

Sentencing Snapshot

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

June 2009
No. 89

Sexual penetration of a child under care, supervision or authority

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of sexual penetration of a child under care, supervision or authority 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 takes part in an act of sexual penetration with a child, who at the time was aged between 10 and 16 and was under the care, supervision or authority of the person at the time, is guilty of an offence.⁴ This is an indictable offence which carries a maximum penalty of 15 years' imprisonment⁵ and/or a fine of 1800 penalty units.⁶ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

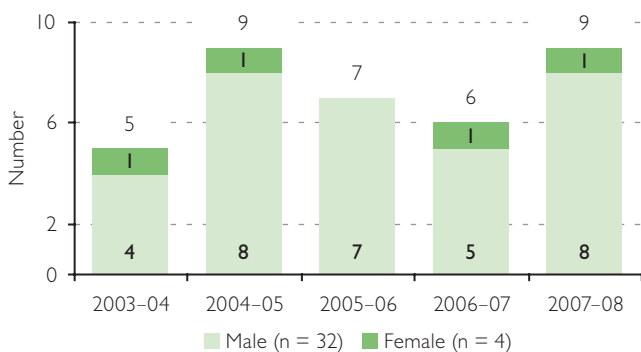
Sexual penetration of a child under care, supervision or authority was the principal offence in 0.3% of cases sentenced in the higher courts between 2003–04 and 2007–08.

People sentenced

Figure 1 shows the number of people sentenced for the principal offence of sexual penetration of a child under care, supervision or authority for the period 2003–04 to 2007–08. As shown, 36 people were sentenced for sexual penetration of a child under care, supervision or authority over the five-year period. There were 9 people sentenced for this offence in 2007–08, up by 3 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (88.9% or 32 of 36 people), including 8 of the 9 people sentenced in 2007–08.

Figure 1: The number of people sentenced for sexual penetration of a child under care, supervision or authority by gender, 2003–04 to 2007–08



Sentence types and trends

Figure 2 shows the total number of people sentenced for sexual penetration of a child under care, supervision or authority 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, 83% of people were given an immediate custodial sentence. This peaked at 100% (7 of 7) in 2005–06 after a low of 60% (3 of 5) in 2003–04. In 2007–08, 78% of people sentenced (7 of 9) were given an immediate custodial sentence.

Figure 2: The number of people sentenced for sexual penetration of a child under care, supervision or authority and the number who received an immediate custodial sentence, 2003–04 to 2007–08



Table 1 shows the number of people sentenced for sexual penetration of a child under care, supervision or authority from 2003–04 to 2007–08 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for sexual penetration of a child under care, supervision or authority received a period of imprisonment (64% or 23 of 36 people), while 19% received a partially suspended sentence of imprisonment and 17% received a wholly suspended sentence of imprisonment.⁸

Table 1: The number and percentage of people sentenced for sexual penetration of a child under care, supervision or authority by sentence type, 2003–04 to 2007–08

Sentence type	2003–04	2004–05	2005–06	2006–07	2007–08
Imprisonment	3 (60%)	7 (78%)	6 (86%)	1 (17%)	6 (67%)
Partially suspended sentence	0 (–)	1 (11%)	1 (14%)	4 (67%)	1 (11%)
Wholly suspended sentence	2 (40%)	1 (11%)	0 (–)	1 (17%)	2 (22%)
People sentenced	5	9	7	6	9

Sentence types by gender

Table 2 shows the types of sentence imposed for sexual penetration of a child under care, supervision or authority grouped by gender. As shown, most men received a period of imprisonment (72%). Three of the four women received a wholly suspended sentence of imprisonment.

