

Sentencing Snapshot

Sentencing trends
in the Magistrates'
Court of Victoria
2004-05 to 2006-07

June 2008
No. 49

Indecent Assault

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of indecent assault and details the age and gender² of people sentenced for this offence in the Magistrates' Court of Victoria between 2004-05 and 2006-07.

A person who assaults another in indecent circumstances and without that person's consent, is guilty of the offence of indecent assault.³ Indecent assault is an indictable offence which carries a maximum penalty of 10 years' imprisonment⁴ and/or a fine of 1200 penalty units.⁵

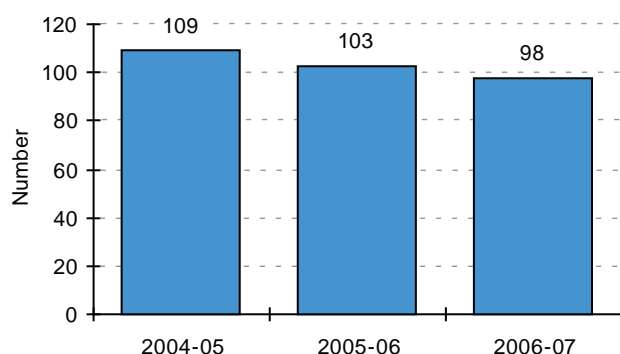
This offence may be heard summarily in the Magistrates' Court if the court considers it appropriate and the defendant consents. This tends to occur where the offence is seen by the court as being less serious in nature. Where an offence is tried summarily, the matter will be heard before a magistrate rather than a judge and a jury. Where indecent assault is heard summarily, it carries a maximum penalty of 2 years' imprisonment and/or a fine of 240 penalty units.⁶

Of all people sentenced for the principal offence of indecent assault, 70.8% had their cases heard in the Magistrates' Court. The remaining cases were heard in the Children's Court and higher courts.⁷ Indecent assault was the principal offence in 0.2% of cases sentenced in the Magistrates' Court between 2004-05 and 2006-07.

People sentenced

Over the three year period, 310 people were sentenced for the principal offence of indecent assault in the Magistrates' Court. In 2006-07, there were 98 people who were sentenced for the principal proven offence of indecent assault.⁸ This has steadily decreased each year from 109 people in 2004-05 to 98 in 2006-07.

Figure 1: The number of people sentenced for indecent assault, 2004-05 to 2006-07



Sentencing outcomes

Table 1 shows the sentencing outcomes for people sentenced for indecent assault during 2004-05 to 2006-07. Over the three-year period, the majority of those sentenced for indecent assault received a non-custodial sentence (232 people or 74.8%), including 88 people who received a community-based order (28.4%), 86 people who received

a fine (27.7%) and 58 people who received an adjourned undertaking (18.7%).

There were also 41 people who received a non-immediate custodial sentence (13.2%), including 28 people who received a wholly suspended sentence (9.0%) and 13 people who received an intensive correction order (4.2%).

In some circumstances, when sentencing an offender the court may decide whether to record a conviction.⁹ Of the 98 people sentenced for indecent assault in 2006-07, 78.6% had a conviction recorded (77 people).¹⁰

Table 1: The number and percentage of people sentenced for indecent assault by sentence type, 2004-05 to 2006-07

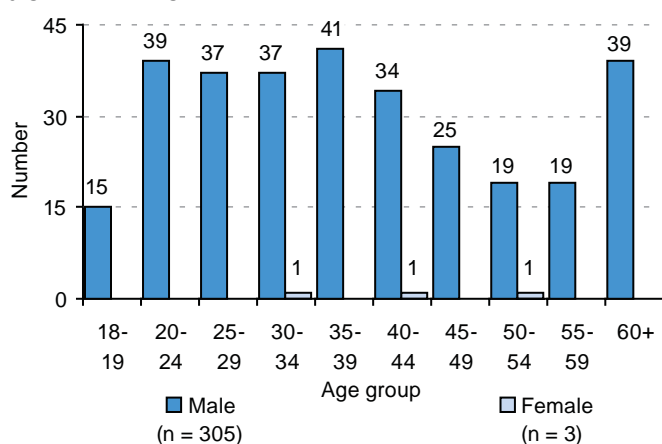
Sentence Type	Total	%
Immediate custodial	37	11.9
Imprisonment	28	9.0
Partially suspended sentence	6	1.9
Youth justice centre order	3	1.0
Other custodial	41	13.2
Wholly suspended sentence	28	9.0
Intensive correction order	13	4.2
Non-custodial	232	74.8
Community-based order	88	28.4
Fine	86	27.7
Adjourned undertaking	58	18.7
People sentenced	310	100.0
Criminal justice diversion program	11	
Total dispositions	321	

An additional 11 people participated in the criminal justice diversion program. These people are not counted towards the total number of people sentenced and are not included in any further analyses in this paper (unless stated).¹¹

Age and gender

Over the three-year period, the majority of those sentenced were men (307 people or 99.0%).¹² The age of people sentenced for indecent assault ranged from 18 years to 83 years, while the median age was 38 years (meaning that half of the people were aged 38 years or younger and half were 38 years or older).¹³

Figure 2: The number of people sentenced for indecent assault by gender and age, 2004-05 to 2006-07



Sentencing outcomes by gender and age group

Table 2 shows the number and percentage of people who were sentenced for indecent assault by sentence type. The first two columns show sentence types by gender, while the next four columns show the sentence types by age group.

