

## No. 31: Sentencing trends for sexual penetration of a child aged between 10 and 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 sexual penetration of a child aged between 10 and 16 and details the age and gender<sup>2</sup> of people sentenced for this offence in the County and Supreme Courts of Victoria between 2001-02 and 2005-06<sup>3</sup>. This snapshot excludes those people sentenced for the offence of sexual penetration of a child between 10 and 16 who was under the care, supervision or authority of the accused.

A person who takes part in an act of sexual penetration with a child aged between 10 and 16 is guilty of an indictable offence<sup>4</sup>. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. The maximum penalty for this offence is 10 years' imprisonment<sup>5</sup> and/or a fine of 1200 penalty units<sup>6</sup>.

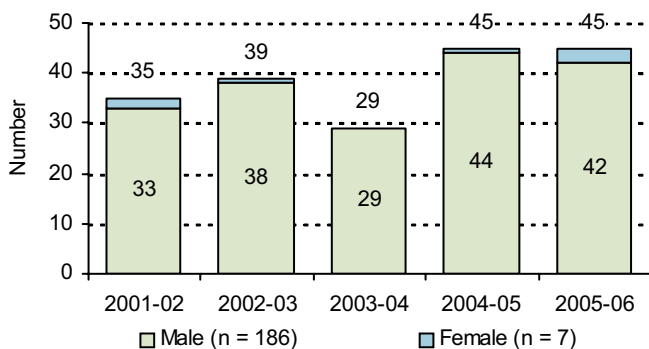
All offences involving sexual penetration of a child aged between 10 and 16 were heard in the County or Supreme Court. Sexual penetration of a child aged between 10 and 16 was the principal offence in 1.9% of cases sentenced in the higher courts between 2001-02 and 2005-06.

### People sentenced

Figure 1 shows the number of people sentenced for sexual penetration of a child aged between 10 and 16 for the period 2001-02 to 2005-06. As shown, 193 people were sentenced for sexual penetration of a child aged between 10 and 16 over the five year period. There were 45 people sentenced for this offence in 2005-06, remaining stable with the previous year.

Over the five years depicted, the majority of those sentenced were men (96.4% or 186 of the 193 people), including 42 of the 45 people sentenced in 2005-06.

**Figure 1: The number of people sentenced for sexual penetration of a child aged between 10 and 16 by gender, 2001-02 to 2005-06**



### Sentence types and trends

Figure 2 shows the total number of people sentenced for sexual penetration of a child aged between 10 and 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>7</sup>. Over the five year period, 44% of people were given a custodial sentence. This peaked at 62% (28 of 45) in 2005-06 after a low of 31% (12 of 39) in 2002-03.

**Figure 2: The number of people sentenced for sexual penetration of a child aged between 10 and 16 and the number who received a custodial sentence, 2001-02 to 2005-06**

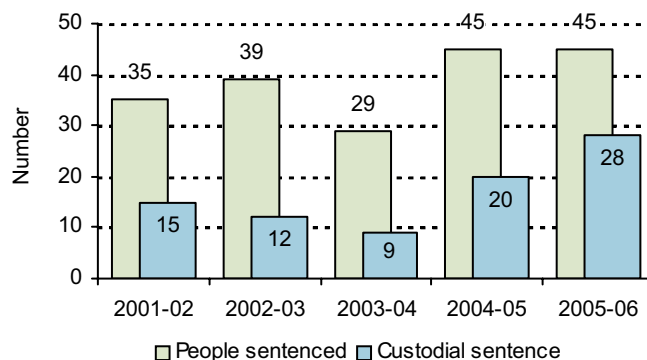
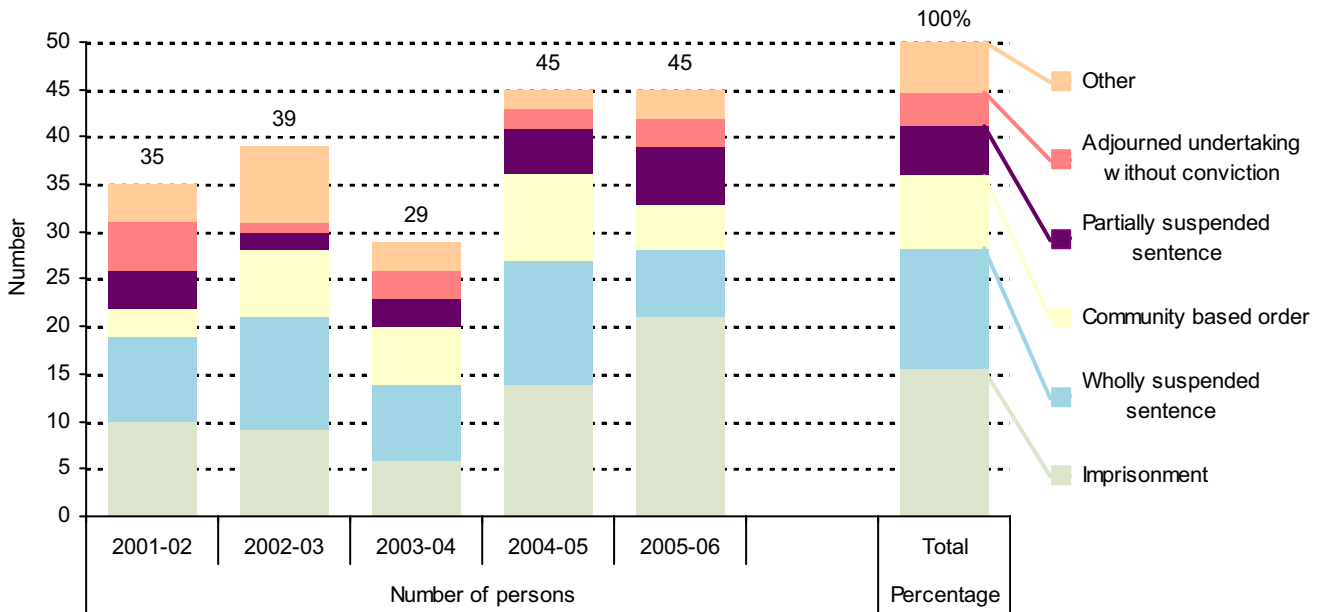