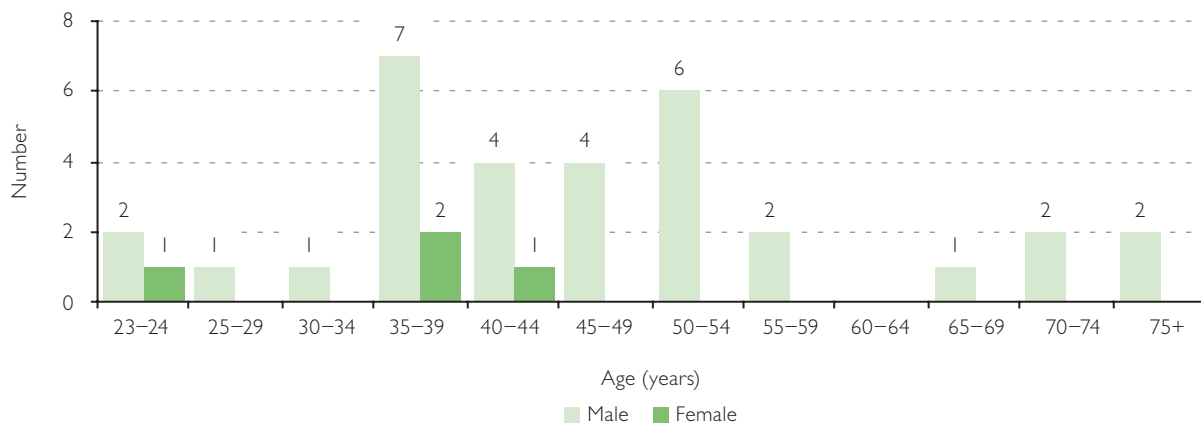
Table 2: The number and percentage breakdown of people sentenced for sexual penetration of a child under care, supervision or authority by gender, 2003–04 to 2007–08

Sentence type	Male	Female	Total
Imprisonment	23 (72%)	0 (–)	23 (64%)
Partially suspended sentence	6 (19%)	1 (25%)	7 (19%)
Wholly suspended sentence	3 (9%)	3 (75%)	6 (17%)
People sentenced	32	4	36

Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for sexual penetration of a child under care, supervision or authority grouped by their age⁹ between 2003–04 and 2007–08. The average age of people sentenced for sexual penetration of a child under care, supervision or authority was forty-six years.

Figure 3: The number of people sentenced for sexual penetration of a child under care, supervision or authority by gender and age, 2003–04 to 2007–08



Sentence types by age

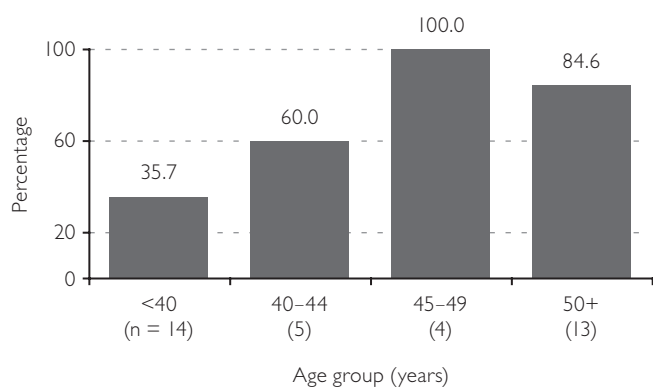
As shown in Table 2, the three sentence types imposed were imprisonment, partially suspended sentences of imprisonment and wholly suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 45–49 years old (100% or four of the 4 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 40 years (36% or five of the 14 people in this age group).

Figure 4: The percentage of people who received a period of imprisonment for sexual penetration of a child under care, supervision or authority by age group, 2003–04 to 2007–08

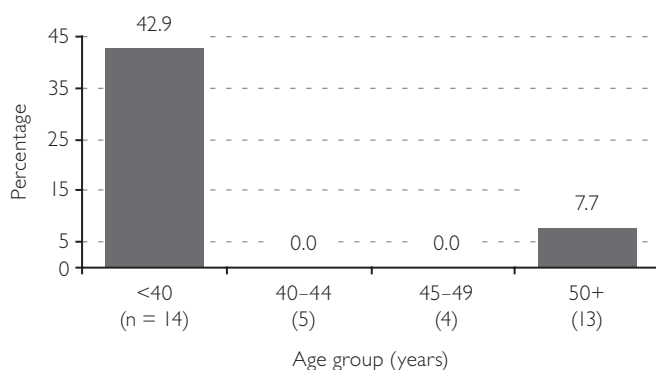


Partially suspended sentences of imprisonment

Partially suspended sentences of imprisonment were most likely to be given to people aged under 40 years (43% or 6 of the 14 people in this age group).

