

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

May 2017
No. 205

Persistent sexual abuse of a child under 16

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of persistent sexual abuse of a child under 16 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 persistent sexual abuse of a child under 16 and other offences is available on SACStat – Higher Courts.

A person who is involved in at least three relevant sexual offences with a child under the age of 16 over a specific period is guilty of the offence of persistent sexual abuse of a child under 16. It is not necessary to prove any of the acts with the same degree of specificity as to the date, time, place, circumstances or occasion as would be required if each act were charged as a separate offence.

Persistent sexual abuse of a child under 16 is an indictable offence and 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. Persistent sexual abuse of a child under 16 is a Category 1 offence, which means that a court must impose a custodial sentence for the offence.⁵

Persistent sexual abuse of a child under 16 was the principal offence⁶ in 0.6% of cases sentenced in the higher courts from 2011–12 to 2015–16.

People sentenced

From 2011–12 to 2015–16, 54 people were sentenced in the higher courts for a principal offence of persistent sexual abuse of a child under 16.

Figure 1 shows the number of people sentenced for the principal offence of persistent sexual abuse of a child under 16 by financial year. There were 16 people sentenced for this offence in 2015–16, up by 1 person from the previous year. The number of people sentenced was highest in 2015–16 (16 people).

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

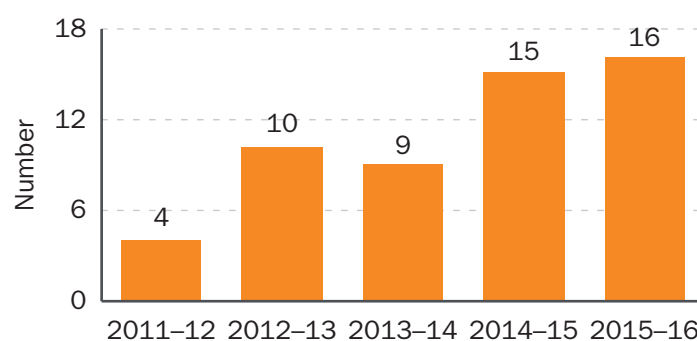
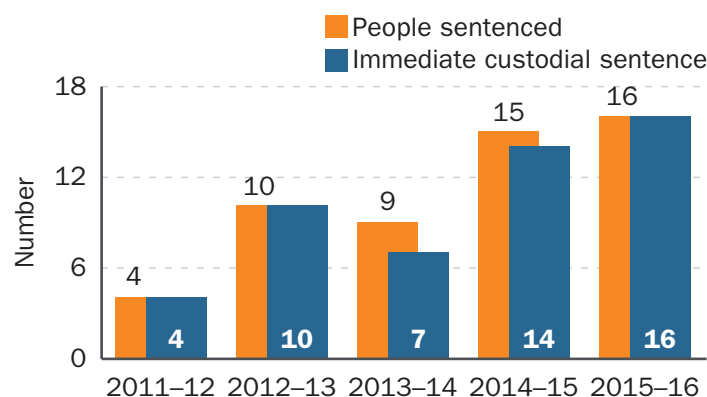


Figure 2: The number of people sentenced for persistent sexual abuse of a child under 16 and the number that received an immediate custodial sentence, 2011–12 to 2015–16



Sentence types and trends

Figure 2 shows the total number of people sentenced for persistent sexual abuse of a child under 16 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, 94% of people were given an immediate custodial sentence.

Table 1 shows the number of people sentenced for persistent sexual abuse of a child under 16 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 persistent sexual abuse of a child under 16 received a period of imprisonment (93% or 50 of 54 people).

The percentage of people who received imprisonment for persistent sexual abuse of a child under 16 peaked at 100% in 2011–12 and 2012–13, while the number was highest in 2015–16 (94% or 15 of 16 people). The percentage of people who received imprisonment for persistent sexual abuse of a child under 16 was lowest in 2013–14 (78% or 7 of 9 people), while the number was lowest in 2011–12 (4 people).

