

Sentencing trends in
the higher courts of
Victoria
2015–16 to 2019–20

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No. 258

Indecent act with a child under 16

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of indecent act with a child under 16² in the County and Supreme Courts of Victoria (the higher courts) from 2015–16 to 2019–20.³ Adjustments made by the Court of Appeal to sentence or conviction as at June 2020 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 [Sentencing Advisory Council Statistics \(SACStat\)](#).

For offending prior to 1 July 2017, a person involved in any act in indecent circumstances with or in the presence of a child aged under 16 is guilty of the offence of committing an indecent act with a child.⁴ For offending on or after 1 July 2017, that behaviour will now, depending on the circumstances, constitute sexual assault of a child aged under 16,⁵ engaging in sexual activity in the presence of a child aged under 16⁶ or causing a child aged under 16 to be present during sexual activity.⁷

Each of these offences is an indictable offence that carries a maximum penalty of 10 years' imprisonment and/or a fine of 1,200 penalty units. Each can be tried summarily in the Magistrates' Court if certain criteria are met.⁸ If any of the offences of sexual assault of a child aged under 16, engaging in sexual activity in the presence of a child aged under 16 or causing a child aged under 16 to be present during sexual activity were committed on or after 1 February 2018, they will be standard sentence offences.⁹ This means that courts must take into account that a prison sentence of 4 years represents the middle of the range of objective seriousness.¹⁰

The four offences that make up this Snapshot are collectively referred to as 'indecent act with a child under 16' in the main analysis. This Snapshot focuses on cases where indecent act with a child under 16 was the principal offence, that is, cases where indecent act with a child under 16 was the offence that received the most severe sentence.¹¹ In some sections, this Snapshot distinguishes charges and cases subject to standard sentence classification.

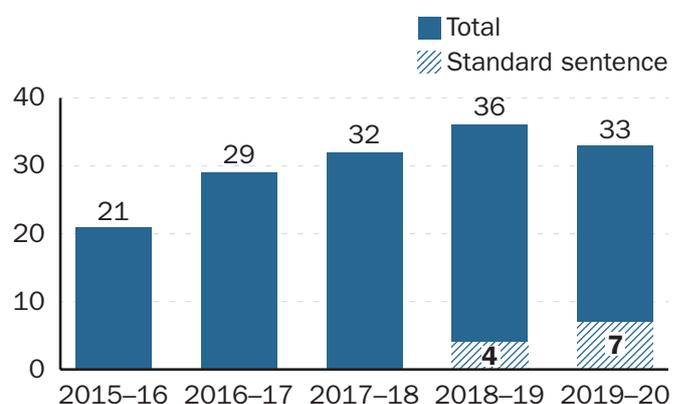
Indecent act with a child under 16 was the principal offence in 1.7% of cases sentenced in the higher courts between 2015–16 and 2019–20.

People sentenced

From 2015–16 to 2019–20, 151 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 33 people sentenced for this offence in 2019–20, down from 36 in the previous year. The number of people sentenced was highest in 2018–19 (36 people) and lowest in 2015–16 (21 people). There were 11 people whose offending attracted standard sentence classification.

Figure 1: The number of people sentenced for indecent act with a child under 16 by financial year



Sentence types and trends

Figure 2 shows the proportion of people who received a custodial or non-custodial sentence for the principal offence of indecent act with a child under 16.

A *custodial sentence* involves at least some element of immediate imprisonment or detention.¹² The rate of custodial sentences was lowest in 2015–16 (42.9%) and highest in 2019–20 (60.6%). Over the five-year period, 51.0% of people were given a custodial sentence.

Table 1 shows the principal sentence imposed for indecent act with a child under 16 from 2015–16 to 2019–20.¹³ The *principal sentence* is the most serious sentence imposed for the charge that is the principal offence.¹⁴ The availability of different sentence types has changed over time. Most notably, wholly and partially suspended sentences have now been abolished for offences committed after a certain date.¹⁵ Changes to community correction orders may have also influenced the sentencing trends over the five years covered by this Snapshot.¹⁶

Over the five-year period, almost half of the people sentenced for indecent act with a child under 16 as the principal offence received a principal sentence of imprisonment (47.0% or 71 of 151 people). The rate of imprisonment sentences was highest in 2016–17 (58.6%) and lowest in 2015–16 (38.1%). Seven of the 11 offenders whose offence attracted standard sentence classification received a principal sentence of imprisonment (63.6%).

