

Persistent sexual abuse of a child aged under 16

Sentencing trends in the higher courts of Victoria 2019–20 to 2023–24

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of persistent sexual abuse of a child aged under 16 in the County and Supreme Courts of Victoria (the higher courts) from 2019–20 to 2023–24.² The data in this Snapshot incorporates adjustments made by the Court of Appeal to sentence or conviction as at June 2024. Detailed data on persistent sexual abuse of a child aged under 16 and other offences is also available on [SACStat](#).

A person who is involved in at least three relevant sexual offences with a child under the age of 16 over a specific period is guilty of the offence of persistent sexual abuse of a child aged under 16. It is not necessary to prove any of the acts with the same degree of specificity as to the date, time, place, circumstances or occasion as would be required if each act was charged as a separate offence. Persistent sexual abuse of a child aged under 16 is an indictable offence that carries a maximum penalty of 25 years' imprisonment.³

Effect of COVID-19 on sentencing data

The data in this Snapshot is likely to have been affected by the COVID-19 pandemic, particularly in the 2020–21 and 2021–22 financial years. For instance:

- the number of people sentenced in the period after March 2020 may be lower than in other years because the pandemic caused delays in court proceedings
- court backlogs may have led to prioritisation of more serious cases in that period and therefore higher imprisonment rates than in other years

Persistent sexual abuse of a child aged under 16 is a category 1 offence if it was committed on or after 20 March 2017. For this offence, category 1 classification means that courts must always impose a custodial sentence.⁴ Persistent sexual abuse of a child aged under 16 is also a standard sentence offence if it was committed on or after 1 February 2018. This means that courts must take into account that a prison sentence of 10 years represents the middle of the range of objective seriousness for this offence.⁵

This Snapshot focuses on cases where persistent sexual abuse of a child aged under 16 was the principal offence, that is, persistent sexual abuse of a child aged under 16 was the offence that received the most severe sentence in the case.⁶

Persistent sexual abuse of a child aged under 16 was the principal offence in 0.4% of cases sentenced in the higher courts between 2019–20 and 2023–24.

- prison sentences may be shorter during that period than in other years to reflect the combined effect of:
 - a. guilty pleas having an 'augmented mitigatory effect' (*Worboyes v The Queen* [2021] VSCA 169) because they help to relieve the strain on the justice system and
 - b. the experience of prison being more burdensome due to increased stress on prisoners and their families and changes in custodial conditions.

People sentenced

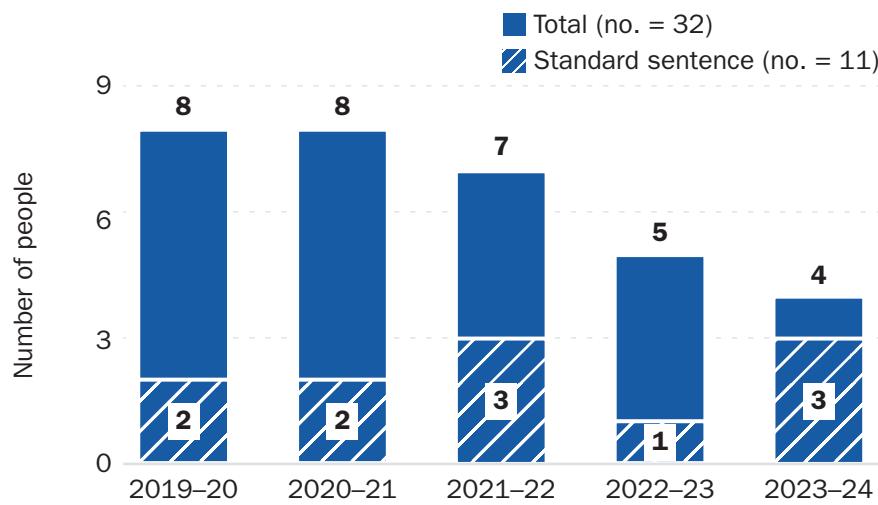
From 2019–20 to 2023–24, 32 people were sentenced in the higher courts for a principal offence of persistent sexual abuse of a child aged under 16.

Figure 1 shows that the number of people sentenced for the principal offence of persistent sexual abuse of a child aged under 16 by financial year decreased from a high of 8 people in 2019–20 and 2020–21 to 4 people in 2023–24.

There were 11 people whose offending attracted standard sentence offence classification.

There were no people who received a custodial or non-custodial supervision order for the principal offence of persistent sexual abuse of a child aged under 16 during the five-year period.⁷

Figure 1: The number of people sentenced for persistent sexual abuse of a child aged under 16, by financial year



Sentence types and trends

Figure 2 shows the proportion of people who received an immediate custodial sentence or a non-custodial sentence for the principal offence of persistent sexual abuse of a child aged under 16. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁸ Over the five-year period, 93.8% of people were given an immediate custodial sentence.

