

Sentencing trends in
the higher courts of
Victoria
2011–12 to 2015–16

May 2017
No. 210

Sexual penetration with a child under 12

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of sexual penetration with a child aged under 12 in the County Court of Victoria from 2011–12 to 2015–16.² Adjustments made by the Court of Appeal to sentence or conviction as at December 2016 have been incorporated into the data in this Snapshot.

Detailed data on sexual penetration with a child aged under 12 and other offences is available on SACStat – Higher Courts.

A person who takes part in an act of sexual penetration with a child under the age of 12 is guilty of an offence. Sexual penetration with a child aged under 12 is an indictable offence that carries a maximum penalty of 25 years' imprisonment³ and/or a fine of 3,000 penalty units.⁴ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Sexual penetration with a child aged under 12 is a Category 1 offence, which means that a court must impose a custodial sentence for that offence.⁵

Sexual penetration with a child aged under 12 was the principal offence⁶ in 0.9% of cases sentenced in the higher courts from 2011–12 to 2015–16.

People sentenced

From 2011–12 to 2015–16, 79 people were sentenced in the higher courts for a principal offence of sexual penetration with a child aged under 12.

Figure 1 shows the number of people sentenced for the principal offence of sexual penetration with a child aged under 12 by financial year. There were 17 people sentenced for this offence in 2015–16, down by 3 people from the previous year. The number of people sentenced was highest in 2014–15 (20 people).

Figure 1: The number of people sentenced for sexual penetration with a child aged under 12 by financial year, 2011–12 to 2015–16

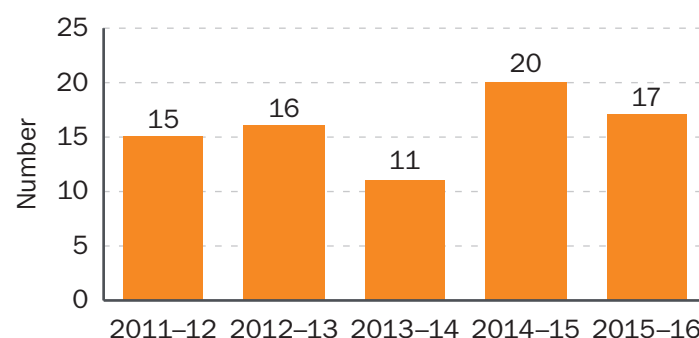
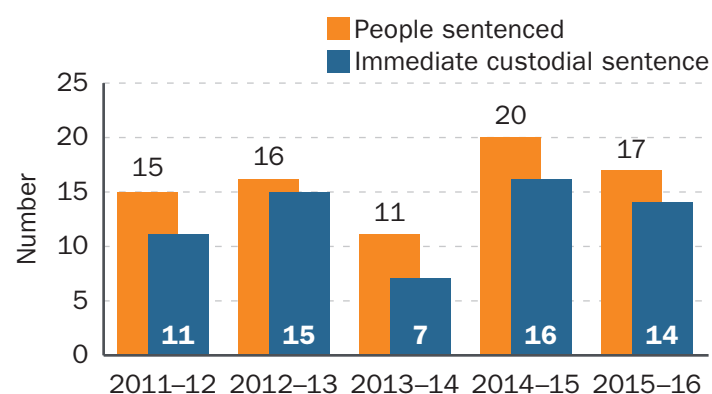


Figure 2: The number of people sentenced for sexual penetration with a child aged under 12 and the number that received an immediate custodial sentence, 2011–12 to 2015–16



Sentence types and trends

Figure 2 shows the total number of people sentenced for sexual penetration with a child aged under 12 and the number that received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate imprisonment or detention.⁷ Over the five-year period, 80% of people were given an immediate custodial sentence.

Table 1 shows the number of people sentenced for sexual penetration with a child aged under 12 from 2011–12 to 2015–16 by the types of sentences imposed. The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished.⁸

Over the five-year period, the majority of the people sentenced for sexual penetration with a child aged under 12 received a period of imprisonment (75% or 59 of 79 people), while 11% received a community correction order. Of the 59 people who received imprisonment, 1 person received a combined sentence of imprisonment with a community correction order, and 2 received an aggregate sentence of imprisonment.

The percentage of people who received any form of imprisonment for sexual penetration with a child aged under 12 peaked at 82% in 2015–16, while the number was highest in 2014–15 (75% or 15 of 20 people). The percentage and number of people who received imprisonment for sexual penetration with a child aged under 12 were lowest in 2013–14 (55% or 6 of 11 people).