Figure 2: The percentage of people who received a custodial or non-custodial sentence for indecent act with a child under 16, by financial year

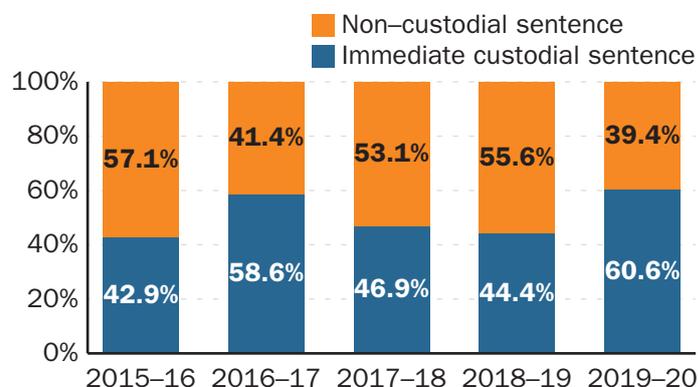


Table 1: The number and percentage of people sentenced for indecent act with a child under 16 by principal sentence type, standard sentence classification and financial year

Sentence type	2015–16	2016–17	2017–18	2018–19	2019–20	Total
Non-standard sentence						
Imprisonment	8 (38.1%)	17 (58.6%)	13 (40.6%)	12 (33.3%)	14 (42.4%)	64 (42.4%)
Youth justice centre order	0 (0.0%)	0 (0.0%)	1 (3.1%)	0 (0.0%)	0 (0.0%)	1 (0.7%)
Community correction order	7 (33.3%)	3 (10.3%)	9 (28.1%)	12 (33.3%)	7 (21.2%)	38 (25.2%)
Partially suspended sentence	1 (4.8%)	0 (0.0%)	1 (3.1%)	2 (5.6%)	1 (3.0%)	5 (3.3%)
Wholly suspended sentence	1 (4.8%)	4 (13.8%)	4 (12.5%)	2 (5.6%)	3 (9.1%)	14 (9.3%)
Non-custodial supervision order	1 (4.8%)	1 (3.4%)	3 (9.4%)	2 (5.6%)	1 (3.0%)	8 (5.3%)
Other	3 (14.3%)	4 (13.8%)	1 (3.1%)	2 (5.6%)	0 (0.0%)	10 (6.6%)
Total non-standard sentence	21	29	32	32	26	140
Standard sentence						
Imprisonment	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (5.6%)	5 (15.2%)	7 (4.6%)
Community correction order	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (5.6%)	2 (6.1%)	4 (2.6%)
Total standard sentence	0	0	0	4	7	11
Total people sentenced	21	29	32	36	33	151

Principal and total effective sentences of imprisonment

The principal sentence describes sentences for the offence at a *charge* level (as described in the previous section). The total effective sentence describes sentences at a *case* level.

The total effective sentence in a case with multiple charges receiving imprisonment is the sentence that results from the court ordering the individual sentences of imprisonment to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other). The total effective sentence in a case with a single charge is the principal sentence. Therefore, where a case involves multiple charges, the total effective sentence imposed on a person is sometimes 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 2015–16 to 2019–20.

Principal sentence of imprisonment

Table 2 shows that a total of 71 people received a principal sentence of imprisonment for indecent act with a child under 16. Most people received a non-aggregate term of imprisonment (95.8% or 68 of 71 people).¹⁷ There were 22 people who received a community correction order in addition to their term of imprisonment. All 7 people whose offending attracted standard sentence classification received non-aggregate imprisonment terms.

Table 2: The number and percentage of people sentenced to imprisonment for indecent act with a child under 16 by sentence type, standard sentence classification and financial year

Type of imprisonment sentence	2015–16	2016–17	2017–18	2018–19	2019–20	Total
Non-standard sentence						
Imprisonment	1 (12.5%)	11 (64.7%)	9 (69.2%)	11 (78.6%)	12 (63.2%)	44 (62.0%)
Imprisonment and community correction order (combined)	6 (75.0%)	6 (35.3%)	3 (23.1%)	1 (7.1%)	1 (5.3%)	17 (23.9%)
Total non-aggregate imprisonment	7 (87.5%)	17 (100.0%)	12 (92.3%)	12 (85.7%)	13 (68.4%)	61 (85.9%)
Aggregate imprisonment	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (5.3%)	1 (1.4%)
Aggregate imprisonment and community correction order (combined)	1 (12.5%)	0 (0.0%)	1 (7.7%)	0 (0.0%)	0 (0.0%)	2 (2.8%)
Total aggregate imprisonment	1 (12.5%)	0 (0.0%)	1 (7.7%)	0 (0.0%)	1 (5.3%)	3 (4.2%)
Total non-standard sentence	8	17	13	12	14	64
Standard sentence						
Imprisonment	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (14.3%)	2 (10.5%)	4 (5.6%)
Imprisonment and community correction order (combined)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (15.8%)	3 (4.2%)
Total standard sentence	0	0	0	2	5	7
Total people sentenced	8	17	13	14	19	71