Table 1 (page 3) shows the principal sentence types imposed for persistent sexual abuse of a child aged under 16 from 2019–20 to 2023–24. The *principal sentence* is the most serious sentence imposed for the principal offence in a case.⁹

Figure 2: The percentage of people who received an immediate custodial sentence or a non-custodial sentence for persistent sexual abuse of a child aged under 16, by financial year

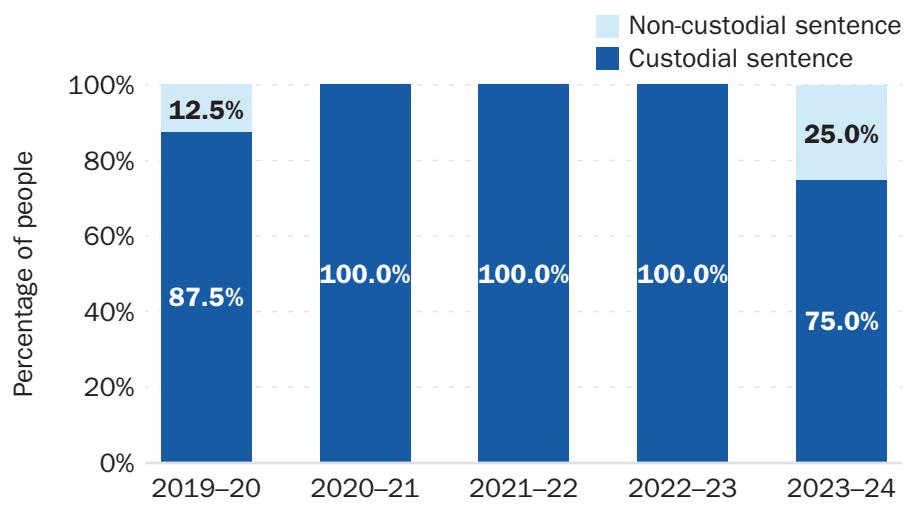


Table 1: The number and percentage of people sentenced for persistent sexual abuse of a child aged under 16, by principal sentence type

Sentence type	2019–20	2020–21	2021–22	2022–23	2023–24	Total
Non-standard sentence						
Imprisonment	5 (62.5%)	5 (62.5%)	4 (57.1%)	4 (80.0%)	0 (0.0%)	18 (56.3%)
Community correction order	1 (12.5%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (3.1%)
Partially suspended sentence	0 (0.0%)	1 (12.5%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (3.1%)
Wholly suspended sentence	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (25.0%)	1 (3.1%)
Standard sentence						
Imprisonment	2 (25.0%)	2 (25.0%)	3 (42.9%)	1 (20.0%)	3 (75.0%)	11 (34.4%)
Total people sentenced	8	8	7	5	4	32

Over the five-year period, most people sentenced for persistent sexual abuse of a child aged under 16 as the principal offence received a principal sentence of imprisonment (90.6% or 29 of 32 people). The remaining people received a community correction order (1 person),¹⁰ or a partially or wholly suspended sentence (1 person each). All offenders whose offence attracted standard sentence classification received imprisonment.

Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the principal offence of persistent sexual abuse of a child aged under 16 from 2019–20 to 2023–24.

The *principal sentence* is the most serious sentence imposed for the principal offence in a case at a charge level.

The *total effective sentence* is the sentence imposed for all charges in a case and applies at a case level. Where a case involves multiple charges, the total effective sentence will be either the same as or longer than the principal sentence.

Principal sentences of imprisonment

All 29 people who received a principal sentence of imprisonment received a non-aggregate imprisonment term, that is, the imprisonment term was not part of an aggregate sentence. None of the imprisonment terms were combined with a community correction order.

The lengths of imprisonment terms for these people are shown in Figure 3 (page 4). Imprisonment lengths ranged from 2 years to 13 years,¹¹ while the median imprisonment length was 7 years and 9 months.

The most common range of imprisonment lengths was 8 to less than 9 years (6 principal sentences).

The imprisonment lengths imposed when persistent sexual abuse of a child aged under 16 was a standard sentence offence are presented separately because courts sentencing standard sentence offences ‘must only have regard to sentences imposed for the offence as a standard sentence offence’.¹² Courts sentencing non-standard sentence offences must have regard to sentences imposed when the offence both was and was not a standard sentence offence.

