

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

May 2017
No. 206

Indecent act with a child under 16

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of indecent act with 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 [indecent act with a child under 16](#) and other offences is available on SACStat – Higher Courts.

A person who is involved in any act in indecent circumstances, with or in the presence of a child under 16, is guilty of the offence of committing an indecent act with a child under the age of 16.

Committing an indecent act with a child under the age of 16 is an indictable offence that carries a maximum penalty of 10 years' imprisonment³ and/or a fine of 1,200 penalty units.⁴ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court. Committing an indecent act with a child under 16 can also be tried summarily by the Magistrates' Court if the Magistrates' Court considers it appropriate and the accused consents.

Indecent act with a child under 16 was the principal offence⁵ in 1.6% of cases sentenced in the higher courts from 2011–12 to 2015–16.

People sentenced

From 2011–12 to 2015–16, 150 people were sentenced in the higher courts for a principal offence of indecent act with a child under 16.

Figure 1 shows the number of people sentenced for the principal offence of indecent act with a child under 16 by financial year. There were 18 people sentenced for this offence in 2015–16, down by 19 people from the previous year. The number of people sentenced was highest in 2014–15 (37 people).

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

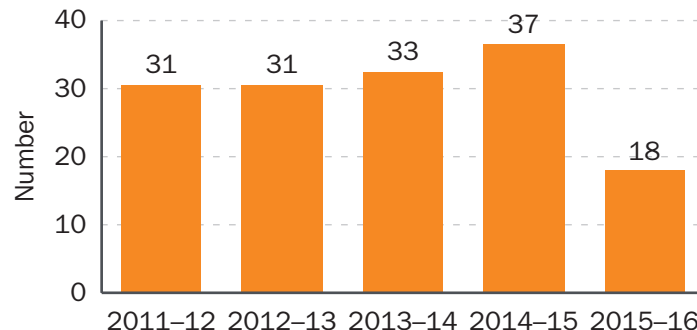
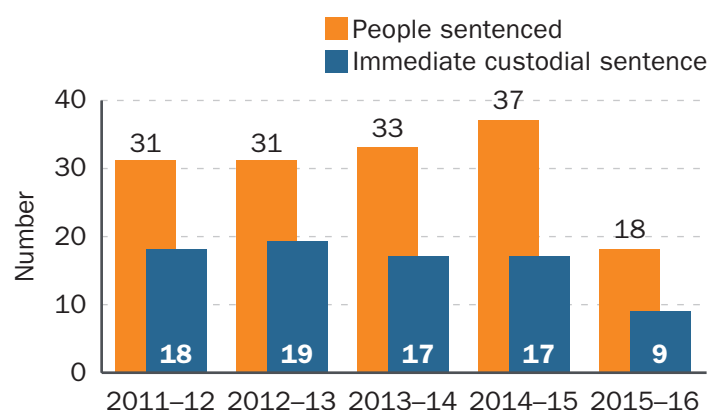


Figure 2: The number of people sentenced for indecent act with a child under 16 and the number that received an immediate custodial sentence, 2011–12 to 2015–16



Sentence types and trends

Figure 2 shows the total number of people sentenced for indecent act with 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.⁶ Over the five-year period, 53% of people were given an immediate custodial sentence.

Table 1 shows the number of people sentenced for indecent act with 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.⁷

Over the five-year period, almost 1 in 2 people sentenced for indecent act with a child under 16 received a period of imprisonment (45% or 67 of 150 people). Of these, 53 received imprisonment, 12 received imprisonment combined with a community correction order, 1 received an aggregate sentence of imprisonment and 1 received aggregate imprisonment combined with a community correction order. People sentenced for indecent act with a child under 16 also commonly received a community correction order (26% or 39 of 150 people).

The percentage of people who received imprisonment for indecent act with a child under 16 peaked at 52% in 2012–13, while the number was highest in 2012–13 and 2014–15 (16 people each). The percentage that received imprisonment for indecent act with a child under 16 was lowest in 2013–14 (39% or 13 of 33 people), while the number was lowest in 2015–16 (44% or 8 of 18 people).