Table 1: The number and percentage of people sentenced for persistent sexual abuse of a child under 16 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	4 (100%)	10 (100%)	7 (78%)	14 (93%)	15 (94%)	50 (93%)
Partially suspended sentence	0 (–)	0 (–)	0 (–)	0 (–)	1 (6%)	1 (2%)
Community correction order	0 (–)	0 (–)	1 (11%)	1 (7%)	0 (–)	2 (4%)
Wholly suspended sentence	0 (–)	0 (–)	1 (11%)	0 (–)	0 (–)	1 (2%)
People sentenced	4	10	9	15	16	54

Age and gender of people sentenced

Data on the age and gender of people sentenced for persistent sexual abuse of a child under 16 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 persistent sexual abuse of a child under 16 must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of persistent sexual abuse of a child under 16 from 2011–12 to 2015–16.

Principal sentence of imprisonment

A total of 50 people received a principal sentence of imprisonment for persistent sexual abuse of a child under 16 from 2011–12 to 2015–16.

Figure 3 shows these people by the length of their imprisonment term. Imprisonment terms ranged from 2 years to 13 years, while the median length of imprisonment was 7 years (meaning that half of the imprisonment terms were shorter than 7 years and half were longer).

The most common length of imprisonment imposed was 8 to less than 9 years (9 people).

As shown in Figure 4, the average (mean) length of imprisonment imposed on people sentenced for persistent sexual abuse of a child under 16 ranged from 5 years and 4 months in 2013–14 to 8 years and 6 months in 2011–12.

Other offences finalised at the same hearing

Often people prosecuted for persistent sexual abuse of a child under 16 face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of persistent sexual abuse of a child under 16.

Figure 5 shows the number of people sentenced for the principal offence of persistent sexual abuse of a child under 16 by the total number of offences for which sentences were imposed. The number of sentenced offences per person ranged from 1 to 21, while the median was 2 offences. There were 25 people (46.3%) sentenced for the single offence of persistent sexual abuse of a child under 16. The average number of offences per person sentenced for persistent sexual abuse of a child under 16 was 3.94.

Table 2 shows the 10 most common offences for people sentenced for persistent sexual abuse of a child under 16, by number and percentage. The last column sets out the average number of offences sentenced per person. For example, 14 of the total 54 people (25.9%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 2.71 counts of indecent act with a child under 16.

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

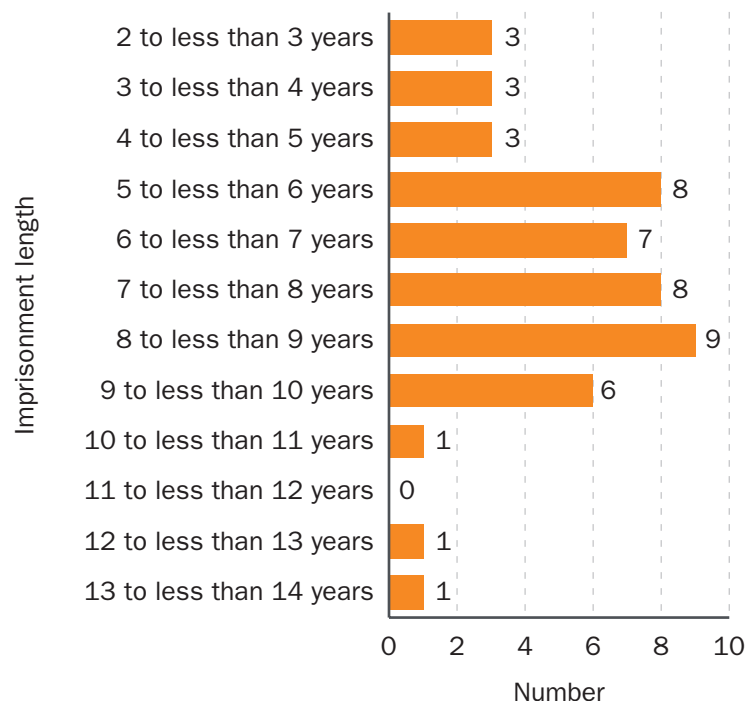


Figure 4: The average (mean) length of imprisonment imposed on people sentenced for persistent sexual abuse of a child under 16, 2011–12 to 2015–16

