

# Sentencing Snapshot

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

June 2009  
No. 90

## Sexual penetration of a child aged under 10

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of sexual penetration of a child aged under 10 and details the age and gender<sup>2</sup> of people sentenced for this offence in the County Court of Victoria between 2003–04 and 2007–08.<sup>3</sup>

A person who takes part in an act of sexual penetration with a child under the age of 10 is guilty of an offence.<sup>4</sup> Sexual penetration of a child under 10 is an indictable offence which carries a maximum penalty of 25 years' imprisonment<sup>5</sup> and/or a fine of 3000 penalty units.<sup>6</sup> Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

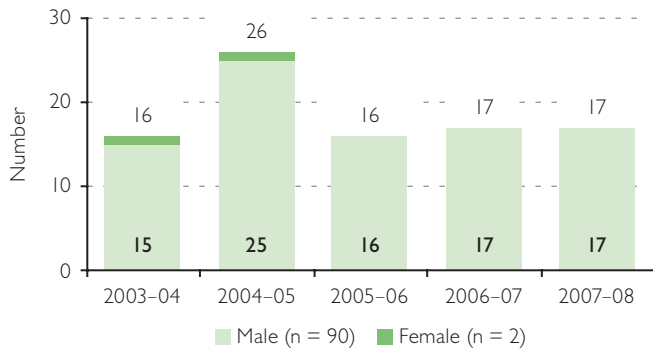
Sexual penetration of a child aged under 10 was the principal offence in 0.9% of cases sentenced in the higher courts between 2003–04 and 2007–08.

### People sentenced

Figure 1 shows the number of people sentenced for the principal proven offence of sexual penetration of a child aged under 10 for the period 2003–04 to 2007–08. As shown, 92 people were sentenced for sexual penetration of a child aged under 10 over the five-year period. There were 17 people sentenced for this offence in 2007–08, remaining stable with the previous year.

Over the five years depicted, the majority of those sentenced were men (97.8% or 90 of 92 people), including all of the 17 people sentenced in 2007–08.

**Figure 1:** The number of people sentenced for sexual penetration of a child aged under 10 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 aged under 10 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.<sup>7</sup> Over the five-year period, 74% of people were given an immediate custodial sentence. This peaked at 94% (16 of 17) in 2006–07 after a low of 54% (14 of 26) in 2004–05. In 2007–08, 82% of people sentenced (14 of 17) were given an immediate custodial sentence.

**Figure 2:** The number of people sentenced for sexual penetration of a child aged under 10 and the number who received an immediate custodial sentence, 2003–04 to 2007–08

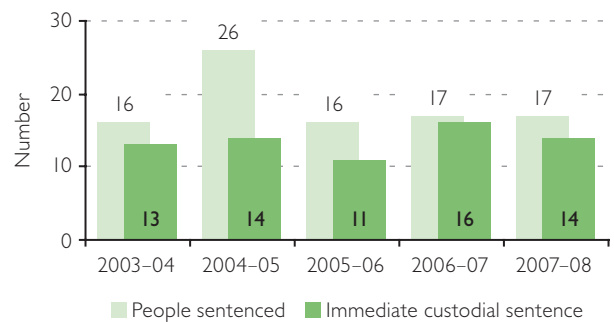


Table 1 shows the number of people sentenced for sexual penetration of a child aged under 10 from 2003–04 to 2007–08 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for sexual penetration of a child aged under 10 received a period of imprisonment (71% or 65 of 92 people), while 15% received a wholly suspended sentence of imprisonment.<sup>8</sup>

The use of suspended sentences has decreased over the past two years with 2 wholly suspended sentences imposed in 2006–07 and 2007–08 compared to 12 wholly and 3 partially suspended sentences imposed in the first three years of the reference period.

