

## No. 25: Sentencing trends for maintaining a sexual relationship with a child under 16 in the higher courts of Victoria, 2001-02 to 2005-06

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of maintaining a sexual relationship with a child under the age of 16 and details the age and gender<sup>2</sup> of people sentenced for this offence in the County Court of Victoria between 2001-02 and 2005-06<sup>3</sup>.

A person who is involved in at least three relevant sexual offences<sup>4</sup> with a child under the age of 16 over a specific period is guilty of the offence of maintaining a sexual relationship with a child under 16<sup>5</sup>.

It is not necessary to prove any of the acts with the same degree of specificity as to the date, time, place, circumstances or occasion as would be required if each act were charged as a separate offence<sup>6</sup>.

Maintaining a sexual relationship with a child under 16 is an indictable offence which carries a maximum penalty of 25 years' imprisonment<sup>7</sup> and/or a fine of 3000 penalty units<sup>8</sup>. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

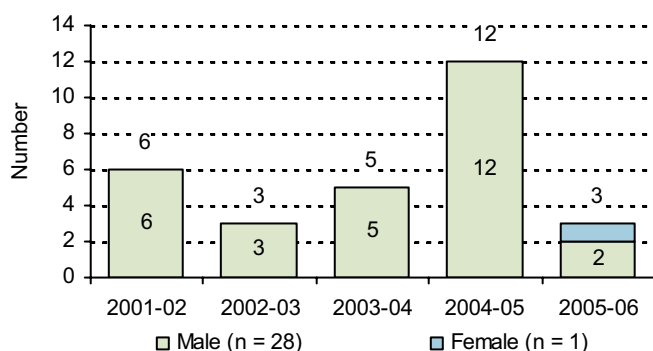
All maintaining a sexual relationship with a child under 16 offences were heard in the County or Supreme Court. Maintaining a sexual relationship with a child under 16 was the principal offence in 0.3% of cases sentenced in the higher courts between 2001-02 and 2005-06.

### People sentenced

Figure 1 shows the number of people sentenced for maintaining a sexual relationship with a child under 16 for the period 2001-02 to 2005-06. As shown, 29 people were sentenced for maintaining a sexual relationship with a child under 16 over the five year period. There were 3 people sentenced for this offence in 2005-06, down by 9 people from the previous year.

Over the five years depicted, all but one of those sentenced were men (96.6% or 28 of 29 people), including 2 of the 3 people sentenced in 2005-06.

**Figure 1: The number of people sentenced for maintaining a sexual relationship 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 maintaining a sexual relationship 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 detention<sup>9</sup>. Over the five year

period, 83% of people were given a custodial sentence. This peaked at 100% (3 of 3) in 2005-06 after a low of 33% (1 of 3) in 2002-03.