Table 1: The number and percentage of people sentenced for sexual penetration with a child aged under 12 by sentence type, 2011–12 to 2015–16 (in descending order of numbers for 2015–16)

Sentence type	2011–12	2012–13	2013–14	2014–15	2015–16	Total
Imprisonment	11 (73%)	13 (81%)	6 (55%)	14 (70%)	12 (71%)	56 (71%)
Community correction order	0 (–)	1 (6%)	2 (18%)	3 (15%)	3 (18%)	9 (11%)
Aggregate imprisonment	0 (–)	0 (–)	0 (–)	0 (–)	2 (12%)	2 (3%)
Wholly suspended sentence	4 (27%)	0 (–)	2 (18%)	1 (5%)	0 (–)	7 (9%)
Partially suspended sentence	0 (–)	1 (6%)	0 (–)	1 (5%)	0 (–)	2 (3%)
Youth justice centre order	0 (–)	1 (6%)	1 (9%)	0 (–)	0 (–)	2 (3%)
Imprisonment and community correction order (combined)	0 (–)	0 (–)	0 (–)	1 (5%)	0 (–)	1 (1%)
People sentenced	15	16	11	20	17	79

Age and gender of people sentenced

Data on the age and gender of people sentenced for sexual penetration with a child aged under 12 is available on SACStat – Higher Courts.

Principal and total effective sentences

Two methods for describing sentence types and lengths are examined in this section. One relates to the principal sentence and examines sentences for the offence at a *charge* level. The other relates to the total effective sentence and examines sentences for the offence at a case level.

The principal sentence is the sentence imposed for the charge that is the principal offence.⁹

The total effective sentence in a case with a single charge is the principal sentence. The total effective sentence in a case with multiple charges is the sentence that results from the court ordering the individual sentences for each charge to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other).

In many cases, the total effective sentence imposed on a person is longer than the principal sentence. Principal sentences for sexual penetration with a child aged under 12 must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of sexual penetration with a child aged under 12 from 2011–12 to 2015–16.

Principal sentence of imprisonment

A total of 59 people received a principal sentence of imprisonment for sexual penetration with a child aged under 12 from 2011–12 to 2015–16.¹⁰

Figure 3 shows these people by the length of their imprisonment term.¹¹ Imprisonment terms ranged from 8 months to 6 years, while the median length of imprisonment was 4 years (meaning that half of the imprisonment terms were shorter than 4 years and half were longer).

The most common length of imprisonment imposed was 4 to less than 5 years (18 people).

As shown in Figure 4, the average (mean) length of imprisonment imposed on people sentenced for sexual penetration with a child aged under 12 ranged from 3 years and 6 months in 2011–12 and 2014–15 to 4 years and 5 months in 2013–14.

Other offences finalised at the same hearing

Often people prosecuted for sexual penetration with a child aged under 12 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 with a child aged under 12.

Figure 5 shows the number of people sentenced for the principal offence of sexual penetration with a child aged under 12 by the total number of offences for which sentences were imposed. The number of sentenced offences per person ranged from 1 to 17, while the median was 4 offences. There were 15 people (19.0%) sentenced for the single offence of sexual penetration with a child aged under 12. The average number of offences per person sentenced for sexual penetration with a child aged under 12 was 5.34.

Table 2 shows the 10 most common offences for people sentenced for sexual penetration with a child aged under 12, by number and percentage. The last column sets out the average number of offences sentenced per person. For example, 49 of the total 79 people (62.0%) also received sentences for committing an indecent act with a child under 16. On average, they were sentenced for 3.12 counts of indecent act with a child under 16.

Figure 3: The number of people sentenced to imprisonment for sexual penetration with a child aged under 12 by length of imprisonment term, 2011–12 to 2015–16

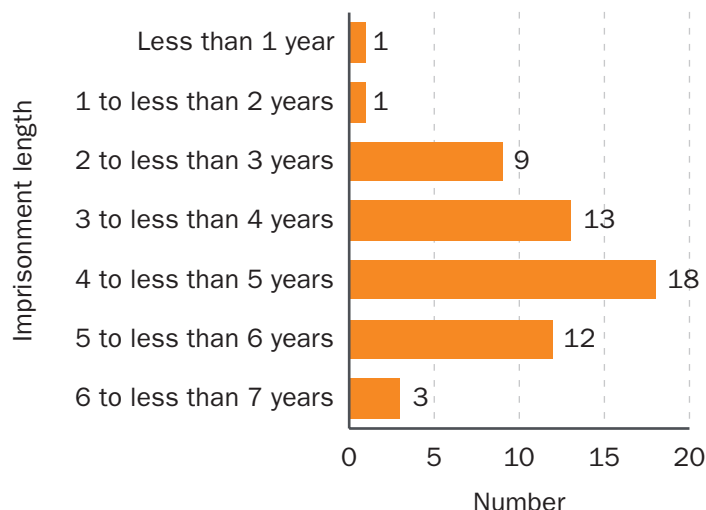


Figure 4: The average (mean) length of imprisonment imposed on people sentenced for sexual penetration with a child aged under 12, 2011–12 to 2015–16