Table 1: The number and percentage of people sentenced for indecent act with 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 and community correction order (combined)	0 (–)	0 (–)	0 (–)	6 (16%)	6 (33%)	12 (8%)
Community correction order	5 (16%)	6 (19%)	12 (36%)	12 (32%)	4 (22%)	39 (26%)
Imprisonment	14 (45%)	15 (48%)	13 (39%)	10 (27%)	1 (6%)	53 (35%)
Partially suspended sentence	4 (13%)	3 (10%)	4 (12%)	1 (3%)	1 (6%)	13 (9%)
Adjourned undertaking without conviction	0 (–)	1 (3%)	0 (–)	2 (5%)	1 (6%)	4 (3%)
Non-custodial supervision order	0 (–)	0 (–)	1 (3%)	1 (3%)	1 (6%)	3 (2%)
Unconditional release	0 (–)	0 (–)	1 (3%)	0 (–)	1 (6%)	2 (1%)
Aggregate imprisonment and community correction order (combined)	0 (–)	0 (–)	0 (–)	0 (–)	1 (6%)	1 (<1%)
Community correction order and fine (combined)	0 (–)	0 (–)	0 (–)	0 (–)	1 (6%)	1 (<1%)
Aggregate fine	0 (–)	0 (–)	0 (–)	0 (–)	1 (6%)	1 (<1%)
Wholly suspended sentence	8 (26%)	4 (13%)	2 (6%)	5 (14%)	0 (–)	19 (13%)
Aggregate imprisonment	0 (–)	1 (3%)	0 (–)	0 (–)	0 (–)	1 (<1%)
Adjourned undertaking with conviction	0 (–)	1 (3%)	0 (–)	0 (–)	0 (–)	1 (<1%)
People sentenced	31	31	33	37	18	150

Age and gender of people sentenced

Data on the age and gender of people sentenced for indecent act with 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.⁸

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 indecent act with a child under 16 must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of indecent act with a child under 16 from 2011–12 to 2015–16.

Principal sentence of imprisonment

A total of 67 people received a principal sentence of imprisonment for indecent act with a child under 16 from 2011–12 to 2015–16.⁹

Figure 3 shows these people by the length of their imprisonment term.¹⁰ Imprisonment terms ranged from 8 days to 4 years and 6 months, while the median length of imprisonment was 1 year and 6 months (meaning that half of the imprisonment terms were shorter than 1 year and 6 months and half were longer).

The most common length of imprisonment imposed was 1 to less than 2 years (24 people).

As shown in Figure 4, the average (mean) length of imprisonment imposed on people sentenced for indecent act with a child under 16 ranged from 1 year and 8 months in 2015–16 to 1 year and 8 months in 2011–12, 2012–13 and 2013–14.

Other offences finalised at the same hearing

Often people prosecuted for indecent act with 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 indecent act with a child under 16.

Figure 5 shows the number of people sentenced for the principal offence of indecent act with 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 19, while the median was 3 offences. There were 34 people (22.7%) sentenced for the single offence of indecent act with a child under 16. The average number of offences per person sentenced for indecent act with a child under 16 was 3.51.

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

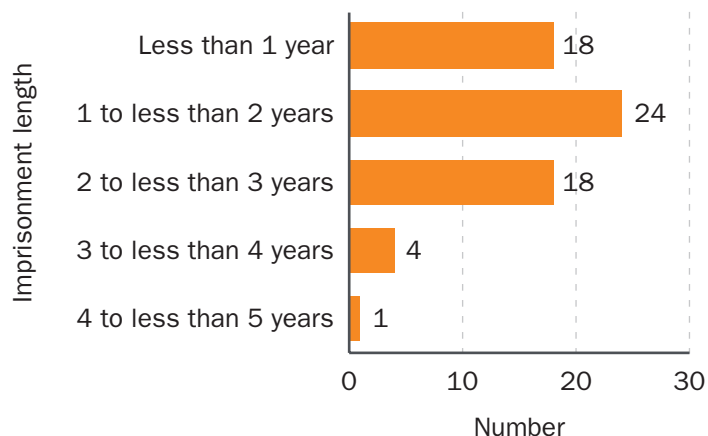


Figure 4: The average (mean) length of imprisonment imposed on people sentenced for indecent act with a child under 16, 2011–12 to 2015–16