**Table 1:** The number and percentage of people sentenced for sexual penetration of a child aged under 10 by sentence type, 2003–04 to 2007–08

Sentence type	2003–04	2004–05	2005–06	2006–07	2007–08
Imprisonment	12 (75%)	12 (46%)	11 (69%)	16 (94%)	14 (82%)
Wholly suspended sentence	3 (19%)	6 (23%)	3 (19%)	0 (–)	2 (12%)
Partially suspended sentence	1 (6%)	2 (8%)	0 (–)	0 (–)	0 (–)
Community-based order	0 (–)	3 (12%)	0 (–)	0 (–)	0 (–)
Adjourned undertaking with conviction	0 (–)	1 (4%)	1 (6%)	0 (–)	1 (6%)
Youth supervision order	0 (–)	0 (–)	0 (–)	1 (6%)	0 (–)
Youth attendance order	0 (–)	1 (4%)	0 (–)	0 (–)	0 (–)
Intensive correction order	0 (–)	0 (–)	1 (6%)	0 (–)	0 (–)
Adjourned undertaking without conviction	0 (–)	1 (4%)	0 (–)	0 (–)	0 (–)
<b>People sentenced</b>	<b>16</b>	<b>26</b>	<b>16</b>	<b>17</b>	<b>17</b>

### Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for sexual penetration of a child aged under 10 grouped by their age<sup>9</sup> between 2003–04 and 2007–08. The average age of people sentenced for sexual penetration of a child aged under 10 was forty-three years. One male juvenile was sentenced over this period.

### 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, most men received a period of imprisonment (70%), followed by a wholly suspended sentence of imprisonment (16%). The two women received a period of imprisonment.

Figure 3: The number of people sentenced for sexual penetration of a child aged under 10 by gender and age, 2003–04 to 2007–08



Table 2: The number and percentage breakdown of people sentenced for sexual penetration of a child aged under 10 by gender, 2003–04 to 2007–08

Sentence type	Male	Female	Total
Imprisonment	63 (70%)	2 (100%)	65 (71%)
Wholly suspended sentence	14 (16%)	0 (–)	14 (15%)
Partially suspended sentence	3 (3%)	0 (–)	3 (3%)
Community-based order	3 (3%)	0 (–)	3 (3%)
Adjourned undertaking with conviction	3 (3%)	0 (–)	3 (3%)
Youth supervision order	1 (1%)	0 (–)	1 (1%)
Youth attendance order	1 (1%)	0 (–)	1 (1%)
Intensive correction order	1 (1%)	0 (–)	1 (1%)
Adjourned undertaking without conviction	1 (1%)	0 (–)	1 (1%)
<b>People sentenced</b>	<b>90</b>	<b>2</b>	<b>92</b>

## Sentence types by age

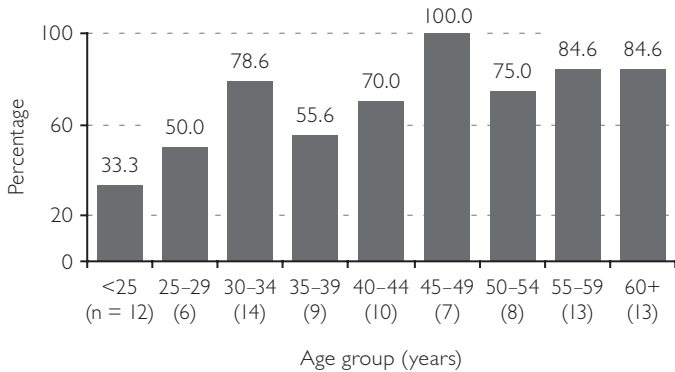
As shown in Table 2, the two most common sentence types were imprisonment and wholly suspended sentences of imprisonment. The following analysis examines these sentence types by the offender's age group.

### Imprisonment

Sentences of imprisonment were most likely to be given to people aged 45–49 years old (all of the 7 people in this age group).

Conversely, sentences of imprisonment were least common for those aged younger than 25 years old (33% or 4 of the 12 people in this age group).

