

Sentencing Snapshot

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

June 2009
No. 82

Maintain a sexual relationship with a child under 16

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of maintaining a sexual relationship with a child under 16² and details the age and gender³ of people sentenced for this offence in the County Court of Victoria between 2003–04 and 2007–08.⁴

A person who is involved in at least three relevant sexual offences⁵ 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 16.⁶

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.⁷

Maintaining a sexual relationship with a child under 16 is an indictable offence and carries a maximum penalty of 25 years' imprisonment⁸ and/or a fine of 3000 penalty units.⁹ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

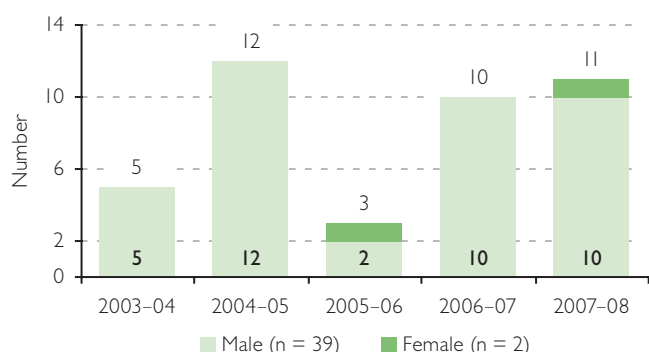
Maintaining a sexual relationship with a child under 16 was the principal offence in 0.4% of cases sentenced in the higher courts between 2003–04 and 2007–08.

People sentenced

Figure 1 shows the number of people sentenced for the principal proven offence of maintaining a sexual relationship with a child under 16 for the period 2003–04 to 2007–08. As shown, 41 people were sentenced for maintaining a sexual relationship with a child under 16 over the five year period. There were 11 people sentenced for this offence in 2007–08, up by 1 person from the previous year.

Over the five years depicted, the majority of those sentenced were men (95.1% or 39 of 41 people), including 10 of the 11 people sentenced in 2007–08.

Figure 1: The number of people sentenced for maintaining a sexual relationship 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 maintaining a sexual relationship 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.¹⁰ Over the five year period, 90% of people were given an immediate custodial sentence. This peaked at 100% (3 of 3) in 2005–06 and 100% (10 of 10) in 2006–07 after a low of 80% (4 of 5) in 2003–04. In 2007–08, 82% of people sentenced (9 of 11) were given an immediate custodial sentence.

Figure 2: The number of people sentenced for maintaining a sexual relationship 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 maintaining a sexual relationship with a child under 16 from 2003–04 to 2007–08 by the types of sentences imposed.¹¹

Over the five year period, the majority of people sentenced for maintaining a sexual relationship with a child under 16 received a term of imprisonment (83% or 34 of 41 people).

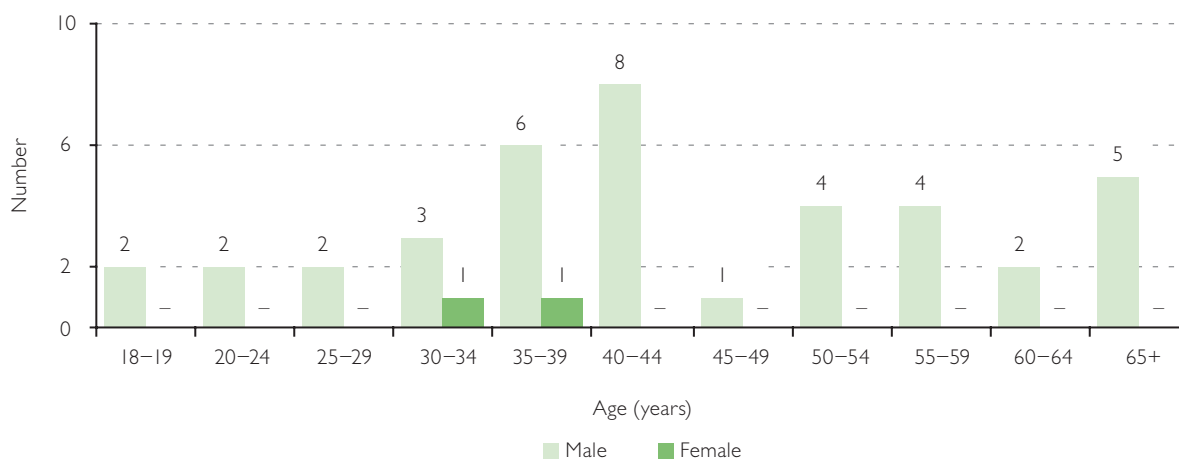
Table 1: The number and percentage of people sentenced for maintaining a sexual relationship with a child under 16 by sentence type, 2003–04 to 2007–08

