

## Sexual penetration of a child aged 12 to under 16

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

### Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of sexual penetration of a child aged 12 to under 16<sup>2</sup> in the County and Supreme Courts of Victoria (the higher courts) from 2019–20 to 2023–24.<sup>3</sup> The data in this Snapshot incorporates adjustments made by the Court of Appeal to sentence or conviction as at June 2024. Detailed data on sexual penetration of a child aged 12 to under 16 and other offences is also available on [SACStat](#).

A person who takes part in an act of sexual penetration of a child aged between 12 and under 16 is guilty of an indictable offence that carries a maximum penalty of 15 years' imprisonment.<sup>4</sup>

Sexual penetration of a child aged 12 to under 16 is 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 6 years represents the middle of the range of objective seriousness for this offence.<sup>5</sup>

This Snapshot focuses on cases where sexual penetration of a child aged 12 to under 16 was the principal offence, that is, sexual penetration of a child aged 12 to under 16 was the offence that received the most severe sentence in the case.<sup>6</sup>

Sexual penetration of a child aged 12 to under 16 was the principal offence in 2.8% of cases sentenced in the higher courts between 2019–20 and 2023–24.

### 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

- 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

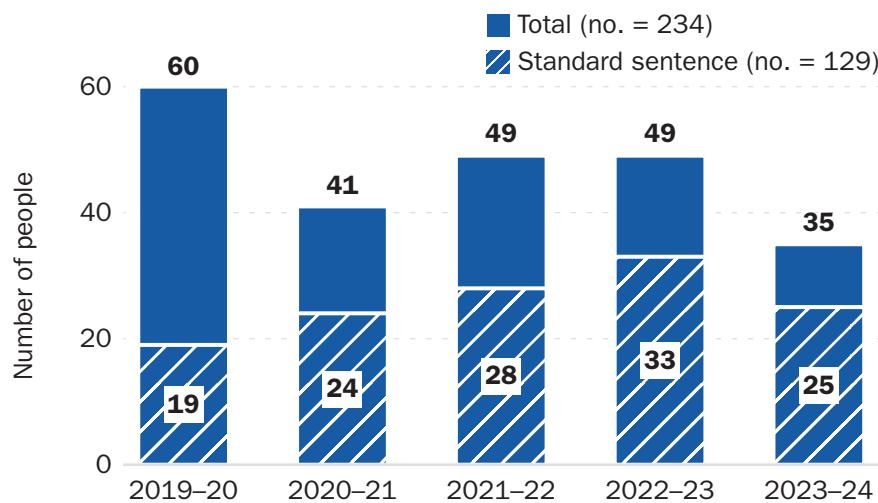
From 2019–20 to 2023–24, 234 people were sentenced in the higher courts for a principal offence of sexual penetration of a child aged 12 to under 16.

Figure 1 shows that there was an overall decrease in the number of people sentenced for the principal offence of sexual penetration of a child aged 12 to under 16 by financial year, from a high of 60 people 2019–20 to 35 people in 2023–24.

There were 129 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 sexual penetration of a child aged 12 to under 16 during the five-year period.<sup>7</sup>

**Figure 1: The number of people sentenced for sexual penetration of a child aged 12 to 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 sexual penetration of a child aged 12 to under 16. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.<sup>8</sup> Over the five-year period, 74.8% of people were given an immediate custodial sentence.

**Figure 2: The percentage of people who received an immediate custodial sentence or a non-custodial sentence for sexual penetration of a child aged 12 to under 16, by financial year**

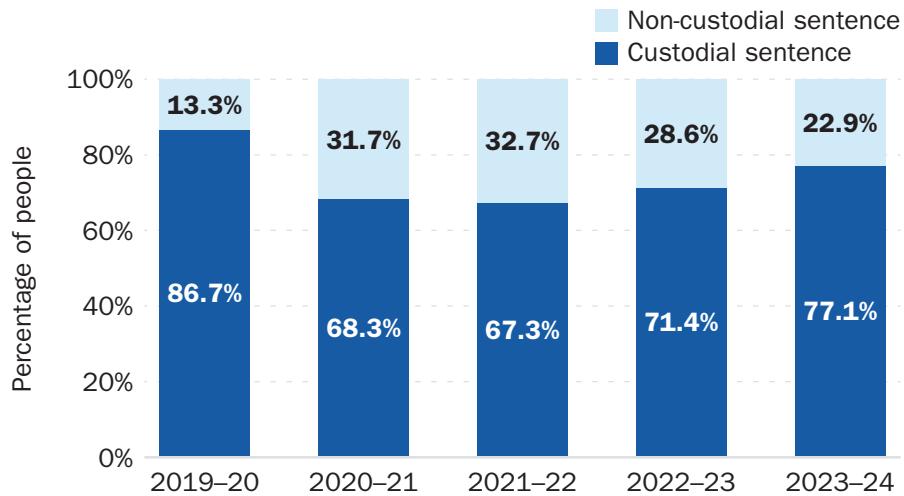


Table 1 shows the principal sentence types imposed for sexual penetration of a child aged 12 to under 16 from 2019–20 to 2023–24. The *principal sentence* is the most serious sentence imposed for the principal offence in a case.<sup>9</sup>

