

No. 33: Sentencing trends for sexual penetration of a child aged under 10 in the higher courts of Victoria, 2001-02 to 2005-06

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of sexual penetration of a child aged under 10 and details the age and gender² of people sentenced for this offence in the County and Supreme Courts of Victoria between 2001-02 and 2005-06³.

A person who takes part in an act of sexual penetration with a child under the age of 10 is guilty of an offence⁴. Sexual penetration of a child under 10 is an indictable offence which carries a maximum penalty of 25 years' imprisonment⁵ and/or a fine of 3000 penalty units⁶. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

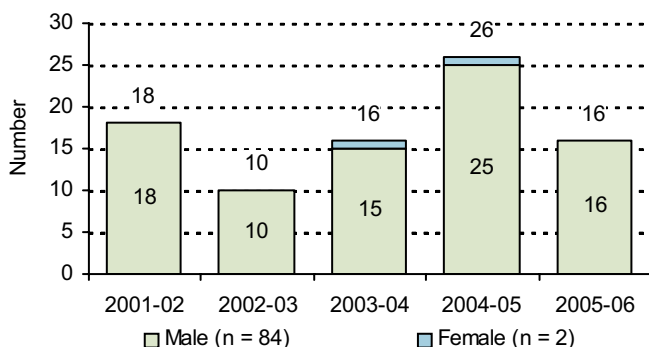
All offences involving sexual penetration of a child aged under 10 were heard in the County or Supreme Court. Sexual penetration of a child aged under 10 was the principal offence in 0.9% of cases sentenced in the higher courts between 2001-02 and 2005-06.

People sentenced

Figure 1 shows the number of people sentenced for sexual penetration of a child aged under 10 for the period 2001-02 to 2005-06. As shown, 86 people were sentenced for sexual penetration of a child aged under 10 over the five year period. There were 16 people sentenced for this offence in 2005-06, down by 10 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (97.7% or 84 of 86 people), including all of the 16 people sentenced in 2005-06.

Figure 1: The number of people sentenced for sexual penetration of a child aged under 10 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 under 10 and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention⁷. Over the five year period, 73% of people were given a custodial sentence. This peaked at 90% (9 of 10) in 2002-03 before decreasing to 54% (14 of 26) in 2004-05. In 2005-06, 69% of people sentenced (11 of 16) were given a custodial sentence.