Sentence type	2003–04	2004–05	2005–06	2006–07	2007–08
Imprisonment	4 (80%)	9 (75%)	3 (100%)	10 (100%)	8 (73%)
Wholly suspended sentence	1 (20%)	0 (–)	0 (–)	0 (–)	1 (9%)
Partially suspended sentence	0 (–)	1 (8%)	0 (–)	0 (–)	1 (9%)
Community-based order	0 (–)	1 (8%)	0 (–)	0 (–)	1 (9%)
Youth training centre order	0 (–)	1 (8%)	0 (–)	0 (–)	0 (–)
People sentenced	5	12	3	10	11

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for maintaining a sexual relationship with a child under 16 grouped by their age¹² between 2003–04 and 2007–08. The average age of people sentenced for maintaining a sexual relationship with a child under 16 was forty-four years. There were no juveniles sentenced over this period.

Figure 3: The number of people sentenced for maintaining a sexual relationship with a child under 16 by gender and age, 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.

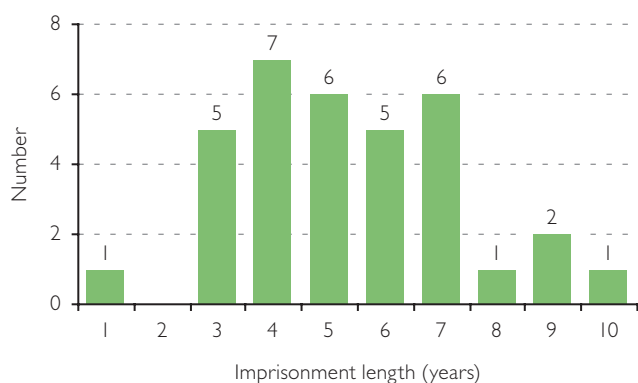
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for maintaining a sexual relationship with a child under 16 must be considered in this broader context. The following sections analyse the use of imprisonment for maintaining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

Principal sentence of imprisonment

Figure 4 shows the number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to ten years, while the median length of imprisonment was five years and three months (meaning that half of the imprisonment terms were shorter than five years and three months and half were longer).

The most common length of imprisonment imposed was 4 years (7 people).

Figure 4: The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 5, the average length of imprisonment term imposed on people sentenced for maintaining a sexual relationship with a child under 16 ranged from four years and one month in 2003–04 to six years in 2006–07.

Figure 5: The average length of imprisonment term imposed on people sentenced for maintaining a sexual relationship with a child under 16, 2003–04 to 2007–08

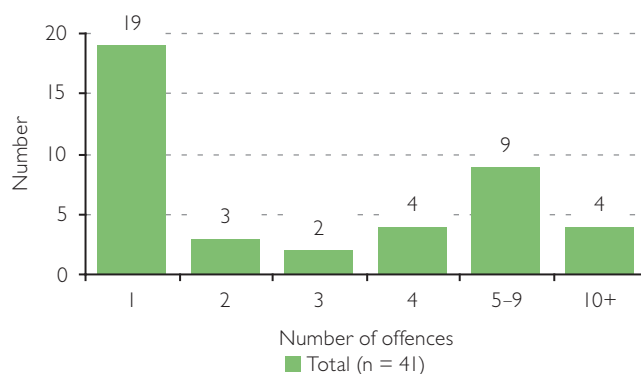


Other offences finalised at the same hearing

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 6 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 14, while the median was 2 offences. There were 19 people (46.3%) sentenced for the single offence of maintaining a sexual relationship with a child under 16. The average number of offences per person sentenced for maintaining a sexual relationship with a child under 16 was 3.98.

Figure 6: 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, 2003–04 to 2007–08



While Figure 6 presents the number of sentenced offences for those sentenced for maintaining a sexual relationship with a child under 16, Table 2 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, 12 of the total 41 people (29.3%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 4.58 counts of indecent act with a child under 16.

Table 2: 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, 2003–04 to 2007–08

Offence	No.	%	Avg.
1 maintain a sexual relationship with a child under 16	41	100.0	1.59
2 indecent act with a child under 16	12	29.3	4.58
3 sexual penetration of a child under 16	5	12.2	2.40
4 possess child pornography	5	12.2	1.20
5 produce child pornography	4	9.8	1.75
6 indecent assault	3	7.3	1.00
7 incest by sibling	1	2.4	5.00
8 incest	1	2.4	3.00
9 rape	1	2.4	2.00
10 attempted incest	1	2.4	1.00
People sentenced	41	100.0	3.98

Total effective sentence of imprisonment

There were 34 people given a total effective sentence of imprisonment.¹³ Figure 7 shows the number of people sentenced to imprisonment for maintaining a sexual relationship 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 one year and six months to fourteen years and seven months, 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).