Conversely, none of the 5 people aged 40–44 years old and none of the 4 people aged 45–49 years old received a partially suspended sentence of imprisonment.

Figure 5: The percentage of people who received a partially suspended sentence of imprisonment for sexual penetration of a child under care, supervision or authority by age group, 2003–04 to 2007–08

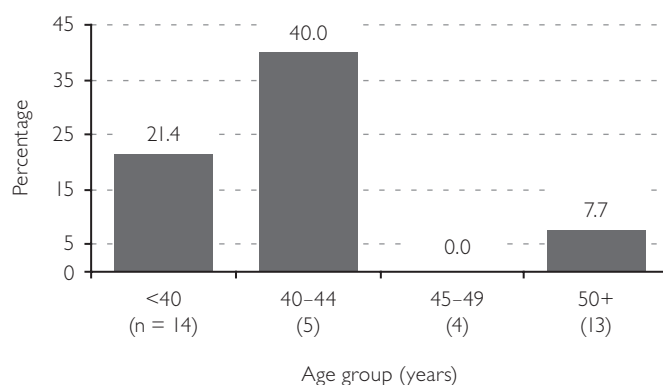


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 40–44 years old (40% or two of the 5 people in this age group).

Conversely, none of the 4 people aged 45–49 years old received a wholly suspended sentence of imprisonment.

Figure 6: The percentage of people who received a wholly suspended sentence of imprisonment for sexual penetration of a child under care, supervision or authority 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.

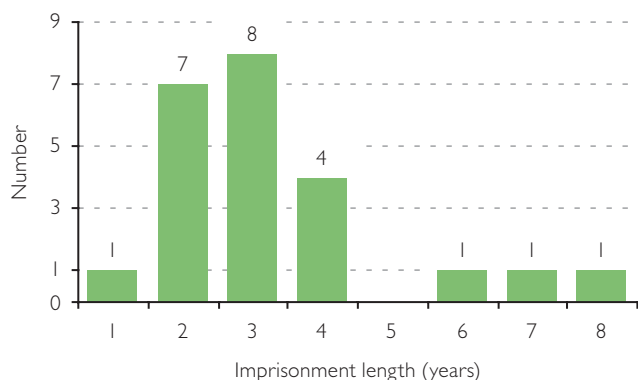
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for sexual penetration of a child under care, supervision or authority must be considered in this broader context. The following sections analyse the use of imprisonment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

Principal sentence of imprisonment

Figure 7 shows the number of people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from one year to eight years, while the median length of imprisonment was three years (meaning that half of the imprisonment terms were shorter than three years and half were longer).

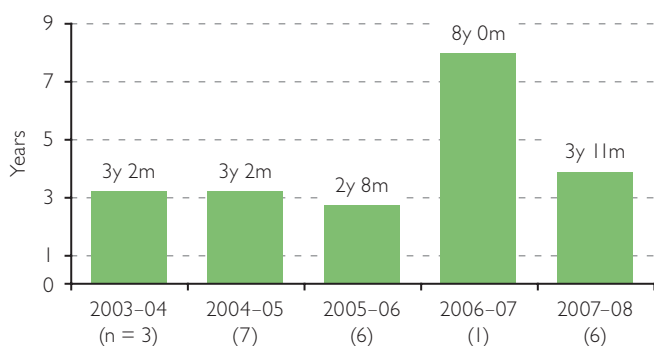
The most common length of imprisonment imposed was three years (8 people).