Over the five-year period, over two-thirds of people sentenced for sexual penetration of a child aged

12 to under 16 received a principal sentence of imprisonment (70.5% or 165 of 234 people). Other sentence types included community correction orders (19.2%), wholly suspended sentences (4.7%), partially suspended sentences (2.1%), youth justice centre orders (2.1%) and adjourned undertakings (1.3%).<sup>10</sup>

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

Sentence type	2019–20	2020–21	2021–22	2022–23	2023–24	Total
<b>Non-standard sentence</b>						
Imprisonment	33 (55.0%)	11 (26.8%)	11 (22.4%)	9 (18.8%)	7 (20.0%)	71 (30.3%)
Community correction order	5 (8.3%)	4 (9.8%)	4 (8.2%)	1 (2.1%)	1 (2.9%)	15 (6.4%)
Wholly suspended sentence	1 (1.7%)	2 (4.9%)	2 (4.1%)	5 (10.4%)	1 (2.9%)	11 (4.7%)
Partially suspended sentence	0 (0.0%)	0 (0.0%)	4 (8.2%)	1 (2.1%)	0 (0.0%)	5 (2.1%)
Youth justice centre order	1 (1.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.4%)
Adjourned undertaking	1 (1.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (2.9%)	2 (0.9%)
<b>Standard sentence</b>						
Imprisonment	16 (26.7%)	17 (41.5%)	18 (36.7%)	25 (52.1%)	18 (51.4%)	94 (40.2%)
Community correction order	1 (1.7%)	7 (17.1%)	10 (20.4%)	7 (14.6%)	5 (14.3%)	30 (12.8%)
Youth justice centre order	2 (3.3%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (5.7%)	4 (1.7%)
Adjourned undertaking	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (2.1%)	0 (0.0%)	1 (0.4%)
<b>Total people sentenced</b>	<b>60</b>	<b>41</b>	<b>49</b>	<b>48</b>	<b>35</b>	<b>234</b>

## Principal and total effective sentences of imprisonment

The following sections analyse the use of imprisonment for the principal offence of sexual penetration of a child aged 12 to 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

There were 165 principal sentences of imprisonment for sexual penetration of a child aged

12 to under 16. Most (97.0% or 160 of 165) were non-aggregate imprisonment terms, that is, the imprisonment terms were not part of an aggregate sentence.<sup>11</sup> There were 23 people who received a combined order of imprisonment with a community correction order and 1 person who received a fine in addition to an imprisonment term.

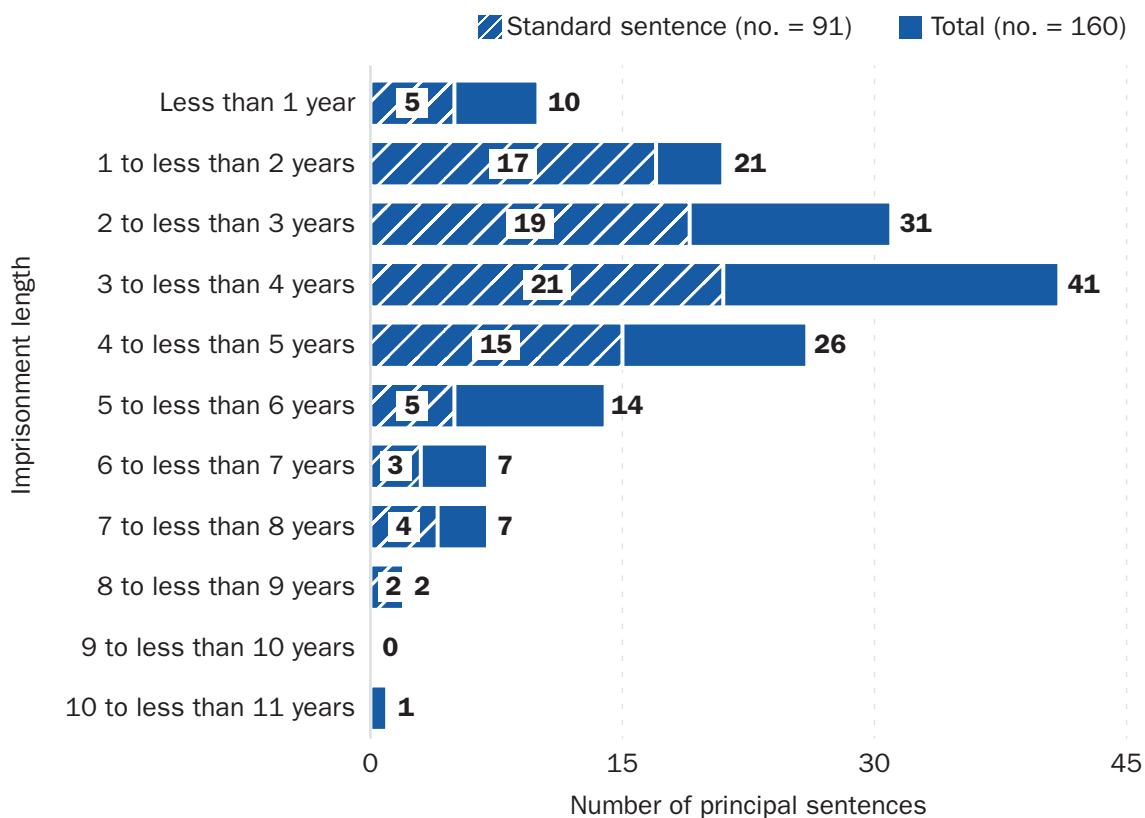
Figure 3 (page 5) shows the imprisonment lengths imposed for the principal offence of sexual penetration of a child aged 12 to under 16 for the 160 non-aggregate imprisonment terms. Imprisonment lengths ranged from 58 days to 10 years and 6 months,<sup>12</sup> while the median imprisonment length was 3 years and 1 month.