Figure 3 and Table 1 show the number of people sentenced for sexual penetration of a child aged between 10 and 16 from 2001-02 to 2005-06 by the types of sentences imposed.

Over the five year period, around one third of the people sentenced for sexual penetration of a child aged between 10 and 16 received a period of imprisonment (31% or 60 of 193 people), while 25% received a wholly suspended sentence of imprisonment, 16% received a community based order and 10% received a partially suspended sentence of imprisonment.

The percentage of people who received a period of immediate imprisonment increased each year over the last three years from 21% in 2003-04 to 47% in 2005-06. Over this period, the percentage of people who received wholly suspended sentences of imprisonment decreased from 28% in 2003-04 to 16% in 2005-06.

**Figure 3: The number of people sentenced for sexual penetration of a child aged between 10 and 16 by sentence type, 2001-02 to 2005-06**



Other includes adjourned undertaking with conviction, youth training centre order, intensive correction order, fine, mix (community based order & fine) and mix (aggregate fine & adjourned undertaking).

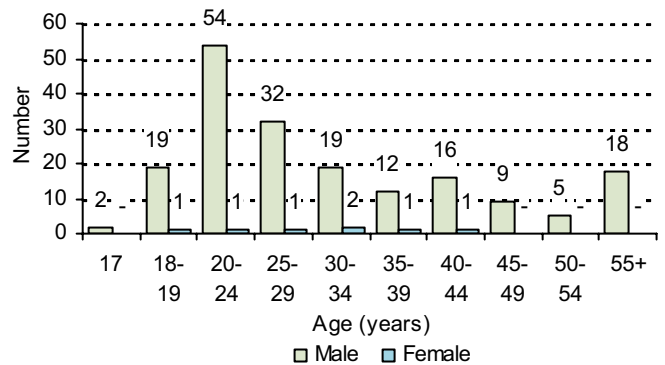
**Table 1: The number and percentage of people sentenced for sexual penetration of a child aged between 10 and 16 by sentence type, 2001-02 to 2005-06**

Sentence type	01-02	02-03	03-04	04-05	05-06
Imprisonment	10	9	6	14	21
	29%	23%	21%	31%	47%
Wholly suspended sentence	9	12	8	13	7
	26%	31%	28%	29%	16%
Community based order	3	7	6	9	5
	9%	18%	21%	20%	11%
Partially suspended sentence	4	2	3	5	6
	11%	5%	10%	11%	13%
Adjoined undertaking without conviction	5	1	3	2	3
	14%	3%	10%	4%	7%
Adjoined undertaking with conviction	2	1	2	1	0
	6%	3%	7%	2%	-
Youth training centre order	1	1	0	1	1
	3%	3%	-	2%	2%
Intensive correction order	1	3	0	0	0
	3%	8%	-	-	-
Fine	0	2	1	0	1
	-	5%	3%	-	2%
Mix (community based order & fine)	0	0	0	0	1
	-	-	-	-	2%
Mix (agg fine. & adjourned undertaking)	0	1	0	0	0
	-	3%	-	-	-
<b>People sentenced</b>	<b>35</b>	<b>39</b>	<b>29</b>	<b>45</b>	<b>45</b>

### Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for sexual penetration of a child aged between 10 and 16 grouped by their age<sup>8</sup> between 2001-02 and 2005-06. The average age of people sentenced for sexual penetration of a child aged between 10 and 16 was thirty-one years and nine months. Two male juveniles were sentenced over this period.

