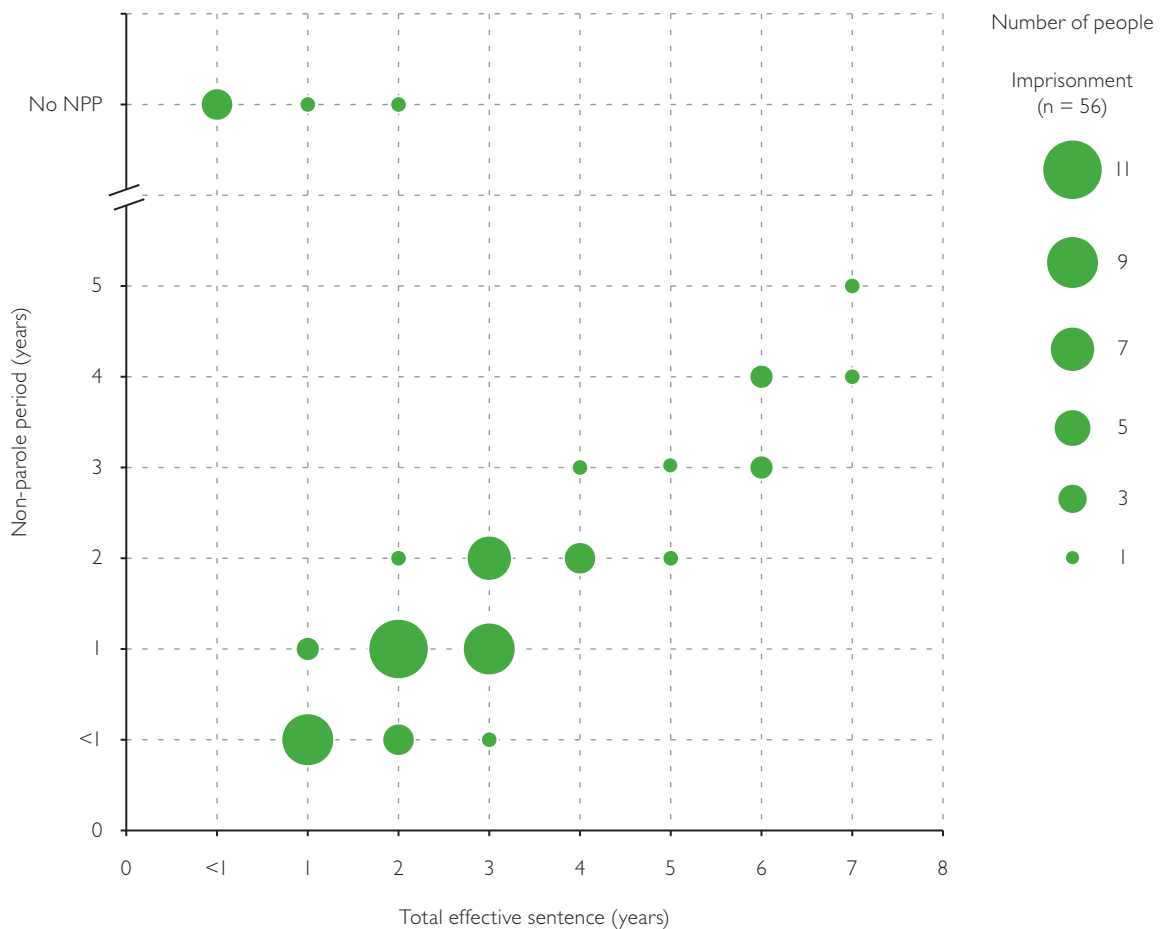


Total effective sentence of imprisonment by non-parole period

While Figures 11 and 12 present the lengths of the total effective sentences and non-parole periods separately, Figure 14 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 combination.¹⁴ 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 (11 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from three months with no non-parole period to seven years and six months with a non-parole period of five years and six months.