The most common range of imprisonment lengths was 3 to less than 4 years (41 principal sentences).

**Table 2: The number and percentage of people sentenced to imprisonment for sexual penetration of a child aged 12 to under 16, by sentence type, standard sentence classification and financial year**

Imprisonment type	2019–20	2020–21	2021–22	2022–23	2023–24	Total
<b>Non-standard sentence</b>						
Imprisonment	28 (57.1%)	10 (35.7%)	9 (31.0%)	9 (26.5%)	7 (28.0%)	63 (38.2%)
Imprisonment and community correction order (combined)	3 (6.1%)	1 (3.6%)	1 (3.4%)	0 (0.0%)	0 (0.0%)	5 (3.0%)
Imprisonment and fine (combined)	0 (0.0%)	0 (0.0%)	1 (3.4%)	0 (0.0%)	0 (0.0%)	1 (0.6%)
<b>Total non-aggregate imprisonment</b>	<b>31 (63.3%)</b>	<b>11 (39.3%)</b>	<b>11 (37.9%)</b>	<b>9 (26.5%)</b>	<b>7 (28.0%)</b>	<b>69 (41.8%)</b>
Aggregate imprisonment and community correction order (combined)	2 (4.1%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (1.2%)
<b>Total aggregate imprisonment</b>	<b>2 (4.1%)</b>	<b>0 (0.0%)</b>	<b>0 (0.0%)</b>	<b>0 (0.0%)</b>	<b>0 (0.0%)</b>	<b>2 (1.2%)</b>
<b>Standard sentence</b>						
Imprisonment	12 (24.5%)	11 (39.3%)	17 (58.6%)	23 (67.6%)	15 (60.0%)	78 (47.3%)
Imprisonment and community correction order (combined)	3 (6.1%)	5 (17.9%)	0 (0.0%)	2 (5.9%)	3 (12.0%)	13 (7.9%)
<b>Total non-aggregate imprisonment</b>	<b>15 (30.6%)</b>	<b>16 (57.1%)</b>	<b>17 (58.6%)</b>	<b>25 (73.5%)</b>	<b>18 (72.0%)</b>	<b>91 (55.2%)</b>
Aggregate imprisonment and community correction order (combined)	1 (2.0%)	1 (3.6%)	1 (3.4%)	0 (0.0%)	0 (0.0%)	3 (1.8%)
<b>Total aggregate imprisonment</b>	<b>1 (2.0%)</b>	<b>1 (3.6%)</b>	<b>1 (3.4%)</b>	<b>0 (0.0%)</b>	<b>0 (0.0%)</b>	<b>3 (1.8%)</b>

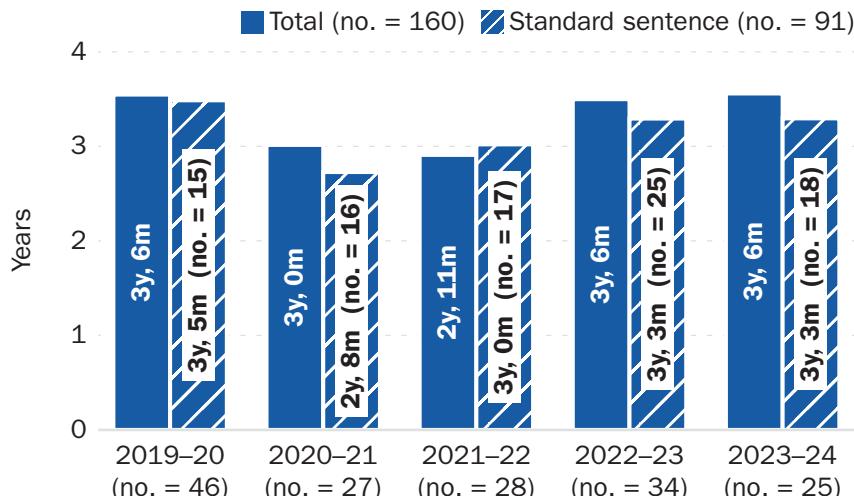
**Figure 3: The number of principal sentences of imprisonment for sexual penetration of a child aged 12 to under 16, by range of imprisonment lengths, 2019–20 to 2023–24**