Figure 3: The number of principal sentences of imprisonment for persistent sexual abuse of a child aged under 16, by range of imprisonment lengths, 2019–20 to 2023–24

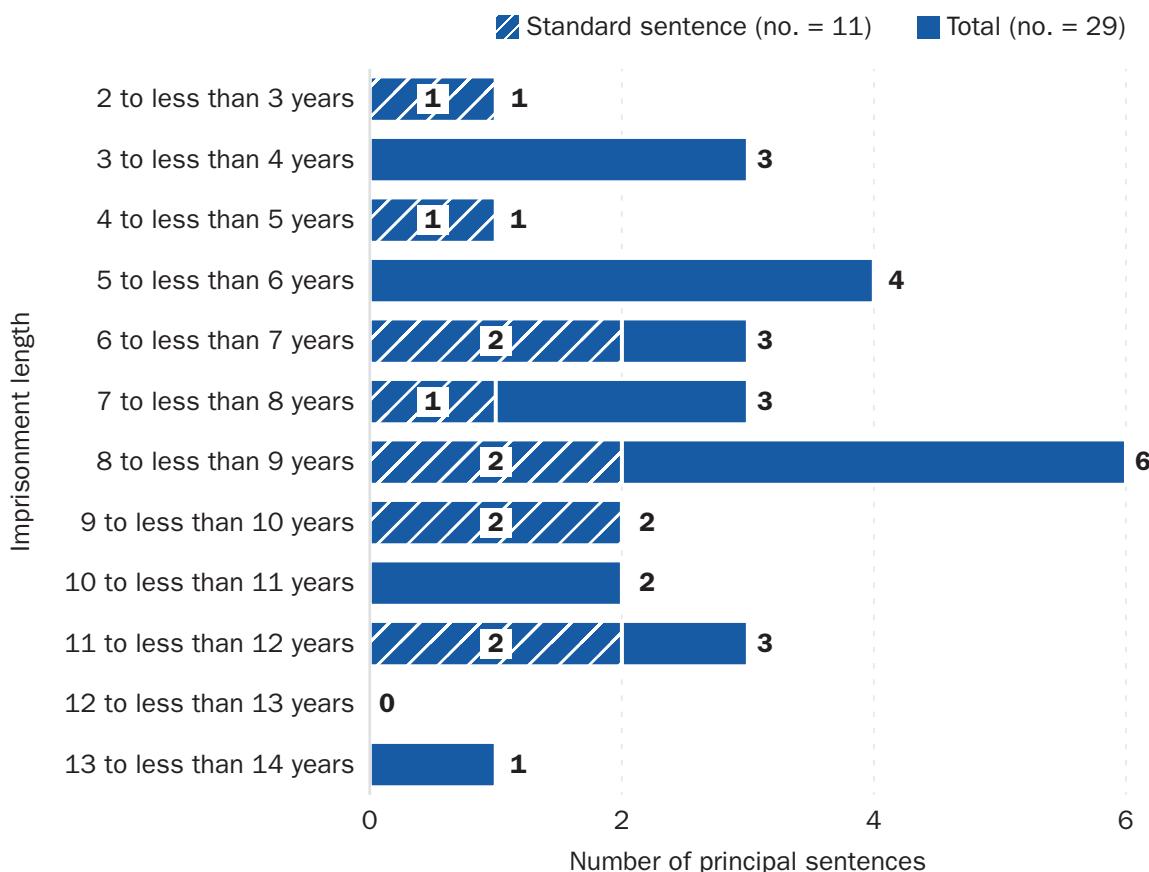
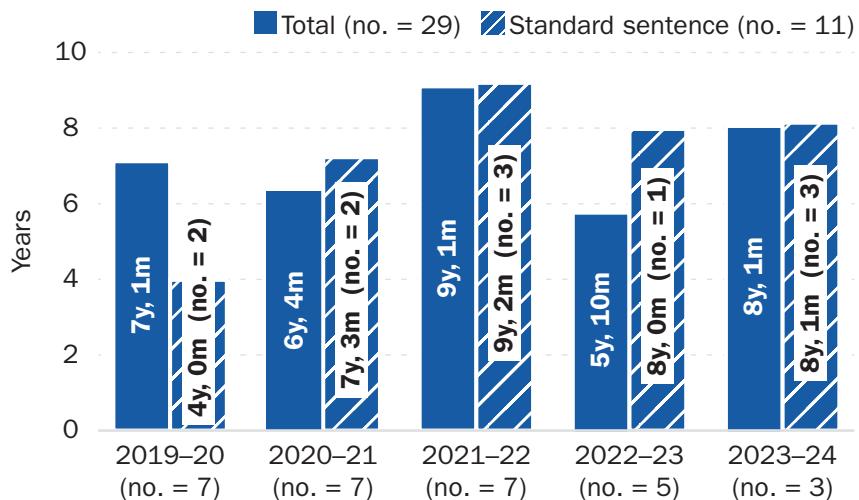


Figure 4 shows the average length of the imprisonment terms for the offence of persistent sexual abuse of a child aged under 16 each financial year. The average imprisonment length ranged from 5 years and 10 months in 2022–23 to 9 years and 1 month in 2021–22. Over the five-year period,

the average imprisonment length was 7 years and 3 months for all principal offences of persistent sexual abuse of a child aged under 16, and 7 years and 6 months when the standard sentence applied. Given the low number of cases each year, caution is required in interpreting these averages.