**Figure 4:** The percentage of people who received a period of imprisonment for sexual penetration of a child aged under 10 by age group, 2003–04 to 2007–08

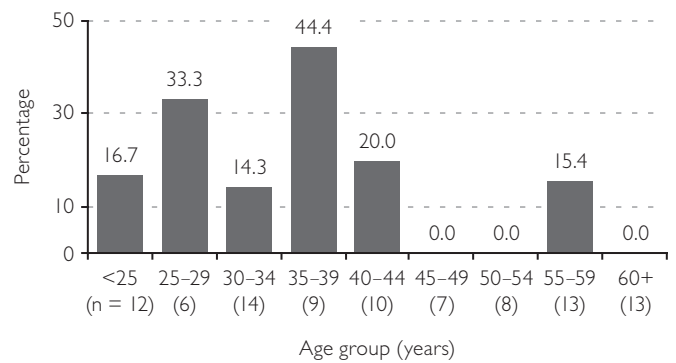


## Wholly suspended sentences of imprisonment

Wholly suspended sentences of imprisonment were most likely to be given to people aged 35–39 years old (44% or 4 of the 9 people in this age group).

Conversely, none of the 7 people aged 45–49 years old, none of the 8 people aged 50–54 years old and none of the 13 people aged 60 years or older received a wholly suspended sentence of imprisonment.

**Figure 5:** The percentage of people who received a wholly suspended sentence of imprisonment for sexual penetration of a child aged under 10 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 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 2003–04 to 2007–08.

### Principal sentence of imprisonment

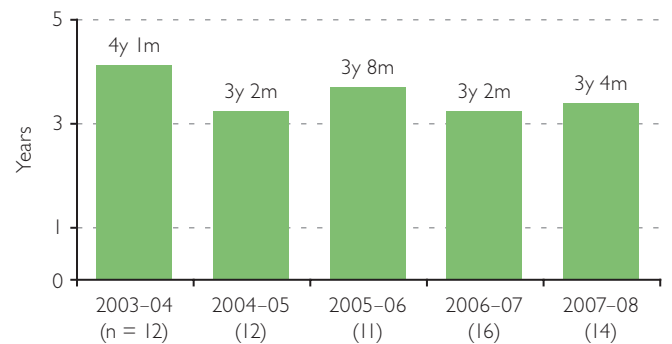
Figure 6 shows the number of people sentenced to imprisonment for sexual penetration of a child aged under 10 between 2003–04 and 2007–08 by the length of the imprisonment term. Imprisonment terms ranged from one year to ten years, while the median length of imprisonment was three years and six months (meaning that half of the imprisonment terms were shorter than three years and six months and half were longer).

**Figure 6:** The number of people sentenced to imprisonment for sexual penetration of a child aged under 10 by length of imprisonment term, 2003–04 to 2007–08



As shown in Figure 7, the average length of imprisonment term imposed on people sentenced for sexual penetration of a child aged under 10 ranged from three years and two months in 2004–05 and 2006–07 to four years and one month in 2003–04.

**Figure 7:** The average length of imprisonment term imposed on people sentenced for sexual penetration of a child aged under 10, 2003–04 to 2007–08

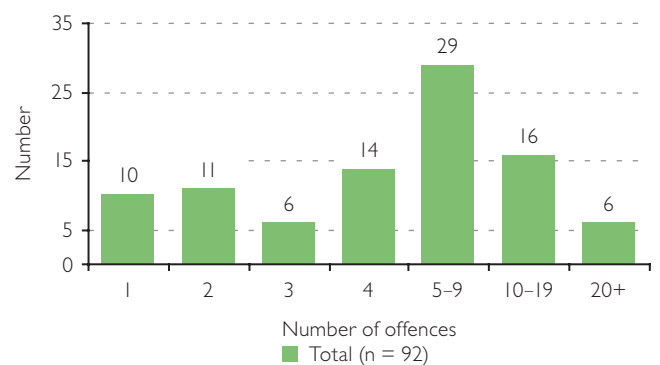


### Other offences finalised at the same hearing

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 8 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 45, while the median was 5 offences. There were 10 people (10.9%) sentenced for the single offence of sexual penetration of a child aged under 10 alone. The average number of offences per person sentenced for sexual penetration of a child aged under 10 was 7.43.