The imprisonment lengths imposed when sexual penetration of a child aged 12 to 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’.<sup>13</sup> 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 4 shows the average length of the imprisonment terms for the offence of sexual penetration of a child aged 12 to under 16 each financial year. The average imprisonment length ranged from 2 years and 11 months in 2021–22 to 3 years and 6 months in 2019–20, 2022–23 and 2023–24. Over the five-year period, the average imprisonment length was 3 years and 4 months for all principal offences of sexual penetration of a child aged 12 to under 16, and 3 years and 2 months when the standard sentence applied.

**Figure 4: The average imprisonment length imposed for sexual penetration of a child aged 12 to under 16, by financial year**

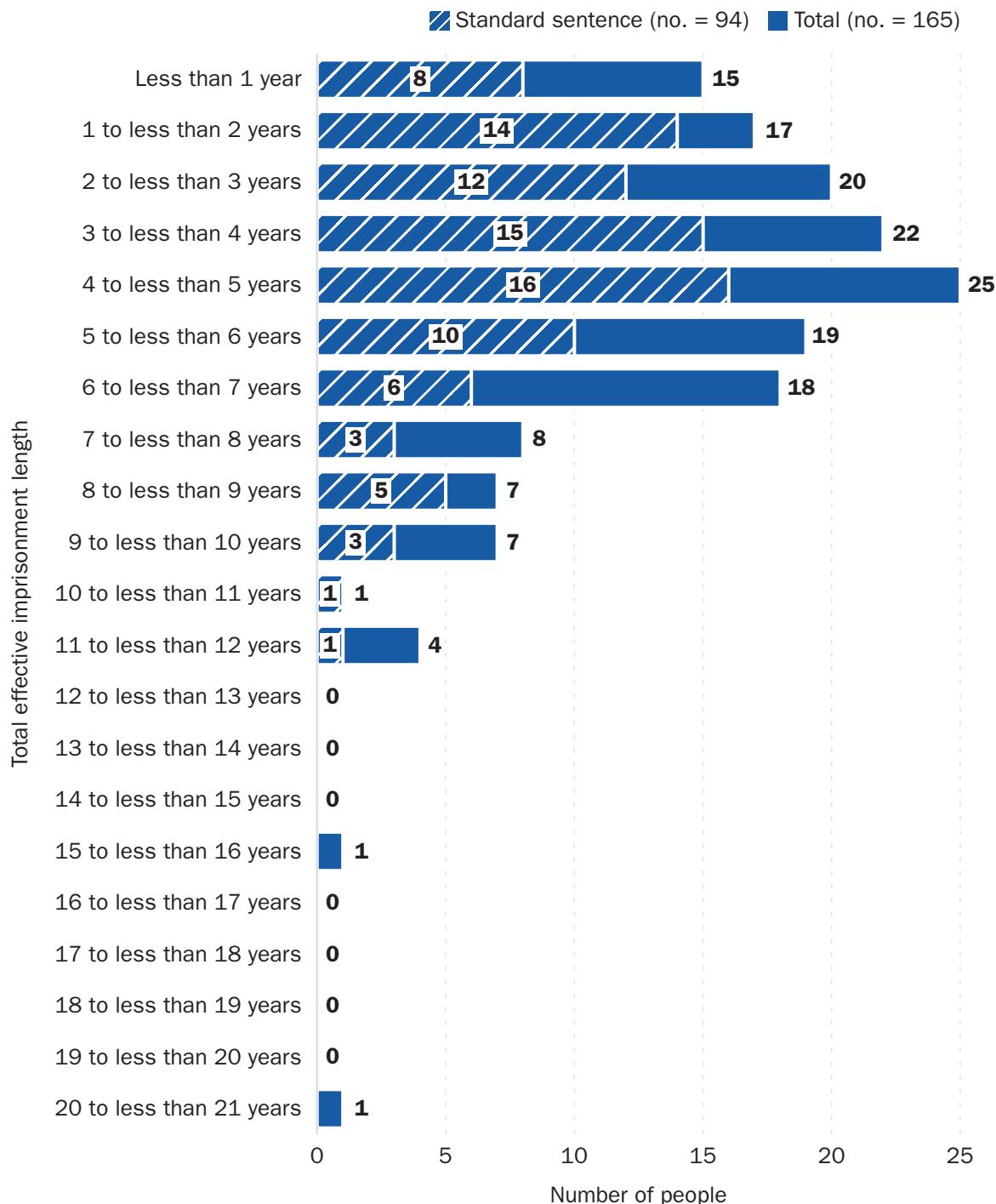


## Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where sexual penetration of a child aged 12 to under 16 was the principal offence. Total effective sentences ranged from 40 days<sup>14</sup> to 20 years and 6 months,<sup>15</sup> while the median total effective sentence was 4 years.