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

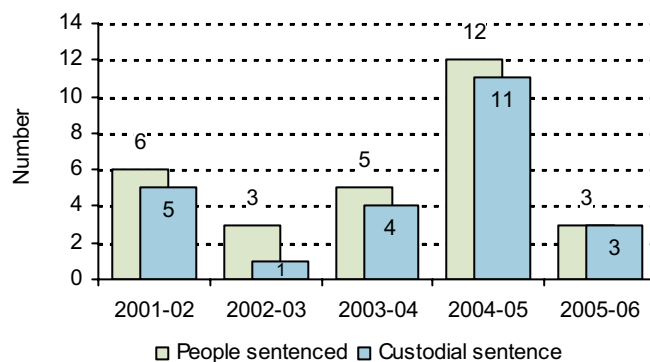
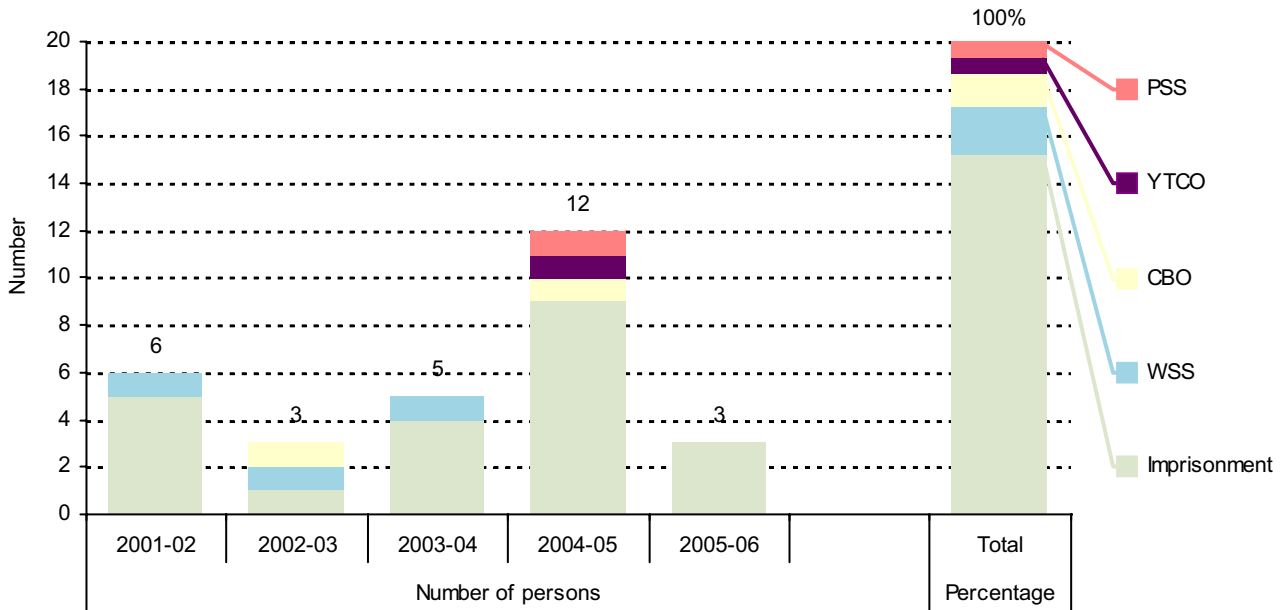


Figure 3 and Table 1 show the number of people sentenced for maintaining a sexual relationship with a child under 16 from 2001-02 to 2005-06 by the types of sentences imposed.

Over the five year period, the majority of the people sentenced for maintaining a sexual relationship with a child under 16 received a period of imprisonment (76% or 22 of 29 people), while 10% received a wholly suspended sentence of imprisonment. There were also two people sentenced to a community based order over the five year period.

**Figure 3: The number of people sentenced for maintaining a sexual relationship with a child under 16 by sentence type, 2001-02 to 2005-06**



Note: WSS refers to wholly suspended sentence of imprisonment, CBO refers to community based order, YTCO refers to youth training centre order and PSS refers to partially suspended sentence of imprisonment.

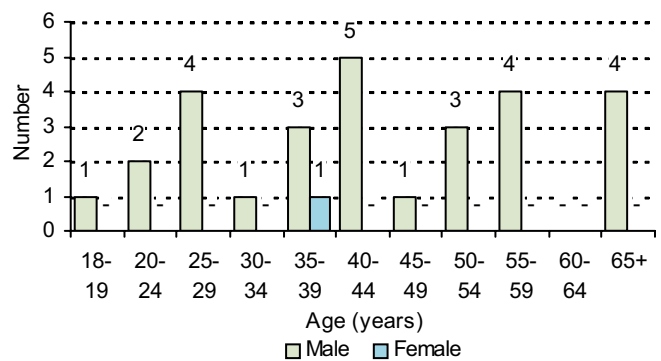
**Table 1: The number and percentage of people sentenced for maintaining a sexual relationship with a child under 16 by sentence type, 2001-02 to 2005-06**

| Sentence type                | 01-02    | 02-03    | 03-04    | 04-05     | 05-06    |
|------------------------------|----------|----------|----------|-----------|----------|
| Imprisonment                 | 5        | 1        | 4        | 9         | 3        |
|                              | 83%      | 33%      | 80%      | 75%       | 100%     |
| Wholly suspended sentence    | 1        | 1        | 1        | 0         | 0        |
|                              | 17%      | 33%      | 20%      | -         | -        |
| Community based order        | 0        | 1        | 0        | 1         | 0        |
|                              | -        | 33%      | -        | 8%        | -        |
| Youth training centre order  | 0        | 0        | 0        | 1         | 0        |
|                              | -        | -        | -        | 8%        | -        |
| Partially suspended sentence | 0        | 0        | 0        | 1         | 0        |
|                              | -        | -        | -        | 8%        | -        |
| <b>People sentenced</b>      | <b>6</b> | <b>3</b> | <b>5</b> | <b>12</b> | <b>3</b> |

### Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for maintaining a sexual relationship with a child under 16 grouped by their age<sup>10</sup> between 2001-02 and 2005-06. The average age of people sentenced for maintaining a sexual relationship with a child under 16 was forty-three years. There were no juveniles sentenced over this period.

**Figure 4: The number of people sentenced for maintaining a sexual relationship with a child under 16 by gender and age, 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 maintaining a sexual relationship with a child under 16 must be considered in this broader context. The following sections analyse the use of imprisonment for maintaining a sexual relationship with a child under 16 over 2001-02 to 2005-06.

### Principal sentence of imprisonment

Figure 5 shows the number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 2 years to nine years, while the median length of imprisonment was 5 years (meaning that half of the imprisonment terms were shorter than 5 years and half were longer).

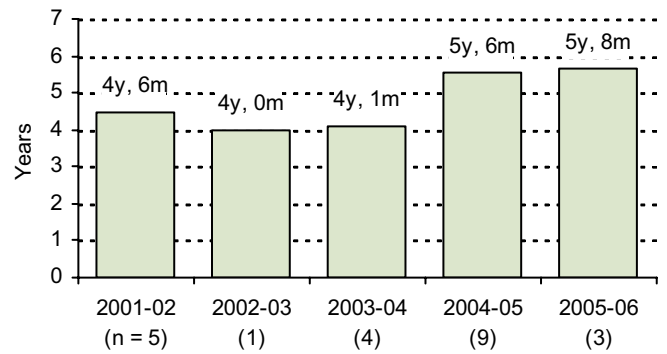
The most common length of imprisonment imposed was 4 years (6 people).

**Figure 5: The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by length of imprisonment term, 2001-02 to 2005-06**



As shown in Figure 6, the average length of imprisonment term imposed on people sentenced for maintaining a sexual relationship with a child under 16 ranged from four years in 2002-03 to five years and eight months in 2005-06.

**Figure 6: The average length of imprisonment term imposed on people sentenced for maintaining a sexual relationship with a child under 16, 2001-02 to 2005-06**

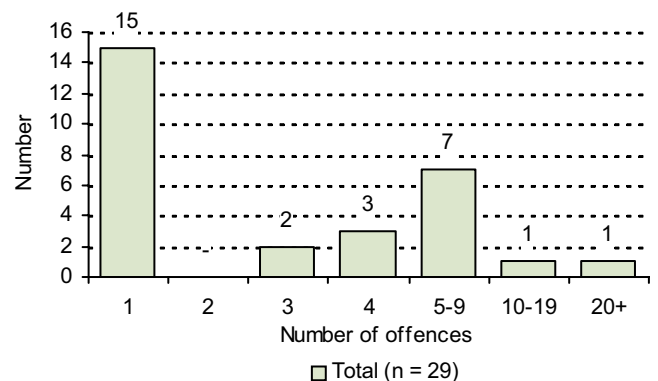


### Other offences finalised at the same hearing

Often people prosecuted for maintaining a sexual relationship 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 maintaining a sexual relationship with a child under 16.

Figure 7 shows the number of people sentenced for the principal offence of maintaining a sexual relationship 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 21, while the median was 1 offence. There were 15 people (51.7%) sentenced for the single offence of maintaining a sexual relationship with a child under 16 alone. The average number of offences per person sentenced for maintaining a sexual relationship with a child under 16 was 3.86.