Due to the low number of women who were sentenced for this offence, it is difficult to draw conclusions on the differences in sentencing outcomes between genders.

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence and an intensive correction order. Conversely, a higher percentage of those in the younger age groups received a non-custodial sentence, including a community-based order.

Table 2: The number and percentage of people sentenced for indecent assault by sentence type, gender and age group, 2004-05 to 2006-07

Sentencing outcome	Gender		Age				All People
	Male	Female	<18	18-24	25-39	40+	
Immediate custodial	37 (12.1%)	0 -	0 -	6 (11.1%)	17 (14.7%)	13 (9.4%)	37 (11.9%)
Imprisonment	28 (9.1)	0 -	0 -	3 (5.6%)	16 (13.8%)	8 (5.8%)	28 (9.0%)
Partially suspended sentence	6 (2.0%)	0 -	0 -	0 -	1 (0.9%)	5 (3.6%)	6 (1.9%)
Youth justice centre order	3 (1.0%)	0 -	0 -	3 (5.6%)	0 -	0 -	3 (1.0%)
Other custodial	41 (13.4%)	0 -	0 -	3 (5.6%)	11 (9.5%)	27 (19.6%)	41 (13.2%)
Wholly suspended sentence	28 (9.1%)	0 -	0 -	2 (3.7%)	7 (6.0%)	19 (13.8%)	28 (9.0%)
Intensive correction order	13 (4.2%)	0 -	0 -	1 (1.9%)	4 (3.4%)	8 (5.8%)	13 (4.2%)
Non-custodial	229 (74.6%)	3 (100.0%)	0 -	45 (83.3%)	88 (75.9%)	98 (71.0%)	232 (74.8%)
Community-based orders	87 (28.3%)	1 (33.3%)	0 -	21 (38.9%)	36 (31.0%)	31 (22.5%)	88 (28.4%)
Fine	85 (27.7%)	1 (33.3%)	0 -	12 (22.2%)	38 (32.8%)	35 (25.4%)	86 (27.7%)
Adjourned undertaking	57 (18.6%)	1 (33.3%)	0 -	12 (22.2%)	14 (12.1%)	32 (23.2%)	58 (18.7%)
People sentenced	307 (100.0%)	3 (100.0%)	0 -	54 (100.0%)	116 (100.0%)	138 (100.0%)	310 (100.0%)

Sentencing outcomes by year

Table 3 shows the number and percentage of people sentenced each year from 2004-05 to 2006-07 for indecent assault by the type of sentence imposed.

The number and percentage of people who received an immediate custodial sentence fluctuated from 9 people and 8.3% in 2004-05 to 16 people and 15.5% in 2005-06.

The number and percentage of people who received a non-custodial sentence decreased each year from 86 people and 78.9% in 2004-05 to 72 people and 73.5% in 2006-07.

