

Sex Offences in Victoria: 2010–2019

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Warning

This short report contains material and case studies that may be distressing or confronting.

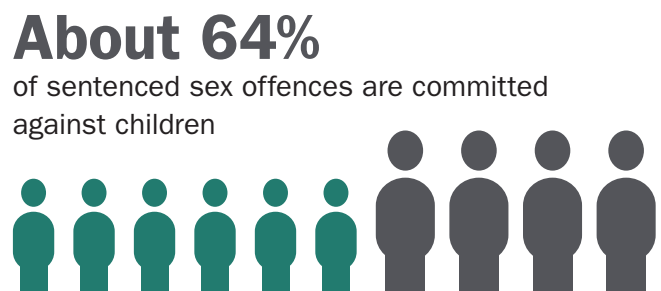
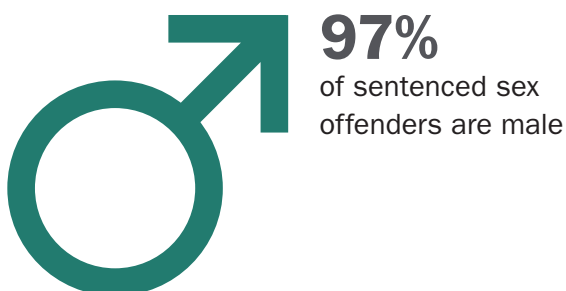
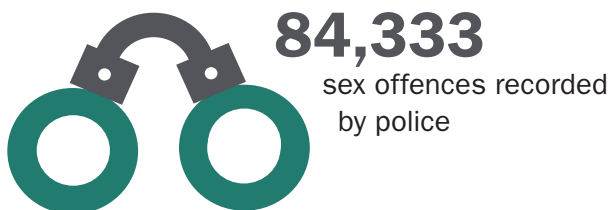
Sex offences in Victoria

The Sentencing Advisory Council recently looked at how courts sentenced contact sex offences in Victoria in the 10 years to 2019. Using police and court data, this short report provides an overview of how courts sentenced the six most common contact sex offences.

More detailed information can be found in *Sentencing Sex Offences in Victoria: An Analysis of Three Sentencing Reforms*.

The six most common contact sex offences in Victoria from 2010 to 2019 were:

- rape
- sexual penetration of a child
- sexual assault of an adult
- sexual assault of a child
- incest with a child
- persistent sexual abuse of a child



Key findings

In the 10 years to 2019, there was:

- a significant increase in the number of sex offences **recorded by police**, especially offences committed against adults
- little change in the number of sex offences **sentenced by courts**
- a significant increase in the lengths of prison sentences for most sex offences, especially rape and offences involving children, which received **noticeably longer prison sentences**.

How many sex offences were recorded by police?

There was a significant increase in the number of sex offences recorded by police in the 10 years to 2019.

In 2010, police recorded almost 6,000 sex offences (5,893). In 2019, police recorded over 9,500 sex offences (9,617) – that’s 63% higher than in 2010.

Most of this increase is because there were more recorded sex offences against *adults*. The number of recorded rapes almost doubled to nearly 3,000, and the number of recorded sexual assaults more than doubled to over 3,000.

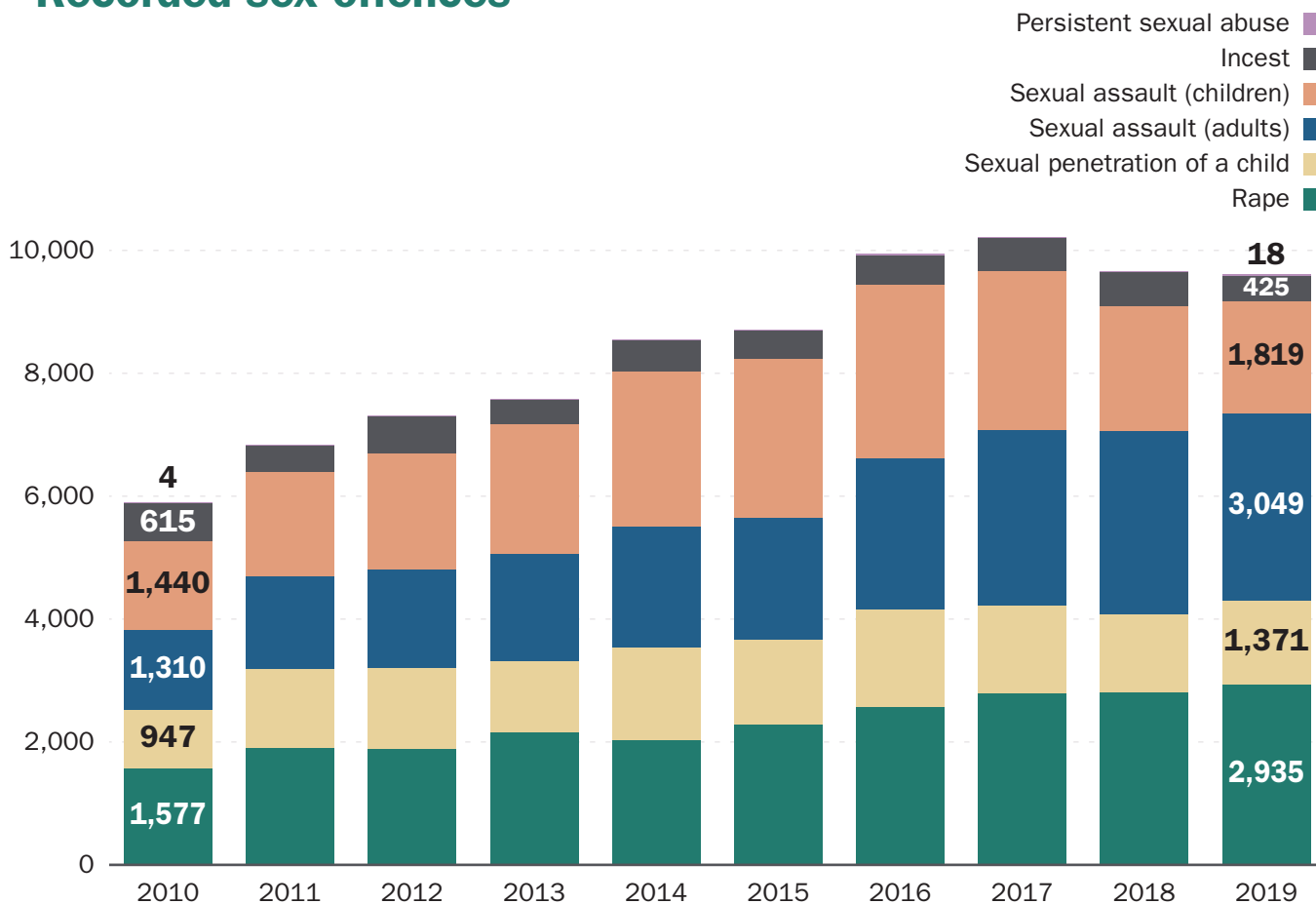
Some of the possible reasons for the increased reporting of sex offences include:

