

## No. 32: Sentencing trends for sexual penetration of a child aged 10 to 16 under the care, supervision or authority of the offender in the higher courts of Victoria, 2001-02 to 2005-06

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of sexual penetration of a child aged 10 to 16 under the care, supervision or authority of the offender and details the age and gender<sup>2</sup> of people sentenced for this offence in the County and Supreme Courts of Victoria between 2001-02 and 2005-06<sup>3</sup>.

A person who takes part in an act of sexual penetration with a child who at the time was aged between 10 and 16 and was under the care, supervision or authority of the person at the time is guilty of an offence<sup>4</sup>. This is an indictable offence which carries a maximum penalty of 15 years' imprisonment<sup>5</sup> and/or a fine of 1800 penalty units<sup>6</sup>. Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

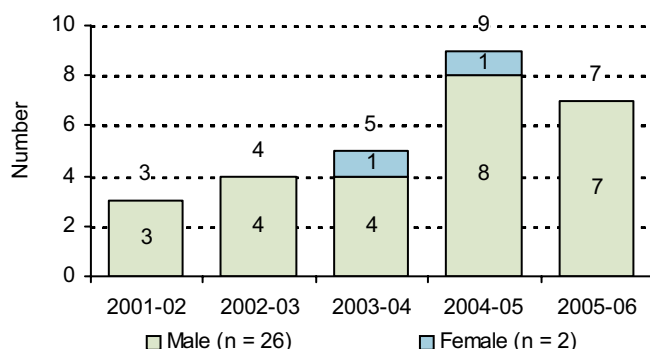
All offences involving sexual penetration of a child aged 10 to 16 under the care, supervision or authority of the offender were heard in the County or Supreme Court. This offence was the principal offence in 0.3% of cases sentenced in the higher courts between 2001-02 and 2005-06.

### People sentenced

Figure 1 shows the number of people sentenced for sexual penetration of a child aged 10 to 16 under the care, supervision or authority of the offender (a 'child under care') for the period 2001-02 to 2005-06. As shown, 28 people were sentenced for sexual penetration of a child under care over the five year period. There were 7 people sentenced for this offence in 2005-06, down by 2 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (92.9% or 26 of 28 people), including all of the 7 people sentenced in 2005-06.

**Figure 1: The number of people sentenced for sexual penetration of a child under care by gender, 2001-02 to 2005-06**



### Sentence types and trends

Figure 2 shows the total number of people sentenced for sexual penetration of a child under care and the number who received a custodial sentence. Custodial refers to sentences that involve at least some aspect of immediate imprisonment or detention<sup>7</sup>. Over the five year period, 86% of people were given a custodial sentence. This peaked at 100% (3 of 3) in 2001-02 and 100% (7 of 7) in 2005-06 with a low of 60% (3 of 5) in 2003-04.

**Figure 2: The number of people sentenced for sexual penetration of a child under care and the number who received a custodial sentence, 2001-02 to 2005-06**

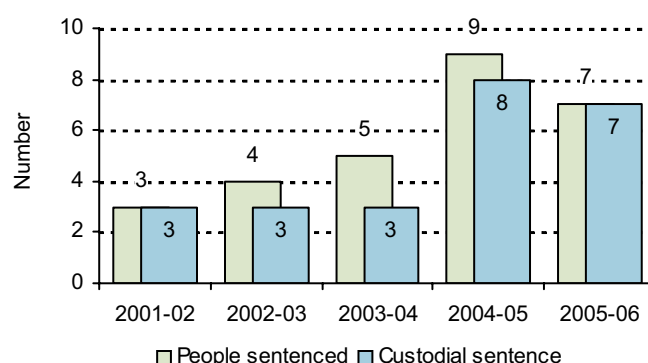


Table 1 shows the number of people sentenced for sexual penetration of a child under care from 2001-02 to 2005-06 by the types of sentences imposed.

Over the five year period, the majority of the people sentenced for sexual penetration of a child under care received a period of imprisonment (79% or 22 of 28 people), while 14% received a wholly suspended sentence of imprisonment. In both 2004-05 and 2005-06, there was one person who received a partially suspended sentence of imprisonment.