Figure 7: The number of people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 8, the average length of imprisonment term imposed on people sentenced for sexual penetration of a child under care, supervision or authority ranged from two years and eight months in 2005–06 to eight years in 2006–07.

Figure 8: The average length of imprisonment term imposed on people sentenced for sexual penetration of a child under care, supervision or authority, 2003–04 to 2007–08

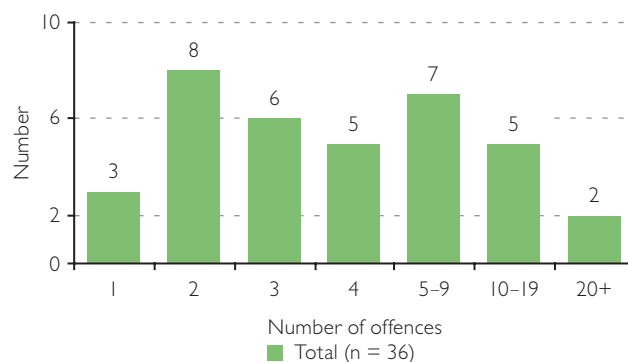


Other offences finalised at the same hearing

Often people prosecuted for sexual penetration of a child under care, supervision or authority 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 under care, supervision or authority.

Figure 9 shows the number of people sentenced for the principal offence of sexual penetration of a child under care, supervision or authority 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 4 offences. There were 3 people (8.3%) sentenced for the single offence of sexual penetration of a child under care, supervision or authority alone. The average number of offences per person sentenced for sexual penetration of a child under care, supervision or authority was 5.94.

Figure 9: The number of people sentenced for the principal offence of sexual penetration of a child under care, supervision or authority by the number of sentenced offences per person, 2003–04 to 2007–08



While Figure 9 presents the number of sentenced offences for those sentenced for sexual penetration of a child under care, supervision or authority, 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, 23 of the total 36 people (63.9%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 3.48 counts of indecent act with a child under 16.

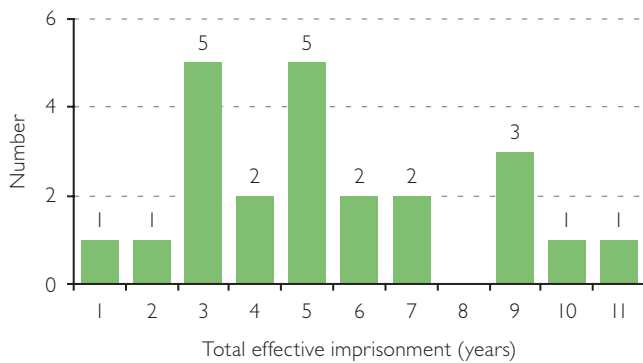
Table 3: The number and percentage of people sentenced for the principal offence of sexual penetration of a child under care, supervision or authority by the most common offences that were sentenced and the average number of those offences that were sentenced, 2003–04 to 2007–08

Offence	No.	%	Avg.
1 sexual penetration of a child under care, supervision or authority	36	100.0	2.81
2 indecent act with a child under 16	23	63.9	3.48
3 indecent assault	6	16.7	2.00
4 sexual penetration with a 16/17 year old child who is under care	2	5.6	3.50
5 attempted offence	2	5.6	2.00
6 possess unregistered longarm	1	2.8	2.00
7 incest by sibling	1	2.8	2.00
8 making a threat to kill	1	2.8	1.00
9 possess cartridge ammunition – unlicensed	1	2.8	1.00
10 possess firearm	1	2.8	1.00
People sentenced	36	100.0	5.94

Total effective sentence of imprisonment

There were 23 people given a total effective sentence of imprisonment.¹⁰ Figure 10 shows the number of people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority 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 three months to eleven years and two months, while the median total effective length of imprisonment was five years (meaning that half of the total effective sentence lengths were below five years and half were above).