- victims and the community are better able to identify sexual violence when it occurs
- victims are more confident in reporting sexual violence to police
- people are more willing to report historical sex offending.

What is a recorded offence?

Any criminal act or omission by a person for which a penalty could be imposed by the Victorian legal system

Recorded sex offences



Does this graph include historical offences?

Yes. This graph includes more recent offences, but it also includes historical offences that may have been committed decades earlier but were only reported to police during the 10 years to 2019. For example, a victim may have reported a rape contrary to section 44 of the *Crimes Act 1958* (Vic), an offence that was in effect from 1959 to 1981.

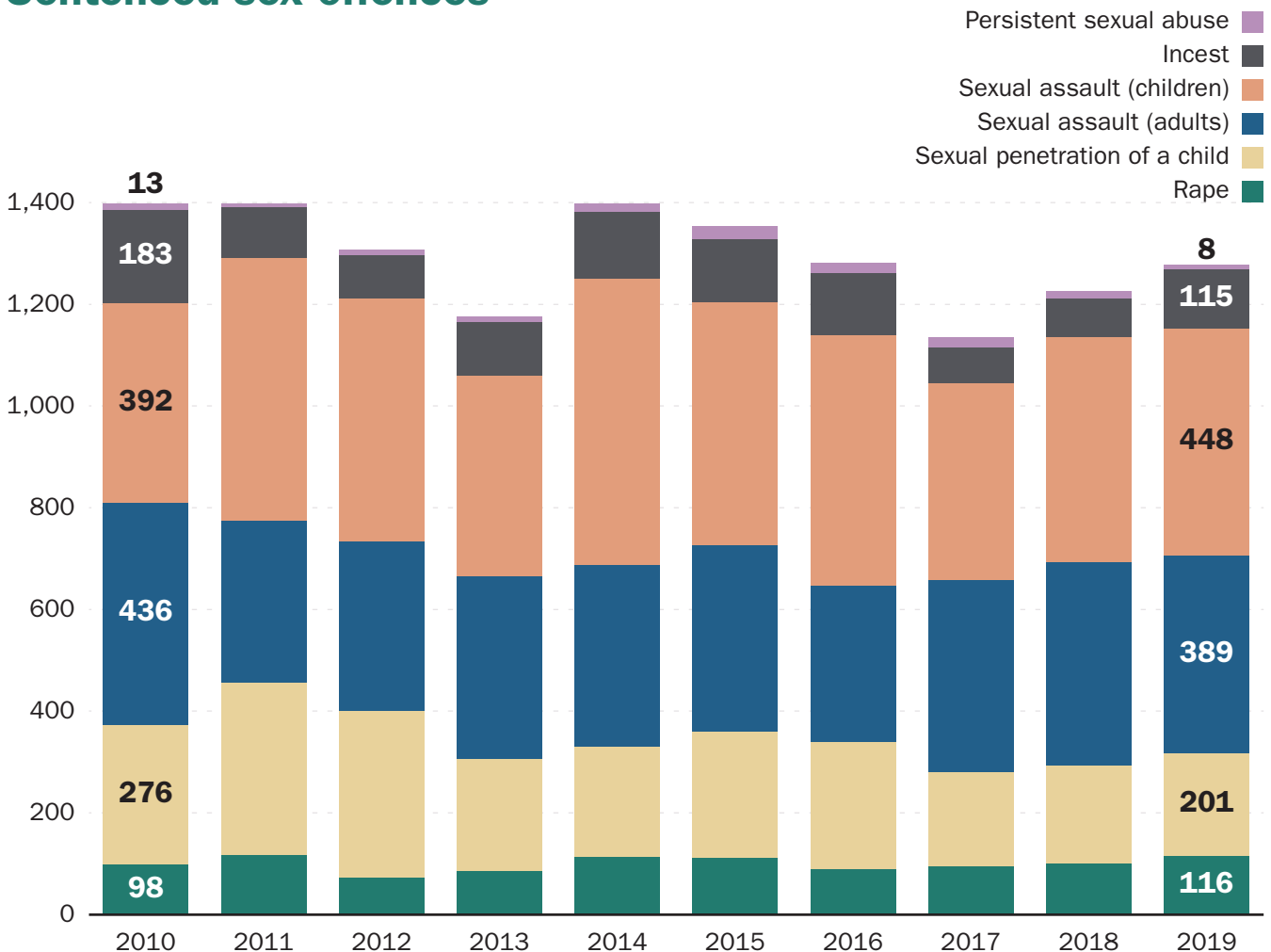
How many sex offences were sentenced?

Victorian courts sentenced between 1,100 and 1,400 sex offences each year from 2010 to 2019. While the number of sex offences recorded by police increased (as seen above), the number of sex offences sentenced by courts did not change significantly.