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

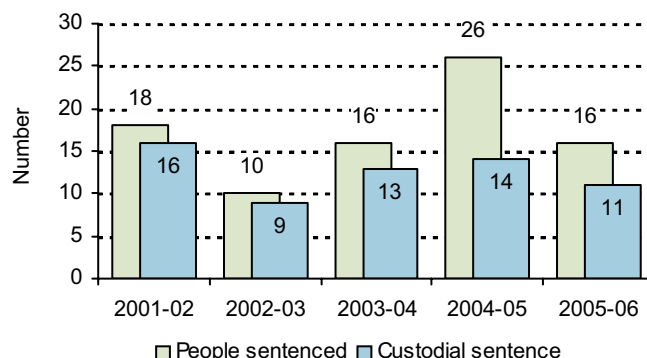
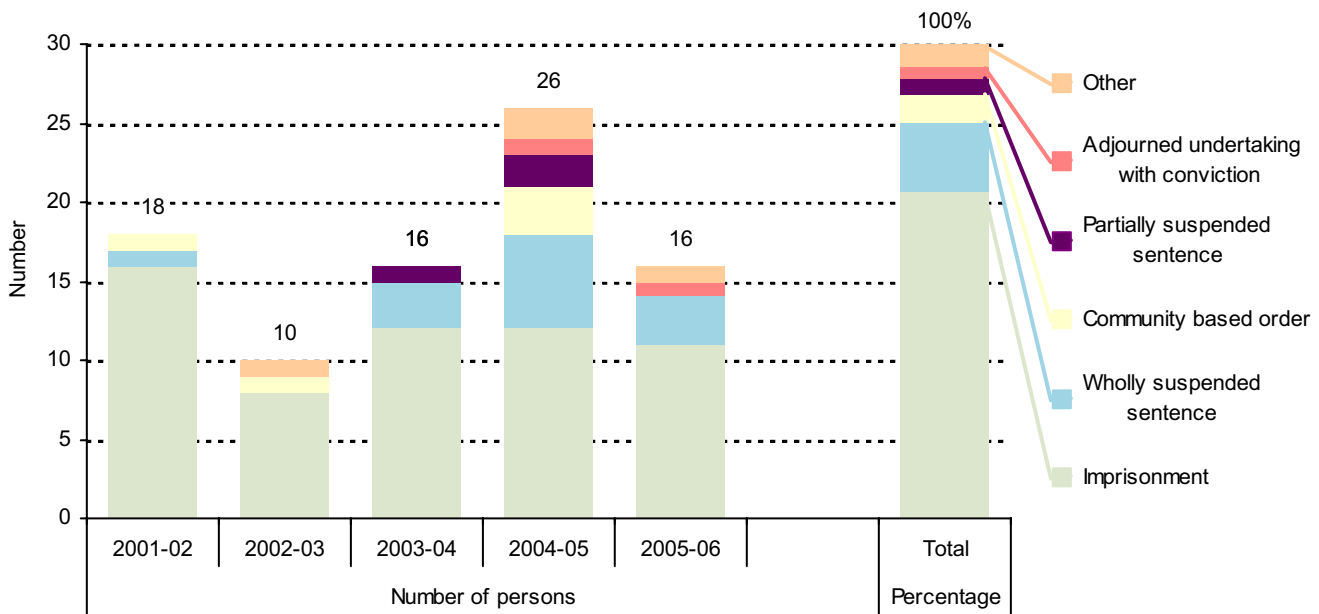


Figure 3 and Table 1 show the number of people sentenced for sexual penetration of a child aged under 10 from 2001-02 to 2005-06 by the types of sentences imposed.

Over the five year period, the majority of the people sentenced for sexual penetration of a child aged under 10 received a period of imprisonment (69% or 59 of 86 people), while 15% received a wholly suspended sentence of imprisonment.

More than half of the people sentenced received a period of imprisonment in each of the five years except for 2004-05. In 2004-05, six of the 26 people were sentenced to a wholly suspended sentence, while three people received a community based order.

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



Other includes youth training centre order, youth attendance order, intensive correction order and adjourned undertaking without conviction.

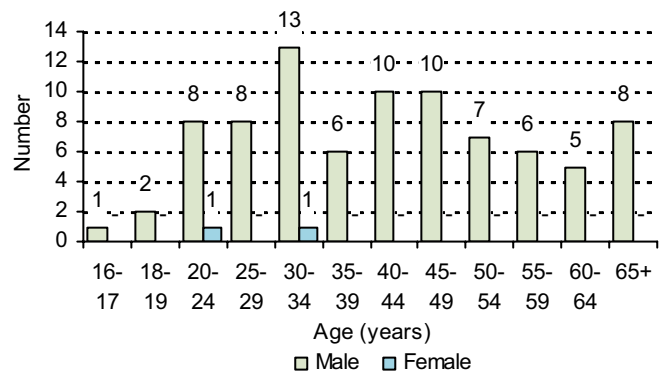
Table 1: The number and percentage of people sentenced for sexual penetration of a child aged under 10 by sentence type, 2001-02 to 2005-06

Sentence type	01-02	02-03	03-04	04-05	05-06
Imprisonment	16 89%	8 80%	12 75%	12 46%	11 69%
Wholly suspended sentence	1 6%	0	3 19%	6 23%	3 19%
Community based order	1 6%	1 10%	0	3 12%	0
Partially suspended sentence	0	0	1 6%	2 8%	0
Adjoined undertaking with conviction	0	0	0	1 4%	1 6%
Youth training centre order	0	1 10%	0	0	0
Youth attendance order	0	0	0	1 4%	0
Intensive correction order	0	0	0	0	1 6%
Adjoined undertaking without conviction	0	0	0	1 4%	0
People sentenced	18	10	16	26	16

Age and gender of people sentenced

Figure 4 shows the gender of people sentenced for sexual penetration of a child aged under 10 grouped by their age⁸ between 2001-02 and 2005-06. The average age of people sentenced for sexual penetration of a child aged under 10 was forty-one years. One male juvenile was sentenced over this period.