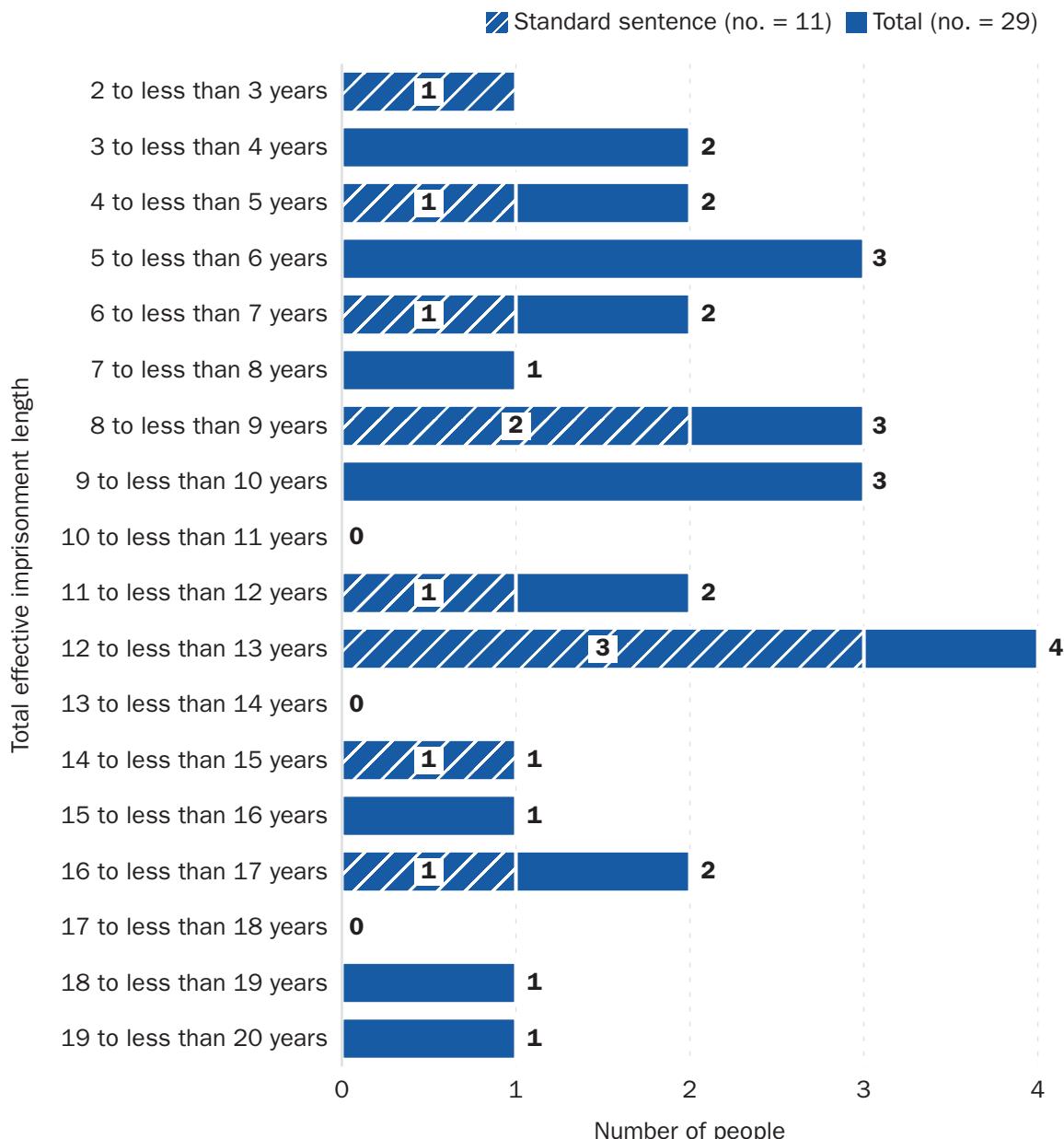
Figure 4: The average imprisonment length imposed for persistent sexual abuse of a child aged under 16, by financial year



Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where persistent sexual abuse of a child aged under 16 was the principal offence. Total effective sentences ranged from 2 years to 19 years,¹³ while the median total effective sentence was 9 years.