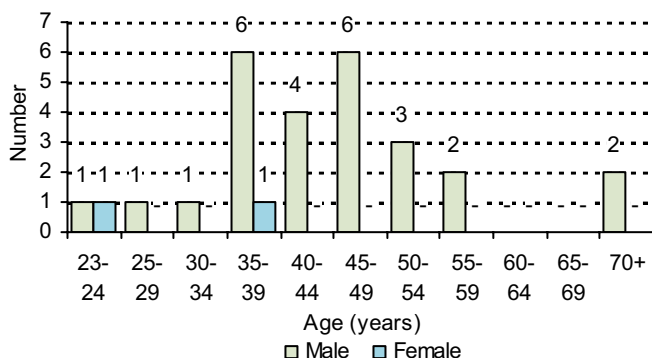
**Table 1: The number and percentage of people sentenced for sexual penetration of a child under care by sentence type, 2001-02 to 2005-06**

Sentence type	01-02	02-03	03-04	04-05	05-06
Imprisonment	3 100%	3 75%	3 60%	7 78%	6 86%
Wholly suspended sentence	0 -	1 25%	2 40%	1 11%	0 -
Partially suspended sentence	0 -	0 -	0 -	1 11%	1 14%
<b>People sentenced</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>9</b>	<b>7</b>

## Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for sexual penetration of a child under care grouped by their age<sup>8</sup> between 2001-02 and 2005-06. The average age of people sentenced for sexual penetration of a child under care was forty-three years. There were no juveniles sentenced over this period.

**Figure 3: The number of people sentenced for sexual penetration of a child under care by gender and age, 2001-02 to 2005-06**



## Sentence types by gender

Table 2 shows the types of sentence imposed for sexual penetration of a child under care grouped by gender. As shown, while most of the men received a sentence of imprisonment, the two women both received a wholly suspended sentence of imprisonment.

**Table 2: The number and percentage breakdown of people sentenced for sexual penetration of a child under care by gender, 2001-02 to 2005-06**

Sentence type	Male	Female	Total
Imprisonment	22 85%	0 -	22 79%
Wholly suspended sentence	2 8%	2 100%	4 14%
Partially suspended sentence	2 8%	0 -	2 7%
<b>People sentenced</b>	<b>26</b>	<b>2</b>	<b>28</b>

## Sentence types by age

As shown in the table above, the two most common sentence types were imprisonment and wholly suspended sentences of imprisonment. All of the people aged 40 years and older were sentenced to imprisonment, while 45% (5 of 11 people) of those aged under 40 years were sentenced to imprisonment. Wholly suspended sentences of imprisonment were only imposed on people aged under 40 years (four of the 11 people in this age group).

## Principal and total effective sentences

There are two methods for describing sentence types and lengths - the principal sentence and the total effective sentence.

The *principal sentence* is the individual sentence imposed for a single charge. When imposing a sentence for multiple charges, the court imposes a 'total effective sentence'. The *total effective sentence* aggregates the principal sentence handed down for each charge, and takes into account whether sentences are ordered by the court to be served concurrently (at the same time) or cumulatively.

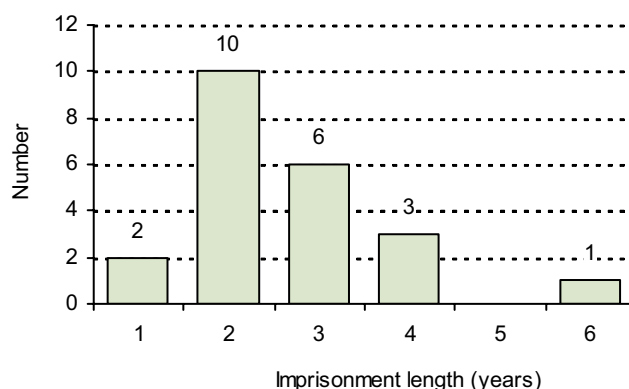
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for sexual penetration of a child under care must be considered in this broader context. The following sections analyse the use of imprisonment for sexual penetration of a child under care over 2001-02 to 2005-06.