There could be various reasons the number of sentenced sex offences didn't change, including:

- more frequent charging of multiple incidents as a single offence
- increased reporting of historical sex offences, which are harder to prove and/or
- a lower threshold for police in recording an offence, but no change in the standard required for proving an offence in court.

Sentenced sex offences



Recorded versus sentenced rape offences

A discrepancy stands out between the number of recorded rape offences and the number of sentenced rape offences. For most sex offences, the ratio of sentenced sex offences to recorded sex offences was about 1 in 5. But for rape offences, that ratio was about 1 in 23. Of the various types of sex offences shown in the graph, rape offences had the highest total number of recorded offences (about 23,000) but the lowest total number of sentenced offences (about 1,000).

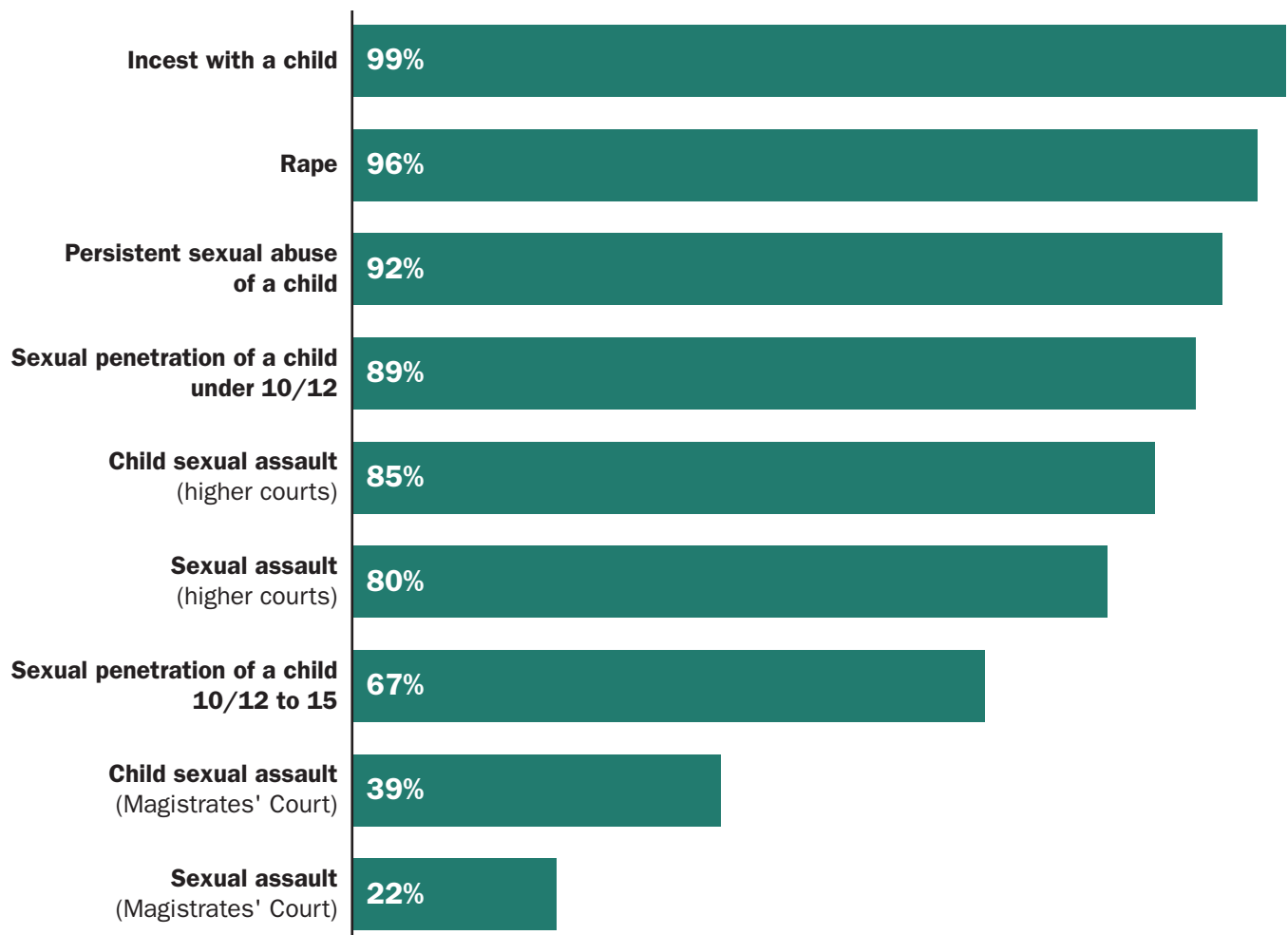
How many sex offences received custodial sentences?

Most sex offences sentenced in the 10 years to 2019 received an immediate custodial sentence (77%). This varied by offence though, ranging from 22% for sexual assault (in the Magistrates' Court) to 99% for incest with a child, stepchild or grandchild. Offences against children were more likely to result in immediate custodial sentences. So too were offences sentenced in the higher courts (the County and Supreme Courts).

What is an immediate custodial sentence?

A sentence requiring the offender to spend some time in detention, including imprisonment, partially suspended sentences and youth detention.

Rates of custodial sentences



Did the rates of immediate custodial sentences change in the 10 years to 2019?

No, for the most part. The rates of immediate custodial sentences were relatively stable. The one exception was child sexual assault offences sentenced in the Magistrates' Court. One in two charges now receive a custodial sentence, compared to one in four previously. This could be due to more serious cases now being heard in the Magistrates' Court. Previously, such cases might have been sentenced in the County Court.