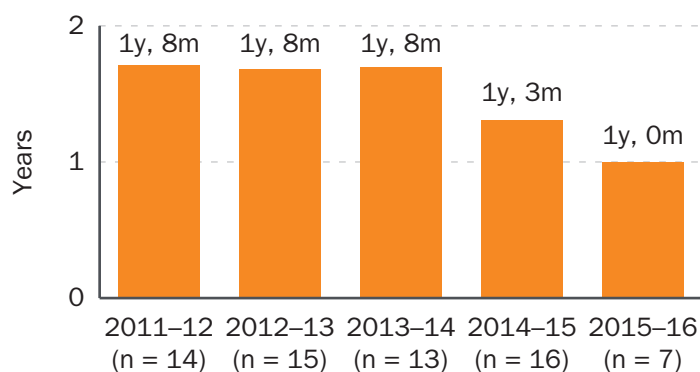


Figure 5: The number of people sentenced for the principal offence of indecent act with a child under 16 by the number of sentenced offences per person, 2011–12 to 2015–16

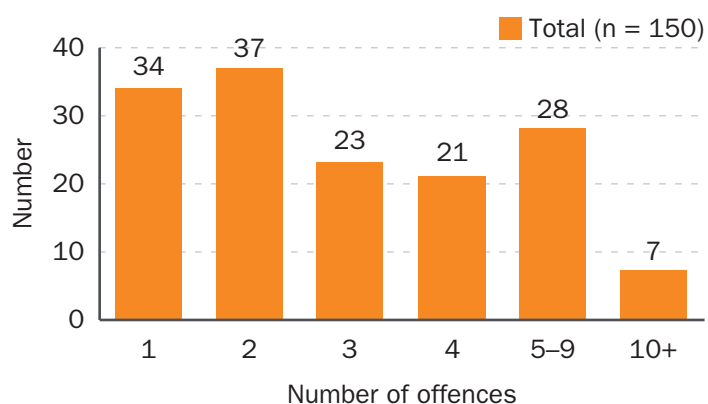


Table 2 shows the 10 most common offences for people sentenced for indecent act with a child under 16, by number and percentage. The last column sets out the average number of offences sentenced per person. For example, 10 of the total 150 people (6.7%) also received sentences for knowingly possessing child pornography. On average, they were sentenced for 1 count of knowingly possessing child pornography.

Table 2: The number and percentage of people sentenced for the principal offence of indecent act with 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. Indecent act with a child under 16	150	100.0	2.75
2. Knowingly possess child pornography	10	6.7	1.00
3. Sexual penetration with a child aged 10/12 to 16	8	5.3	1.88
4. Make or produce child pornography	7	4.7	3.29
5. Indecent assault	5	3.3	1.60
6. Indecent assault (historical offence)	3	2.0	2.67
7. Fail to comply with reporting obligations	3	2.0	2.00
8. Incest with sibling	3	2.0	1.33
9. Use a carriage service to groom a child under 16 for sexual activity	3	2.0	1.33
10. Common law assault	3	2.0	1.00
People sentenced	150	100.0	3.51

Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for indecent act with a child under 16 from 2011–12 to 2015–16 by length of total effective imprisonment term. Total effective imprisonment terms ranged from 8 days to 5 years and 6 months, while the median total effective imprisonment term was 2 years (meaning that half of the total effective imprisonment terms were below 2 years and half were above).

The most common total effective imprisonment term was 1 to less than 2 years (17 people).

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 67 people who were sentenced to imprisonment for indecent act with a child under 16, 54 were eligible to have a non-parole period fixed.¹¹ Of these people, 46 were given a non-parole period (85%).¹²

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

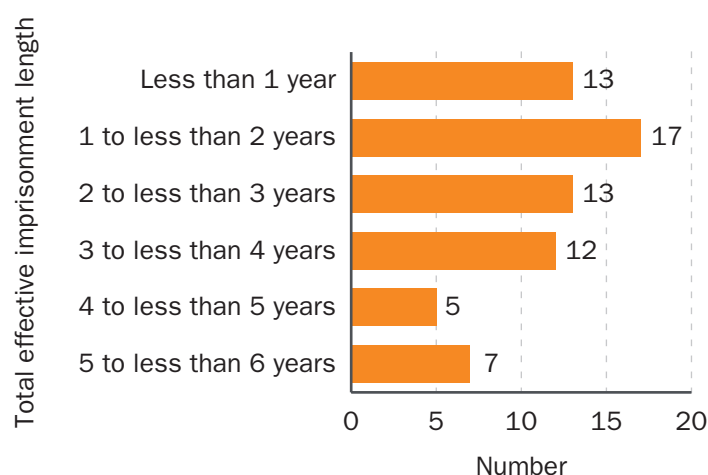


Figure 7 shows the number of people sentenced to imprisonment for indecent act with a child under 16 from 2011–12 to 2015–16 by length of non-parole period. Non-parole periods ranged from 6 months to 3 years and 6 months, while the median length of the non-parole period was 1 year and 6 months (meaning that half of the non-parole periods were below 1 year and 6 months and half were above).