## Principal sentence of imprisonment

Figure 4 shows the number of people sentenced to imprisonment for sexual penetration of a child under care between 2001-02 and 2005-06 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to six years, while the median length of imprisonment was two years and six months (meaning that half of the imprisonment terms were shorter than two years and six months and half were longer).

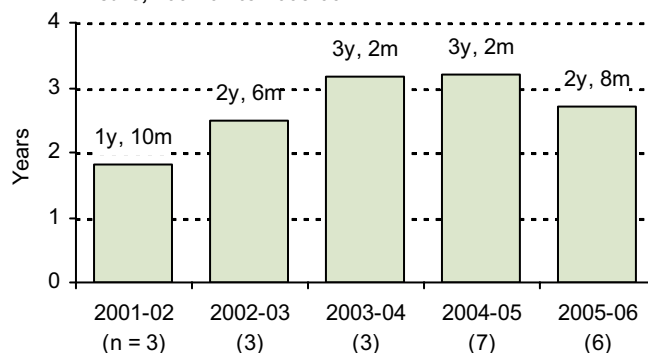
The most common length of imprisonment imposed was 2 years (10 people).

**Figure 4: The number of people sentenced to imprisonment for sexual penetration of a child under care by length of imprisonment term, 2001-02 to 2005-06**



As shown in Figure 5, the average length of imprisonment term imposed on people sentenced for sexual penetration of a child under care ranged from one year and ten months in 2001-02 to three years and two months in 2003-04 and 2004-05.

**Figure 5: The average length of imprisonment term imposed on people sentenced for sexual penetration of a child under care, 2001-02 to 2005-06**

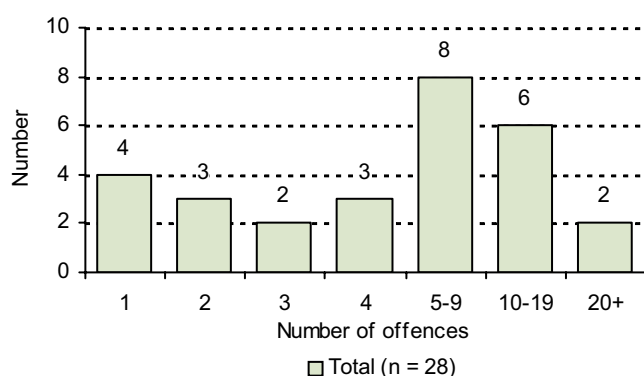


## Other offences finalised at the same hearing

Often people prosecuted for sexual penetration of a child under care 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 sexual penetration of a child under care.

Figure 6 shows the number of people sentenced for the principal offence of sexual penetration of a child under care by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 21, while the median was 6 offences. There were 4 people (14.3%) sentenced for the single offence of sexual penetration of a child under care. The average number of offences per person sentenced for sexual penetration of a child under care was 7.14.

**Figure 6: The number of people sentenced for the principal offence of sexual penetration of a child under care by the number of sentenced offences per person, 2001-02 to 2005-06**



While Figure 6 presents the number of sentenced offences for those sentenced for sexual penetration of a child under care, Figure 7 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, 19 of the total 28 people (67.9%) also received sentences for indecent act with a child under 16. On average, they were sentenced for 4.32 counts of indecent act with a child under 16.

**Figure 7: The number and percentage of people sentenced for the principal offence of sexual penetration of a child under care by the most common offences that were sentenced and the average number of those offences that were sentenced, 2001-02 to 2005-06**

Offence	No.	%	Avg.
1 sexual penetration of a child under care	28	100.0	3.32
2 indecent act with a child under 16	19	67.9	4.32
3 indecent assault	4	14.3	2.50
4 sexual penetration with a 16/17 year old child who is under care	1	3.6	5.00
5 possess unregistered longarm	1	3.6	2.00
6 incest	1	3.6	2.00
7 making a threat to kill	1	3.6	1.00
8 possess cartridge ammunition - unlicensed	1	3.6	1.00
9 possess firearm	1	3.6	1.00
10 transmit objectionable material	1	3.6	1.00
<b>People sentenced</b>	<b>28</b>	<b>100.0</b>	<b>7.14</b>