Figure 14: 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, 2003–04 to 2007–08¹⁵



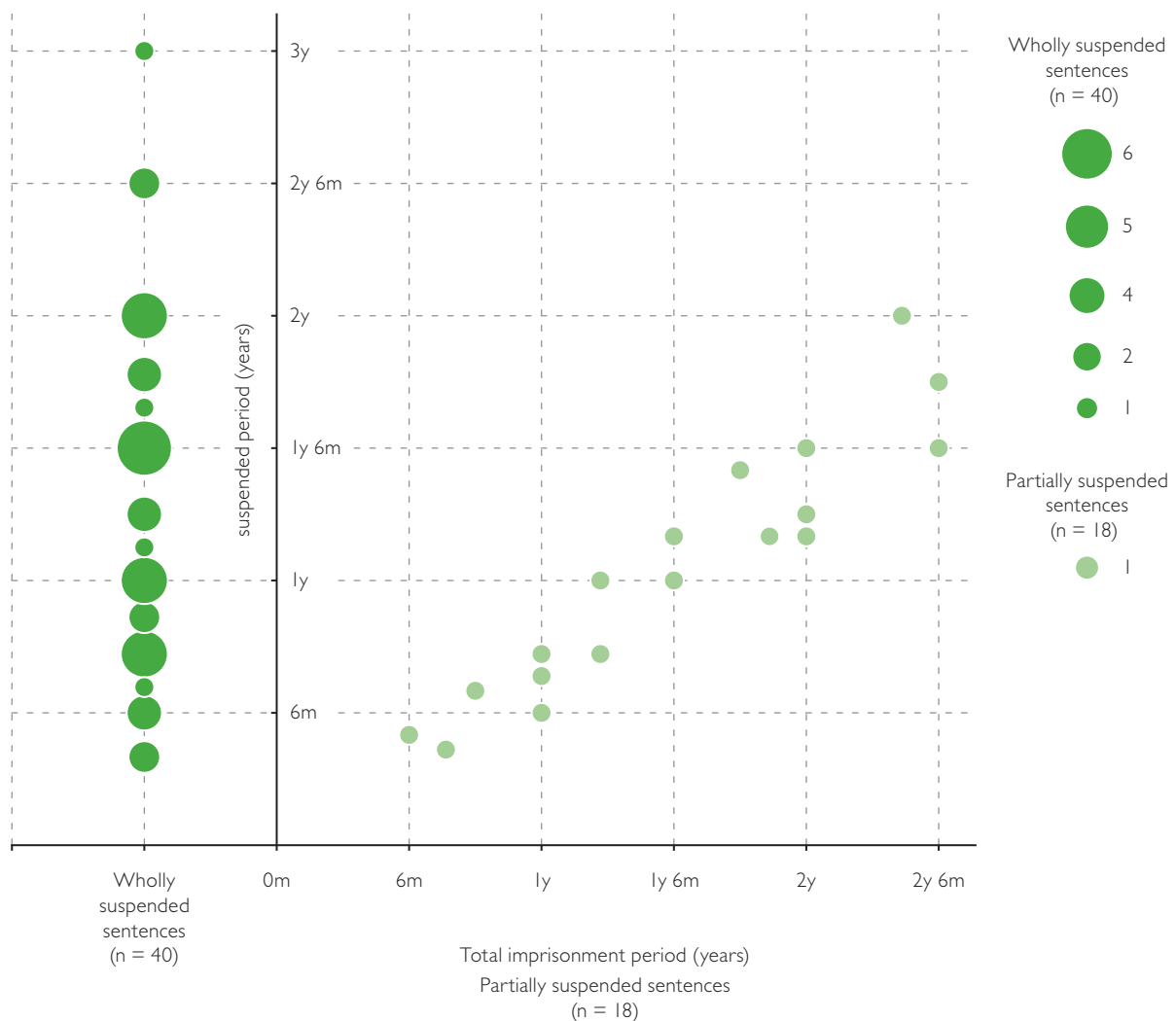
Note: No NPP refers to no non-parole period.

Suspended sentences of imprisonment

There were 58 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 40 people had their prison sentence wholly suspended and 18 received a partially suspended sentence of imprisonment. Figure 15 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 dark green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the light green 'bubbles' to the right of the vertical axis show the combination of total imprisonment length and the suspended period for those sentenced to a partially suspended sentence. The size of the bubble reflects the number of people who received either the wholly or partially suspended prison term.