Figure 4: The number of people sentenced for sexual penetration of a child aged under 10 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 under 10 grouped by gender. As shown, while the 84 men received a variety of sentences, the two women both received a period of imprisonment⁹.

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

Sentence type	Male	Female	Total
Imprisonment	57 68%	2 100%	59 69%
Wholly suspended sentence	13 15%	0 -	13 15%
Community based order	5 6%	0 -	5 6%
Partially suspended sentence	3 4%	0 -	3 3%
Adjourned undertaking with conviction	2 2%	0 -	2 2%
Intensive correction order	1 1%	0 -	1 1%
Adjourned undertaking without conviction	1 1%	0 -	1 1%
Youth attendance order	1 1%	0 -	1 1%
Youth training centre order	1 1%	0 -	1 1%
People sentenced	84	2	86

Sentence types by age

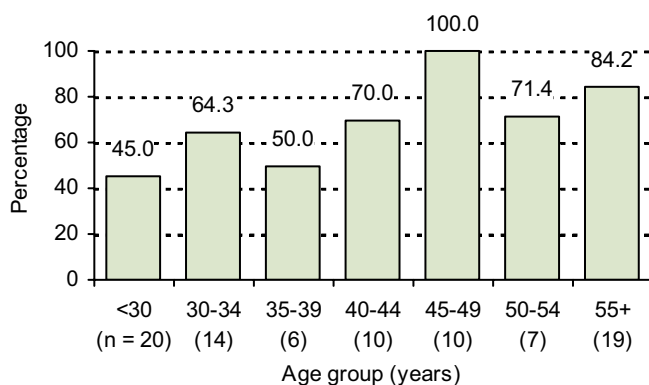
As shown in the table above, the two most common sentence types were imprisonment and wholly suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

Imprisonment

Sentences of imprisonment were most likely to be given to people aged 45-49 years old (100% or 10 of the 10 people in this age group).

Conversely, sentences of imprisonment were least common for those aged under 30 years (45% or nine of the 20 people in this age group).

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

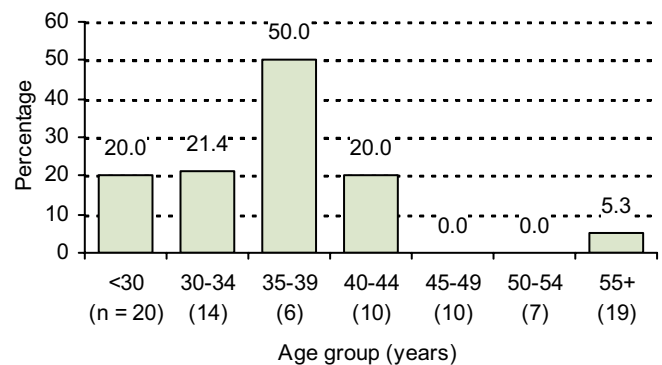


Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 35-39 years old (50% or three of the 6 people in this age group).

Conversely, none of the 10 people aged 45-49 years old and none of the 7 people aged 50-54 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 aged under 10 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.