The most common non-parole period imposed was 1 to less than 2 years (22 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 1 year and 7 months in 2015–16 to 2 years and 9 months in 2012–13. Over the same period, the average length of non-parole periods ranged from 1 year and 6 months in 2011–12 and 2013–14 to 3 years in 2015–16. Only one person received a non-parole period in 2015–16, which explains why this value was higher than the averages recorded for previous years.

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

Summary

From 2011–12 to 2015–16, 150 people were sentenced for indecent act with a child under 16 in the higher courts. Of these people 67 (45%) were given a principal sentence of imprisonment.

The number and range of offences for which people with a principal offence of indecent act with 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 2 years, while the median principal imprisonment length was 1 year and 6 months.

Total effective imprisonment lengths ranged from 8 days to 5 years and 6 months, and non-parole periods (where imposed) ranged from 6 months to 3 years and 6 months.

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

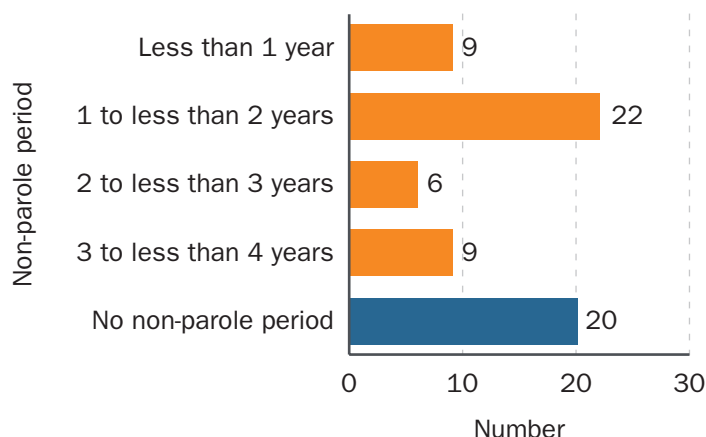
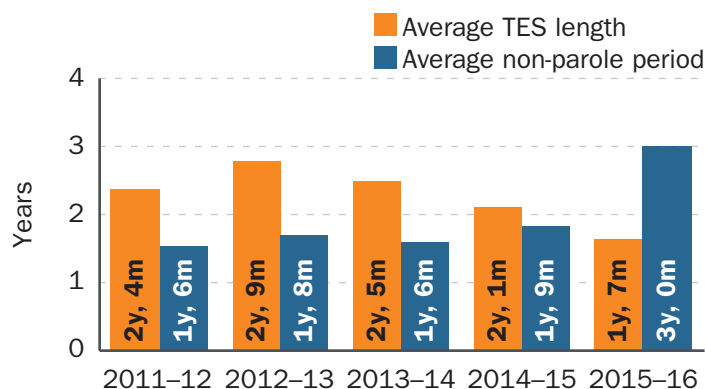


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for indecent act with a child under 16, 2011–12 to 2015–16



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. 178, which describes sentencing trends for indecent act with 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 47.
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. 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.
6. 'Immediate custodial sentence' includes imprisonment, imprisonment combined with a community correction order, aggregate imprisonment, aggregate imprisonment combined with a community correction order and partially suspended sentences.
7. 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.
8. Refer to Endnote 5.
9. This total includes the people in Table 1 who received a sentence of imprisonment, aggregate imprisonment, imprisonment combined with a community correction order and aggregate imprisonment combined with a community correction order.
10. 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 indecent act with a child under 16. During the 2011–12 to 2015–16 period, 2 people received an aggregate form of imprisonment.
11. A total of 13 people were not eligible to have a non-parole period fixed because they were given a total effective sentence length of less than 1 year.
12. 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. A non-parole period was not set for 7 people who were eligible for a non-parole period.

SACStat – Higher Courts Indecent act with a child under 16

https://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_47.html

Authored by Angela Volkov, Data Analyst, Sentencing Advisory Council.

Published by the Sentencing Advisory Council, Melbourne Victoria Australia.

© Copyright State of Victoria, Sentencing Advisory Council, 2017

ISSN 1836-6384 (Online)

Authorised by the Sentencing Advisory Council, Level 3, 333 Queen 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.