Figure 10: The number of people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority 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 sexual penetration of a child under care, supervision or authority. Sentences and non-parole periods must be considered in this broader context.

Of the 23 people who were sentenced to imprisonment for sexual penetration of a child under care, supervision or authority, all were given a non-parole period. Figure 11 shows the number of people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority between 2003–04 and 2007–08 by the length of their non-parole period. Non-parole periods ranged from five months to eight years, while the median length of the non-parole period was three years (meaning that half of the non-parole periods were below three years and half were above).

Figure 11: The number of people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority by length of non-parole period, 2003–04 to 2007–08

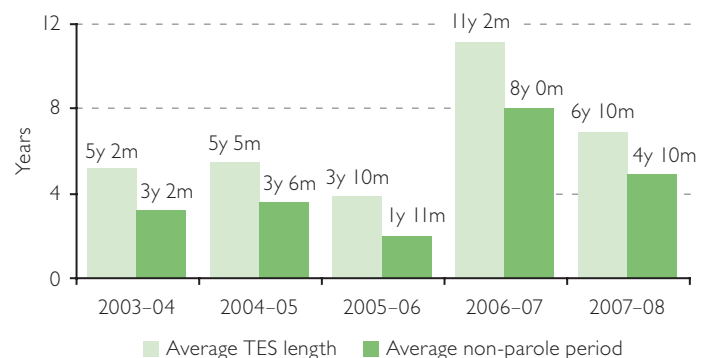


Total effective sentences of imprisonment and non-parole periods

Figure 12 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 2007–08.¹¹

From 2003–04 to 2007–08, the average length of total effective sentences for all people ranged from three years and ten months in 2005–06 to eleven years and two months in 2006–07. Over the same period, the average length of non-parole periods ranged from one year and eleven months in 2005–06 to eight years in 2006–07.

Figure 12: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority, 2003–04 to 2007–08