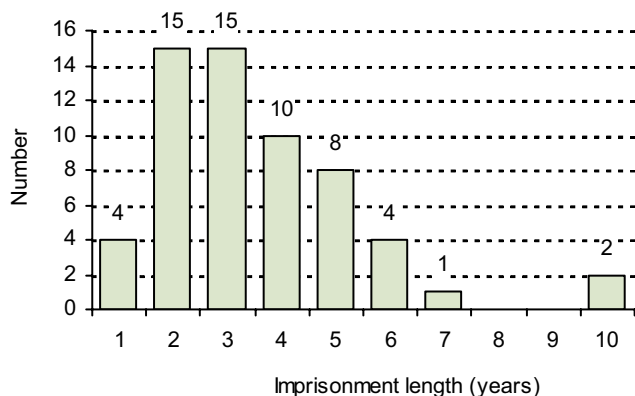
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for sexual penetration of a child aged under 10 must be considered in this broader context. The following sections analyse the use of imprisonment for sexual penetration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

Principal sentence of imprisonment

Figure 7 shows the number of people sentenced to imprisonment for sexual penetration of a child aged under 10 between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to ten 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).

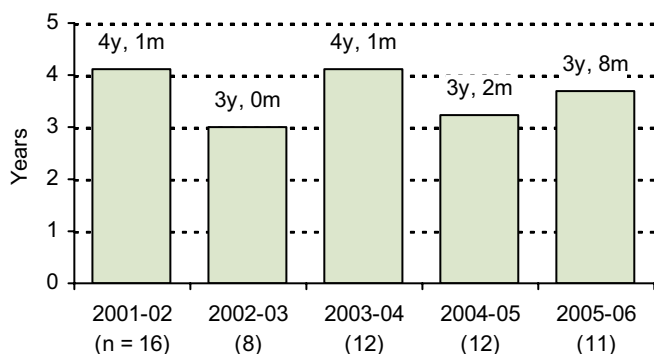
The most common length of imprisonment imposed was 3 years (15 people).

Figure 7: The number of people sentenced to imprisonment for sexual penetration of a child aged under 10 by length of imprisonment term, 2001-02 to 2005-06



As shown in Figure 8, the average length of imprisonment term imposed on people sentenced for sexual penetration of a child aged under 10 ranged from three years in 2002-03 to four years and one month in 2001-02 and 2003-04.

Figure 8: The average length of imprisonment term imposed on people sentenced for sexual penetration of a child aged under 10, 2001-02 to 2005-06

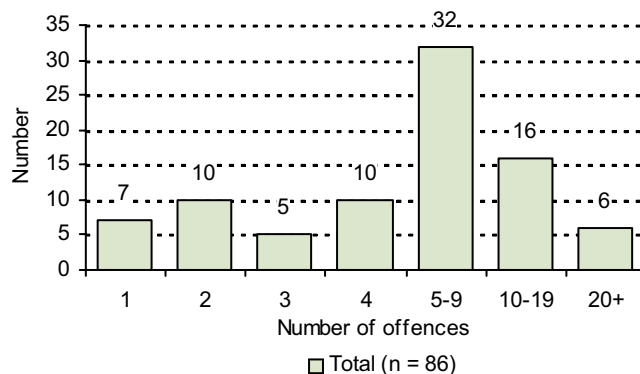


Other offences finalised at the same hearing

Often people prosecuted for sexual penetration of a child aged under 10 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 under 10.

Figure 9 shows the number of people sentenced for the principal offence of sexual penetration of a child aged under 10 by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 39, while the median was 6.5 offences. There were 7 people (8.1%) sentenced for the single offence of sexual penetration of a child aged under 10. The average number of offences per person sentenced for sexual penetration of a child aged under 10 was 8.00.

Figure 9: The number of people sentenced for the principal offence of sexual penetration of a child aged under 10 by the number of sentenced offences per person, 2001-02 to 2005-06



While Figure 9 presents the number of sentenced offences for those sentenced for sexual penetration of a child aged under 10, Figure 10 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, 48 of the total 86 people (55.8%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 4.40 counts of indecent act with a child under 16.