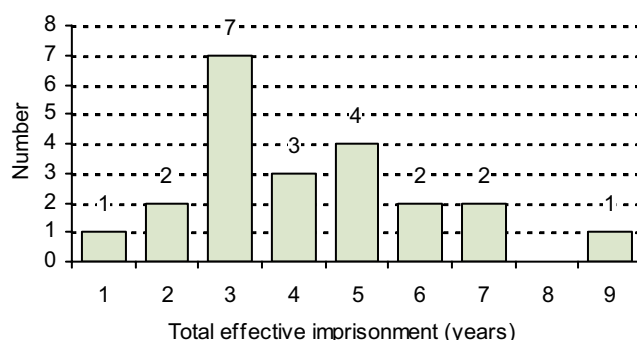
### Total effective sentence of imprisonment

There were 22 people given a total effective sentence of imprisonment<sup>9</sup>. Figure 8 shows the number of people sentenced to imprisonment for sexual penetration of a child under care between 2001-02 and 2005-06 by the length of their total effective sentence. The length of total effective sentences ranged from one year and three months to nine

years, while the median total effective length of imprisonment was four years and six months (meaning that half of the total effective sentence lengths were below four years and six months and half were above).

The most common total effective imprisonment length was 3 years (7 people).

**Figure 8: The number of people sentenced to imprisonment for sexual penetration of a child under care by total effective length of imprisonment term, 2001-02 to 2005-06**



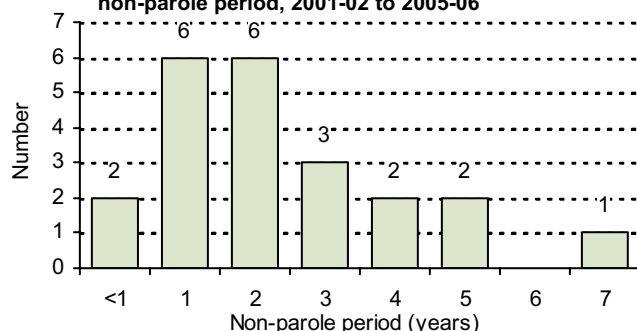
### Non-parole period

When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. 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.

Under s.11(4) of the *Sentencing Act 1991* (Vic), if a court sentences an offender to imprisonment in respect of more than one offence, the non-parole period set by the court must be in respect of the total effective sentence of imprisonment that the offender is liable to serve under all the sentences imposed. In many cases, the non-parole period will be lengthier than the individual principal sentence for sexual penetration of a child under care. Sentences and non-parole periods must be considered in this broader context.

Of the 22 people who were sentenced to imprisonment for sexual penetration of a child under care, all were given a non-parole period (100%). Figure 9 shows the number of people sentenced to imprisonment for sexual penetration of a child under care between 2001-02 and 2005-06 by the length of their non-parole period. Non-parole periods ranged from five months to seven years and six months, while the median length of the non-parole period was two years, four months and fifteen days (meaning that half of the non-parole periods were below two years, four months and fifteen days and half were above).

**Figure 9: The number of people sentenced to imprisonment for sexual penetration of a child under care by length of non-parole period, 2001-02 to 2005-06**

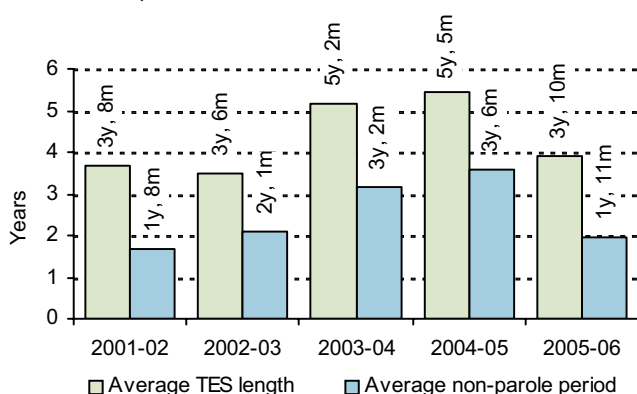


## Total effective sentences of imprisonment and non-parole periods

Figure 10 presents the average length of total effective sentence of imprisonment compared to the average length of non-parole period for all people from 2001-02 to 2005-06<sup>10</sup>.