**Figure 4: The number of people sentenced for sexual penetration of a child aged between 10 and 16 by gender and age, 2001-02 to 2005-06**



## Sentence types by gender

Table 2 shows the types of sentence imposed for sexual penetration of a child aged between 10 and 16 grouped by gender.

**Table 2: The number and percentage breakdown of people sentenced for sexual penetration of a child aged between 10 and 16 by gender, 2001-02 to 2005-06**

Sentence type	Male	Female	Total
Imprisonment	58 31%	2 29%	60 31%
Wholly suspended sentence	46 25%	3 43%	49 25%
Community based order	29 16%	1 14%	30 16%
Partially suspended sentence	20 11%	0 -	20 10%
Adjourned undertaking without conviction	13 7%	1 14%	14 7%
Adjourned undertaking with conviction	6 3%	0 -	6 3%
Intensive correction order	4 2%	0 -	4 2%
Fine	4 2%	0 -	4 2%
Mix (community based order & fine)	1 <1%	0 -	1 <1%
Mix (agg fine. & adjourned undertaking)	1 <1%	0 -	1 <1%
Youth training centre order	4 2%	0 -	4 2%
<b>People sentenced</b>	<b>186</b>	<b>7</b>	<b>193</b>

## Sentence types by age

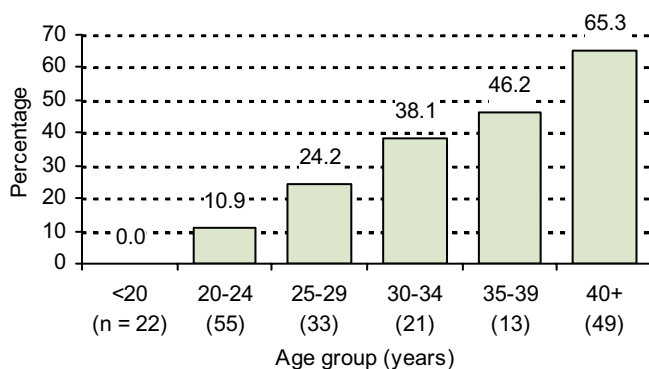
As shown in the table above, the four most common sentence types were imprisonment, wholly suspended sentences of imprisonment, community based orders and partially suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

### Imprisonment

Sentences of imprisonment were most likely to be given to people aged 40 years and older (65% or 32 of the 49 people in this age group).

Conversely, none of the 22 people aged under 20 years received a period of imprisonment.

**Figure 5: The percentage of people who received a period of imprisonment for sexual penetration of a child aged between 10 and 16 by age group, 2001-02 to 2005-06**

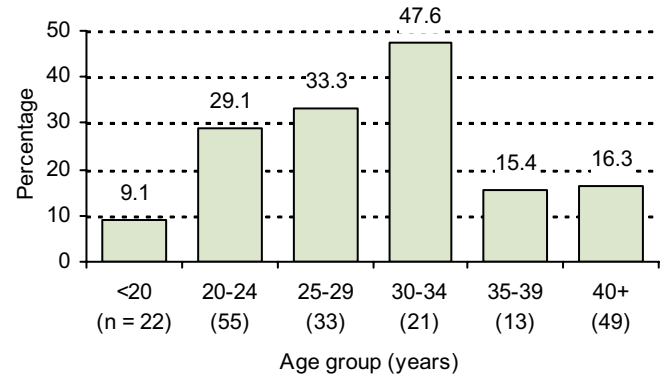


## Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 30-34 years old (48% or 10 of the 21 people in this age group).

Conversely, wholly suspended sentences of imprisonment were least common for those aged under 20 years (9% or two of the 22 people in this age group).

**Figure 6: The percentage of people who received a wholly suspended sentence of imprisonment for sexual penetration of a child aged between 10 and 16 by age group, 2001-02 to 2005-06**

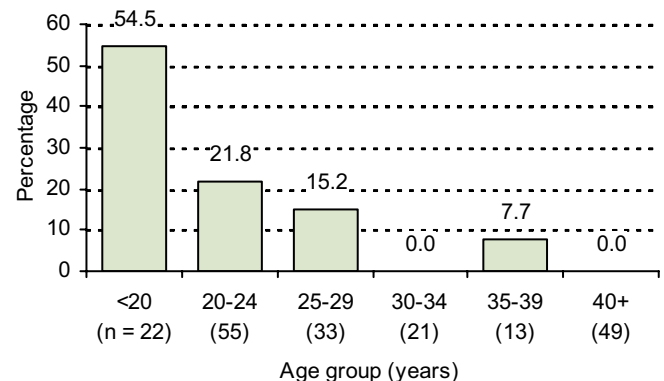


### Community based orders

Community based orders were most likely to be given to people aged under 20 years (55% or 12 of the 22 people in this age group).