Wholly suspended sentence lengths ranged from four months to three years. The most common wholly suspended sentence length was one year and six months (6 people – as represented by the largest dark green 'bubble' on the chart).

Figure 15: The number of people given a wholly or partially suspended sentence of imprisonment for indecent act with a child under 16 by sentence type and length, 2003–04 to 2007–08

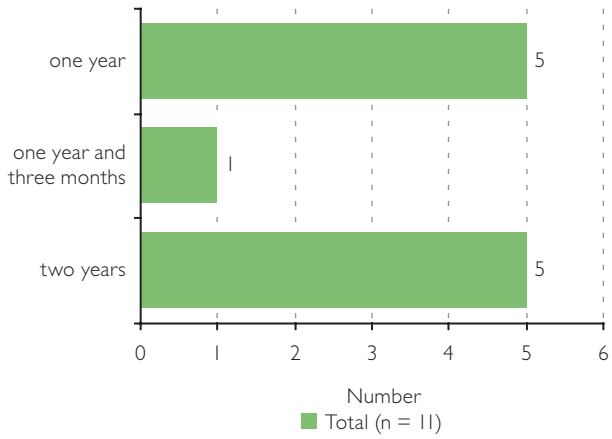


Community-based orders

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.

Figure 16: The number of people sentenced to a community-based order for indecent act with a child under 16 by length of order imposed, 2003–04 to 2007–08



Summary

Between 2003–04 and 2007–08, 140 people were sentenced for the principal proven offence of indecent act with a child under 16 in the higher courts. Over this period, all but two people sentenced were men, while over half (57%) were aged 40 years or older.

Around four in ten people sentenced for indecent act with a child under 16 received a period of imprisonment (43%), while 28% received a wholly suspended sentence of imprisonment and 11% received a partially suspended sentence of imprisonment.

Imprisonment was more common for those older than 55 years of age, wholly suspended sentences of imprisonment were more common for those aged between 30 and 35 years of age and partially suspended sentences of imprisonment were more common for those aged between 50 and 55 years of age.

Each of the 140 people was sentenced for an average of 4.39 offences, including 3.51 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 under 16 (11.4% 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 two years and six months, 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 seven years and six months with a non-parole period of five years and six months. The most common sentence of imprisonment was two years with a one year non-parole period.

The most common wholly suspended sentence length was one year and six months.

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. There were 486 people sentenced from 2003–04 to 2007–08 for 1,675 offences of indecent act with a child under 16. Indecent act with a child under 16 was the principal proven offence for 140 of these people.

This series of reports includes custodial and non-custodial supervision orders imposed under Part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases where the defendant is not guilty because of mental impairment. However, they are included in this series as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot No. 24, which described sentencing trends for indecent act with a child under 16 between 2001–02 and 2005–06.

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). While every effort is made to ensure that the data analysed in this report are accurate, the data are subject to revision.
4. *Crimes Act 1958* (Vic) s 47.
5. *Crimes Act 1958* (Vic) s 47(1).
6. 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>.
7. Immediate custodial sentence includes imprisonment, partially suspended sentence, hospital security order and aggregate imprisonment.
8. The *Sentencing (Suspended Sentences) Act 2006* (Vic) s 4(2) amended the *Sentencing Act 1991* (Vic) s 26(2B) to restrict the use of wholly suspended sentences for serious offences to cases involving exceptional circumstances. This legislation commenced on 1 November 2006. There were 14 individuals who received a wholly suspended sentence for the principal proven offence of indecent act with a child in 2006–07 and 2007–08. All but four of these offenders committed the offences prior to this legislative change.
9. Age is as at the time of sentencing.
10. Of the 61 people who were given a principal sentence of imprisonment, 58 were also given a total effective sentence of imprisonment. There were three people who were 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. 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.
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 down to the nearest year of imprisonment, while sentence lengths of less than one year are grouped into the '<1 year' category.
15. This graph includes the 56 people who were given a total effective sentence and a non-parole period that related to this case only.

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

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- 41 Causing injury intentionally or recklessly
- 40 Causing serious injury recklessly
- 39 Causing serious injury intentionally
- 38 Aggravated burglary
- 37 Burglary
- 36 Attempted armed robbery
- 35 Armed robbery
- 34 Robbery

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