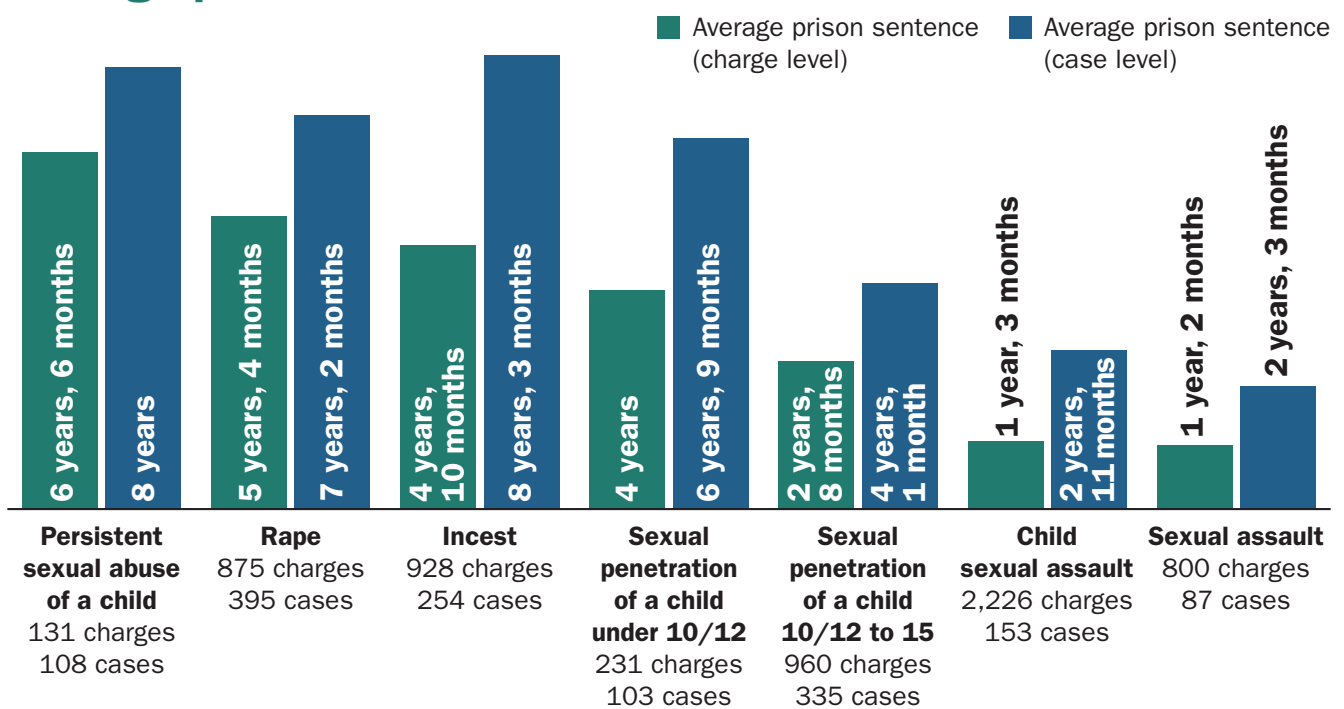
How long were prison sentences for sex offences?

Below are the average prison sentences for sex offences sentenced in the higher courts in the 10 years to 2019. The graph does not include sex offences sentenced in the Magistrates' Court (which were almost all sexual assaults of adults or children).

The sex offence with the longest charge-level sentence was persistent sexual abuse of a child (6.5 years). This is probably because the offending is protracted or repeated, is committed against a child and typically involves penetration.

The sex offence with the longest case-level sentence was incest with a child. This is probably because cases that have incest as the most serious offence are the most likely to involve multiple offences that are sentenced in the same case.

Average prison sentences



What is the difference between a charge-level sentence and a case-level sentence?

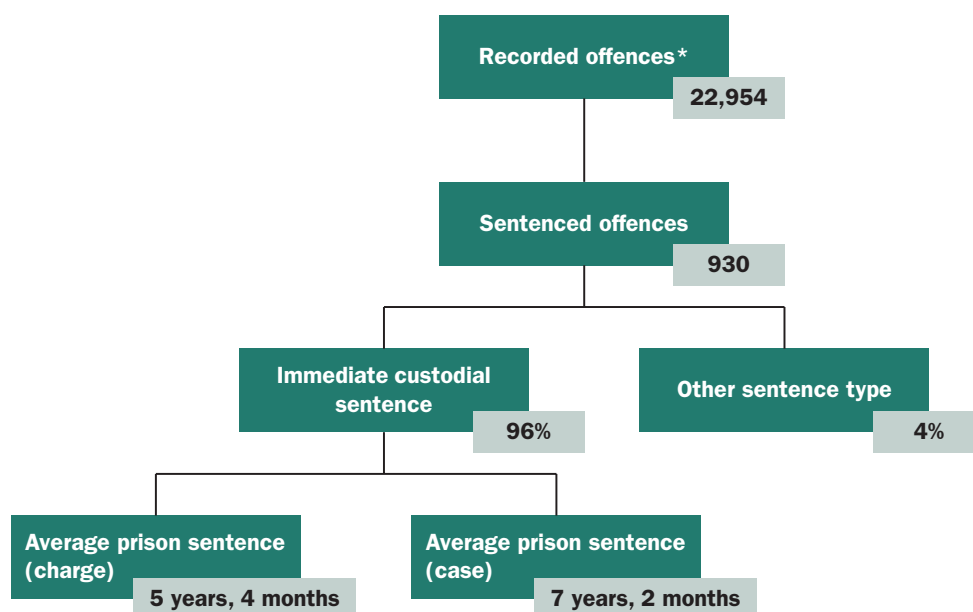
A charge-level sentence is imposed on a single count of an offence (for example, one charge of rape). Often multiple offences are sentenced in the same case (for example, one charge of rape and one charge of aggravated burglary). When this happens, the court needs to say whether the prison sentences for the offences are cumulative (served one after the other), concurrent (served at the same time) or a bit of both. The court then needs to tell the offender how much time, in total, they have to spend in prison for all of their offending. This is known as the total effective sentence, head sentence or case-level sentence.

The average charge-level prison sentences above are based on every charge of the relevant offence that received a separate prison sentence. In comparison, the average case-level prison sentences above are based on every case where the relevant offence was the most serious offence in the case; it skews the statistics too much if cases with more serious offences, like murder, are included.