**Figure 7: The number of people sentenced for the principal offence of maintaining a sexual relationship with a child under 16 by the number of sentenced offences per person, 2001-02 to 2005-06**



While Figure 7 presents the number of sentenced offences for those sentenced to maintaining a sexual relationship with a child under 16, Figure 8 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, 9 of the total 29 people (31.0%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 2.78 counts of indecent act with a child under 16.

**Figure 8: The number and percentage of people sentenced for the principal offence of maintaining a sexual relationship 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**

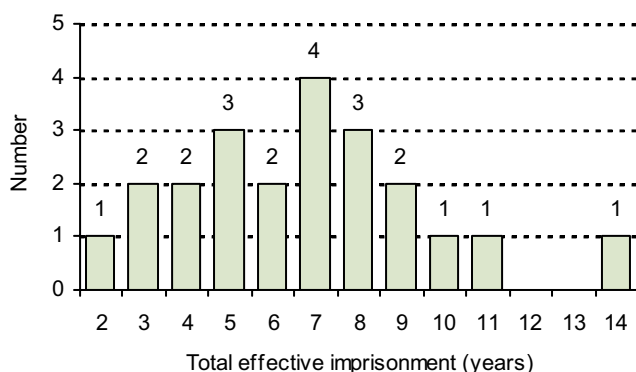
| Offence  | No.       | %            | Avg.        |
|--|-----------|--------------|-------------|
| 1 maintain a sexual relationship with a child under 16 | 29        | 100.0        | 1.48        |
| 2 indecent act with a child under 16                   | 9         | 31.0         | 2.78        |
| 3 sexual penetration of a child under 16               | 3         | 10.3         | 2.67        |
| 4 indecent assault                                     | 3         | 10.3         | 2.00        |
| 5 possess child pornography                            | 3         | 10.3         | 1.00        |
| 6 incest   | 2         | 6.9          | 7.50        |
| 7 incest by step-parent                                | 1         | 3.4          | 3.00        |
| 8 breach of intervention order                         | 1         | 3.4          | 2.00        |
| 9 produce child pornography                            | 1         | 3.4          | 2.00        |
| 10 rape  | 1         | 3.4          | 2.00        |
| <b>People sentenced</b>                                | <b>29</b> | <b>100.0</b> | <b>3.86</b> |

### Total effective sentence of imprisonment

There were 22 people given a total effective sentence of imprisonment<sup>11</sup>. Figure 9 shows the number of people sentenced to imprisonment for maintaining a sexual relationship 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 two years to fourteen years, while the median total effective length of imprisonment was seven years (meaning that half of the total effective sentence lengths were below seven years and half were above).

The most common total effective imprisonment length was 7 years (4 people).

**Figure 9: The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by total effective length of imprisonment term, 2001-02 to 2005-06**



### Non-parole period

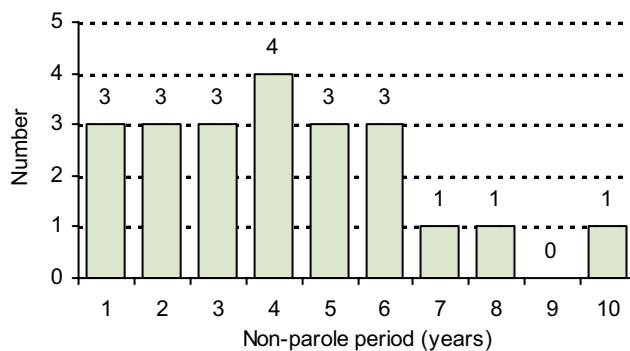
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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 maintaining a sexual relationship with a child under 16. Sentences and non-parole periods must be considered in this broader context.

Of the 22 people who were sentenced to imprisonment for maintaining a sexual relationship with a child under 16, all were eligible for parole. Of these people, all were given a non-parole period (100%). Figure 10 shows the number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 between 2001-02 and 2005-06 by the length of their non-parole period. Non-parole periods ranged from one year to ten years, while the median length of the non-parole period was four years and three months (meaning that half of the non-parole periods were below four years and three months and half were above).