The most common range of total effective sentences was 4 to less than 5 years (25 people).

**Figure 5: The number of people sentenced to imprisonment for sexual penetration of a child aged 12 to under 16, by range of total effective sentences, 2019–20 to 2023–24**



## 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.

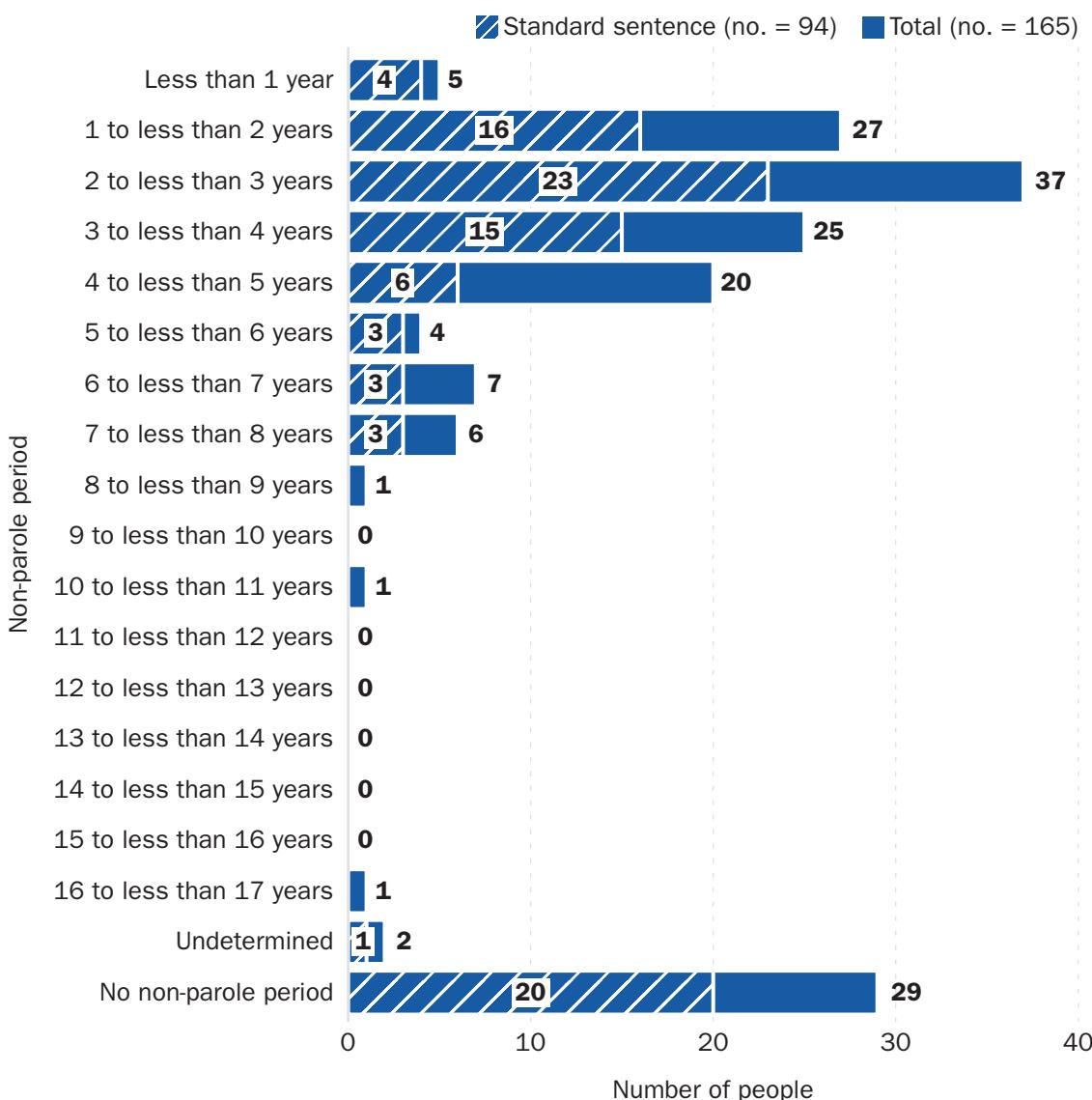
Of the 165 people who were sentenced to imprisonment for the principal offence of sexual

penetration of a child aged 12 to under 16, 150 were eligible to have a non-parole period fixed.<sup>16</sup> Of these people, 134 were given a non-parole period that could be discerned (89.3%).<sup>17</sup> It was not possible to determine the non-parole period for 2 people.<sup>18</sup>

Figure 6 shows the lengths of the non-parole periods for people sentenced to imprisonment for the principal offence of sexual penetration of a child aged 12 to under 16. Non-parole periods ranged from 8 months to 16 years, while the median non-parole period was 2 years and 10 months.