Figure 5: The number of people sentenced to imprisonment for persistent sexual abuse of a child aged under 16, by range of total effective sentences, 2019–20 to 2023–24

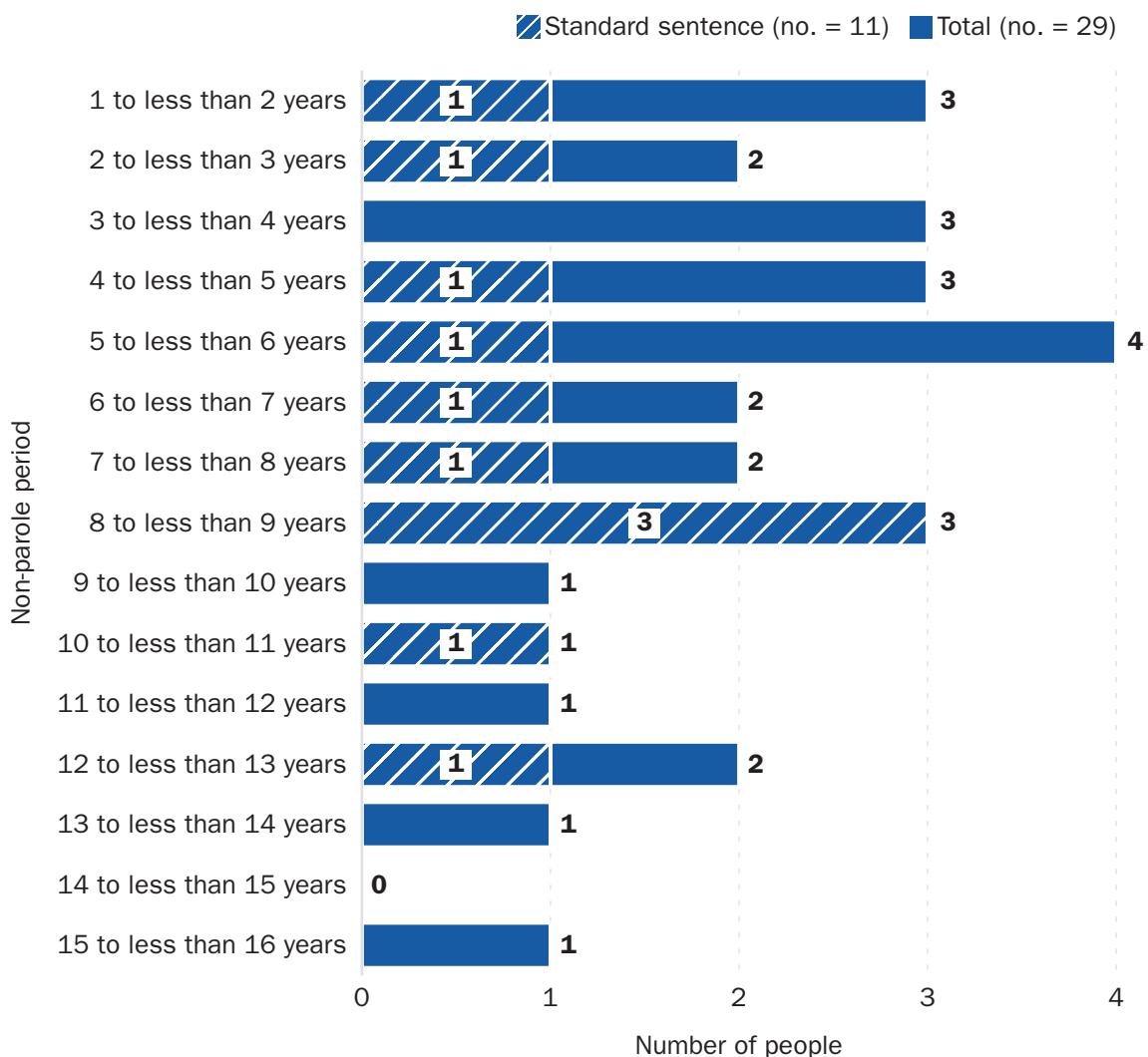


The most common range of total effective sentences was 12 to less than 13 years (4 people).

Non-parole periods

If a person is sentenced to an imprisonment term of less than 1 year, the court cannot impose a non-parole period. For imprisonment terms between 1 year and less than 2 years, the court has the discretion to fix a non-parole period. For imprisonment terms 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.

Figure 6: The number of people sentenced to imprisonment for persistent sexual abuse of a child aged under 16, by range of non-parole periods, 2019–20 to 2023–24



All 29 people who were sentenced to imprisonment for the principal offence of persistent sexual abuse of a child aged under 16 were eligible to have a non-parole period fixed, and all were given a non-parole period.

Figure 6 shows the lengths of the non-parole periods for people sentenced to imprisonment for the principal offence of persistent sexual abuse of a child aged under 16. Non-parole periods ranged from 1 year to 15 years, while the median non-parole period was 5 years and 10 months.

The most common range of non-parole periods was 5 to less than 6 years (4 people).