**Figure 10: The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by length of non-parole period, 2001-02 to 2005-06**

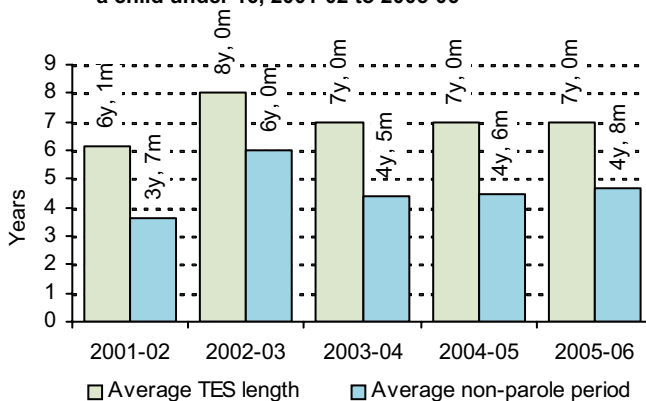


### Total effective sentences of imprisonment and non-parole periods

Figure 11 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 2005-06<sup>12</sup>.

From 2001-02 to 2005-06, the average length of total effective sentence for all people ranged from six years and one month in 2001-02 to eight years in 2002-03. Over the same period, the average length of non-parole period ranged from three years and seven months in 2001-02 to six years in 2002-03.

**Figure 11: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for maintaining a sexual relationship with a child under 16, 2001-02 to 2005-06**