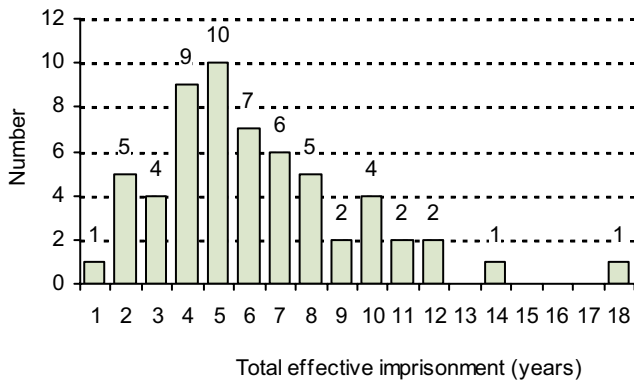
Figure 10: The number and percentage of people sentenced for the principal offence of sexual penetration of a child aged under 10 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2001-02 to 2005-06

Offence	No.	%	Avg.
1 sexual penetration of a child aged under 10	86	100.0	2.77
2 indecent act with a child under 16	48	55.8	4.40
3 indecent assault	27	31.4	3.89
4 gross indecency with a child	13	15.1	2.46
5 incest	8	9.3	3.63
6 produce child pornography	7	8.1	1.71
7 attempted offence	6	7.0	1.33
8 attempt to take part in an act of sexual penetration with a child under the age of 10	6	7.0	1.17
9 possess child pornography	5	5.8	1.00
10 sexual penetration with a child aged under 16	4	4.7	3.00
People sentenced	86	100.0	8.00

Total effective sentence of imprisonment

There were 59 people given a total effective sentence of imprisonment¹⁰. Figure 11 shows the number of people sentenced to imprisonment for sexual penetration of a child aged under 10 between 2001-02 and 2005-06 by the length of their total effective sentence. The length of total effective sentences ranged from one year and three months to eighteen years, while the median total effective length of imprisonment was six years (meaning that half of the total effective sentence lengths were below six years and half were above).

Figure 11: The number of people sentenced to imprisonment for sexual penetration of a child aged under 10 by total effective length of imprisonment term, 2001-02 to 2005-06



Non-parole period

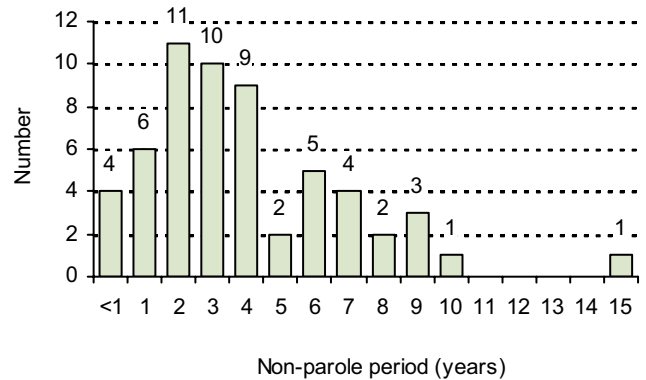
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person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

Of the 59 people who were sentenced to imprisonment for sexual penetration of a child aged under 10, all were eligible to have a non-parole period fixed. Of these people, 58 were given a non-parole period (98%)¹¹. Figure 12 shows the number of people sentenced to imprisonment for sexual penetration of a child aged under 10 between 2001-02 and 2005-06 by the length of their non-parole period. Non-

parole periods ranged from six months to fifteen years, while the median length of the non-parole period was three years and six months (meaning that half of the non-parole periods were below three years and six months and half were above).