Rape

Police recorded almost 23,000 rape offences in the 10 years to 2019. Courts sentenced 1,003 rape offences in total: 930 were for the specific offence of rape contrary to section 38 of the *Crimes Act 1958* (Vic). Of these, almost all received an immediate custodial sentence (96%). The remainder tended to receive wholly suspended sentences, which are not available for rape offences committed after 2011.

For the rape *charges* that received a prison sentence, the average sentence length was almost 5.5 years. Where rape was the most serious offence in the case, the average total effective sentence was just over 7 years. The average prison sentence for rape has traditionally been about 5 years. That increased to 6 years in 2017 and has stayed stable since then.



*This includes all recorded rape offences, not just those under section 38 of the *Crimes Act 1958* (Vic)

Cases highlighting the range of sentences imposed for rape

Wholly suspended sentence

The offender was the victim's husband and primary carer. He persisted with sex on a number of occasions despite her indicating she was not interested. She asked police for help but not to charge him. He made full admissions at interview. At sentencing, both the victim and her family asked the court not to imprison him and allow him to continue caring for her.

Unpublished sentencing remarks provided to the Council

5-year prison sentence

The 18-year-old victim had been drinking with friends and had organised an Uber home. The offender was the Uber driver. He pulled over, entered the backseat and digitally raped the victim. He denied the offending when interviewed but later pleaded guilty. His visa was revoked, and he spent nearly 2 years in immigration detention.

DPP v Barbar [2021] VCC 180

12-year prison sentence

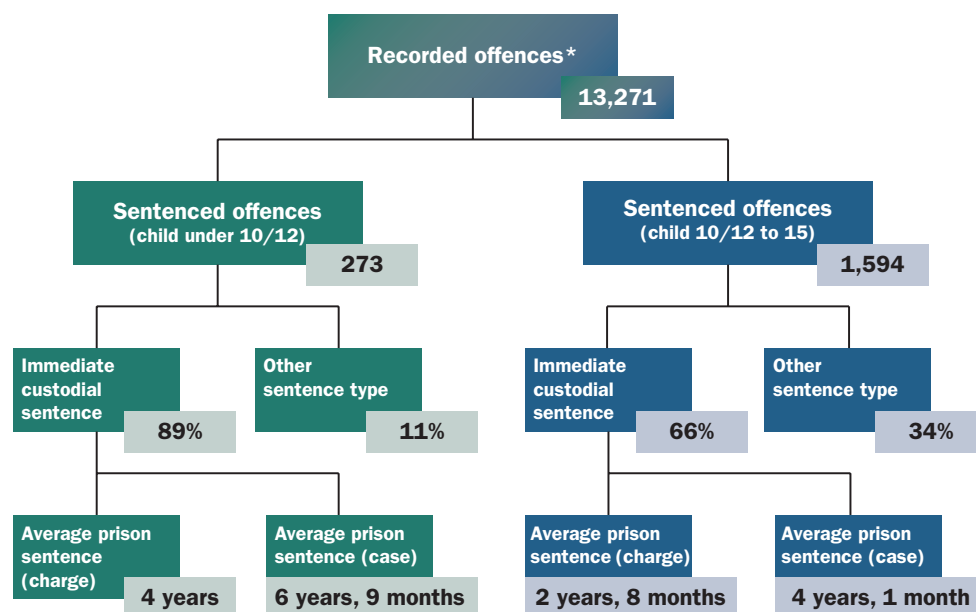
On release from prison for family violence, the offender went to his former partner's house and vaginally and anally raped her. He did not plead guilty and was considered a high risk of reoffending. He had previously been convicted for rape. His total effective sentence was 21 years' prison.

DPP v Bolton [2018] VCC 385

Child sexual penetration

Police recorded over 13,000 child sexual penetration offences in the 10 years to 2019. The courts sentenced 2,453 total offences in this category. Of these, 1,867 were for the specific offences of sexual penetration of a child aged under 10/12 or sexual penetration with a child aged 10/12 to 15, against sections 45(1), 49A and 49B of the *Crimes Act 1958* (Vic). (The maximum age for the offence increased from 10 to 12 in 2010.)

The remainder were either historical offences or offences involving an offender with authority over a child aged 16 or 17. Most child sexual penetration offences were committed against older children (85%). Offences against younger children were then more likely to receive a sentence of immediate custody (89% versus 66%). These offences also received longer average prison sentences (4 years versus 2.75 years).



*This includes all recorded child sexual penetration offences, not just those under sections 45(1), 49A–49B of the *Crimes Act 1958* (Vic)

Cases highlighting the range of sentences imposed for child sexual penetration

Adjourned undertaking

The 14-year-old victim left out-of-home care to go to the 17-year-old offender's home, where they had sex. The offender knew she was 14. A two-year delay in prosecuting the case meant he missed out on being sentenced in the Children's Court. He pleaded guilty and was assessed as having genuine prospects for rehabilitation.

DPP v Coombes (A Pseudonym)
[2018] VCC 389

4-year prison sentence

10 years prior to being sentenced, the 44-year-old offender, who was a close family friend, offended against a 14-year-old boy during a holiday at a caravan park. In the middle of the night, he put the boy's penis in his mouth. A month earlier, he had also offended against the boy, for which he was imprisoned separately. Since then, he had not offended and had made significant progress with rehabilitation.

DPP v Butler (A Pseudonym)
[2019] VCC 1585

10-year prison sentence

Over a period of 3.5 months, the 69-year-old offender offended against the 8-year-old victim while babysitting her at his house. He penetrated her on multiple occasions with a vibrator, his fingers and his penis. He had a protracted criminal history of child sex offending and was considered a high risk of reoffending.