**Figure 8:** 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, 2003–04 to 2007–08



While Figure 8 presents the number of sentenced offences for those sentenced for sexual penetration of a child aged under 10, 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, 51 of the total 92 people (55.4%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 4.43 counts of indecent act with a child under 16.

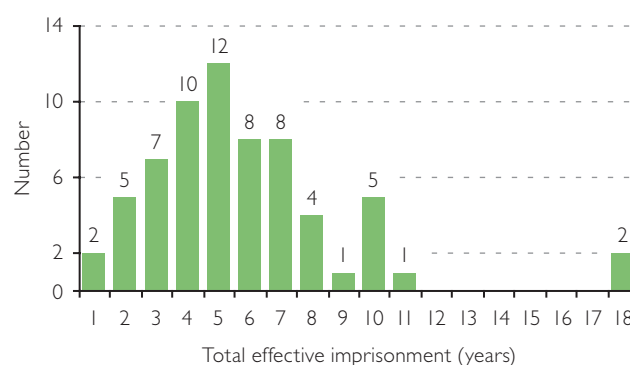
**Table 3:** The number and percentage of people sentenced for the principal offence of sexual penetration of a child aged under 10 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2003–04 to 2007–08

Offence	No.	%	Avg.
1 sexual penetration of a child under 10	92	100.0	2.50
2 indecent act with a child under 16	51	55.4	4.43
3 indecent assault	30	32.6	3.30
4 gross indecency with a child	15	16.3	2.60
5 produce child pornography	5	5.4	3.20
6 sexual penetration with a child aged under 16	5	5.4	2.80
7 attempted offence	4	4.3	1.25
8 attempt to take part in an act of sexual penetration with a child under the age of 10	4	4.3	1.25
9 possess child pornography	4	4.3	1.00
10 incest by sibling	4	4.3	1.00
<b>People sentenced</b>	<b>92</b>	<b>100.0</b>	<b>7.43</b>

### Total effective sentence of imprisonment

There were 65 people given a total effective sentence of imprisonment.<sup>10</sup> Figure 9 shows the number of people sentenced to imprisonment for sexual penetration of a child aged under 10 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 eighteen years,<sup>11</sup> while the median total effective length of imprisonment was five years and nine months (meaning that half of the total effective sentence lengths were below five years and nine months and half were above).

**Figure 9:** The number of people sentenced to imprisonment for sexual penetration of a child aged under 10 by total effective length of imprisonment term, 2003–04 to 2007–08



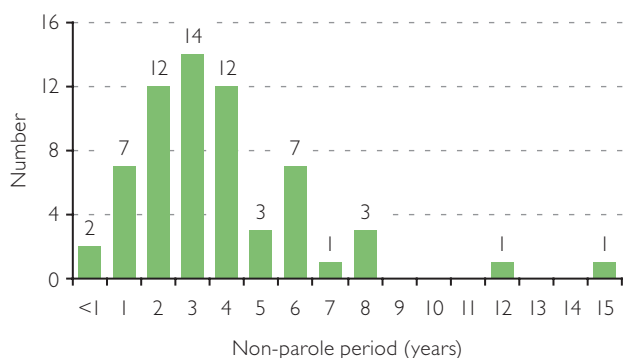
### Non-parole period

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 aged under 10. Sentences and non-parole periods must be considered in this broader context.

Of the 65 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, 63 were given a non-parole period (97%).<sup>12</sup> Figure 10 shows the number of people sentenced to imprisonment for sexual penetration of a child aged under 10 between 2003–04 and 2007–08 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 four months (meaning that half of the non-parole periods were below three years and four months and half were above).