Figure 12: The number of people sentenced to imprisonment for sexual penetration of a child aged under 10 by length of non-parole period, 2001-02 to 2005-06

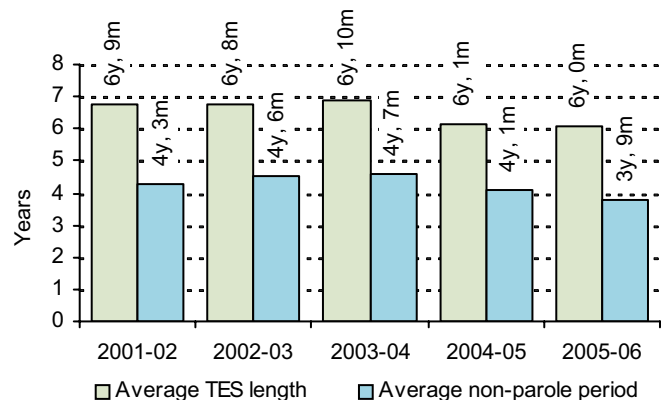


Total effective sentences of imprisonment and non-parole periods

Figure 13 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 2005-06¹².

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

Figure 13: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for sexual penetration of a child aged under 10, 2001-02 to 2005-06

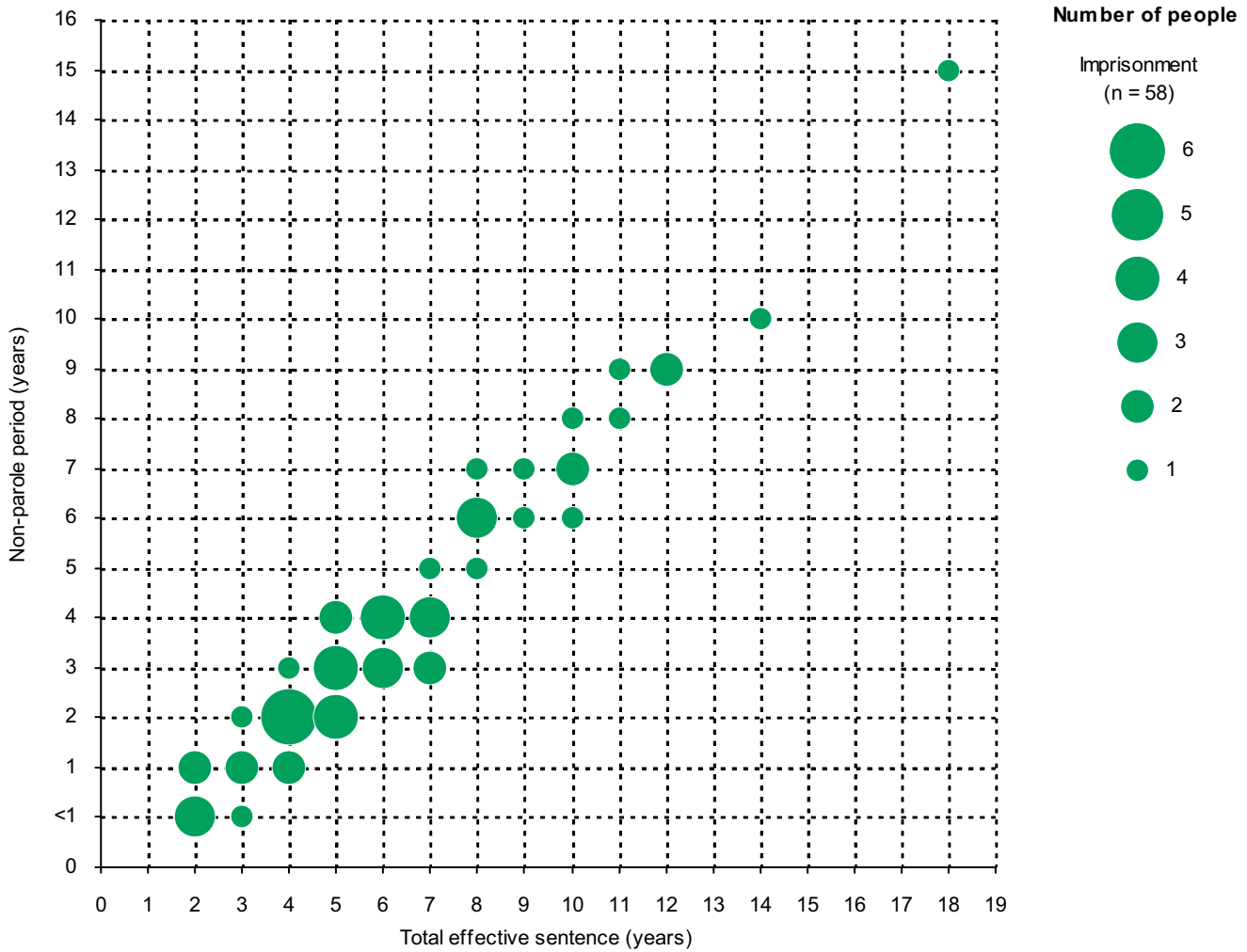


Total effective sentence of imprisonment by non-parole period

While Figure 11 and Figure 12 present the lengths of the total effective sentences and non-parole periods separately, Figure 14 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for sexual penetration of a child aged under 10 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 combination¹³. 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 (6 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 eighteen years with a non-parole period of fifteen years.

Figure 14: The number of people sentenced to imprisonment for sexual penetration of a child aged under 10 by the total effective sentence and the non-parole period imposed, 2001-02 to 2005-06¹⁴