The most common range of non-parole periods was 2 to less than 3 years (37 people).

**Figure 6: The number of people sentenced to imprisonment for sexual penetration of a child aged 12 to under 16, by range of non-parole periods, 2019–20 to 2023–24**



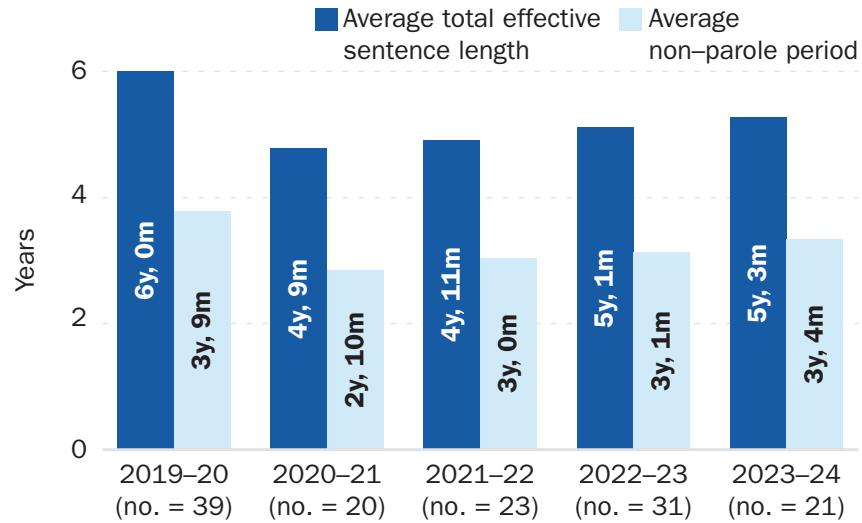
## Average total effective sentences of imprisonment and non-parole periods

Figure 7 presents the average total effective sentences and average non-parole periods each year for the 134 people who were sentenced to imprisonment for the principal offence of sexual penetration of a child aged 12 to under 16 and who received a non-parole period that could be determined.

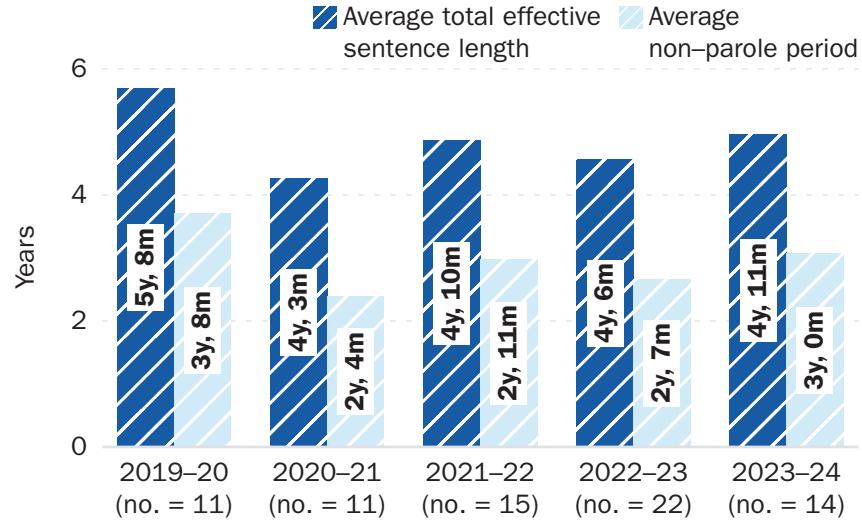
The average total effective sentence ranged from 4 years and 9 months in 2020–21 to 6 years in 2019–20. The average non-parole period ranged from 2 years and 10 months in 2020–21 to 3 years and 9 months in 2019–20.

Similarly, Figure 8 presents the average total effective sentence and average non-parole period for the 73 people who were sentenced to imprisonment and received a non-parole period for sexual penetration of a child aged 12 to under 16 as a standard sentence offence. The average total effective sentence ranged from 4 years and 3 months in 2020–21 to 5 years and 8 months in 2019–20. The average non-parole period ranged from 2 years and 4 months in 2020–21 to 3 years and 8 months in 2019–20.