Figure 7: The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by total effective length of imprisonment term, 2003–04 to 2007–08



Non-parole period

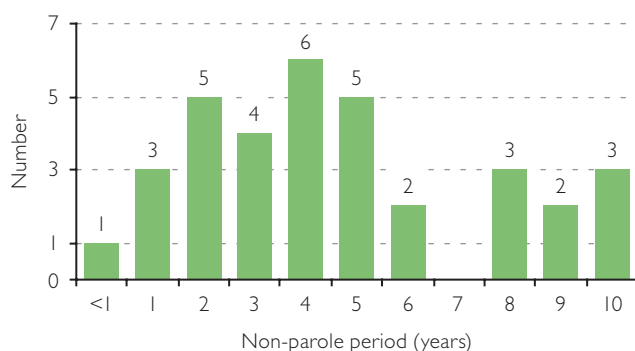
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person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

Of the 34 people who were sentenced to imprisonment for maintaining a sexual relationship with a child under 16, all were given a non-parole period. Figure 8 shows the number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 between 2003–04 and 2007–08 by the length of their non-parole period. Non-parole periods ranged from six months to ten years, while the median length of the non-parole period was four years and six months (meaning that half of the non-parole periods were below four years and six months and half were above).

The most common non-parole period imposed was 4 years (6 people).

Figure 8: The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by length of non-parole period, 2003–04 to 2007–08

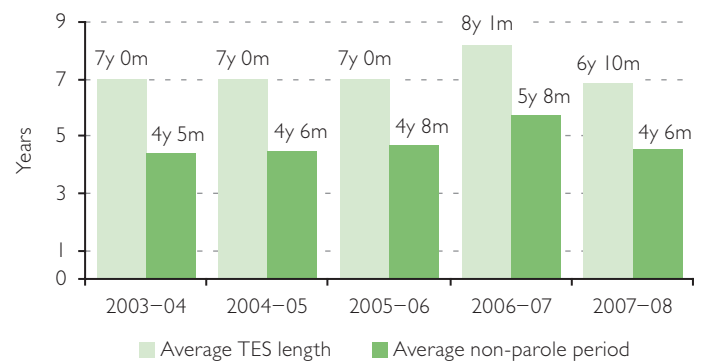


Total effective sentences of imprisonment and non-parole periods

Figure 9 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 2007–08.¹⁴

From 2003–04 to 2007–08, the average length of total effective sentences for all people ranged from six years and ten months in 2007–08 to eight years and one month in 2006–07. Over the same period, the average length of non-parole periods ranged from four years and five months in 2003–04 to five years and eight months in 2006–07.

Figure 9: 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, 2003–04 to 2007–08