Average total effective sentences of imprisonment and non-parole periods

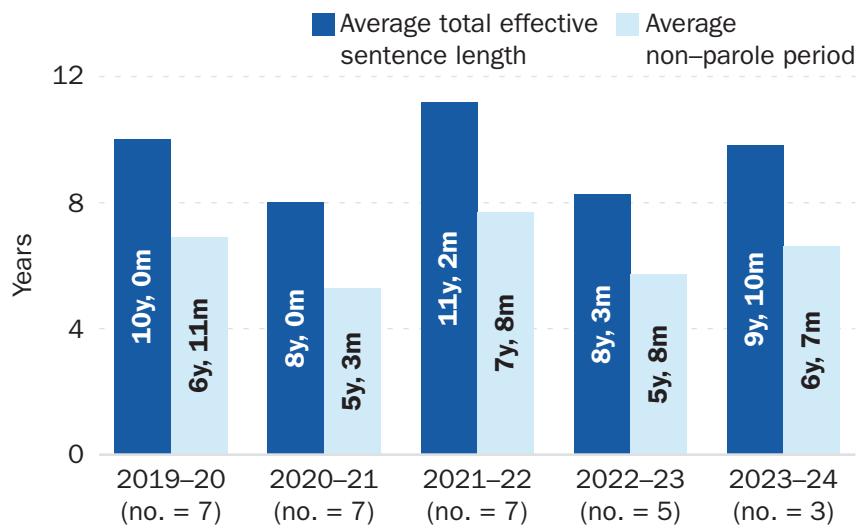
Figure 7 presents the average total effective sentences and average non-parole periods each year for the 29 people who were sentenced to imprisonment for the principal offence of persistent sexual abuse of a child aged under 16 and who received a non-parole period.

The average total effective sentence ranged from 8 years in 2020–21 to 11 years and 2 months in 2021–22. The average non-parole period ranged from 5 years and 3 months in 2020–21 to 7 years and 8 months in 2021–22. Given the low number of

cases each year, caution is required in interpreting these averages.

For the 11 people who were sentenced to imprisonment and received a non-parole period for the principal offence of persistent sexual abuse of a child aged under 16 as a standard sentence offence, the average total effective sentence was 9 years and 8 months, and the average non-parole period was 6 years and 8 months. There were too few cases to present meaningful yearly averages.

Figure 7: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for persistent sexual abuse of a child aged under 16, by financial year



Other offences finalised at the same hearing

Sometimes people prosecuted for persistent sexual abuse of a child aged 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 persistent sexual abuse of a child aged under 16.

Figure 8 shows the number of people sentenced for the principal offence of persistent sexual abuse of a child aged under 16 by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 14, and the median was 2.5 offences. There were 10 people (31.3%) sentenced for the single

offence of persistent sexual abuse of a child aged under 16. The average number of offences per person was 3.9.

Table 2 shows the 10 most common offences co-sentenced alongside persistent sexual abuse of a child aged under 16. The last column sets out the average number of offences sentenced per case. For example, 7 of the total 32 people (21.9%) were also sentenced for indecent act with or in the presence of a child aged under 16. On average, those 7 people were sentenced for 1.1 charges of indecent act with or in the presence of a child aged under 16 per case.

Figure 8: The number of people sentenced for the principal offence of persistent sexual abuse of a child aged under 16, by the number of sentenced offences per person, 2019–20 to 2023–24

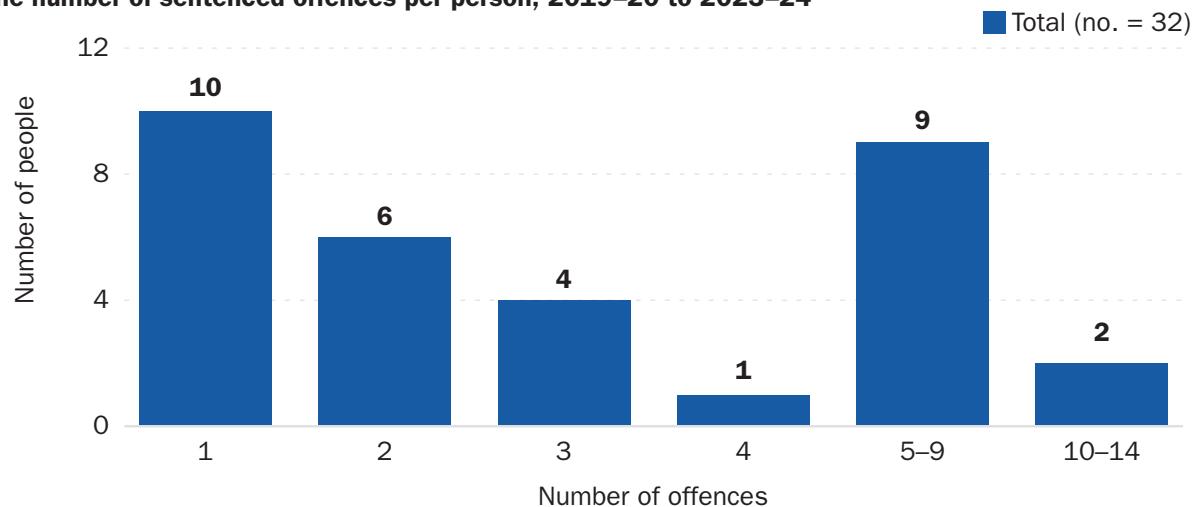


Table 2: The number and percentage of people sentenced for the principal offence of persistent sexual abuse of a child aged under 16, by the most common offences that were sentenced alongside persistent sexual abuse of a child aged under 16, 2019–20 to 2023–24