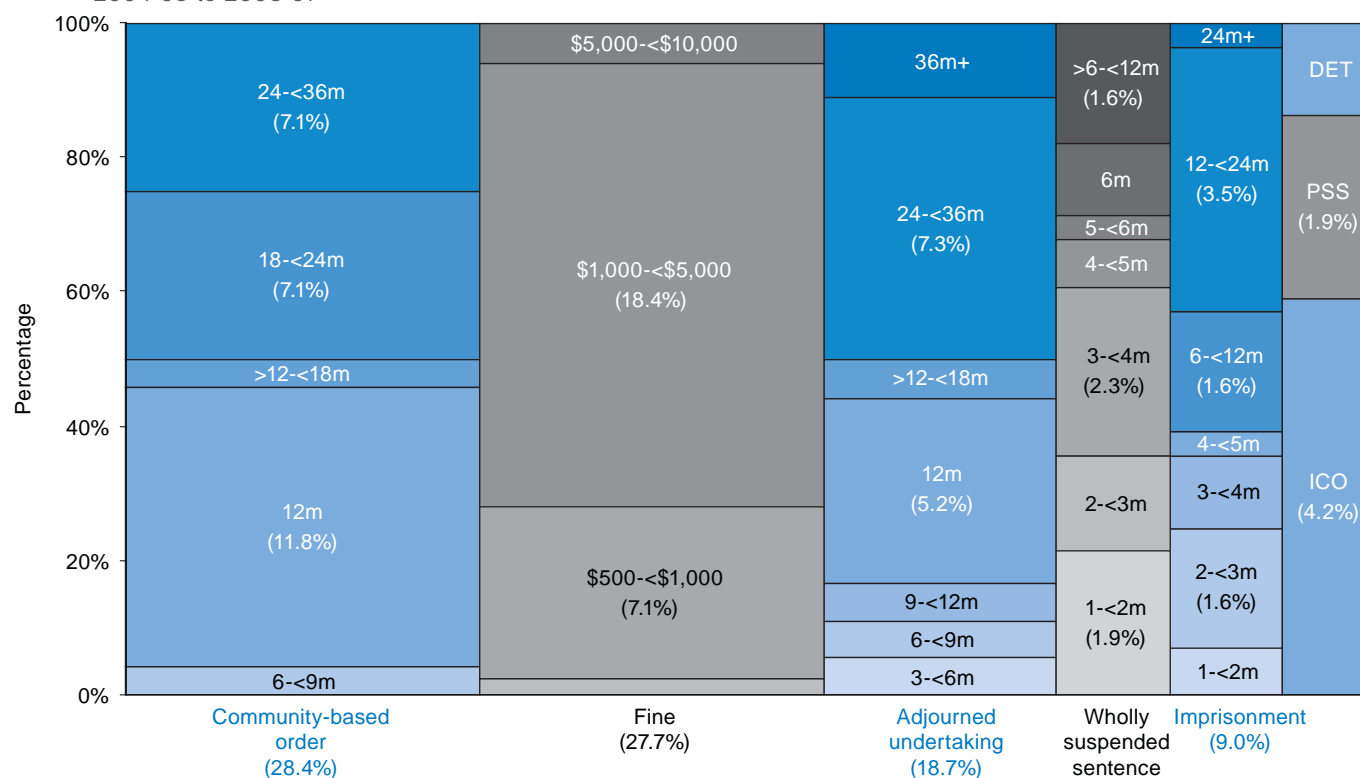
Sentencing map

Figure 3 presents both the sentencing outcome and the quantum for that outcome for people sentenced for indecent assault. For example, 28.4% of people sentenced received a community-based order including 11.8% who received a community-based order of 12 months. The right most column of the graph presents the least common sentencing outcomes without showing the quantum information.

Table 3: The number and percentage of people sentenced for indecent assault by sentence type and year, 2004-05 to 2006-07¹⁴

Sentence Type	2004-05	2005-06	2006-07
Immediate custodial	9 (8.3%)	16 (15.5%)	12 (12.2%)
Imprisonment	8 (7.3%)	11 (10.7%)	9 (9.2%)
Partially suspended sentence	0	3 (2.9%)	3 (3.1%)
Youth justice centre order	1 (0.9%)	2 (1.9%)	0
Other custodial	14 (12.8%)	13 (12.6%)	14 (14.3%)
Wholly suspended sentence	10 (9.2%)	10 (9.7%)	8 (8.2%)
Intensive correction order	4 (3.7%)	3 (2.9%)	6 (6.1%)
Non-custodial	86 (78.9%)	74 (71.8%)	72 (73.5%)
Community-based order	38 (34.9%)	26 (25.2%)	24 (24.5%)
Fine	31 (28.4%)	25 (24.3%)	30 (30.6%)
Adjourned undertaking	17 (15.6%)	23 (22.3%)	18 (18.4%)
People sentenced	109	103	98

Figure 3: Sentencing map: The percentage of people sentenced for indecent assault by sentencing outcomes and sentencing quanta, 2004-05 to 2006-07¹⁵



Note: ICO refers to intensive correction order, PSS refers to partially suspended sentence and DET refers to youth justice centre order.

Principal sentence

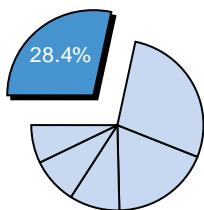
This section examines the use of the four most common principal sentencing outcomes for this offence.¹⁶ Firstly, it provides an analysis of the trends in the use of each sentencing outcome, both in terms of the number and percentage of people sentenced. Secondly, a demographic analysis of the people sentenced to each sentencing outcome is provided. Finally, where relevant, the details of the sentence (length of order or fine amount) are examined.¹⁷

The four most common sentences imposed for indecent assault are community-based orders, fines, adjourned undertakings and wholly suspended sentences of imprisonment.

Community-based order

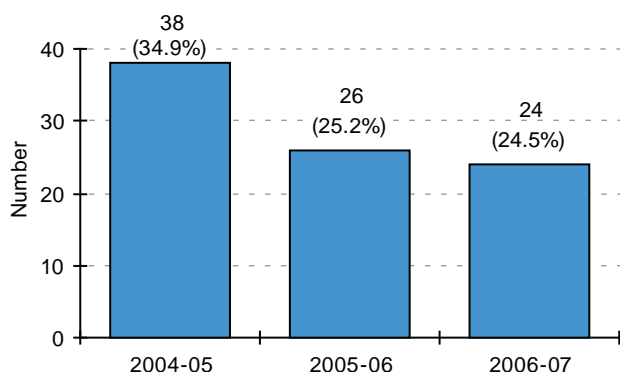
Trends

Over the three years, there were 88 people who received a community-based order for indecent assault. This represented 28.4% of all people sentenced for this offence. Figure 4 shows the trends in the number and percentage of people sentenced who received a community-based order for indecent assault.



In 2006-07, 24 people received a community-based order for the principal proven offence of indecent assault. This is a slight decrease from 26 people in 2005-06, continuing a decrease from the previous year. A similar trend was evident when expressed as a percentage of all people sentenced for indecent assault (24.5% received a community-based order in 2006-07).