Conversely, none of the 21 people aged 30-34 years old and none of the 49 people aged 40 years and older received a community based order.

**Figure 7: The percentage of people who received a community based order for sexual penetration of a child aged between 10 and 16 by age group, 2001-02 to 2005-06**

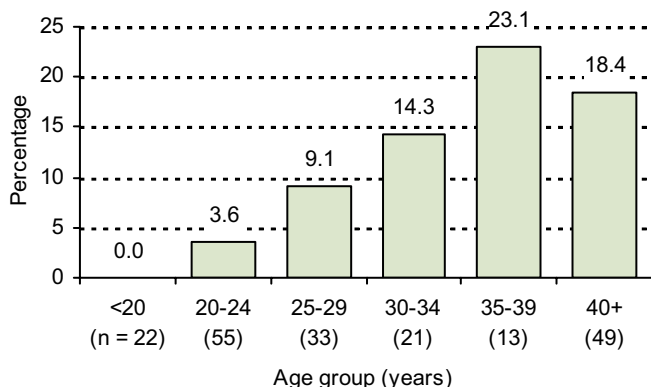


### Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged 35-39 years old (23% or three of the 13 people in this age group).

Conversely, none of the 22 people aged under 20 years received a partially suspended sentence of imprisonment.

**Figure 8: The percentage of people who received a partially suspended sentence of imprisonment for sexual penetration of a child aged between 10 and 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.

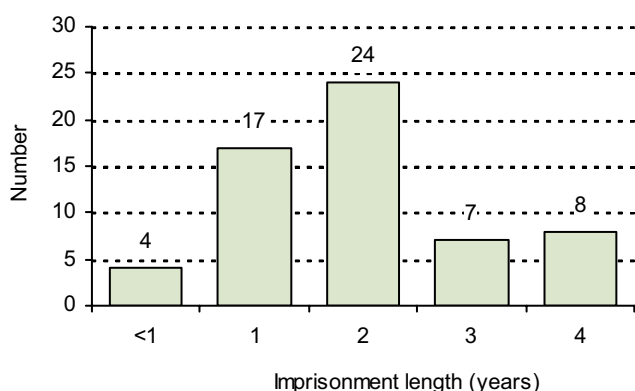
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for sexual penetration of a child aged between 10 and 16 must be considered in this broader context. The following sections analyse the use of imprisonment for sexual penetration of a child aged between 10 and 16 over 2001-02 to 2005-06.

### Principal sentence of imprisonment

Figure 9 shows the number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 4 months to four years and two months, while the median length of imprisonment was two years (meaning that half of the imprisonment terms were shorter than two years and half were longer).

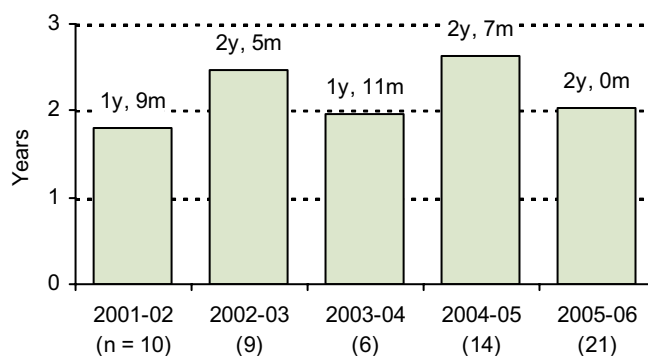
The most common length of imprisonment imposed was 2 years (24 people).

**Figure 9: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 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 sexual penetration of a child aged between 10 and 16 ranged from one year and nine months in 2001-02 to two years and seven months in 2004-05.

**Figure 10: The average length of imprisonment term imposed on people sentenced for sexual penetration of a child aged between 10 and 16, 2001-02 to 2005-06**



### Other offences finalised at the same hearing

Often people prosecuted for sexual penetration of a child aged between 10 and 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 sexual penetration of a child aged between 10 and 16.

Figure 11 shows the number of people sentenced for the principal offence of sexual penetration of a child aged between 10 and 16 by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 19, while the median was 3 offences. There were 45 people (23.3%) sentenced for the single offence of sexual penetration of a child aged between 10 and 16. The average number of offences per person sentenced for sexual penetration of a child aged between 10 and 16 was 4.19.