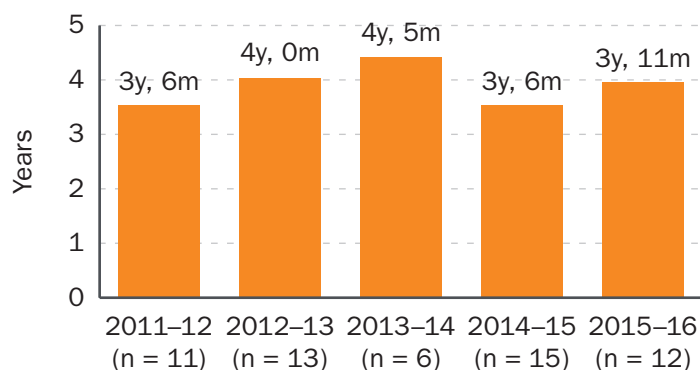


Figure 5: The number of people sentenced for the principal offence of sexual penetration with a child aged under 12 by the number of sentenced offences per person, 2011–12 to 2015–16

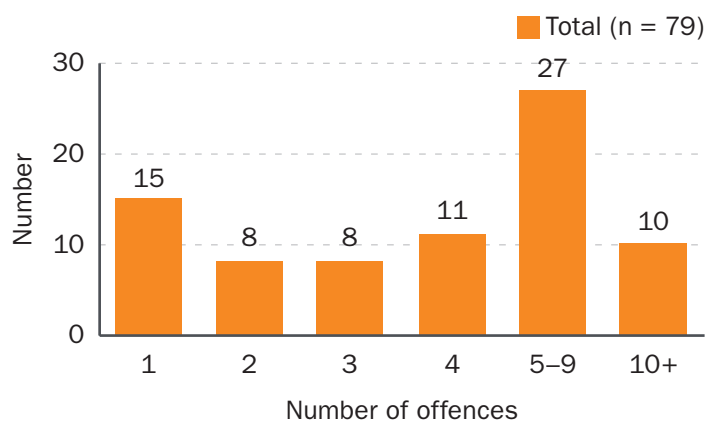


Table 2: The number and percentage of people sentenced for the principal offence of sexual penetration with a child aged under 12 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2011–12 to 2015–16

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Sexual penetration with a child aged under 12	79	100.0	1.99
2. Indecent act with a child under 16	49	62.0	3.12
3. Sexual penetration with a child aged 12 to 16	10	12.7	1.80
4. Indecent assault (historical offence)	8	10.1	3.13
5. Indecent assault	7	8.9	1.43
6. Sexual penetration with a child aged 12 to 16 and under care/supervision/authority	5	6.3	1.80
7. Knowingly possess child pornography	5	6.3	1.00
8. Make or produce child pornography	4	5.1	1.25
9. Gross indecency with a child	3	3.8	2.67
10. Attempted sexual penetration with a child under 12	2	2.5	2.00
People sentenced	79	100.0	5.34

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for sexual penetration with a child aged under 12 from 2011–12 to 2015–16 by length of total effective imprisonment term. The total effective imprisonment terms ranged from 1 year (with a 3 year community correction order) to 15 years and 8 months, while the median total effective imprisonment term was 6 years and 6 months (meaning that half of the total effective imprisonment terms were below 6 years and 6 months and half were above).

The most common total effective imprisonment term was 6 to less than 7 years and 7 to less than 8 years (10 people each).

Non-parole period

If a person is sentenced to a term of immediate imprisonment of less than 1 year, the court cannot impose a non-parole period. For terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For terms of imprisonment of 2 years or more, the court must impose a non-parole period in most circumstances. 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 in custody.