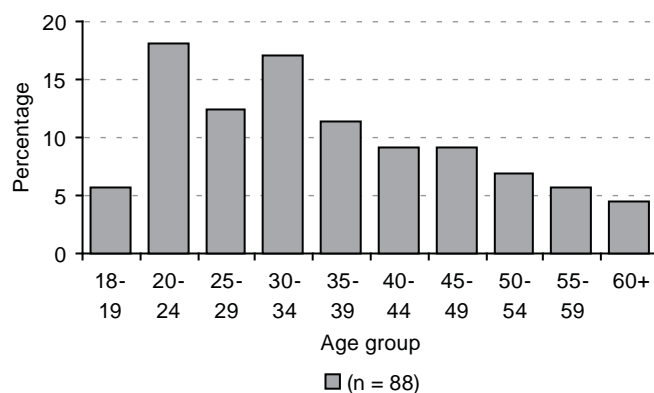
Figure 4: The number and percentage of people who received a community-based order for indecent assault, 2004-05 to 2006-07



Age and gender

Of the 88 people who received a community-based order, 98.9% were men. Figure 5 shows the age groups of people who received a community-based order for indecent assault. The median age of these people was 34 years.

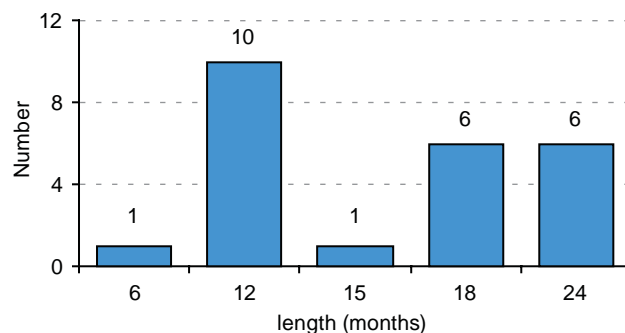
Figure 5: The percentage of people who received a community-based order for indecent assault by age, 2004-05 to 2006-07¹⁸



Length of sentence

Figure 6 shows the number of people who received a community-based order for indecent assault by the length of the sentence. While the length of community-based orders ranged from six months to two years, the most common length was 12 months.

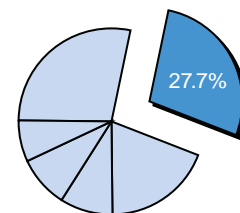
Figure 6: The number of people who received a community-based order for indecent assault by the length of order, 2006-07



Fine

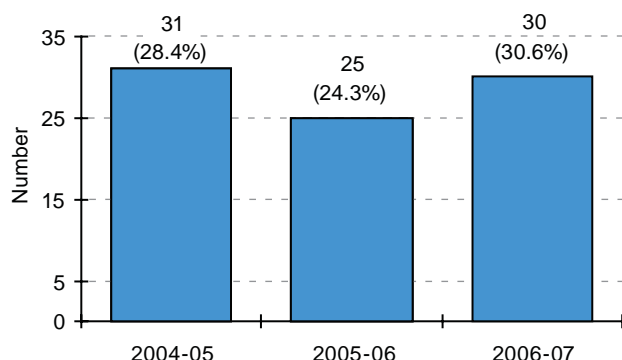
Trends

Over the three years, there were 86 people who received a fine for indecent assault. This represented 27.7% of all people sentenced for this offence. Figure 7 shows the trends in the number and percentage of people sentenced who received a fine for indecent assault.



In 2006-07, 30 people received a fine for the principal proven offence of indecent assault. This is an increase from 25 people in 2005-06, reversing a decrease from the previous year. A similar trend was evident when expressed as a percentage of all people sentenced for indecent assault (30.6% received a fine in 2006-07).

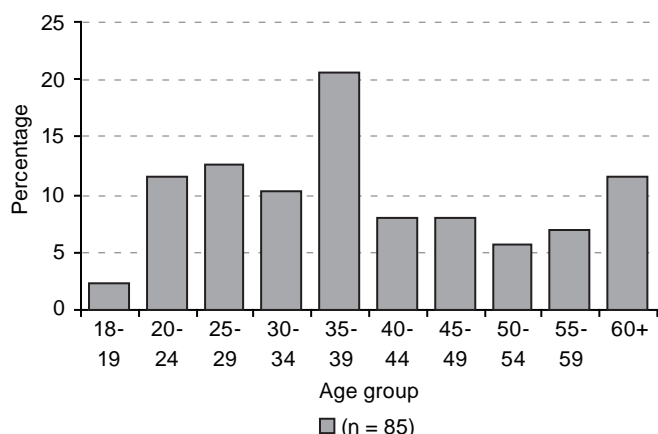
Figure 7: The number and percentage of people who received a fine for indecent assault, 2004-05 to 2006-07



Age and gender

Of the 86 people who received a fine, 98.9% were men. Figure 8 shows the age groups of people who received a fine for indecent assault. The median age of these people was 38 years.