**Figure 7: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for sexual penetration of a child aged 12 to under 16, by financial year**



**Figure 8: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for sexual penetration of a child aged 12 to under 16 as a standard sentence offence, by financial year**



## Other offences finalised at the same hearing

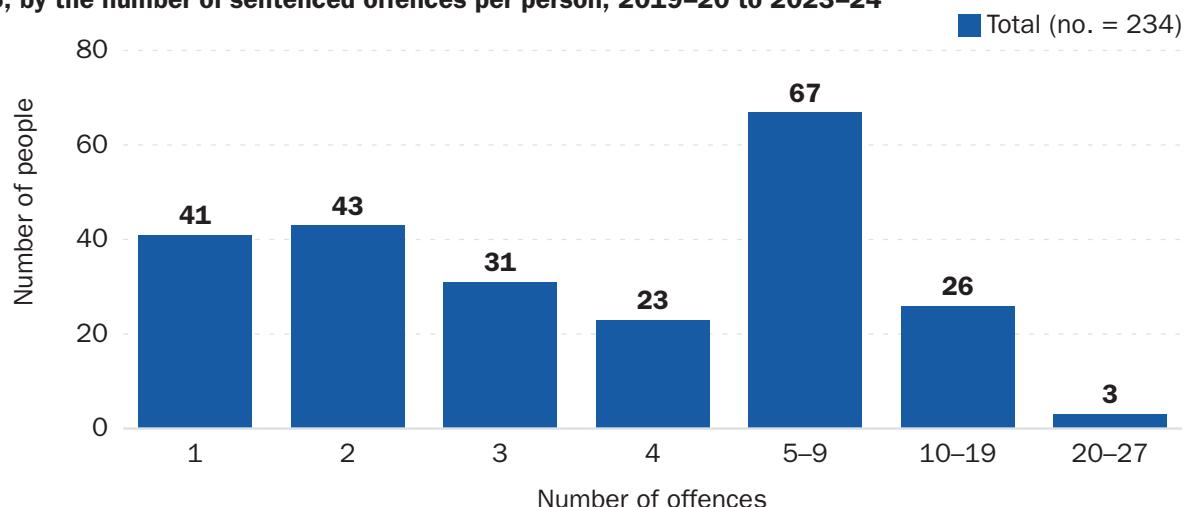
Sometimes people prosecuted for sexual penetration of a child aged 12 to under 16 face multiple charges, which are finalised at the same hearing. This section looks at the range of offences that offenders were sentenced for alongside the principal offence of sexual penetration of a child aged 12 to under 16.

Figure 9 shows the number of people sentenced for the principal offence of sexual penetration of a child aged 12 to under 16 by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 27, and the median was 4 offences. There were 41

people (17.5%) sentenced for the single offence of sexual penetration of a child aged 12 to under 16. The average number of offences per person was 4.4.

Table 3 shows the 10 most common offences co-sentenced alongside sexual penetration of a child aged 12 to under 16. The last column sets out the average number of offences sentenced per case. For example, 42 of the total 234 people (17.9%) were also sentenced for sexual assault of a child aged under 16. On average, those 42 people were sentenced for 2.1 charges of sexual assault of a child aged under 16 per case.

**Figure 9: The number of people sentenced for the principal offence of sexual penetration of a child aged 12 to under 16, by the number of sentenced offences per person, 2019–20 to 2023–24**



**Table 3: The number and percentage of people sentenced for the principal offence of sexual penetration of a child aged 12 to under 16, by the most common offences that were sentenced alongside sexual penetration of a child aged 12 to under 16, 2019–20 to 2023–24**

Offence	Number of cases	Percentage of cases	Average number of proven offences per person
Sexual penetration of a child aged 12 to under 16	234	100.0%	2.1
Sexual assault of a child aged under 16	42	17.9%	2.1
Indecent act with or in the presence of a child aged under 16	30	12.8%	1.0
Knowingly possess child abuse material	24	10.3%	1.8
Commit an indictable offence while on bail	20	8.5%	1.3
Groom a child aged under 16 for a sexual offence	17	7.3%	1.2
Supply a drug of dependence to a child for use by that child	14	6.0%	1.9
Possess a drug of dependence	13	5.6%	1.4
Use a carriage service to transmit indecent communications to a child aged under 16	11	4.7%	1.5
Persistent contravention of a family violence intervention order or safety notice	11	4.7%	1.2
<b>Total</b>	<b>234</b>	<b>100.0%</b>	<b>4.4</b>

## Summary

From 2019–20 to 2023–24, 234 people were sentenced in the higher courts for the principal offence of sexual penetration of a child aged 12 to under 16. Of those 234 people, 165 (70.5%) received a principal sentence of imprisonment. The remaining people received a community correction order (45 people), a wholly suspended sentence (11 people), a partially suspended sentence (5 people), a youth justice centre order (5 people) or an adjourned undertaking (3 people).

Total effective sentences of imprisonment ranged from 40 days to 20 years and 6 months, and non-parole periods ranged from 8 months to 16 years. The median total effective sentence was 4 years, while the median non-parole period was 2 years and 10 months. On average, people sentenced

for the principal offence of sexual penetration of a child aged 12 to under 16 were sentenced for 4.4 offences each, with a maximum of 27 offences.