Of the 59 people who were sentenced to imprisonment for sexual penetration with a child aged under 12, all were eligible to have a non-parole period fixed. Of these people, 55 were given a non-parole period (93%).¹²

Figure 6: The number of people sentenced to imprisonment for sexual penetration with a child aged under 12 by length of total effective imprisonment term, 2011–12 to 2015–16

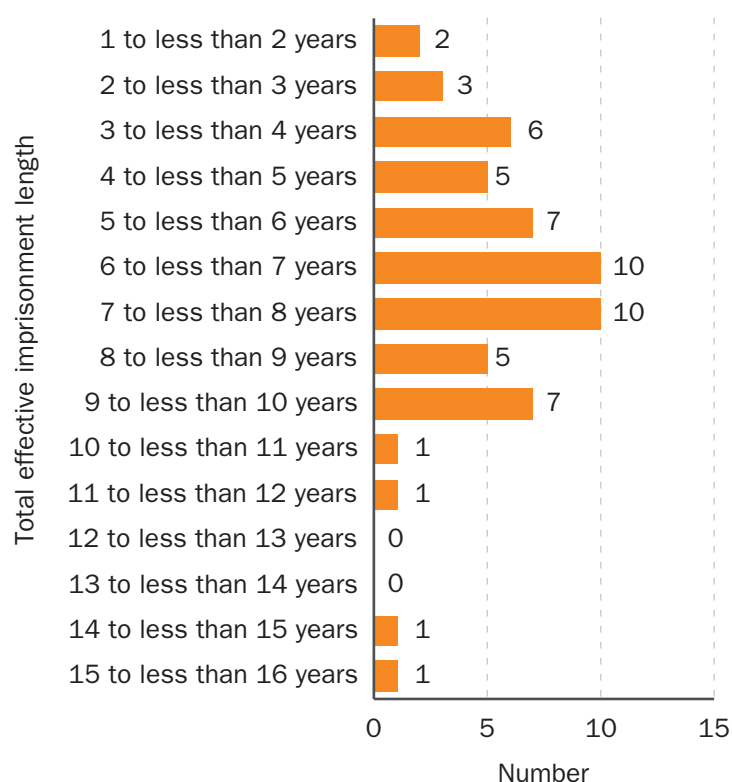


Figure 7 shows the number of people sentenced to imprisonment for sexual penetration with a child aged under 12 from 2011–12 to 2015–16 by length of non-parole period. Non-parole periods ranged from 6 months to 12 years and 2 months, while the median length of the non-parole period was 4 years (meaning that half of the non-parole periods were below 4 years and half were above).

The most common non-parole period imposed was 4 to less than 5 years (11 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods from 2011–12 to 2015–16.

From 2011–12 to 2015–16, the average length of total effective sentences for all people ranged from 5 years and 7 months in 2014–15 to 7 years and 8 months in 2012–13. Over the same period, the average length of non-parole periods ranged from 3 years and 9 months in 2011–12 to 5 years and 1 month in 2012–13.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for [sexual penetration with a child aged under 12](#) is available on SACStat – Higher Courts.

Non-imprisonment sentences

Data on the length of non-imprisonment sentence types, such as community correction orders, suspended sentences and fines, for [sexual penetration with a child aged under 12](#) is available on SACStat – Higher Courts.

Summary

From 2011–12 to 2015–16, 79 people were sentenced for sexual penetration with a child aged under 12 in the higher courts. Of these people, 59 (75%) were given a principal sentence of imprisonment.

The number and range of offences for which people with a principal offence of sexual penetration with a child aged under 12 were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 6 years and 6 months, while the median principal imprisonment length was 4 years.

Total effective imprisonment lengths ranged from 1 year (with a 3 year community correction order) to 15 years and 8 months, and non-parole periods (where imposed) ranged from 6 months to 12 years and 2 months.

Figure 7: The number of people sentenced to imprisonment for sexual penetration with a child aged under 12 by length of non-parole period, 2011–12 to 2015–16