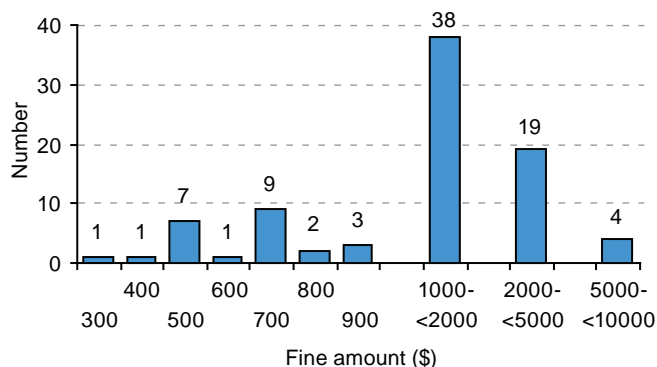
Figure 8: The percentage of people who received a fine for indecent assault by age, 2004-05 to 2006-07¹⁹



Fine Amount

Figure 9 shows the number of people who received a fine for indecent assault by the amount of the fine. While the amount of the fine ranged from \$300 to \$8,000, the median was \$1,000.

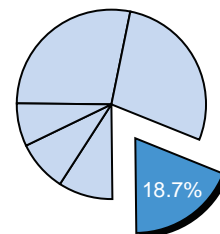
Figure 9: The number of people who received a fine for indecent assault by the amount of the fine, 2004-05 to 2006-07



Adjourned undertaking

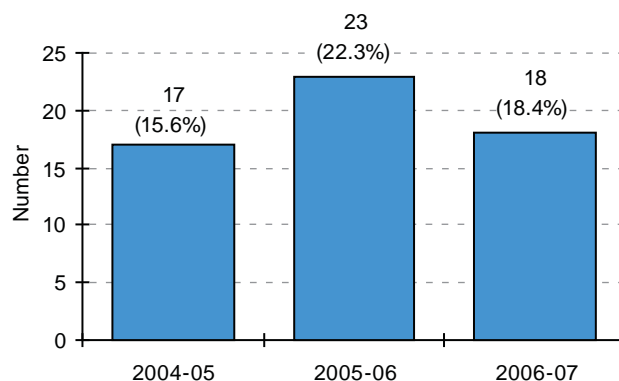
Trends

Over the three years, there were 58 people who received an adjourned undertaking for indecent assault. This represented 18.7% of all people sentenced for this offence. Figure 10 shows the trends in the number and percentage of people sentenced who received an adjourned undertaking for indecent assault.



In 2006-07, 18 people received an adjourned undertaking for the principal proven offence of indecent assault. This is a decrease from 23 people in 2005-06, reversing an increase from the previous year. A similar trend was evident when expressed as a percentage of all people sentenced for indecent assault (18.4% received an adjourned undertaking in 2006-07).

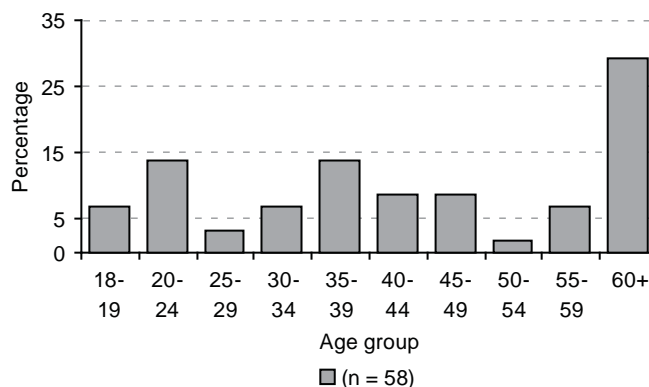
Figure 10: The number and percentage of people who received an adjourned undertaking for indecent assault, 2004-05 to 2006-07



Age and gender

Of the 58 people who received an adjourned undertaking, 98.3% were men. Figure 11 shows the age groups of people who received an adjourned undertaking for indecent assault. The median age of these people was 43 years and six months.

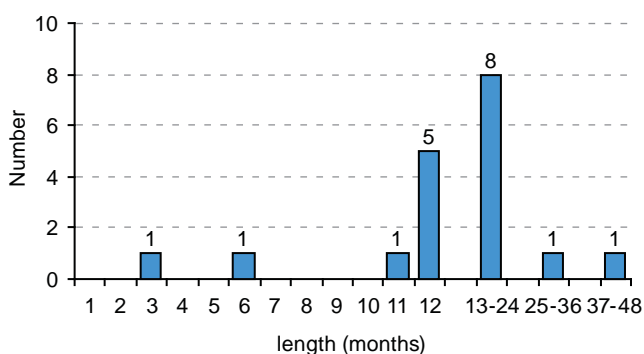
Figure 11: The percentage of people who received an adjourned undertaking for indecent assault by age, 2004-05 to 2006-07²⁰



Length of sentence

Figure 12 shows the number of people who received an adjourned undertaking for indecent assault by length of sentence. While the length of adjourned undertakings ranged from three months to four years, the median was one year, eleven months and fifteen days (meaning that half were shorter than one year, eleven months and fifteen days and half were longer than one year, eleven months and fifteen days).