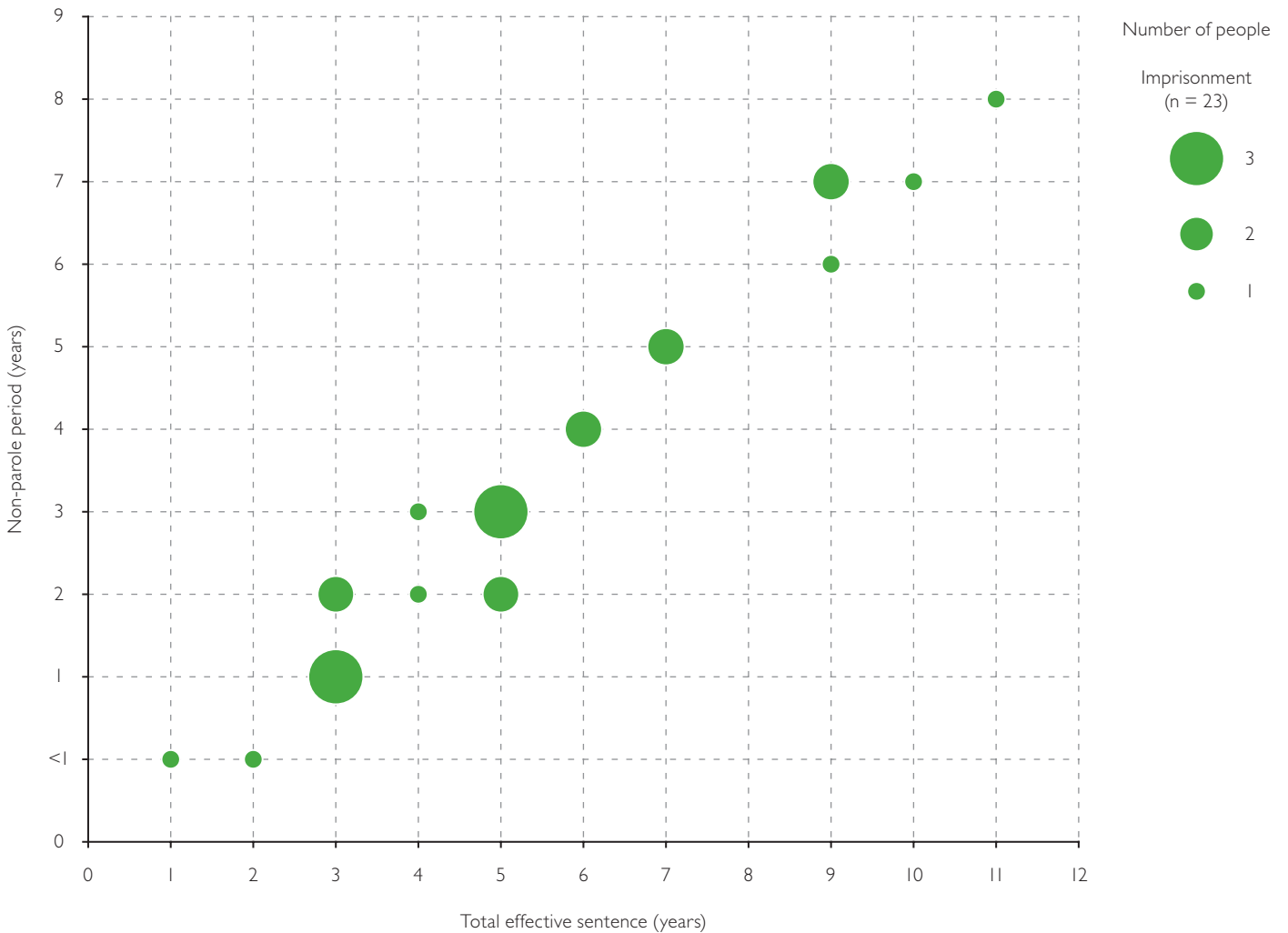


Total effective sentence of imprisonment by non-parole period

While Figures 10 and 11 present the lengths of the total effective sentences and non-parole periods separately, Figure 13 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 under care, supervision or authority 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.¹² As shown, the most common combination of imprisonment length and non-parole period imposed was five years with a non-parole period of three years (3 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from one year and three months with a non-parole period of five months to eleven years and two months with a non-parole period of eight years.

Figure 13: The number of people sentenced to imprisonment for sexual penetration of a child under care, supervision or authority by the total effective sentence and the non-parole period imposed, 2003–04 to 2007–08¹³



Summary

Between 2003–04 and 2007–08, 36 people were sentenced for sexual penetration of a child under care, supervision or authority in the higher courts.

The majority of the people sentenced for sexual penetration of a child under care, supervision or authority received a period of imprisonment (64%), while 19% received a partially suspended sentence of imprisonment and 17% received a wholly suspended sentence of imprisonment.

Imprisonment was more common for those aged between 45 and 50 years of age, partially suspended sentences of imprisonment were more common for those younger than 40 years of age and wholly suspended sentences of imprisonment were more common for those aged between 40 and 45 years of age.

Each of the 36 people was sentenced for an average of 5.94 offences, including 2.81 offences of sexual penetration of a child under care, supervision or authority. The most common offence finalised in conjunction with sexual penetration of a child under care, supervision or authority was indecent act with a child under 16 (63.9% of all cases). The number and range of offences for which people with a principal offence of sexual penetration of a child under care, supervision or authority 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 five years, while the median principal imprisonment length was three years.

Total effective imprisonment lengths ranged from one year and three months with a non-parole period of five months to eleven years and two months with a non-parole period of eight years. The most common sentence of imprisonment was five years with a three year non-parole period.

1. This report presents sentencing outcomes for people sentenced for the principal offence of sexual penetration of a child under care, supervision or authority 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 sexual penetration of a child under care, supervision or authority who received a more serious sentence for another offence forming part of the same presentment.

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. 32, which described sentencing trends for sexual penetration of a child under care, supervision or authority between 2001–02 and 2005–06.