**Figure 11: The number of people sentenced for the principal offence of sexual penetration of a child aged between 10 and 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 for sexual penetration of a child aged between 10 and 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, 80 of the total 193 people (41.5%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 2.86 counts of indecent act with a child under 16.

**Figure 12: The number and percentage of people sentenced for the principal offence of sexual penetration of a child aged between 10 and 16 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2001-02 to 2005-06**

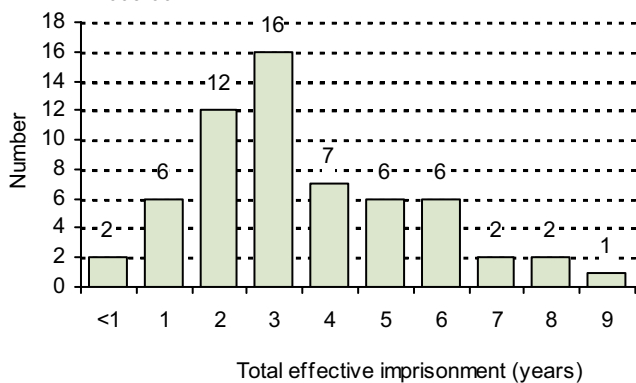
Offence	No.	%	Avg.
1 sexual penetration of a child aged between 10 and 16	193	100.0	2.56
2 indecent act with a child under 16	80	41.5	2.86
3 indecent assault	10	5.2	2.70
4 produce child pornography	8	4.1	1.00
5 attempted offence	6	3.1	1.00
6 possess child pornography	3	1.6	1.00
7 trafficking in a drug of dependence	2	1.0	2.00
8 sexual penetration with a 16/17 year old child who is under care	2	1.0	1.50
9 making a threat to kill	2	1.0	1.00
10 supply a drug of dependence to a child	2	1.0	1.00
<b>People sentenced</b>	<b>193</b>	<b>100.0</b>	<b>4.19</b>

**Total effective sentence of imprisonment**

There were 60 people given a total effective sentence of imprisonment<sup>9</sup>. Figure 13 shows the number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 between 2001-02 and 2005-06 by the length of their total effective sentence. The length of total effective sentences ranged from four months to nine years and two months, while the median total effective length of imprisonment was three years and three months (meaning that half of the total effective sentence lengths were below three years and three months and half were above).

The most common total effective imprisonment length was 3 years (16 people).

**Figure 13: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 by total effective length of imprisonment term, 2001-02 to 2005-06**



**Non-parole period**

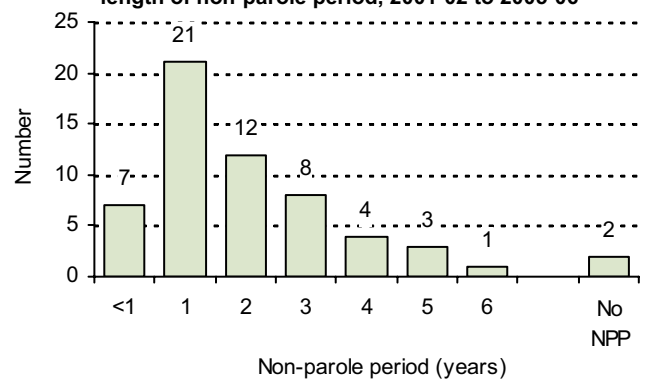
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person 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 sexual penetration of a child aged between 10 and 16. Sentences and non-parole periods must be considered in this broader context.

Of the 60 people who were sentenced to imprisonment for sexual penetration of a child aged between 10 and 16, 58 were eligible to have a non-parole period fixed<sup>10</sup>. Of these people, 56 were given a non-parole period (97%)<sup>11</sup>. Figure 14 shows the number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 between 2001-02 and 2005-06 by the length of their non-parole period. Non-parole periods ranged from six months to six years and two months, while the median length of the non-parole period was one year, ten months and fifteen days (meaning that half of the non-parole periods were below one year, ten months and fifteen days and half were above).

**Figure 14: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 by length of non-parole period, 2001-02 to 2005-06**



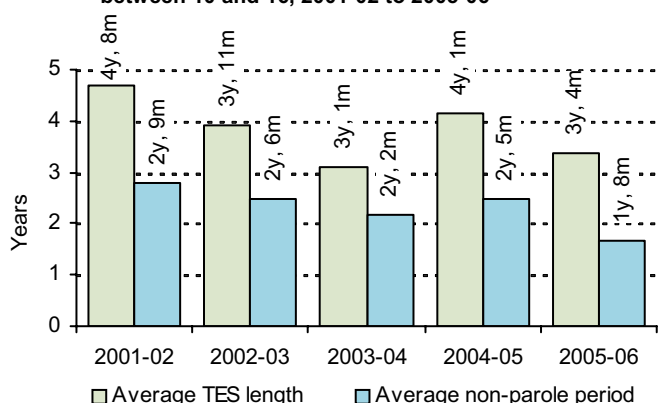
Note: No NPP refers to sentences of imprisonment that had no non-parole period fixed.