**Figure 10:** The number of people sentenced to imprisonment for sexual penetration of a child aged under 10 by length of non-parole period, 2003–04 to 2007–08

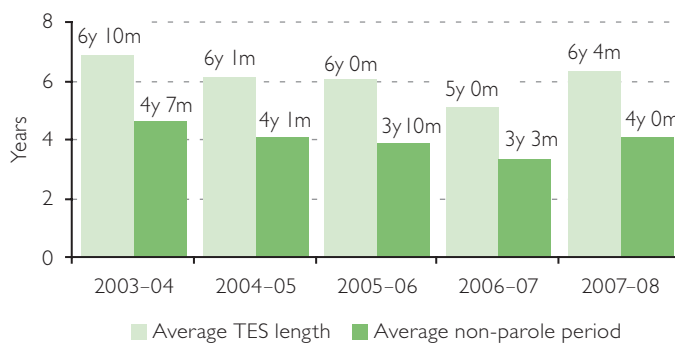


### Total effective sentences of imprisonment and non-parole periods

Figure 11 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.<sup>13</sup>

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

**Figure 11:** 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, 2003–04 to 2007–08

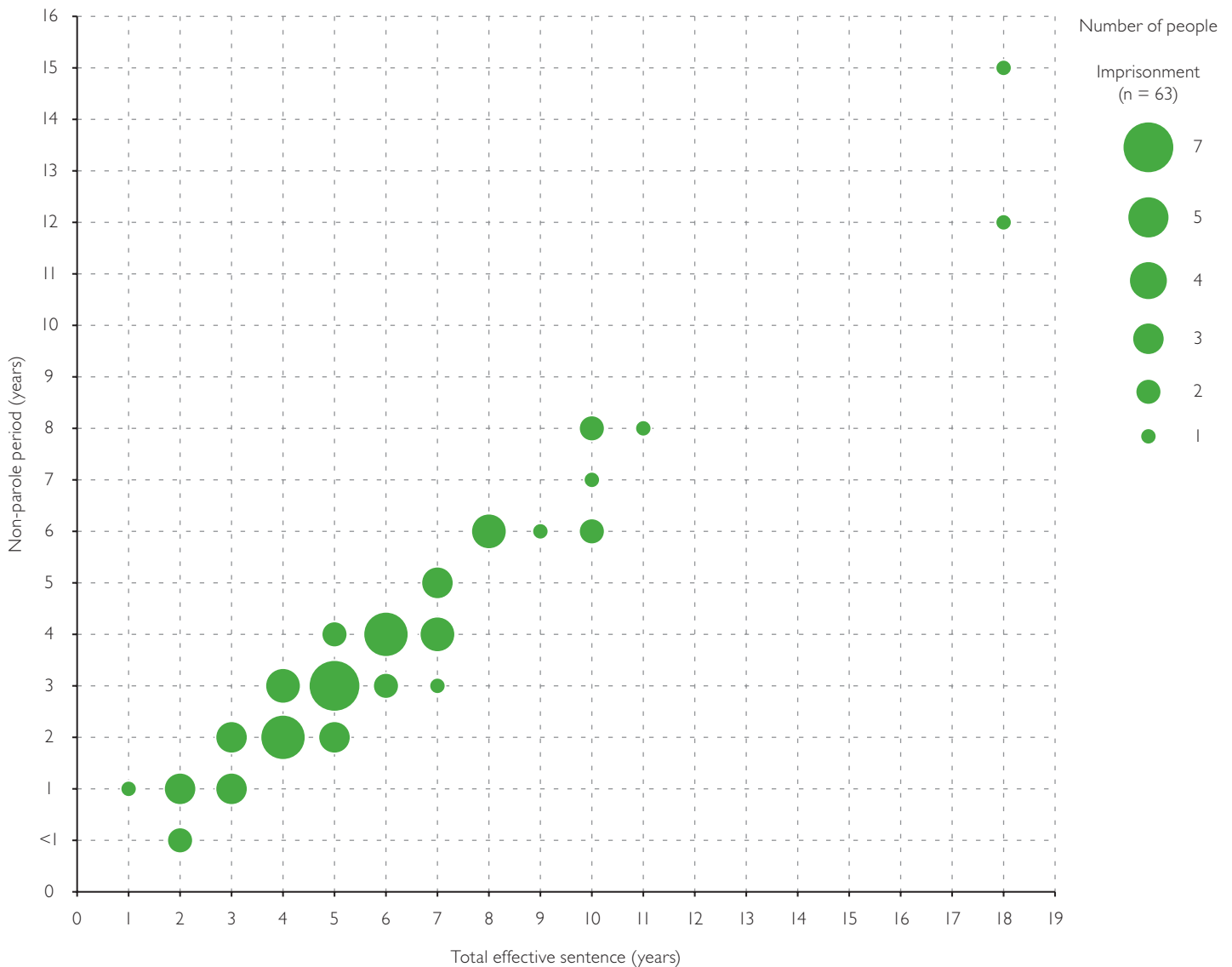


### Total effective sentence of imprisonment by non-parole period

While Figures 9 and 10 present the lengths of the total effective sentences and non-parole periods separately, Figure 12 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for 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 combination.<sup>14</sup> 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 (7 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 one year to eighteen years with a non-parole period of fifteen years.<sup>15</sup>