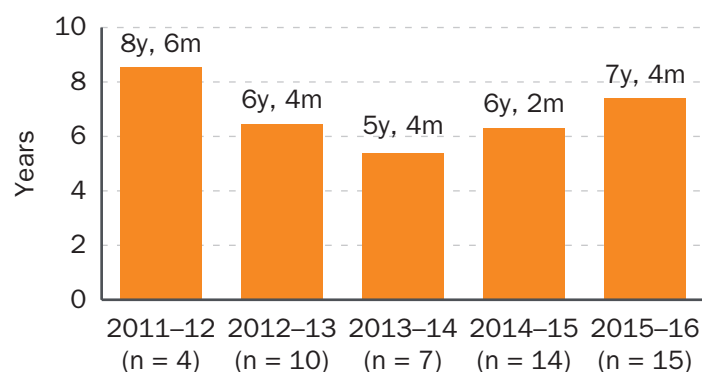


Figure 5: The number of people sentenced for the principal offence of persistent sexual abuse of a child under 16 by the number of sentenced offences per person, 2011–12 to 2015–16

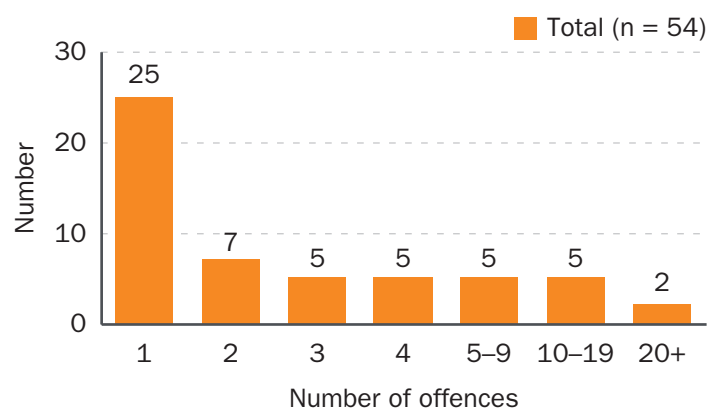


Table 2: The number and percentage of people sentenced for the principal offence of persistent sexual abuse of a child under 16 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2011–12 to 2015–16

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Persistent sexual abuse of a child under 16	54	100.0	1.22
2. Indecent act with a child under 16	14	25.9	2.71
3. Make or produce child pornography	10	18.5	1.10
4. Knowingly possess child pornography	5	9.3	1.00
5. Sexual penetration with a child aged 10/12 to 16	4	7.4	3.00
6. Incest – sexual penetration with own child or child of de facto aged under 18	3	5.6	5.67
7. Sexual penetration with a child aged 10/12 to 16 and under care/supervision/authority	3	5.6	1.33
8. Sexual penetration with a child aged under 10/12	2	3.7	5.00
9. Indecent assault	2	3.7	2.50
10. Use a carriage service for child pornography material	2	3.7	1.50
People sentenced	54	100.0	3.94

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for persistent sexual abuse of a child under 16 from 2011–12 to 2015–16 by length of total effective imprisonment term. Total effective imprisonment terms ranged from 2 years and 6 months to 18 years and 6 months, while the median total effective imprisonment term was 8 years (meaning that half of the total effective imprisonment terms were below 8 years and half were above).

The most common total effective imprisonment terms were 5 to less than 6 years and 9 to less than 10 years (8 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.

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



Of the 50 people who were sentenced to imprisonment for persistent sexual abuse of a child under 16, all were eligible to have a non-parole period fixed. Of these people, 49 were given a non-parole period (98%).¹⁰ Figure 7 shows the number of people sentenced to imprisonment for persistent sexual abuse of a child under 16 from 2011–12 to 2015–16 by length of non-parole period. Non-parole periods ranged from 10 months to 15 years, while the median length of the non-parole period was 5 years and 6 months (meaning that half of the non-parole periods were below 5 years and 6 months and half were above).

The most common non-parole period imposed was 3 to less than 4 years (12 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 6 years in 2013–14 to 10 years and 1 month in 2015–16.