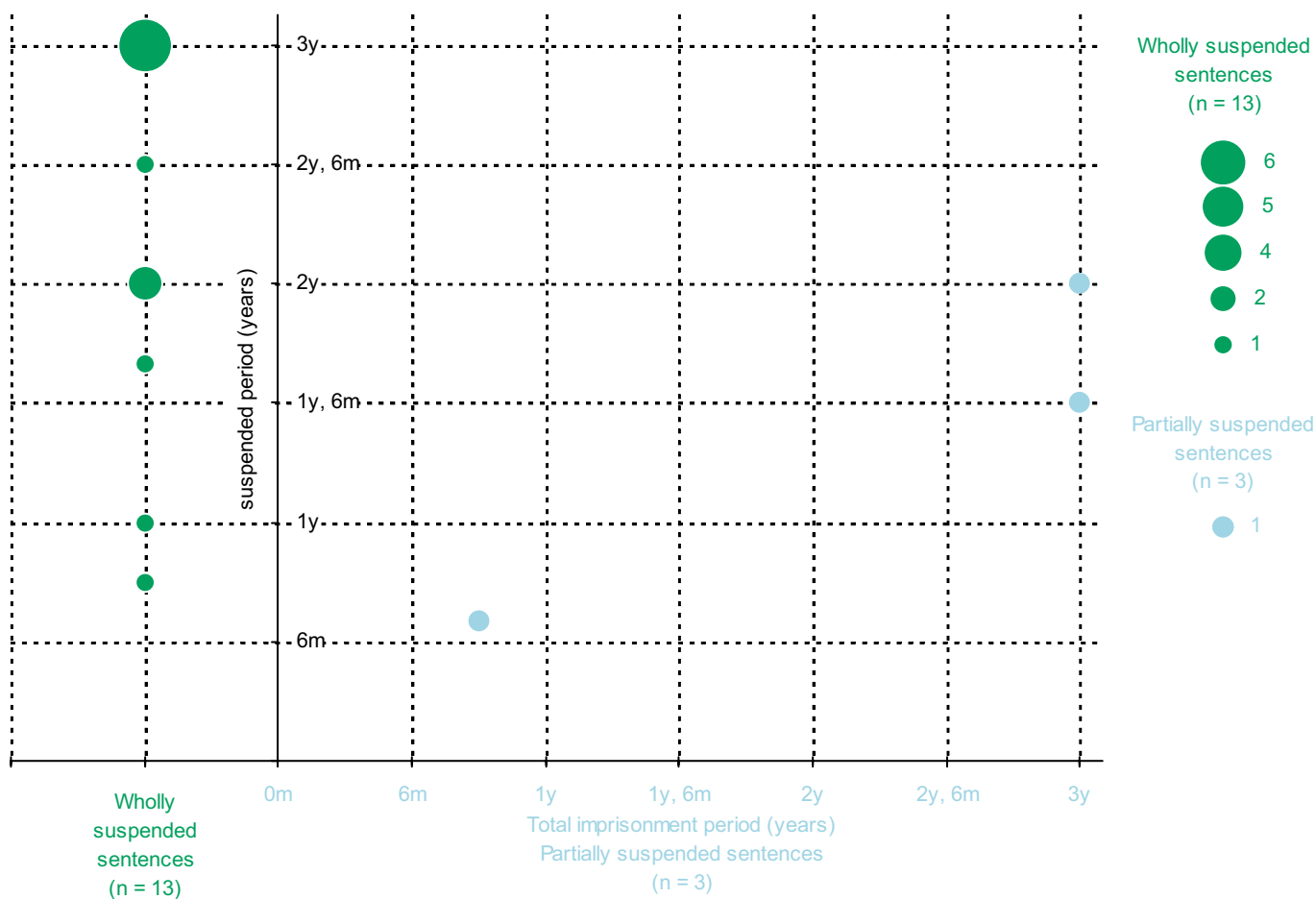
Suspended sentences of imprisonment

There were 16 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 13 people had their prison sentence wholly suspended and 3 received a partially suspended sentence of imprisonment. Figure 15 shows the number of people with a suspended sentence of imprisonment as their total effective sentence by the suspended sentence type and length of sentence. The 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 nine months to three years. The most common wholly suspended sentence length was three years (6 people - as represented by the largest green 'bubble' on the chart).

The three partially suspended sentences imposed were for nine months with seven months suspended, three years with one year and six months suspended and three years with two years suspended (1 person each - as represented by the three largest blue 'bubbles' on the chart).

Figure 15: The number of people given a wholly or partially suspended sentence of imprisonment for sexual penetration of a child aged under 10 by sentence type and length, 2001-02 to 2005-06



Summary

Between 2001-02 and 2005-06, 86 people were sentenced for sexual penetration of a child aged under 10 in the higher courts. Over this period, the majority of those sentenced were men (98%), while 47% were between the age of 30 and 50 years.

The majority of the people sentenced for sexual penetration of a child aged under 10 received a period of imprisonment (69%), while 15% received a wholly suspended sentence of imprisonment.

Imprisonment was more common for those aged between 45 and 50 years of age and wholly suspended sentences of imprisonment were more common for those aged between 35 and 40 years of age.

Each of the 86 people was sentenced for an average of 8.00 offences, including 2.77 offences of sexual penetration of a child aged under 10. The most common offence finalised in conjunction with sexual penetration of a child aged under 10 was indecent act with a child under 16 (55.8% of all cases).