Offence	Number of cases	Percentage of cases	Average number of proven offences per person
Persistent sexual abuse of a child aged under 16	32	100.0%	1.3
Indecent act with or in the presence of a child aged under 16	7	21.9%	1.1
Knowingly possess child abuse material	7	21.9%	1.0
Incest	5	15.6%	1.4
Sexual assault of a child aged under 16	3	9.4%	2.3
Make or produce child pornography	3	9.4%	1.3
Sexual penetration of a child aged 12 to under 16	2	6.3%	4.5
Sexual penetration of a child aged under 12	2	6.3%	2.5
Use an online information service to publish or transmit child pornography	2	6.3%	2.0
Indecent assault	2	6.3%	1.5
Total	32	100.0%	3.9

Summary

From 2019–20 to 2023–24, 32 people were sentenced in the higher courts for the principal offence of persistent sexual abuse of a child aged under 16. Of those 32 people, 29 (90.6%) received a principal sentence of imprisonment. The remaining people received a partially suspended sentence (1 person), a wholly suspended sentence (1 person) or a community correction order (1 person).

Total effective sentences of imprisonment ranged from 2 years to 19 years, and non-parole periods ranged from 1 year to 15 years. The median total effective sentence was 9 years, while the median non-parole period was 5 years and 10 months. On average, people sentenced for the principal offence

of persistent sexual abuse of a child aged under 16 were sentenced for 3.9 offences each, with a maximum of 14 offences.

Of the 11 principal offences of persistent sexual abuse of a child aged under 16 subject to the standard sentence of 10 years, all received imprisonment. The average imprisonment term for the 11 charges that received imprisonment was 7 years and 6 months, which is longer than the overall average of 7 years and 3 months for the total 29 principal offences that received imprisonment during this period.

Further data on this offence is available on [SACStat](#).

Endnotes

- 1 This Sentencing Snapshot is an update of [Sentencing Snapshot no. 281](#), which describes sentencing trends for persistent sexual abuse of a child aged under 16 between 2017–18 and 2021–22.
- 2 Data on first-instance sentencing outcomes presented in this Snapshot was obtained from the Data and Insights 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.
- 3 *Crimes Act 1958* (Vic) s 49J. Prior to 1 July 2017, the offence was located in section 47A of the *Crimes Act 1958* (Vic). Prior to 1 December 2006, the offence was located in section 47A of the *Crimes Act 1958* (Vic) but was called ‘maintaining a sexual relationship with a child under the age of 16’. This Snapshot includes all three versions of this offence if sentenced during the five-year reference period.
- 4 *Sentencing Act 1991* (Vic) ss 3(g) (definition of category 1 offence), 5(2G).
- 5 *Crimes Act 1958* (Vic) s 49J(2A); *Sentencing Act 1991* (Vic) ss 5(2)(ab), 5A–5B.
- 6 If a person is sentenced for a case with a single charge, that offence is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence that attracted the most serious sentence according to the sentencing hierarchy.
- 7 Custodial and non-custodial supervision orders are not sentencing orders as they are imposed in cases where the accused is found unfit to stand trial or not guilty because of mental impairment. However, custodial and non-custodial supervision orders are mentioned in this Snapshot as they are an important form of disposition of criminal charges.
- 8 Immediate custodial sentences for persistent sexual abuse of a child aged under 16 included imprisonment and partially suspended sentences.
- 9 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.
- 10 *DPP v Torres (a pseudonym)* [2019] VCC 1182 (3-year community correction order). The offending in this case occurred prior to this offence being classified as a category 1 offence.
- 11 Sentencing remarks are not publicly available in the case with the 13-year principal sentence. The longest principal sentence for the principal offence of persistent sexual abuse of a child aged under 16 with available remarks was an 11-year prison sentence: *DPP v Murphy (a pseudonym)* [2021] VCC 1525.
- 12 *Sentencing Act 1991* (Vic) s 5B(2)(b).
- 13 *Henderson (a pseudonym) v The King* [2024] VSCA 78 (19-year total effective sentence), reduced on appeal from *DPP v Henderson (a pseudonym)* [2021] VCC 17.

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Disclaimer: The Sentencing Advisory Council draws data for the Sentencing Snapshots from a variety of sources. All original data sources are noted. The Sentencing Advisory Council makes every effort to ensure that data used in the Sentencing Snapshots is accurate at the time of publishing.

Annexure

The role of statistics in sentencing

Why are statistics relevant to sentencing?

Courts apply an **instinctive synthesis** approach to sentencing, meaning that they take a range of considerations into account in deciding an appropriate sentence in a case.¹

One of the factors that courts must consider is **current sentencing practices**, the aim being to achieve consistency and promote the principle of equality before the law.²

The Court of Appeal has said that current sentencing practices will usually involve consideration of both ‘relevant **sentencing statistics** … and … sentencing decisions in comparable cases’.³

How should statistics be treated as a sentencing factor?