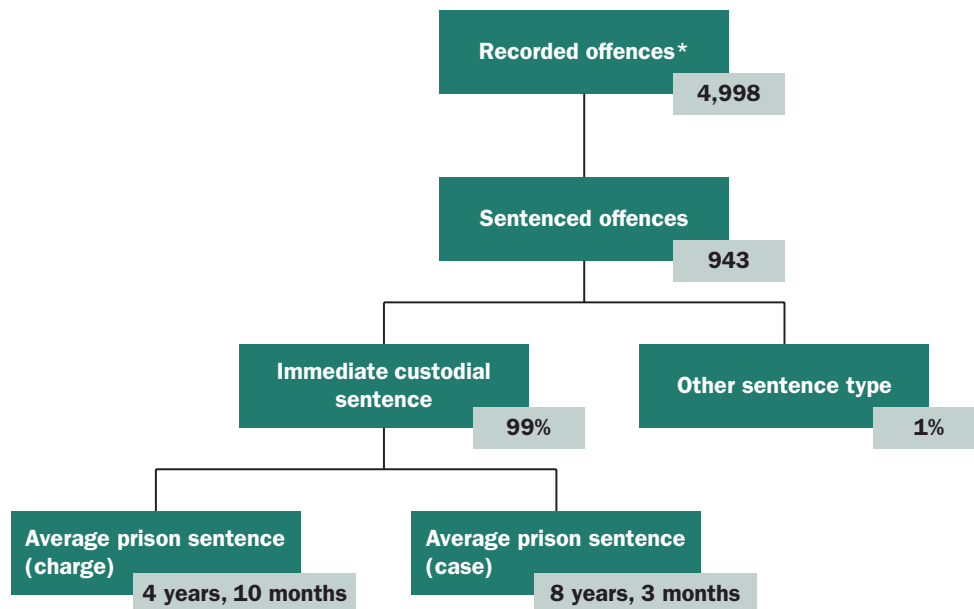
DPP v Thornton (A Pseudonym)
[2016] VCC 946

Incest with a child

Police recorded almost 5,000 incest offences in the 10 years to 2019. In the same timeframe, the courts sentenced 1,110 incest offences. Most (943) were for the specific offence of incest with a child, stepchild or lineal descendant (lineal descendant usually means a grandchild).

Less than 1% of the charges received a sentence other than immediate custody (in 8 cases). The victim in those cases tended to be aged over 18, such as an adult daughter of an estranged father.

In cases where incest was the most serious offence, the average total effective sentence was over 8 years. The average prison sentence for a single charge of incest with a child was just under 5 years. But the yearly average almost doubled between 2010 and 2019, from about 4 years to 7 years. This increase was due to legislative reform as well as some judgments that found incest sentences were too low overall and that they should increase.



*This includes all incest offences, not just incest with a child contrary to sections 44(1)–(2), 50C–50D of the *Crimes Act 1958* (Vic).

Cases highlighting the range of sentences imposed for incest with a child

3-year community order

A decade prior to sentencing, the offender digitally penetrated her daughter at the instigation of her husband, who abused both of them. The offender had a traumatic upbringing and a low IQ. She agreed to testify against her ex-partner. At the time of sentencing, she had sole custody of her 10-year-old son and no extended family to care for him if she was imprisoned.

Unpublished sentencing remarks provided to the Council

4-year prison sentence

The offender was sentenced for two sets of incestuous offending, first against his daughter while he was aged in his 40s and then against his granddaughter while he was aged in his 60s. One of the charges involved him digitally penetrating his granddaughter aged 10 to 12, for which he received a sentence of 4 years. His total effective sentence was almost 10 years.

DPP v Boyle (A Pseudonym)
[2015] VCC 1641

9-year prison sentence

The offender and his partner together sexually abused their daughter while she was aged between 5 and 12. For penetrating her vagina with his tongue for all those years, he received a 9-year prison sentence. He did not plead guilty. His total sentence was 14.5 years.

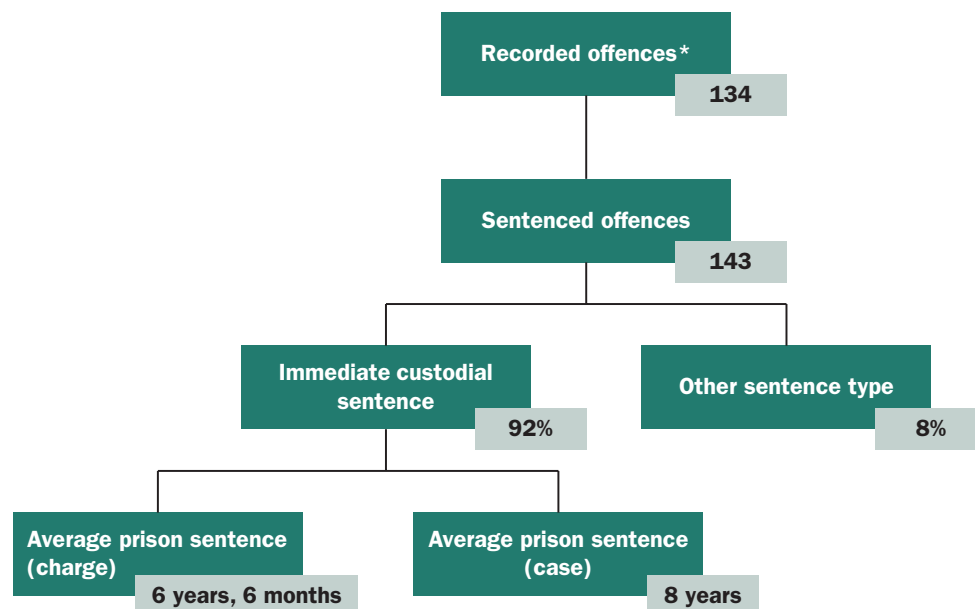
DPP v Molyneux (A Pseudonym)
[2018] VCC 2225

Persistent sexual abuse of a child

Police recorded 134 offences of persistent sexual abuse of a child in the 10 years to 2019. The courts sentenced more charges (143) than the police recorded. This is probably because the offending was originally recorded as other offences (for example, sexual assault or sexual penetration of a child) and was later consolidated into a single charge of persistent sexual abuse, either by the prosecution prior to trial or as a result of plea negotiations.