Figure 3 shows the length of imprisonment for the 68 people who received a non-aggregate term. Imprisonment terms ranged from 2 months to 6 years, while the median length of imprisonment was 1 year and 8 months (meaning that half of the imprisonment terms were below 1 year and 8 months and half were above).

Imprisonment terms imposed on the principal offence of indecent act with a child under 16 subject to standard sentence classification ranged from 3 months to 6 years.

The most common range of imprisonment terms was 1 to less than 2 years (21 people).

Figure 4 shows the average length of imprisonment imposed on people sentenced for indecent act with a child under 16, both for all people and for those whose offending attracted standard sentence classification. For all 68 people, the average imprisonment term increased from 1 year in 2015–16 to 2 years and 7 months in 2018–19, and then dropped to 2 years and 2 months in 2019–20. Over the five years, the average length of imprisonment for indecent act with a child under 16 was 1 year and 10 months.

For the 7 charges subject to the standard sentence, the average length of imprisonment was 2 years and 6 months. The average was higher for standard sentence offences than the overall average in both 2018–19 (2 charges) and 2019–20 (5 charges).

Other offences finalised at the same hearing

Sometimes 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 that offenders were sentenced for alongside 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 sentenced offences per person. The number of sentenced offences per person ranged from 1 to 31, and the median was 3 offences. There were 27 people (17.9%) sentenced for the single offence of indecent act with a child under 16. The average number of offences per person was 4.26.

Figure 3: The number of people sentenced to imprisonment for indecent act with a child under 16 by length of imprisonment term, 2015–16 to 2019–20

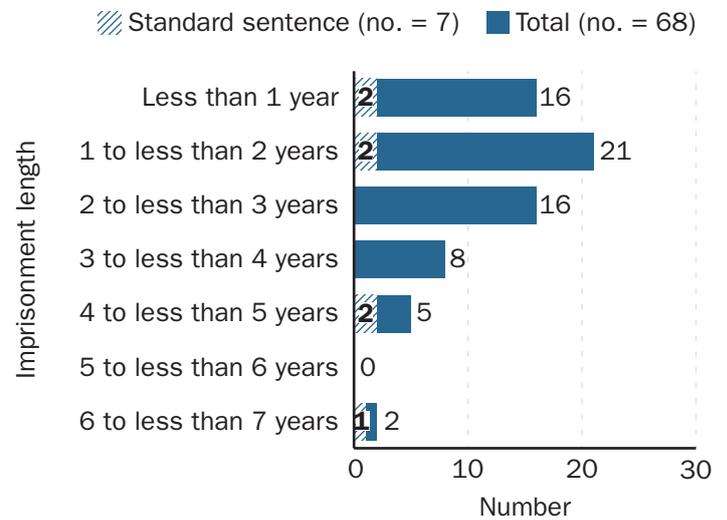


Figure 4: The average length of imprisonment imposed on people sentenced for indecent act with a child under 16, by financial year

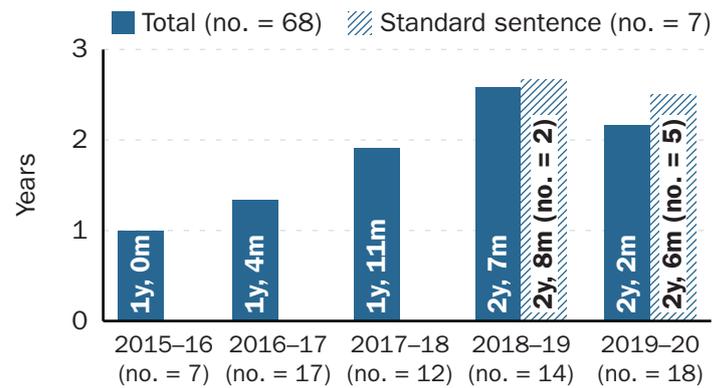


Figure 5: The number of people sentenced for the principal offence of indecent act with a child under 16 by the number of sentenced offences per person, 2015–16 to 2019–20