From 2001-02 to 2005-06, the average length of total effective sentence for all people ranged from three years and six months in 2002-03 to five years and five months in 2004-05. Over the same period, the average length of non-parole period ranged from one year and eight months in 2001-02 to three years and six months in 2004-05.

**Figure 10: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for sexual penetration of a child under care, 2001-02 to 2005-06**



## Total effective sentence of imprisonment by non-parole period

The most common combination of imprisonment length and non-parole period imposed was three years with a non-parole period of one year (5 people). The length of imprisonment ranged from one year and three months with a non-parole period of five months to nine years with a non-parole period of seven years and six months.

## Summary

Between 2001-02 and 2005-06, 28 people were sentenced for sexual penetration of a child under care in the higher courts. Over this period, the majority of those sentenced were men (93%), while 71% were between the age of 35 and 55 years.

The majority of the people sentenced for sexual penetration of a child under care received a period of imprisonment (79%), while 14% received a wholly suspended sentence of imprisonment.

Imprisonment was more common for those aged older than 40 years of age and wholly suspended sentences of imprisonment were only given to those younger than 40 years of age.

Each of the 28 people was sentenced for an average of 7.14 offences, including 3.32 offences of sexual penetration of a child under care. The most common offence finalised in conjunction with sexual penetration of a child under care was indecent act with a child under 16 (67.9% of all cases). The number and range of offences for which people with a principal offence of sexual penetration of a child under care were sentenced helps explain why imprisonment sentence lengths were longer for the total effective sentence than for

the principal sentence. The median total effective imprisonment length was four years and six months, while the median principal imprisonment length was two years and six months.

Total effective imprisonment lengths ranged from one year and three months with a non-parole period of five months to nine years with a non-parole period of seven years and six months. The most common sentence of imprisonment was three years with a one year non-parole period.

- 1 This report presents sentencing outcomes for people sentenced for the principal offence of sexual penetration of a child under care in the County and Supreme Courts of Victoria. The principal offence describes the offence proven that attracted the most serious sentence according to the sentencing hierarchy. The analysis will therefore exclude people sentenced for sexual penetration of a child under care who received a more serious sentence for another offence forming part of the same presentment.
- 2 The information source for sentencing outcomes for sexual penetration of a child under care only contains information on age and gender characteristics. No other demographic analysis is possible.
- 3 The data used for analysis in this report were provided by Court Services, Department of Justice (Vic). This report describes sentencing trends for sexual penetration of a child under care since 2001-02. Court Services advises that sentencing data from the higher courts prior to 2000-01 may be unreliable due to changed data collection processes and counting rules.

The sentencing database used for this analysis was compiled using conviction returns. Due to incomplete offence information regarding sexual penetration offences on the conviction returns, a further classification exercise was undertaken to determine the specific offence types. This involved reading the sentencing remarks of the particular cases and determining if the offence was 'Sexual penetration of a child aged between 10 and 16', 'Sexual penetration of a child under care' or 'Sexual penetration of a child aged under 10'. In total, there were 318 sexual penetration of a child offences over the five year period 2001-02 to 2005-06. Sentencing remarks were located for 307 offences. The remaining 11 cases were excluded from the analysis because the offence could not be categorised adequately.

- 4 *Crimes Act 1958* (Vic) s 45(1) and 45(2)(b). Sexual penetration includes oral, anal and vaginal penetration (*Crimes Act 1958* (Vic) s 35).
- 5 *Crimes Act 1958* (Vic) s 45(2)(b). Separate penalties apply to the related offences of sexual penetration of a child aged under 10 and sexual penetration of a child aged between 10 and 16 who was not under the care supervision or authority of the accused (see Sentencing Snapshot No. 31 and No. 33).
- 6 Sexual penetration of a child under care carries a maximum fine of 1800 penalty units. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette.
- 7 Custodial sentence includes imprisonment and partially suspended sentence.
- 8 Age is as at the time of sentencing.
- 9 All of the 22 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
- 10 There were no women imprisoned with a non-parole period over the reference period.

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