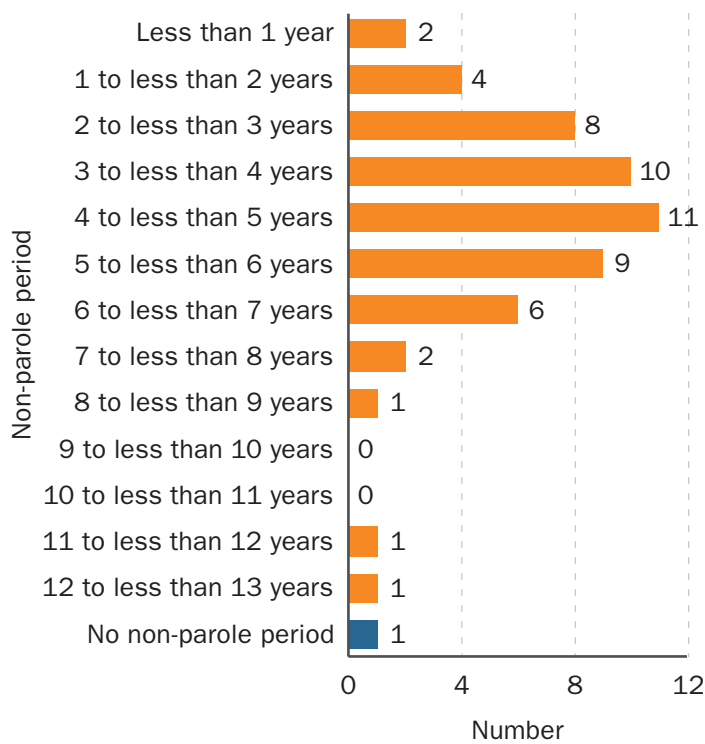
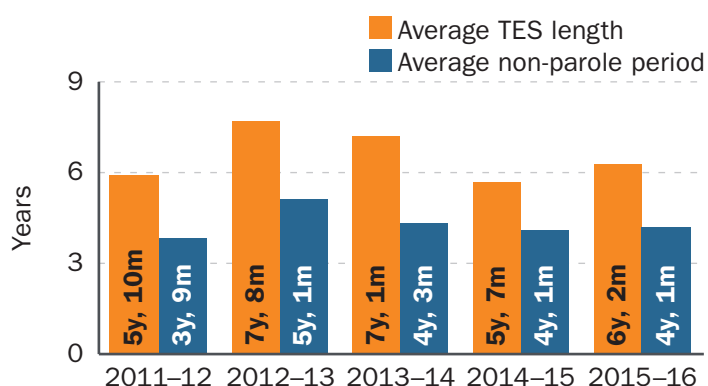


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for sexual penetration with a child aged under 12, 2011–12 to 2015–16



Endnotes

1. 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 accused is found to be unfit to stand trial or not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.
This Sentencing Snapshot is an update of Sentencing Snapshot no. 180, which describes sentencing trends for sexual penetration with a child aged under 12 from 2009–10 to 2013–14.
2. Data on first-instance sentence outcomes presented in this Snapshot was obtained from the Strategic Analysis and Review Team at Court Services Victoria. Data on appeal outcomes was collected by the Sentencing Advisory Council from the [Australasian Legal Information Institute](#), and also was provided by the Victorian Court of Appeal. The Sentencing Advisory Council regularly undertakes extensive quality control measures for current and historical data. While every effort is made to ensure that the data analysed in this report is accurate, the data is subject to revision.
The raw data used for offences of sexual penetration with a child under 16 does not accurately distinguish between the three specific offences within this category (sexual penetration with a child aged 12 to 16, sexual penetration with a child aged under 12 and sexual penetration with a child under care, supervision or authority). Rather, these offences are grouped under the broader category of sexual penetration with a child under 16. In order to determine the specific offence for such cases, the Council uses information in sentencing remarks. However, at the time of publication, sentencing remarks for some cases (19 or 4.5% of cases with a principal offence of sexual penetration with a child under 16) were unavailable. These cases have been excluded from the relevant Sentencing Snapshots.
3. *Crimes Act 1958* (Vic) s 45(2)(a).
4. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the [Victorian Legislation and Parliamentary Documents website](#).
5. *Sentencing Act 1991* (Vic) s 5(2G) requires a custodial sentence (that is, not a sentence of imprisonment combined with a community correction order) to be imposed for this offence when committed after 20 March 2017.
6. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
7. 'Immediate custodial sentence' includes imprisonment, aggregate imprisonment, partially suspended sentences, youth justice centre orders and imprisonment combined with a community correction order.
8. Suspended sentences have been abolished in the higher courts for all offences committed on or after 1 September 2013 and in the Magistrates' Court for all offences committed on or after 1 September 2014.
9. Refer to Endnote 6.
10. This total includes the people in Table 1 who received a sentence of imprisonment, aggregate imprisonment and imprisonment combined with a community correction order.
11. Data presented in this section does not include imprisonment lengths for people who received an aggregate sentence of imprisonment. Sentence lengths for aggregate sentences of imprisonment apply to the whole case, while Figure 3 only deals with sentences of imprisonment for the principal proven offence of sexual penetration with a child aged under 12. During the 2011–12 to 2015–16 period, 2 people received an aggregate form of imprisonment.
12. Three 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. A non-parole period was not set for one person who was eligible for a non-parole period.

SACStat – Higher Courts Sexual penetration with a child under 12

http://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_45_2A.html

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