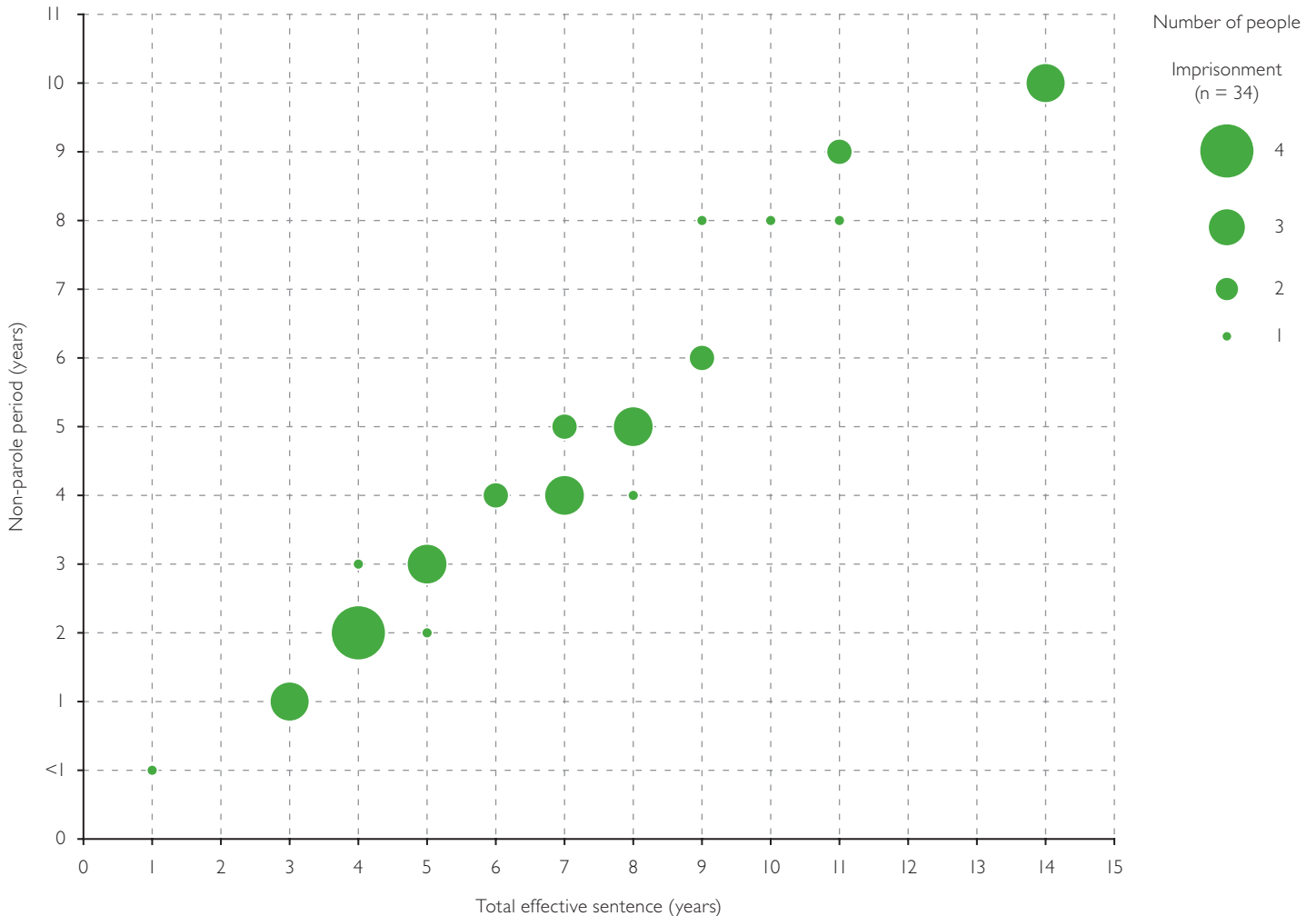


Total effective sentence of imprisonment by non-parole period

While Figures 7 and 8 present the lengths of the total effective sentences and non-parole periods separately, Figure 10 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.¹⁵ As shown, the most common combination of imprisonment length and non-parole period imposed was four years with a non-parole period of two years (4 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from one year and six months with a non-parole period of six months to fourteen years and seven months with a non-parole period of ten years.

Figure 10: 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, 2003–04 to 2007–08¹⁶



Summary

Between 2003–04 and 2007–08, 41 people were sentenced for maintaining a sexual relationship with a child under 16 in the higher courts. Over this period, the majority of those sentenced were men (95%), while 37% were between the age of 35 and 45 years.

The majority of the people sentenced for maintaining a sexual relationship with a child under 16 received a period of imprisonment (83%).

Each of the 41 people was sentenced for an average of 3.98 offences, including 1.59 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 (29.3% of all cases). The number and range of offences for which people with a principal offence of maintaining 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 and three months.

Total effective imprisonment lengths ranged from one year and six months with a non-parole period of six months to fourteen years and seven months with a non-parole period of ten years. The most common sentence of imprisonment was four years with a two year non-parole period.

1. This report presents sentencing outcomes for people sentenced for the principal offence of maintaining a sexual relationship 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 maintaining a sexual relationship with a child under 16 who received a more serious sentence for another offence forming part of the same presentment. There were 42 people sentenced from 2003–04 to 2007–08 for 66 offences of maintaining a sexual relationship with a child under 16. Maintaining a sexual relationship with a child under 16 was the principal proven offence for 41 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. 25, which described sentencing trends for maintaining a sexual relationship with a child under 16 between 2001–02 and 2005–06.

2. The title of this offence was amended by section 11 of the *Crimes (Sexual Offences) Act 2006 (Vic)*. Offences that are alleged to have occurred after the commencement of that Act on 1 December 2006 are now called 'Persistent sexual abuse of a child under the age of 16'. This Snapshot retains the previous offence name as it applies to the majority of offences referred to in the Snapshot.
3. 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.
4. 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.
5. 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.
6. *Crimes Act 1958 (Vic) s 47A*.
7. *Crimes Act 1958 (Vic) s 47A(3)*.
8. *Crimes Act 1958 (Vic) s 47A(4)*.
9. 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>.
10. Immediate custodial sentence includes imprisonment, partially suspended sentence and youth training centre order.
11. 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 was one individual who received a wholly suspended sentence for the principal proven offence of maintaining a sexual relationship with a child under 16 in 2007–08. This offence was committed after the legislative change.
12. Age is as at the time of sentencing.
13. All of the 34 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
14. 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.
15. 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.
16. This graph includes the 34 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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- 39 Causing serious injury intentionally
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- 37 Burglary
- 36 Attempted armed robbery
- 35 Armed robbery
- 34 Robbery

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