Over the same period, the average length of non-parole periods ranged from 3 years and 11 months in 2013–14 to 7 years and 4 months in 2015–16.

Further data on total effective sentences of imprisonment and corresponding non-parole periods for persistent sexual abuse of a child under 16 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 persistent sexual abuse of a child under 16 is available on SACStat – Higher Courts.

Summary

From 2011–12 to 2015–16, 54 people were sentenced for persistent sexual abuse of a child under 16 in the higher courts. Of these people 50 (93%) were given a principal sentence of imprisonment.

The number and range of offences for which people with a principal offence of persistent sexual abuse of a child under 16 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 8 years, while the median principal imprisonment length was 7 years.

Total effective imprisonment lengths ranged from 2 years and 6 months to 18 years and 6 months, and non-parole periods (where imposed) ranged from 10 months to 15 years.

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

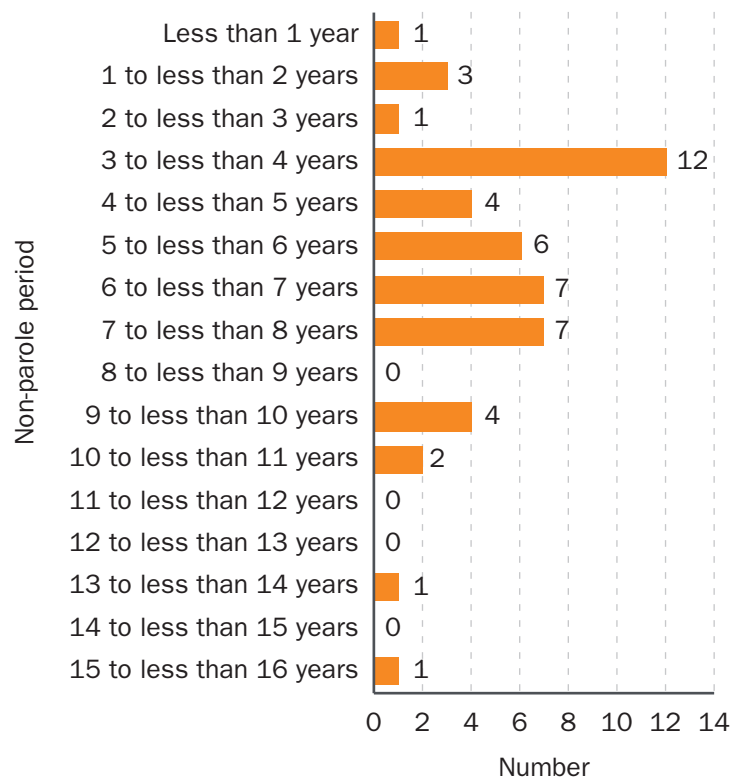
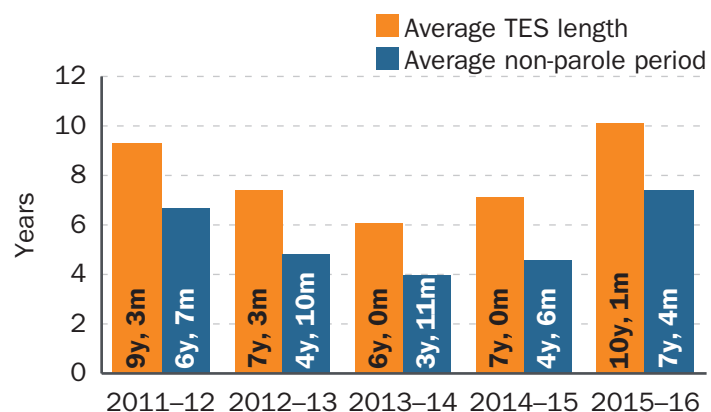


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for persistent sexual abuse of a child under 16, 2011–12 to 2015–16



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. 179, which describes sentencing trends for persistent sexual abuse of a child under 16 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.
3. *Crimes Act 1958* (Vic) s 47A.
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 and partially suspended sentences.
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. 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.

SACStat – Higher Courts Persistent sexual abuse of a child under 16

https://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_47A_1.html

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