**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 2005-06<sup>12</sup>.

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

**Figure 15: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16, 2001-02 to 2005-06**

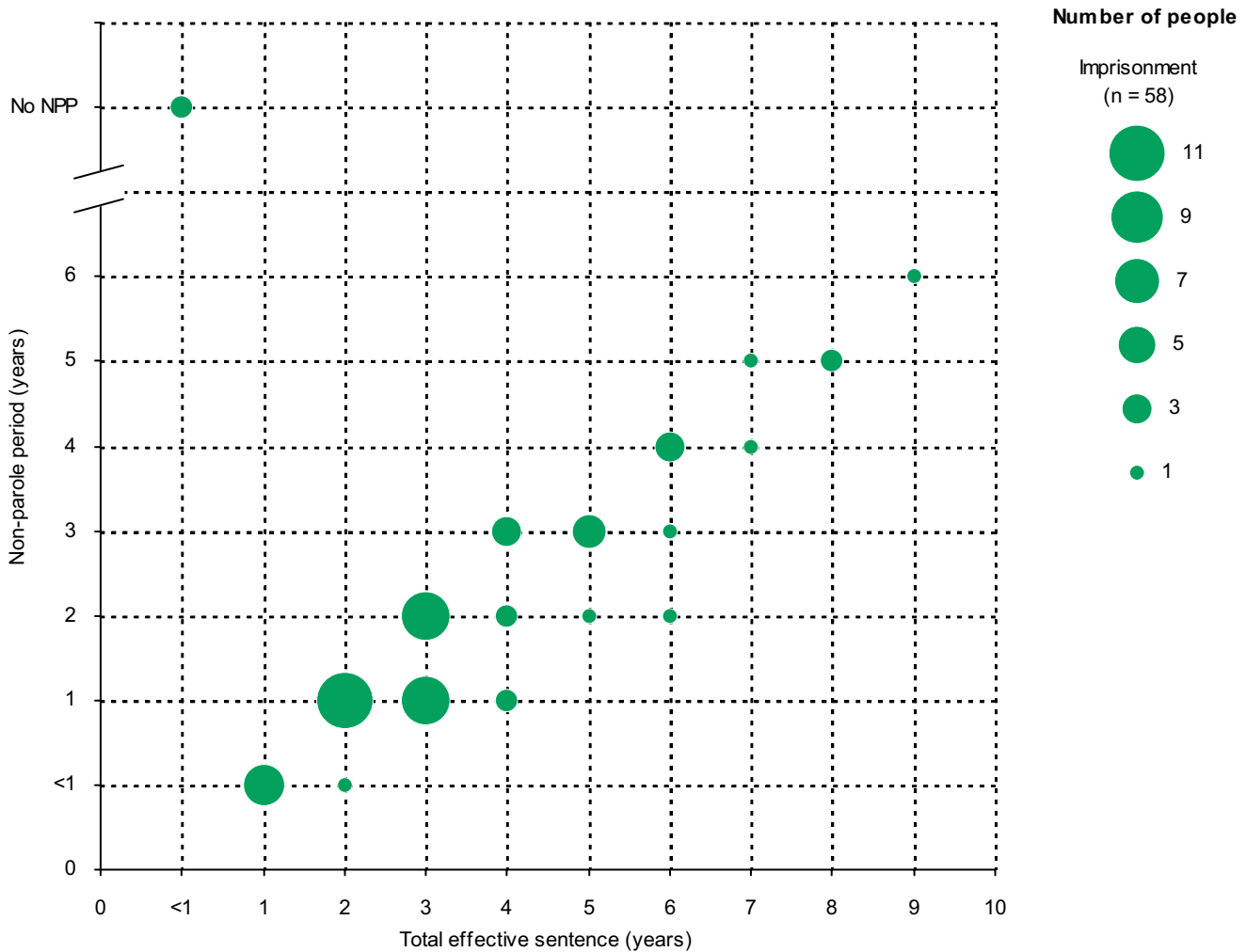


### Total effective sentence of imprisonment by non-parole period

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 sexual penetration of a child aged between 10 and 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>. 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 four months with no non-parole period to nine years and two months with a non-parole period of six years and two months.