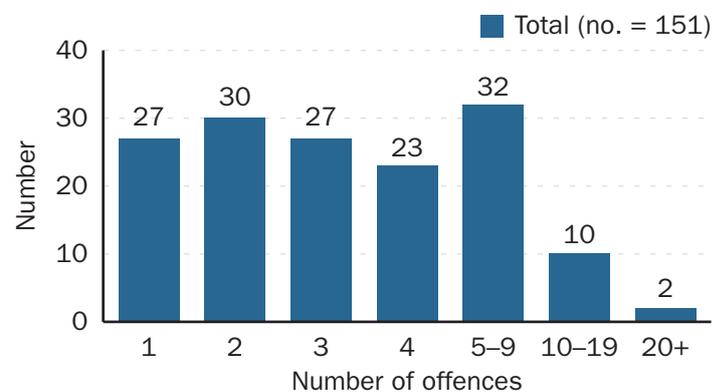


Table 3 shows the 10 most common offences, by number and percentage, for people sentenced for indecent act with a child under 16. The last column sets out the average number of offences sentenced per person. For example, 13 of the total 151 people (8.6%) also received sentences for knowingly possess child pornography. On average, they were sentenced for 1 charge of knowingly possess child pornography per case.

Table 3: 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, 2015–16 to 2019–20

Offence	Number of cases	Percentage of cases	Average number of proven offences per case
1. Indecent act with a child under 16	151	100.0%	3.06
2. Knowingly possess child pornography	13	8.6%	1.00
3. Sexual penetration of a child under 16	12	7.9%	2.67
4. Indecent assault (pre-1991)	7	4.6%	2.14
5. Make or produce child pornography	7	4.6%	1.29
6. Fail to comply with reporting obligations	5	3.3%	1.80
7. Incest with a child, step-child or lineal descendant	5	3.3%	1.40
8. Sexual penetration of a child under 12	5	3.3%	1.40
9. Use a carriage service to transmit indecent communications to a child under 16	4	2.6%	2.50
10. Sexual assault	4	2.6%	1.50
People sentenced	151	100.0%	4.26

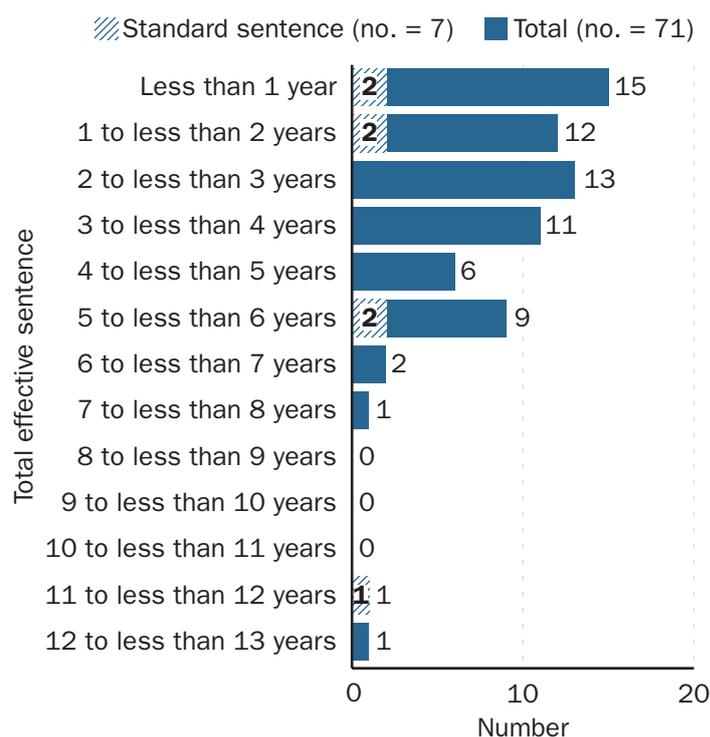
Total effective imprisonment terms

Figure 6 shows the number of people sentenced to imprisonment for indecent act with a child under 16 by length of their total effective sentence. Total effective sentences ranged from 3 months to 12 years, while the median total effective sentence was 2 years and 6 months (meaning that half of the total effective sentences were below 2 years and 6 months and half were above).

Total effective sentences for the 7 cases where the principal offence of indecent act with a child under 16 was subject to standard sentence classification ranged from 6 months to 11 years.