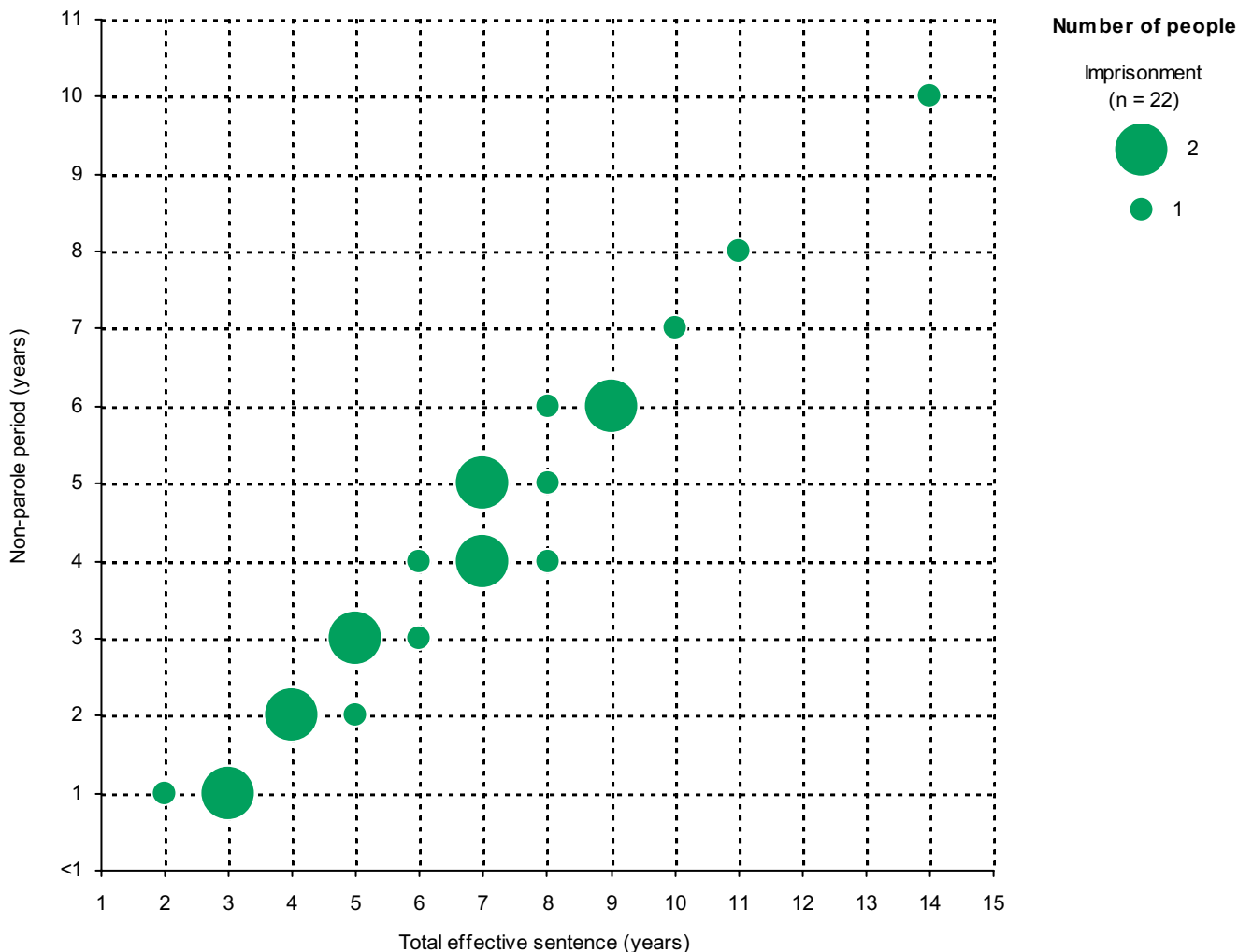


### Total effective sentence of imprisonment by non-parole period

While Figure 9 and Figure 10 present the lengths of the total effective sentences and non-parole periods separately, Figure 12 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for maintaining a sexual relationship 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<sup>13</sup>. The length of imprisonment ranged from two years with a non-parole period of one year to fourteen years with a non-parole period of ten years.

**Figure 12: The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by the total effective sentence and the non-parole period imposed, 2001-02 to 2005-06<sup>14</sup>**



## Summary

Between 2001-02 and 2005-06, 29 people were sentenced for maintaining a sexual relationship with a child under 16 in the higher courts. Over this period, all but one of those sentenced were men (97%), while 76% were between the age of 25 and 60 years.

The majority of the people sentenced for maintaining a sexual relationship with a child under 16 received a period of imprisonment (76%), while 10% received a wholly suspended sentence of imprisonment.

Each of the 29 people was sentenced for an average of 3.86 offences, including for 1.48 offences of maintaining a sexual relationship with a child under 16. The most common offence finalised in conjunction with maintaining a sexual relationship with a child under 16 was indecent act with a child under 16 (31.0% of all cases).

The number and range of offences for which people with a principal offence of maintain a sexual relationship 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 seven years, while the median principal imprisonment length was five years.

Total effective imprisonment lengths ranged from two years with a non-parole period of one year to fourteen years with a non-parole period of ten years.

- 1 This report presents sentencing outcomes for people sentenced for the principal offence of maintaining a sexual relationship with a child under the age of 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 maintaining a sexual relationship 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, 4 people were sentenced for maintaining a sexual relationship with a child under the age of 16. Maintaining a sexual relationship with a child under 16 was the principal offence for 3 of the 4 people.
- 2 The information source for sentencing outcomes for maintaining a sexual relationship 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 maintaining a sexual relationship 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 The relevant sexual offences for the purposes of this provision are any offences under Subdivisions (8A), (8B) and (8C) of the *Crimes Act 1958* (Vic). These include offences such as rape, indecent assault, incest, sexual penetration of a child under 16 and indecent act with a child under 16.
- 5 *Crimes Act 1958* (Vic) s 47A. The title of this offence was amended by section 11 of the *Crimes (Sexual Offences) Act 2006* (Vic). After the commencement of that act on 1 December 2006, the offence title was 'Persistent sexual abuse of a child under the age of 16'.
- 6 *Crimes Act 1958* (Vic) s 47A(3).
- 7 *Crimes Act 1958* (Vic) s 47A(4).
- 8 Maintaining a sexual relationship with a child under 16 carries a maximum fine of 3000 penalty units and each penalty unit is worth \$107.43, Victorian Government Gazette, 6 April 2006.
- 9 Custodial sentence includes imprisonment, youth training centre order and partially suspended sentence.
- 10 Age is as at the time of sentencing.
- 11 All of the 22 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 12 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.
- 13 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.
- 14 This graph includes the 22 people who were given a total effective sentence and a non-parole period that related to this case only.

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