Figure 16: The number of people sentenced to imprisonment for sexual penetration of a child aged between 10 and 16 by the total effective sentence and the non-parole period imposed, 2001-02 to 2005-06<sup>14</sup>



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

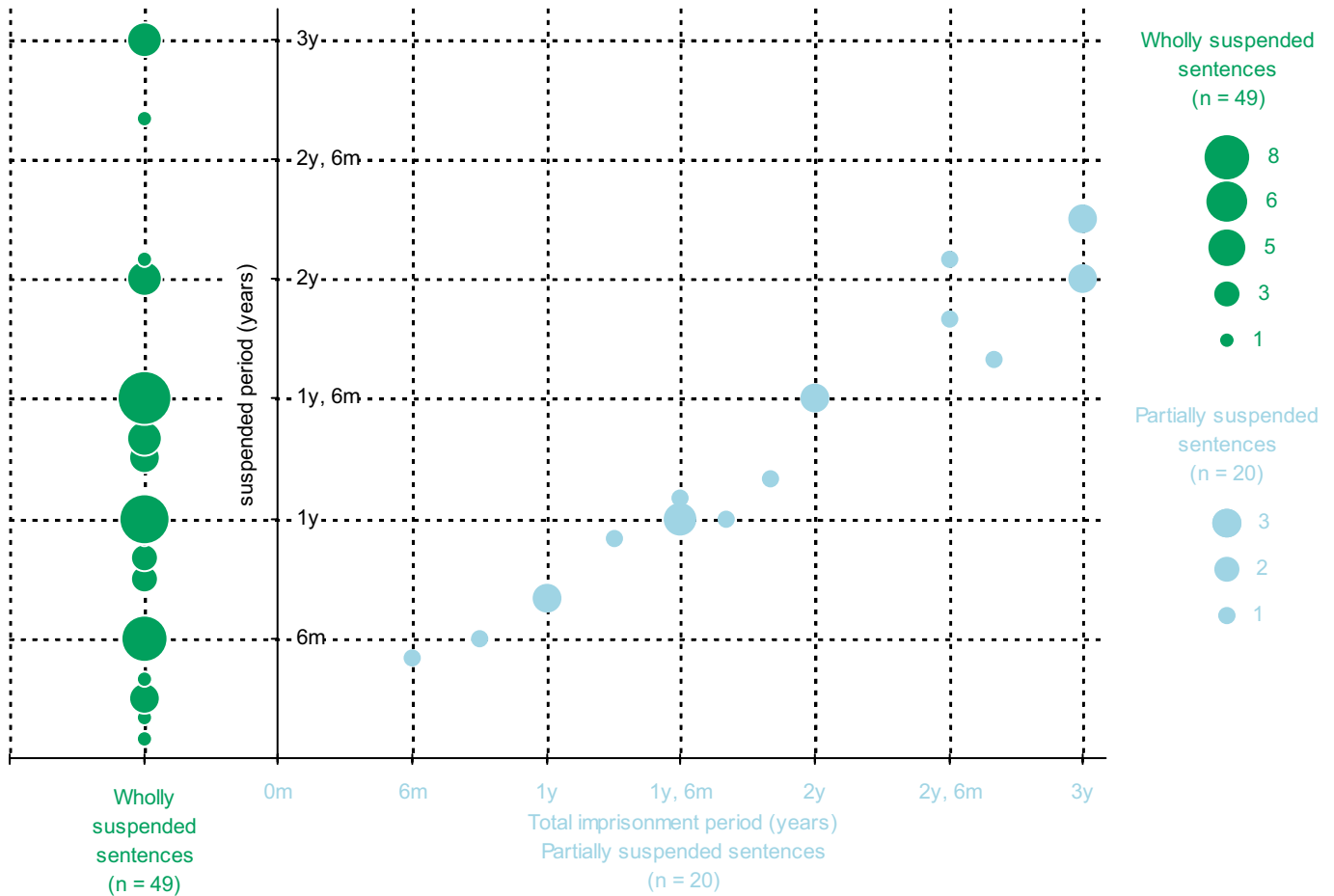
## Suspended sentences of imprisonment

There were 69 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 49 people had their prison sentence wholly suspended and 20 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 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 one month to three years. The most common wholly suspended sentence length was one year and six months (8 people - as represented by the largest green 'bubble' on the chart).