The courts imposed a sentence other than immediate custody for 11 charges in 10 cases. These cases tended to involve offenders aged 17 to 22 and victims aged 13 to 15.

The average charge-level prison sentence was 6.5 years, the longest of any sex offence in this report. The average case-level sentence was 8 years.



Cases highlighting the range of sentences imposed for persistent sexual abuse of a child

2-year community order

The 19-year-old offender began a sexual relationship with the 15-year-old victim believing she was 16. She told him her real age a month later, but they continued their relationship. He made full admissions, pleaded guilty, had an IQ of 75, was on a disability pension, had no prior convictions and was engaging well with drug counselling.

Unpublished sentencing remarks provided to the Council

5-year prison sentence

In the early 2000s, the 24-year-old offender was the 14-year-old victim's physical education teacher at school. He obtained her phone number from a friend and made contact, encouraging a sexual relationship that then went on for a number of years. She developed anxiety and depression, and self-harmed. He pleaded guilty.

DPP v Kelly [2020] VCC 1586

13-year prison sentence

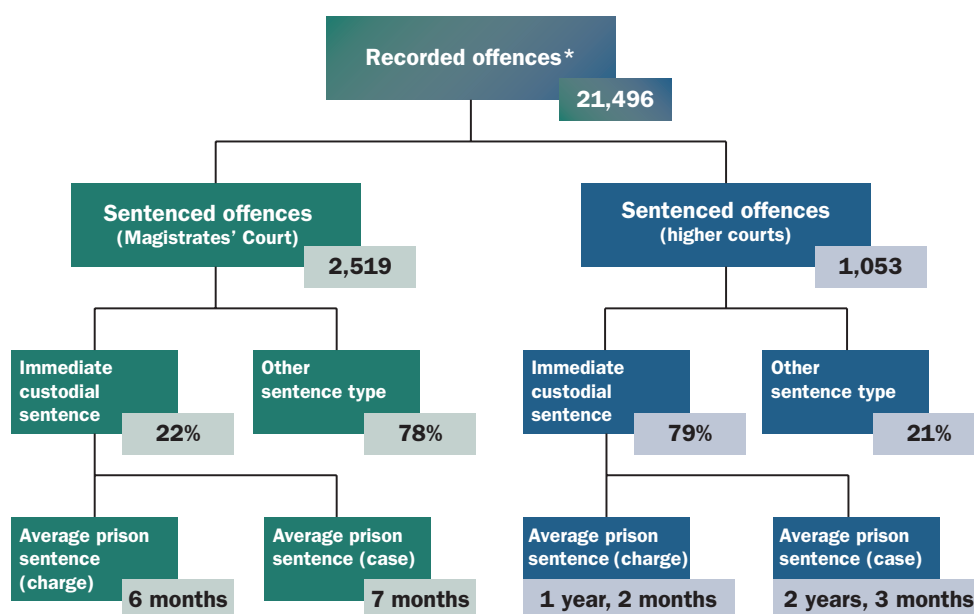
Over a 7-year period, the offender regularly sexually assaulted his partner's two young children. He punched them, suffocated them, threatened them, made them masturbate and penetrate him, and raped them. He did not plead guilty. The two persistent abuse charges received sentences of 13 years and 9 years. His total sentence was 18.5 years.

DPP v Morgan (A Pseudonym) [2015] VCC 1668

Sexual assault

Police recorded almost 21,500 sexual assault offences in the 10 years to 2019. Courts sentenced 3,644 sexual assault offences in total: 3,572 were the specific offences of indecent assault (pre-2017) and sexual assault (post-2017) under sections 39 and 40 of the *Crimes Act 1958* (Vic). Of these, 71% were sentenced in the Magistrates' Court and 29% in the higher courts.

People sentenced for sexual assault in the higher courts were almost four times more likely to receive a custodial sentence. Prison sentences for sexual assault in the higher courts were more than twice as long as those in the Magistrates' Court (14 months versus 6 months). Where sexual assault was the most serious offence in the case, the average total effective sentence was four times longer in the higher courts than in the Magistrates' Court (2.25 years versus 7 months).



*This includes all recorded sexual assault offences, not just those under sections 39 and 40 of the *Crimes Act 1958* (Vic).

Cases highlighting the range of sentences imposed in the higher courts for sexual assault

2.5-year community order

While at a mutual friend's birthday party, the 16-year-old victim rejected the 19-year-old offender's advances. Despite this, he persistently touched and kissed her against her wishes. At one point, he made her masturbate him, telling her she could not leave the room unless she did so. He pleaded guilty and was assessed as a low risk of reoffending.

DPP v Jordan (A Pseudonym)
[2015] VCC 1239

9-month suspended sentence

In the early 1990s, the offender (then aged 51, now aged 74) sexually assaulted his 16-year-old nephew while under his care. He masturbated his nephew (9-month sentence) and a few weeks later sexually assaulted him again (20-month sentence). He had been sentenced for other sex offences against children in the 1990s but had not offended since then. He pleaded guilty.