The Sentencing Advisory Council has also released a statistical report on sentencing for sexual penetration offences. This report is available for download from the Council's website <www.sentencingcouncil.vic.gov.au>.

2. The information source for sentencing outcomes for sexual penetration of a child under care, supervision or authority 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.
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, supervision or authority' or 'Sexual penetration of a child aged under 10'. In total, there were 415 people sentenced for the principal proven offence of sexual penetration of a child over the five-year period 2003–04 to 2007–08. Sentencing remarks were located for 398 offences. The remaining 17 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)(b). Sexual penetration includes oral, anal and vaginal penetration (*Crimes Act 1958 (Vic)* s 35).
5. *Crimes Act 1958 (Vic)* s 45(2)(b). Separate penalties apply to the related offences of sexual penetration of a child aged under 10 and sexual penetration of a child aged between 10 and 16 who was not under the care, supervision or authority supervision or authority of the accused (see Sentencing Snapshot No. 88 and No. 90).
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 and partially suspended sentence.
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 three individuals who received a wholly suspended sentence for the principal proven offence of sexual penetration of a child under care, supervision or authority in 2006–07 and 2007–08. These offenders committed the offences prior to this legislative change.
9. Age is as at the time of sentencing.
10. All of the 23 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
11. There were no women imprisoned with a non-parole period over the reference period.
12. 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.
13. This graph includes the 23 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

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

- 90 Sexual penetration of a child aged under 10
- 89 Sexual penetration of a child under care, supervision or authority
- 88 Sexual penetration of a child aged between 10 and 16
- 87 Making a threat to kill
- 86 Culpable driving causing death
- 85 Manslaughter
- 84 Murder
- 83 Rape
- 82 Maintain a sexual relationship with a child under 16
- 81 Indecent act with a child under 16
- 80 Indecent assault
- 79 Arson
- 78 Obtaining property by deception
- 77 Obtaining a financial advantage by deception
- 76 Theft
- 75 Handling stolen goods

Sentencing trends in the Magistrates' Court, 2004–05 to 2007–08

- 74 Unlicensed driving
- 73 Driving while suspended
- 72 Driving while disqualified
- 71 Trafficking heroin
- 70 Trafficking ecstasy
- 69 Trafficking cannabis
- 68 Trafficking amphetamines
- 67 Possessing heroin
- 66 Possessing ecstasy
- 65 Possessing cannabis
- 64 Possessing amphetamines
- 63 Causing injury recklessly
- 62 Causing injury intentionally

- 61 Causing serious injury recklessly
- 60 Going equipped to steal
- 59 Handling stolen goods
- 58 Aggravated burglary
- 57 Burglary
- 56 Other theft
- 55 Theft of a bicycle
- 54 Theft from a shop
- 53 Theft from a motor vehicle
- 52 Theft of a motor vehicle

Sentencing trends in the Magistrates' Court, 2004–05 to 2006–07

- 51 Knowingly possess child pornography
- 50 Indecent act with a child under 16
- 49 Indecent Assault

Sentencing trends in the higher courts, 2002–03 to 2006–07

- 48 Cultivating a commercial quantity of narcotic plants
- 47 Cultivating narcotic plants
- 46 Trafficking in a large commercial quantity of drugs
- 45 Trafficking in a commercial quantity of drugs
- 44 Trafficking in a non-commercial quantity of drugs
- 43 Incest
- 42 Affray
- 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

Authored by Nick Turner, Senior Data Analyst, Sentencing Advisory Council.
Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

© Copyright State of Victoria, Sentencing Advisory Council, June 2009.

ISSN 1832-6153 (Print)
1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 4, 436 Lonsdale Street, Melbourne.
Printed by BigPrint, 50 Lonsdale Street, Melbourne.

Disclaimer:

The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots are accurate at the time of publishing.

Copies of Sentencing Snapshots
can be downloaded from our website at
www.sentencingcouncil.vic.gov.au