Figure 12: The number of people who received an adjourned undertaking for indecent assault by the length of order, 2006-07



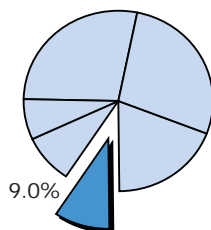
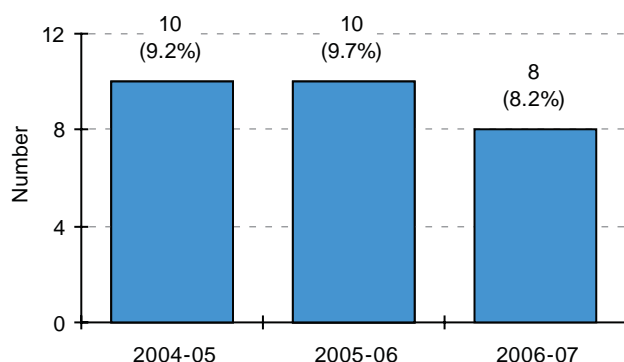
Wholly suspended sentence

Trends

Over the three years, there were 28 people who received a wholly suspended sentence for indecent assault. This represented 9.0% of all people sentenced for this offence. Figure 13 shows the trends in the number and percentage of people sentenced who received a wholly suspended sentence for indecent assault.

In 2006-07, 8 people received a wholly suspended sentence for the principal proven offence of indecent assault. This is a decrease from 10 people in 2005-06, after remaining stable the previous year. Also, the proportion of people who received a wholly suspended sentence decreased to 8.2% in 2006-07 from 9.2% in 2004-05 and from 9.7% in 2005-06.

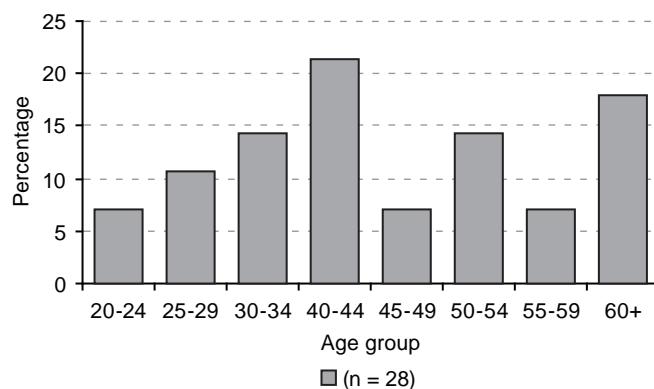
Figure 13: The number and percentage of people who received a wholly suspended sentence for indecent assault, 2004-05 to 2006-07



Age and gender

Of the 28 people who received a wholly suspended sentence, all were men. Figure 14 shows the age groups of people who received a wholly suspended sentence for indecent assault. The median age of these people was 43 years.

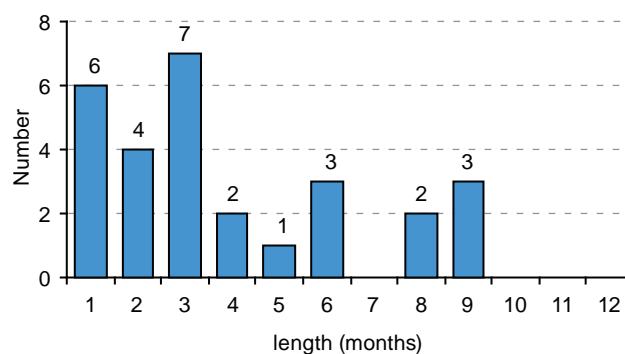
Figure 14: The percentage of people who received a wholly suspended sentence for indecent assault by age, 2004-05 to 2006-07²¹



Length of sentence

Figure 15 shows the number of people who received a wholly suspended sentence for indecent assault by the length of the sentence. While the length of wholly suspended sentences ranged from one month to nine months, the median was three months (meaning that half were shorter than three months and half were longer than three months).

Figure 15: The number of people who received a wholly suspended sentence for indecent assault by the length of order, 2004-05 to 2006-07

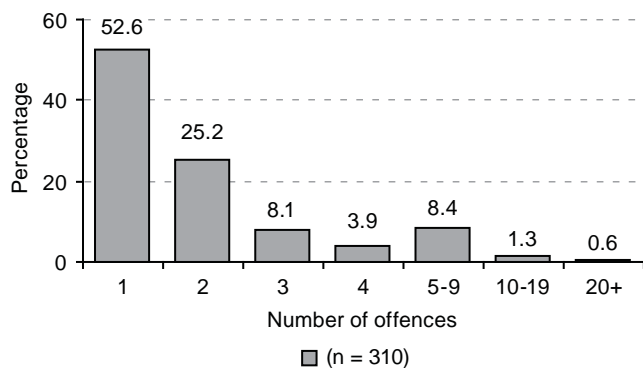


Other offences finalised at the same hearing

Often people prosecuted for indecent assault 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 assault.

Figure 16 shows the number of people sentenced for the principal offence of indecent assault by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 35. There were 163 people (52.6%) sentenced for the single offence of indecent assault alone. The average number of offences per person was 2.32.