The most common range of total effective sentence was less than 1 year (15 people).

Figure 6: The number of people sentenced to imprisonment for indecent act with a child under 16 by length of total effective sentence, 2015–16 to 2019–20



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. If the court fixes a non-parole period, the person must serve that period before becoming eligible for parole. If the court does not set a non-parole period, the person must serve the entirety of their imprisonment term in custody.

Of the 71 people who were sentenced to imprisonment for indecent act with a child under 16, 56 were eligible to have a non-parole period fixed.¹⁸ Of those, 46 were given a non-parole period (78.6%).¹⁹

Figure 7 shows the number of people sentenced to imprisonment for the principal offence of indecent act with a child under 16 by length of non-parole period. Non-parole periods ranged from 9 months to 9 years and 8 months, while the median non-parole period was 2 years and 2 months (meaning that half of the non-parole periods were below 2 years and 2 months and half were above).

The non-parole period for the 3 cases where the principal offence of indecent act with a child under 16 was subject to standard sentence classification, and the person was given a non-parole period, ranged from 3 years to 7 years and 6 months.²⁰

The most common range of non-parole period was 1 to less than 2 years (14 people).

Note that it was not possible to determine the length of the non-parole period for 2 people.²¹

Total effective sentences of imprisonment and non-parole periods

Figure 8 represents the 44 people who were sentenced to imprisonment for indecent act with a child under 16 and received a non-parole period. Figure 8 shows the average total effective sentence and average non-parole period for these people by financial year.

From 2015–16 to 2019–20, the average total effective sentence ranged from 2 years and 8 months in 2016–17 to 5 years in 2015–16. Over the same period, the average non-parole period ranged from 1 year and 8 months in 2016–17 to 3 years and 1 month in 2018–19.

The total effective sentences for the 3 cases in which the principal offence of indecent act with a child under 16 attracted standard sentence classification were 5 years, 5 years and 10 months, and 11 years. Non-parole periods for these 3 cases were, respectively, 3 years, 3 years and 11 months, and 7 years and 6 months.

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](#).

Figure 7: The number of people sentenced to imprisonment for indecent act with a child under 16 by length of non-parole period, 2015–16 to 2019–20

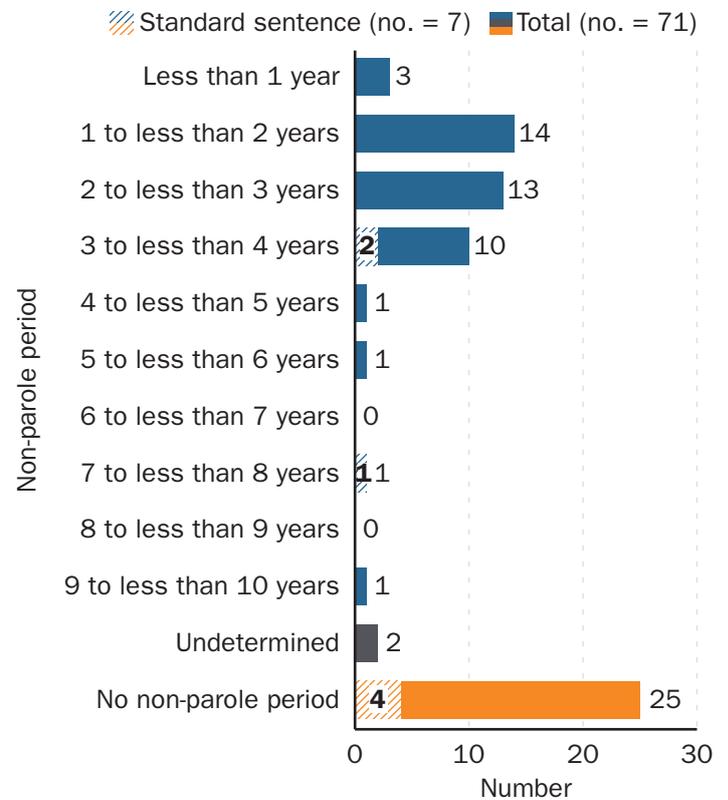
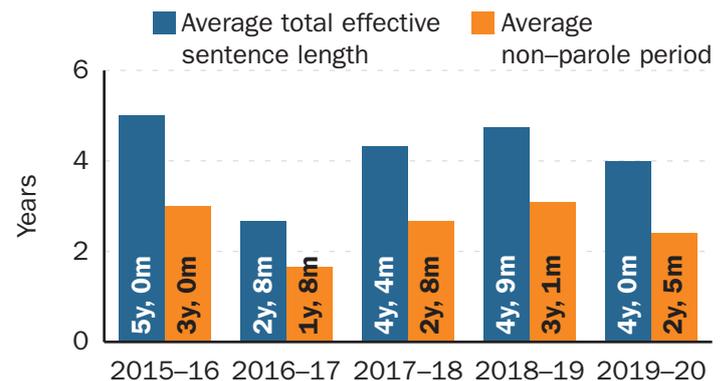