The number and range of offences for which people with a principal offence of sexual penetration of a child aged under 10 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 six 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 eighteen years with a non-parole period of fifteen years. The most common sentence of imprisonment was four years with a two year non-parole period.

The most common wholly suspended sentence length was three years.

- 1 This report presents sentencing outcomes for people sentenced for the principal offence of sexual penetration of a child aged under 10 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 under 10 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 under 10 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 under 10 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.

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). Sexual penetration includes oral, anal and vaginal penetration (*Crimes Act 1958 (Vic)* s 35).
- 5 *Crimes Act 1958 (Vic)* s 45(2)(a). Separate penalties apply if the child is aged between 10 and 16 or if the child is aged between 10 and 16 and is under the care, supervision or authority of the accused (see Sentencing Snapshot No. 31 and No. 32).
- 6 Sexual penetration of a child under 10 carries a maximum fine of 3000 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 In 2004, a woman was sentenced to 5 years' imprisonment with a non-parole period of 2 years for one count of conduct endangering life, two counts of sexual penetration of a child aged under 10 and two counts of common law assault. In 2005, a woman was sentenced to 5 years and nine months' imprisonment with a non-parole period of 2 years and six months for three counts of sexual penetration of a child aged under 10 and nine counts of theft.

- 10 All of the 59 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 11 One person was 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 this case. The non-parole period for this person is 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

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