The most common partially suspended sentence combination was one year and six months with one year suspended (3 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 for sexual penetration of a child aged between 10 and 16 by sentence type and length, 2001-02 to 2005-06**

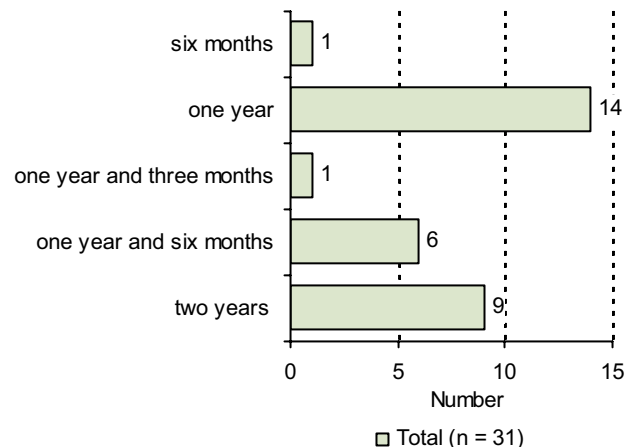


## Community based orders

There were 31 people given a community based order as their total effective sentence.

The length of community based orders for sexual penetration of a child aged between 10 and 16 ranged from six months to two years, while the median length was one year and three months (meaning that half of the lengths were shorter than or equal to one year and three months and half were longer than or equal to one year and three months). The most common length of community based order was one year (14 people).

**Figure 18: The number of people sentenced to a community based order for sexual penetration of a child aged between 10 and 16 by length of order imposed, 2001-02 to 2005-06**



## Summary

Between 2001-02 and 2005-06, 193 people were sentenced for sexual penetration of a child aged between 10 and 16 in the higher courts. Over this period, the majority of those sentenced were men (96%), while 82% were between the age of 18 and 45 years, including 28% who were aged between 20 and 24 years.

Around one third of the people sentenced for sexual penetration of a child aged between 10 and 16 received a period of imprisonment (31%), while 25% received a wholly suspended sentence of imprisonment, 16% received a community based order and 10% received a partially suspended sentence of imprisonment.

Imprisonment was more common for those aged older than 40 years of age, wholly suspended sentences of imprisonment were more common for those aged between 30 and 35 years of age, community based orders were more common for those younger than 20 years of age and partially suspended sentences of imprisonment were more common for those aged between 35 and 40 years of age.

Each of the 193 people was sentenced for an average of 4.19 offences, including 2.56 offences of sexual penetration of a child aged between 10 and 16. The most common offence finalised in conjunction with sexual penetration of a child aged between 10 and 16 was indecent act with a child under 16 (41.5% of all cases). The number and range of offences for which people with a principal offence of sexual penetration of a child aged between 10 and 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 and three months, while the median principal imprisonment length was two years.

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

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

The sentencing database used for this analysis was compiled using conviction returns. Due to incomplete offence information regarding sexual penetration offences on the conviction returns, a further classification exercise was undertaken to determine the specific offence types. This involved reading the sentencing remarks of the particular cases and determining if the offence was 'Sexual penetration of a child aged between 10 and 16', 'Sexual penetration of a child under care' or 'Sexual penetration of a child aged under 10'. In total, there were 318 sexual penetration of a child offences over the five year period 2001-02 to 2005-06. Sentencing remarks were located for 307 offences. The remaining 11 cases were excluded from the analysis because the offence could not be categorised adequately.

- 4 *Crimes Act 1958* (Vic) s 45(1) and 45(2)(c). Sexual penetration includes oral, anal and vaginal penetration (*Crimes Act 1958* (Vic) s 35).
- 5 *Crimes Act 1958* (Vic) s 45(2)(c). Separate penalties apply if the child is under 10 or if the child is under the care, supervision or authority of the accused (see Sentencing Snapshot No. 32 and No. 33).
- 6 Sexual penetration of a child aged between 10 and 16 carries a maximum fine of 1200 penalty units. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette.
- 7 Custodial sentence includes imprisonment, partially suspended sentence and youth training centre order.
- 8 Age is as at the time of sentencing.
- 9 All of the 60 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 10 Two people were not eligible for parole because they were given a total effective sentence length of less than one year.
- 11 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.
- 12 Due to the low number of women (2) 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 58 people who were given a total effective sentence and a non-parole period that related to this case only.

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

Copies of all the Sentencing Snapshots can be downloaded from our website at

[www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au)

- 1 This report presents sentencing outcomes for people sentenced for the principal offence of sexual penetration of a child aged between 10 and 16 in the County and Supreme Courts 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 sexual penetration of a child aged between 10 and 16 who received a more serious sentence for another offence forming part of the same presentment.
- 2 The information source for sentencing outcomes for sexual penetration of a child aged between 10 and 16 only contains information on age and gender characteristics. No other demographic analysis is possible.
- 3 The data used for analysis in this report were provided by Court Services, Department of Justice (Vic). This report describes sentencing trends for sexual penetration of a child aged between 10 and 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.

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