Of the 129 principal offences of sexual penetration of a child aged 12 to under 16 subject to the standard sentence of 6 years, 94 received an imprisonment term (72.9%). Of those, 91 received a non-aggregate imprisonment term. The average imprisonment term for those 91 principal offences was 3 years and 2 months, which is shorter than the overall average of 3 years and 4 months for the total 160 principal offences that received non-aggregate 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. 282](#), which describes sentencing trends for sexual penetration of a child aged 12 to under 16 between 2017–18 and 2021–22.
- 2 The offence of sexual penetration of a child aged 12 to under 16 has changed over time. Prior to 17 March 2010, this offence was known as ‘sexual penetration of a child aged between 10 and 16’ (*Crimes Act 1958* (Vic) s 45(2)(c)) and had a maximum penalty of 10 years’ imprisonment. On 17 March 2010, the offence was renamed ‘sexual penetration of a child aged between 12 and 16’. On 1 July 2017, this offence was transferred to section 49B of the *Crimes Act 1958* (Vic), with a new maximum penalty of 15 years’ imprisonment. Additionally, the separate offence of ‘sexual penetration of a child aged between 12 and 16 under care, supervision or authority’ was repealed on the same date, with any new charges of this offence to be prosecuted under section 49B (with the ‘care, supervision or authority’ of the offender acting as a possible aggravating factor for sentencing purposes). To maintain meaningful comparison over the reference period, this Snapshot includes the offence of sexual penetration of a child aged between 10 and 16, sexual penetration of a child aged between 12 and 16, and sexual penetration of a child aged between 12 and 16 under care, supervision or authority, provided the offence was sentenced in the higher courts of Victoria from 2019–20 to 2023–24.
- 3 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. The data does not always specify whether the child was aged under 12 or aged 12 to under 16. In order to determine the specific offence in those cases, the Council reviews sentencing remarks. At the time of publication, sentencing remarks for 17 of 333 cases (5.1% of cases) were unavailable or provided insufficient detail to identify the age of the victim. These cases have been excluded from both this Sentencing Snapshot and Sentencing Snapshot no. 301, which describes sentencing trends for sexual penetration of a child aged under 12 for the same period.
- 4 *Crimes Act 1958* (Vic) s 49B(2).
- 5 *Crimes Act 1958* (Vic) s 49B(3); *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 are mentioned in this Snapshot as they are an important form of disposition of criminal charges.
- 8 Immediate custodial sentences for sexual penetration of a child aged 12 to under 16 included imprisonment, partially suspended sentences and youth justice centre orders.
- 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 One of the cases where an adjourned undertaking was imposed is *DPP v Kitching (a pseudonym)* [2023] VCC 1424.
- 11 A court may impose an aggregate sentence of imprisonment on multiple charges sentenced at the same time. An aggregate sentence is a single imprisonment term, but the sentences imposed on the individual charges are not specified. A case may include a combination of aggregate and non-aggregate sentences.

12 *DPP v Wall (a pseudonym)* [2022] VCC 1217 (10.5 years' imprisonment each for two of the charges of sexual penetration of a child aged 12 to under 16).

13 Sentencing Act 1991 (Vic) s 5B(2)(b).

14 *Giri v The Queen* [2022] VSCA 64 (reduced on appeal from *DPP v Giri* (Unreported, County Court of Victoria, 28 February 2022).

15 *DPP v Wall (a pseudonym)* [2022] VCC 1217 (the total effective sentence was 20.5 years' imprisonment).

16 There were 15 people who were not eligible to have a non-parole period fixed because they were given a total effective sentence of less than 1 year.

17 There were 14 people who were eligible to have a non-parole period fixed, because their sentence was between 1 and less than 2 years, but did not receive one.

18 There were 2 people who 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.

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Published by the Sentencing Advisory Council, Melbourne Victoria Australia

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ISSN 1836-6384 (Online)

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## 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.<sup>1</sup>

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.<sup>2</sup>

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’.<sup>3</sup>

## 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,<sup>4</sup> the median imprisonment length for an offence,<sup>5</sup> changes

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

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

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

## The ‘inherent limitations’ of sentencing statistics and comparable cases

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

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].

'The sentencing snapshots published by the Sentencing Advisory Council revealed that for these offences sentences of six years or more were extremely rare'

***Greene (a pseudonym) v The King***  
**[2024] VSCA 226**

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.<sup>15</sup> 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':<sup>16</sup>

- our **Sentencing Snapshots** provide five years of higher courts data on the types and lengths of sentences for 18 common or high-profile principal offences<sup>17</sup>
- 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 offences<sup>18</sup>
- our **statistical reports** include in-depth analyses of sentencing practices.<sup>19</sup>

<sup>15</sup> *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].

<sup>16</sup> Sentencing Act 1991 (Vic) s 108C(1)(b).

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

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

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