Figure 16: The percentage of cases where indecent assault was the principal offence by the number of offences where a sentence was imposed in that case, 2004-05 to 2006-07



While Figure 16 presents the number of sentenced offences for those sentenced for indecent assault, Table 4 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, 38 of the total 310 people (12.3%) also received sentences for unlawful assault. On average, they were sentenced for 1.34 charges of unlawful assault. The first row indicates that the average number of charges of indecent assault sentenced per person was 1.34.

Table 4: The number and percentage of people sentenced for the principal offence of indecent assault by the most common offences that were sentenced and the average number of those offences that were sentenced, 2004-05 to 2006-07

Offence	No.	%	Avg.
1 indecent assault	310	100.0	1.34
2 unlawful assault	38	12.3	1.34
3 causing injury	16	5.2	1.13
4 fail to appear on bail	15	4.8	1.47
5 criminal damage	13	4.2	1.38
6 stalk another person (<i>Crimes Act (1958)</i>)	12	3.9	1.17
7 breach of intervention order	11	3.5	2.09
8 behave in an offensive manner	9	2.9	2.00
9 indecent act with a child under 16	9	2.9	1.11
10 wilful and obscene exposure in public	6	1.9	2.50
People sentenced	310	100.0	2.32

Sentence combinations

This section looks at the range of sentence types imposed in the entire case for people who had the principal offence of indecent assault. This includes all sentences imposed for the principal proven offence and for all other offences that were sentenced as part of that case.²²

Table 5 shows the percentages of the six most common sentence types imposed in cases in the Magistrates' Court from 2004-05 to 2006-07 where the principal proven offence was indecent assault, by the other sentence types also

imposed in the case. For example, of the 108 people who received a fine as part of their total effective sentence, 9.3% also received a wholly suspended sentence.

The most common sentence types imposed in conjunction with another sentence type were:

- a fine with a wholly suspended sentence (32.3% of the 31 people who received a wholly suspended sentence);
- a fine with an imprisonment term (14.3% of the 28 people); and
- a community-based order with a wholly suspended sentence (12.9% of the 31 people).

Table 5: The percentage of selected sentence types used in conjunction with other sentence types imposed in the same case, 2004-05 to 2006-07

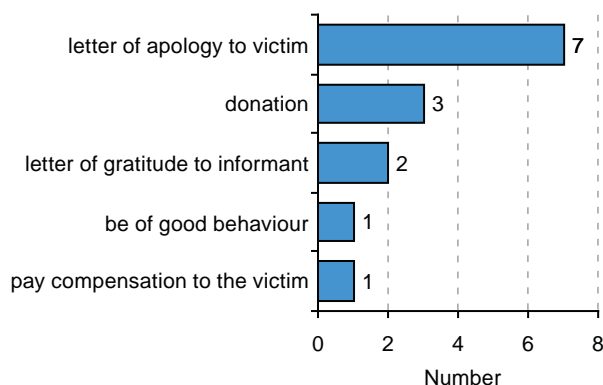
	Fine	CBO	ADU	WSS	Imp.	ICO
Fine	100%	9.5%	4.9%	32.3%	14.3%	0.0%
CBO	8.3%	100%	1.6%	12.9%	7.1%	7.7%
ADU	2.8%	1.1%	100%	0.0%	0.0%	0.0%
WSS	9.3%	4.2%	0.0%	100%	7.1%	0.0%
Imp.	3.7%	2.1%	0.0%	6.5%	100%	0.0%
ICO	0.0%	1.1%	0.0%	0.0%	0.0%	100%
Total	108	95	61	31	28	13

Note: CBO refers to community-based order, ADU refers to adjourned undertaking, WSS refers to wholly suspended sentence, Imp. refers to imprisonment and ICO refers to intensive correction order.

Criminal justice diversion plan²³

Although the criminal justice diversion plan is not a sentencing outcome, it is a dispositional process that does help to reflect the work of the courts. Over the three year period, there were 11 people who were given a criminal justice diversion plan. Figure 17 shows the number of people who received a criminal justice diversion plan for indecent assault by the types of conditions set. People can be given more than one condition on a diversion plan. As shown, the most common condition listed for diversion plans was a letter of apology to the victim (7 of the 11 people).

Figure 17: The number of people who received a criminal justice diversion plan for indecent assault by types of conditions set, 2004-05 to 2006-07



Summary

Between 2004-05 and 2006-07, 310 people were sentenced for the principal offence of indecent assault in the Magistrates' Court. Over this period, the majority of those sentenced were men (307 people or 99.0%). The median age of people sentenced was 38 years, while 13% were aged 60 years or older.

Most people sentenced for indecent assault received a non-custodial sentence (232 people or 74.8%), including 88 people who received a community-based order (28.4%), 86 people who received a fine (27.7%) and 58 people who received an adjourned undertaking (18.7%). A conviction was recorded with the principal sentence for 78.6% of people sentenced.

A higher percentage of older people received a non-immediate custodial sentence, including a wholly suspended sentence and an intensive correction order. Conversely, a higher percentage of those in the younger age groups received a non-custodial sentence, including a community-based order.