Sentencing statistics can be used in a myriad of ways to inform the sentencing exercise. As just some examples, sentencing statistics can highlight the range of recent sentences for an offence,⁴ the median imprisonment length for an offence,⁵ changes

in sentencing practices over time,⁶ the apparent clustering of sentencing outcomes for an offence based on particular factors in a case,⁷ and – especially for sentence appeals – recent outlier sentences, that is, the least and most severe sentences for an offence.⁸

In using statistics in sentencing, there are a number of important principles:

1. Sentencing statistics primarily offer a ‘rough cross-check’.⁹
2. Sentencing statistics are just one consideration among many, not a ‘controlling factor’.¹⁰
3. Sentencing statistics ‘do not set the metes and bounds’ of what a permissible sentence is.¹¹
4. Sentencing statistics are most useful when coupled with comparable cases.¹²

The ‘inherent limitations’ of sentencing statistics and comparable cases

Courts have often said that sentencing statistics have ‘inherent limitations’,¹³ because ‘the many details which would explain the reasons for a particular sentence are omitted from the data’.¹⁴

1 *Markarian v The Queen* [2005] HCA 25.

2 *Sentencing Act 1991* (Vic) s 5(2)(b); *Wong v The Queen* [2001] HCA 64 [65], [89].

3 *DPP v CPD* [2009] VSCA 114 [78] (emphasis added).

4 See, for example, *ED v The Queen* [2011] VSCA 397 [90]; *DPP v Sismanoglou* [2016] VSCA 87 [46].

5 See, for example, *WCB v The Queen* [2010] VSCA 230 [63].

6 See, for example, *R v Lucas* [2021] VSC 81 [212]–[214].

7 See, for example, *Nguyen v The Queen* [2016] VSCA 198 [83]–[86].

8 See, for example, *Ashdown v the Queen* [2011] VSCA 408 [12]–[16].

9 *Russell v The Queen* [2011] VSCA 147 [61]; *Short v The Queen* [2016] VSCA 210 [59].

10 *DPP v Dalgliesh (a pseudonym)* [2017] HCA 41 [68]. See also *Hardwick (a pseudonym) v The Queen* [2021] VSCA 67 [44].

11 *Hardwick (a pseudonym) v The Queen* [2021] VSCA 67 [43]–[44]; *DPP v OJA* [2007] VSCA 129 [30].

12 *Davy v The Queen* [2011] VSCA 98 [42]; *Baroch & Anor v The Queen* [2022] VSCA 90 [32].

13 See, for example, *R v Bangard* [2005] VSCA 313 [39]; *R v AB (No 2)* [2008] VSCA 39 [42].

14 *DPP v Dawes* [2023] VCC 2378 [91].

'between 2013–14 and 2017–18 the average length of a sentence of imprisonment for the offence of persistent sexual abuse of a child aged under 16 ranges between 5 years and 4 months and 7 years and 4 months'

Henderson (a pseudonym) v The King
[2024] VSCA 78

Statistics cannot tell the court whether the offenders in the data pleaded guilty, had prior criminal histories, assisted authorities, used a weapon, or other important factual circumstances.

However, trying to rely exclusively on comparable cases also has limitations.¹⁵ The cases reviewed may not be truly representative of broader sentencing practices, whereas sentencing statistics more exhaustively represent the entire range of sentencing practices. Comparable cases are also rarely available in the summary jurisdiction, meaning that Magistrates' Court data is usually the only source of information about current sentencing practices in that jurisdiction.

Where can you find sentencing statistics?

One of the Council's statutory functions is 'to provide statistical information on sentencing':¹⁶

- our **Sentencing Snapshots** provide five years of higher courts data on the types and lengths of sentences for 18 common or high-profile principal offences¹⁷
- our **SACStat** database of sentencing statistics provides five years of higher courts data and three years of Magistrates' Court data on the types and lengths of sentences imposed for hundreds of distinct offences¹⁸
- our **statistical reports** include in-depth analyses of sentencing practices.¹⁹

¹⁵ *Hudson v The Queen* [2010] VSCA 332, [29]–[31] ("Like" cases can only, at best, provide a general guide or impression as to the appropriate range of sentences ... [and] can only provide limited assistance to this Court). See also *Russell v The Queen* [2011] VSCA 147 [4].

¹⁶ Sentencing Act 1991 (Vic) s 108C(1)(b).

¹⁷ Sentencing Snapshots are available at <https://www.sentencingcouncil.vic.gov.au/snapshots-by-date>.

¹⁸ SACStat is available at <https://www.sacstat.vic.gov.au>.

¹⁹ See, for example, our various **statistical profiles** and reports on **current sentencing practices**.