**Figure 12:** 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, 2003–04 to 2007–08<sup>16</sup>

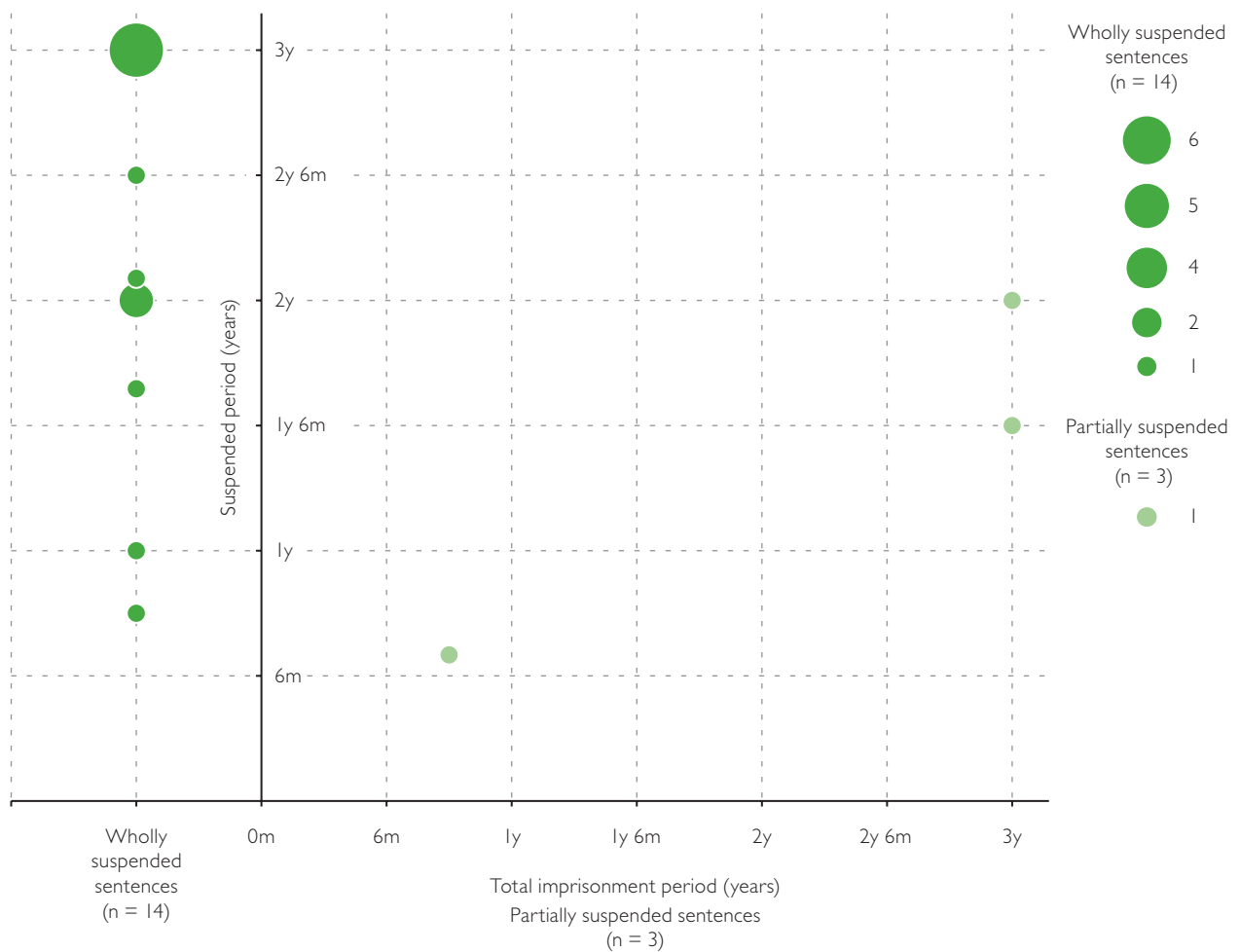


### Suspended sentences of imprisonment

There were 17 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 14 people had their prison sentence wholly suspended and 3 received a partially suspended sentence of imprisonment. Figure 13 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 dark green 'bubbles' to the left of the vertical axis show the lengths of the wholly suspended sentences, while the light green '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 dark green 'bubble' on the chart).

Figure 13: 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, 2003–04 to 2007–08



## Summary

Between 2003–04 and 2007–08, 92 people were sentenced for the principal proven offence of sexual penetration of a child aged under 10 in the higher courts.

The majority of the people sentenced for sexual penetration of a child aged under 10 received a period of imprisonment (71%), 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 92 people was sentenced for an average of 7.43 offences, including 2.50 offences of sexual penetration of a child 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 (55.4% 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 five years and nine months, while the median principal imprisonment length was three years and six months.

Total effective imprisonment lengths ranged from one year and three months with a non-parole period of one year to eighteen years with a non-parole period of fifteen years. The most common sentence of imprisonment was five years with a three 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 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 aged under 10 who received a more serious sentence for another offence forming part of the same presentment. There were 47 people sentenced from 2003–04 to 2007–08 for 121 offences of sexual penetration of a child aged under 10. Sexual penetration of a child aged under 10 was the principal proven offences for all 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 court 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. 33, which described sentencing trends for sexual penetration of a child aged under 10 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](http://www.sentencingcouncil.vic.gov.au)>.

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 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' 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). 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. 88 and No. 89).
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](http://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 two individuals who received a wholly suspended sentence for the principal proven offence of sexual penetration of a child aged under 10 in 2007–08. Both of these offenders committed the offences prior to this legislative change.
9. Age is as at the time of sentencing.
10. All of the 65 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
11. In 2003–04, a 69 year-old male was sentenced for 26 offences, including one count of sexual penetration of a child aged under 10, 16 counts of indecent assault and 2 counts of rape. He was given a total effective sentence of 18 years with a non-parole period of 12 years.  
  
In 2007–08, a 45 year-old male was sentenced for 25 offences, including 6 counts of sexual penetration of a child aged under 10 and 9 counts of incest. He was given a total effective sentence of 18 years with a non-parole period of 15 years.
12. 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.
13. 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.
14. 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.
15. Refer fn. 11.
16. This graph includes the 63 people who were given a total effective sentence and a non-parole period that related to this case only.

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- 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

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