Each of the 310 people was sentenced for an average of 2.32 offences, including 1.34 offences of indecent assault. The most common offence finalised in conjunction with indecent assault was unlawful assault (12.3% of all cases).

The most common sentence types imposed in conjunction with another sentence type were a fine with a wholly suspended sentence (32.3% of the 31 people who received a wholly suspended sentence), a fine with an imprisonment term (14.3% of the 28 people) and a community-based order with a wholly suspended sentence (12.9% of the 31 people).

1 The data analysed in this report are obtained from quarterly unit record extracts provided to the Sentencing Advisory Council by Courtlink (Department of Justice (Vic)). While every effort is made to ensure the analyses presented in this report are accurate, the data are subject to revision.

This report presents sentencing outcomes for people sentenced for the principal offence of indecent assault in the Magistrates' Court of Victoria. The principal proven offence is the offence that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for indecent assault who received a more serious sentence for another offence charged on the same charge sheet.

2 The data used for analysis in this report contain information on age and gender characteristics. No other demographic analysis is possible.

3 *Crimes Act 1958* (Vic) s 39(2).

4 *Crimes Act 1958* (Vic) s 39(1).

5 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).

6 Under section 113 of the *Sentencing Act 1991* (Vic) this general maximum term is prescribed for indictable offences triable summarily. Though section 113 does not specifically state the maximum number of penalty units that can be imposed for an indictable offence triable summarily, section 109 (3)(a) sets the proportion between the maximum term of imprisonment and the maximum fine.

7 For an analysis of sentencing outcomes for this offence in the higher courts, please refer to Sentencing Snapshot No. 23: Sentencing trends for indecent assault in the higher courts of Victoria, 2001-02 to 2005-06. This report is available for download from the Sentencing Advisory Council website (www.sentencingcouncil.vic.gov.au).

8 The number of people sentenced excludes those who participated in the criminal justice diversion program. Only the people who were dismissed in 2006-07 could be counted as dismissed in this report. These people are identified by having the dismissal grounds listed as 'proved and dismissed' (s.360(1)(a) *Children, Youth and Families Act 2005* (Vic)) or 'dismissed' (s.76 *Sentencing Act, 1991* (Vic)). The people who were dismissed in 2004-05 and 2005-06 could not be counted because of changes in data recording practices. Therefore the count of the number of people sentenced over the three year period could be an under-representation. However, in 2006-07, no people were dismissed pursuant to this legislation.

9 *Sentencing Act 1991* (Vic) s 7 and s 8.

In exercising this discretion, the court must have regard to all the circumstances of the case, including the nature of the offence, the character and past history of the offender and the impact of the recording of a conviction on the offender's economic or social well being or on the his or her employment prospects (*Sentencing Act 1991* (Vic) s 8(1)).

10 Only those who had a conviction recorded against the principal proven offence in the case are counted. Information on conviction is not available for sentences imposed in 2004-05 and 2005-06.

11 The criminal justice diversion program provides offenders with the opportunity to be diverted from the normal criminal process. If an offender acknowledges responsibility for the offence(s) and undertakes prescribed conditions, the offender will avoid the risk of a finding of guilt being made against them. The program can only be recommended if the offence is triable summarily, the defendant admits the facts, there is sufficient evidence to gain a conviction and

a diversion is appropriate in the circumstances. The over-riding consideration is that diversion be appropriate in the circumstances. The existence of prior convictions does not disqualify an offender from this program but is a fact to be considered in determining appropriateness. Either the defence or the prosecution may request a disposition of a criminal justice diversion plan, however the plan cannot commence without the consent of the prosecution.

12 The age was unknown for 2 men sentenced for indecent assault (0.6%). These people are excluded from all age analyses in this report.

13 The age is calculated as at the date of sentence. Sentencing outcomes counted in this snapshot may be imposed for offences committed substantially before the three year period covered by this snapshot.

14 Refer fn. 8.

15 Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006-07.

16 The principal sentence is the individual sentence imposed for a single charge. The principal sentence is the most serious sentence in the case. If more than one type of sentence is imposed for a single charge, only the most serious sentence is counted.

17 Fine amounts lower than \$1,000 are rounded up to the nearest \$100, while fine amounts equal to or over \$1,000 are grouped into categories. Sentence lengths shorter than one year are rounded up to the nearest month, while sentence lengths equal to or over one year are grouped into categories of years. Data for sentence lengths of community-based orders, adjourned undertakings and youth justice centre orders are only available for 2006-07.

18 The age was unknown for 2 people sentenced for indecent assault. These people are excluded from this analysis.

19 The age was unknown for 2 people sentenced for indecent assault, including 1 who received a fine. These people are excluded from this analysis.

20 The age was unknown for 2 people sentenced for indecent assault. These people are excluded from this analysis.

21 The age was unknown for 2 people sentenced for indecent assault. These people are excluded from this analysis.

22 Only sentence types that were imposed on the same date as the sentence imposed for the principal proven offence are included.

23 The data analysed in this section were compiled by merging the sentencing outcomes database with an extract from the Criminal Justice Diversion Plan database.