Figure 8: The average total effective sentence and the average non-parole period for people sentenced to imprisonment with a non-parole period for indecent act with a child under 16 by financial year



Summary

From 2015–16 to 2019–20, 151 people were sentenced for indecent act with a child under 16 in the higher courts. Of these people, 71 (47.0%) 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. Total effective sentences ranged from 3 months to 12 years, and non-parole periods ranged from 9 months to 9 years and 8 months. The median total effective sentence was 2 years and 6 months, while the median principal imprisonment length was 1 year and 8 months.

On average, people sentenced for indecent act with a child under 16 were found guilty of 4.26 offences each, with a maximum of 31 offences.

Of the 11 principal offences of indecent act with a child under 16 subject to the standard sentence in this period, all received a custodial sentence and 7 received a prison term (63.6%). The median imprisonment sentence and median total effective sentence were both 1 year and 7 months. The median non-parole period was 3 years and 11 months for the 3 cases given a non-parole period.

Endnotes

1. This Sentencing Snapshot is an update of Sentencing Snapshot no. 233, which describes sentencing trends for indecent act with a child under 16 and related offences between 2013–14 and 2017–18.
2. Indecent act with a child (or in the presence of a child) aged under 16 was previously an offence under section 47 of the *Crimes Act 1958* (Vic). On 1 July 2017, this offence was abolished and replaced with three similar offences in the *Crimes Act 1958* (Vic): sexual assault of a child aged under 16 (section 49D), sexual activity in the presence of a child aged under 16 (section 49F) and causing a child aged under 16 to be present during sexual activity (section 49H). This Snapshot combines the repealed offence and three current offences together in the total count of people sentenced, provided they were sentenced during the five-year period.
3. 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 was also 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 Snapshot is accurate, the data is subject to revision.
4. *Crimes Act 1958* (Vic) s 47 (repealed).
5. *Crimes Act 1958* (Vic) s 49D.
6. *Crimes Act 1958* (Vic) s 49F.
7. *Crimes Act 1958* (Vic) s 49H.
8. *Criminal Procedure Act 2009* (Vic) s 28, sch 2 cl 4.4.
9. *Crimes Act 1958* (Vic) ss 49D(2A), 49F(2A), 49H(2A).
10. *Sentencing Act 1991* (Vic) ss 5(2)(ab), 5A–5B.
11. 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.
12. Custodial sentences are mostly imprisonment, but can also include partially suspended sentences, youth justice centre orders, hospital security orders, residential treatment orders, custodial supervision orders, and combined custody and treatment orders.
13. Principal sentence types can include 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 outcomes and in the count of people sentenced. These are not sentencing orders as they are imposed in cases in which the accused is found unfit to stand trial or not guilty because of mental impairment. However, they are included in this Snapshot as they are an important form of disposition of criminal charges.

14. For example, if the principal offence receives a combined order of imprisonment and a community correction order pursuant to section 44 of the *Sentencing Act 1991* (Vic), imprisonment is recorded as the principal sentence.
15. 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.
16. For example, initially the maximum term of imprisonment that could be combined with a community correction order was set at 3 months, but it was increased to 2 years in September 2014 and reduced to 1 year in March 2017.
17. A court may impose an *aggregate* sentence of imprisonment upon multiple charges sentenced at the same time. These sentences are a single term of imprisonment in which the parts of the term attributable to the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.
18. Fifteen 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.
19. Ten people were eligible for a non-parole period but did not receive one.
20. Two people whose offending attracted standard sentence classification received total effective sentences of less than 1 year and did not have a non-parole period fixed. Another 2 were eligible for a non-parole period but did not have one fixed.
21. Two people were given a non-parole period that related to more than one case (for example, they may have already been serving a prison sentence at the time). It was not possible to separately determine the non-parole periods that related to each individual case.

SACStat – Higher Courts Indecent act with a child under 16

<http://www.sentencingcouncil.vic.gov.au/sacstat/home.html>

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