DPP v Parker (A Pseudonym)
[2015] VCC 1903

4.5-year prison sentence

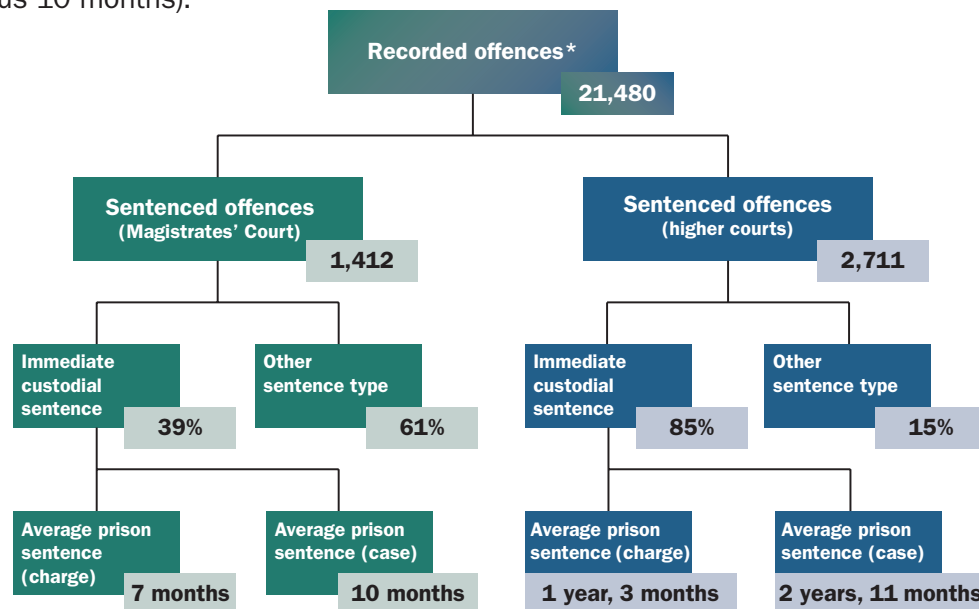
A 29-year-old registered sex offender attacked the 22-year-old victim as she was walking to her local gym. He covered her mouth and nose, dragged her to the ground and touched her vagina before running away when she screamed and bit his hand. He had previously been sentenced for assault with intent to rape. He pleaded guilty.

DPP v Ryan [2018] VCC 1312

Sexual assault of a child under 16

Police recorded almost 21,500 sexual assault offences against children in the 10 years to 2019. Courts sentenced 4,595 child sexual assault offences: 4,123 were for the specific offences of indecent act with a child under 16 (pre-2017) or sexual assault of a child under 16 (post-2017) contrary to sections 47 and 49D of the *Crimes Act 1958* (Vic). Two-thirds (66%) were sentenced in the higher courts, and around one-third (34%) were sentenced in the Magistrates' Court.

People sentenced for child sexual assault in the higher courts were more than twice as likely to receive a custodial sentence as those sentenced in the Magistrates' Court (85% versus 39%). Prison sentences for child sexual assault in the higher courts were more than twice as long (15 months versus 7 months). Where sexual assault was the most serious offence in the case, the average total effective sentence was more than three times longer in the higher courts than in the Magistrates' Court (2 years and 11 months versus 10 months).



*This includes all recorded child sexual assault offences, not just those under sections 47 and 49D of the *Crimes Act 1958* (Vic)

Cases highlighting the range of sentences imposed in the higher courts for child sexual assault

12-month community order

A jury found a 47-year-old man guilty of squeezing a 12-year-old girl's buttock as he walked past her in a shopping centre. He had positive prospects for rehabilitation and no prior sexual offending. A conviction was recorded, and he was placed on the sex offender register for 8 years.

Unpublished sentencing remarks provided to the Council

1.5-year prison sentence

A man in his late 40s committed indecent acts and incest against his daughter when she was aged 10 to 13. In addition to other, more serious sexual offences, he touched her breasts and vagina (18-month sentence). He made full admissions to police, pleaded guilty early and participated in a restorative justice program. His total sentence was 5 years' prison.

DPP v Ingle (A Pseudonym)
[2016] VCC 1430

6-year prison sentence

A jury found a man guilty of sex offences against his daughter while she was aged 9 to 15. On one occasion, he dragged her to his room, locked the door, masturbated and smeared his ejaculate on her body (6-year sentence). He showed no remorse and maintained the charges were a set-up. He had a relevant prior criminal history and posed a high risk of reoffending. He received a total of 12 years' prison.

DPP v Eden (A Pseudonym)
[2019] VCC 459

Reading the data

In this short report, the Council has tried to make complex data as accessible as possible. There are, though, some important things to bear in mind when reading the data.



- 1. Data can be interpreted in a number of ways.** For example, this report highlights a big gap between the raw numbers of rape offences recorded by police and number of rape offences sentenced by courts. But there is no way to know exactly how many recorded offences were eventually sentenced. A single sentenced offence may represent many original recorded offences. Average yearly prison sentences may change because courts are sentencing different types of cases in a given year rather than because courts are doing anything differently. For example, in one case in 2019, 10 charges of incest received very long prison sentences. This increased the average prison sentence that year by 8 months. The context behind the data can tell a very different story from just the numbers alone.
- 2. Counting rules are important.** For example, the term ‘rape offences’ can just mean offences of rape under section 38 of the *Crimes Act 1958* (Vic), a law that has been in effect since 1991. It might also include the offence of rape by compelling sexual penetration under section 39 of the *Crimes Act 1958* (Vic), where the offender is not involved in the penetration. And it might also include the other six historical rape offences that were sentenced during the reference period, such as rape under section 44 of the *Crimes Act 1958* (Vic), which was in effect from 1959 to 1981. Some of the important counting rules in this report are described below.

Counting rules: recorded and sentenced offences

This report presents data on the number of sex offences recorded by police and sentenced by courts in the 10 years to 2019 (see pages 2–3). The data covers *all* offences in each offence category, including historical offences and less common (but more recent) offences, such as rape by compelling sexual penetration and incest with parents and siblings.

Counting rules: sentence types and lengths

This report also presents data on the types and lengths of sentences imposed for sex offences in the 10 years to 2019 (pages 4–5). This does *not* include all offences in each offence category. It only includes the most recent and most common version(s) of each offence: rape (section 38); sexual penetration of a child (sections 45(1), 49A, 49B), sexual assault (sections 39(1), 40(1)), sexual assault of a child (sections 47(1), 49D), incest with a child (sections 44(1)–(2), 50C, 50D), and persistent sexual abuse of a child (section 47A, 49J). It is not usually advisable to compare sentencing outcomes for different offences because they are often different in nature, can have different maximum penalties and can involve very different sentencing considerations.

Counting rules: offence categories

This report also presents data for each offence category (pages 6–11). The data follows the same counting rules used for sentence types and lengths. Similarly, it only includes the most recent and common version(s) of each offence. An exception is the data on recorded offences, which includes all versions of offences in each category.