



Sexual penetration of a child aged under 12

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

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of sexual penetration of a child aged under 12² in the County and Supreme Courts of Victoria (the higher courts) from 2019–20 to 2023–24.³ 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 under 12 and other offences is also available on [SACStat](#).

A person who takes part in an act of sexual penetration of a child aged under 12 is guilty of an indictable offence that carries a maximum penalty of 25 years' imprisonment.⁴

Sexual penetration of a child aged under 12 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.⁵ Sexual penetration of a child aged under 12 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.⁶

This Snapshot focuses on cases where sexual penetration of a child aged under 12 was the principal offence, that is, sexual penetration of a child aged under 12 was the offence that received the most severe sentence in the case.⁷

Sexual penetration of a child aged under 12 was the principal offence in 1.0% 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' (*Worboys 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

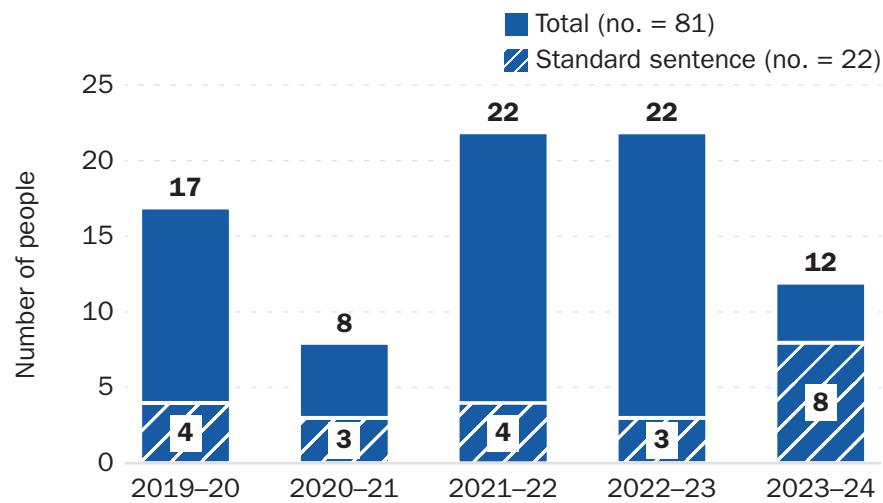
From 2019–20 to 2023–24, 81 people were sentenced in the higher courts for a principal offence of sexual penetration of a child aged under 12.

Figure 1 shows that the number of people sentenced for the principal offence of sexual penetration of a child aged under 12 by financial year ranged from 8 people in 2020–21 to 22 people in 2021–22 and 2022–23.

There were 22 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 under 12 during the five-year period.⁸

Figure 1: The number of people sentenced for sexual penetration of a child aged under 12, by financial year

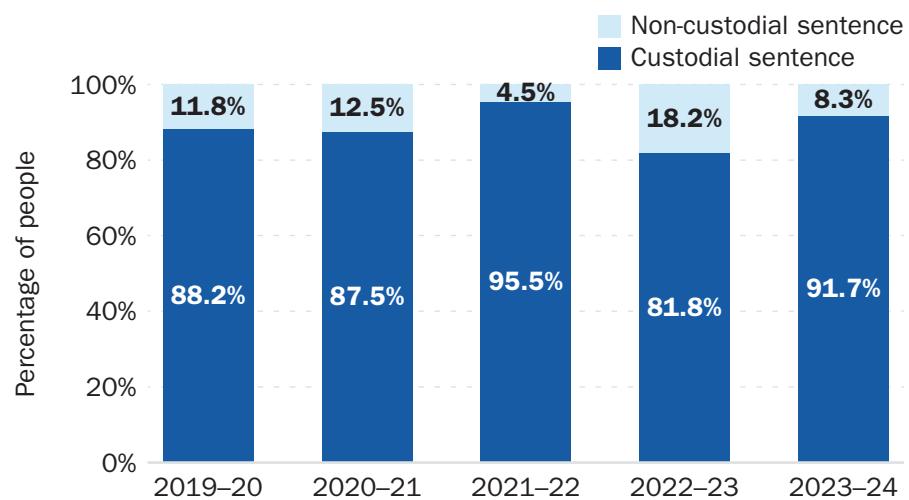


Sentence types and trends

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 under 12. An immediate custodial sentence involves at least some element of immediate imprisonment or detention.⁹ Over the five-year period, 88.9% of people were given an immediate custodial sentence.

Table 1 (page 3) shows the principal sentence types imposed for sexual penetration of a child aged under 12 from 2019–20 to 2023–24. The *principal sentence* is the most serious sentence imposed for the principal offence in a case.¹⁰

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



Over the five-year period, most people sentenced for sexual penetration of a child aged under 12 received a principal sentence of imprisonment (84.0% or 68 of 81 people). The remaining people received a community correction order (4.9% or 4 people),¹¹ or a partially or wholly suspended sentence (11.1% or 9 people).

Table 1: The number and percentage of people sentenced for sexual penetration of a child aged under 12, by principal sentence type

Sentence type	2019–20	2020–21	2021–22	2022–23	2023–24	Total
Non-standard sentence						
Imprisonment	10 (58.8%)	4 (50.0%)	15 (68.2%)	14 (63.6%)	3 (25.0%)	46 (56.8%)
Community correction order	1 (5.9%)	1 (12.5%)	0 (0.0%)	2 (9.1%)	0 (0.0%)	4 (4.9%)
Wholly suspended sentence	1 (5.9%)	0 (0.0%)	1 (4.5%)	2 (9.1%)	1 (8.3%)	5 (6.2%)
Partially suspended sentence	1 (5.9%)	0 (0.0%)	2 (9.1%)	1 (4.5%)	0 (0.0%)	4 (4.9%)
Standard sentence						
Imprisonment	4 (23.5%)	3 (37.5%)	4 (18.2%)	3 (13.6%)	8 (66.7%)	22 (27.2%)
Total people sentenced	17	8	22	22	12	81

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 under 12 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 68 people who received a principal sentence of imprisonment received a non-aggregate imprisonment term, that is, the imprisonment terms were not part of an aggregate sentence.¹²

There was 1 person who received a combined order of imprisonment with a community correction order. The lengths of imprisonment terms for these 68 people are shown in Figure 3 (page 4). Imprisonment lengths ranged from 6 months¹³ to 12 years,¹⁴ while the median imprisonment length was 5 years and 10 months.

The most common range of imprisonment lengths was 6 to less than 7 years (15 principal sentences).

The imprisonment lengths imposed when sexual penetration of a child aged under 12 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’.¹⁵ 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 sexual penetration of a child aged under 12, by range of imprisonment lengths, 2019–20 to 2023–24

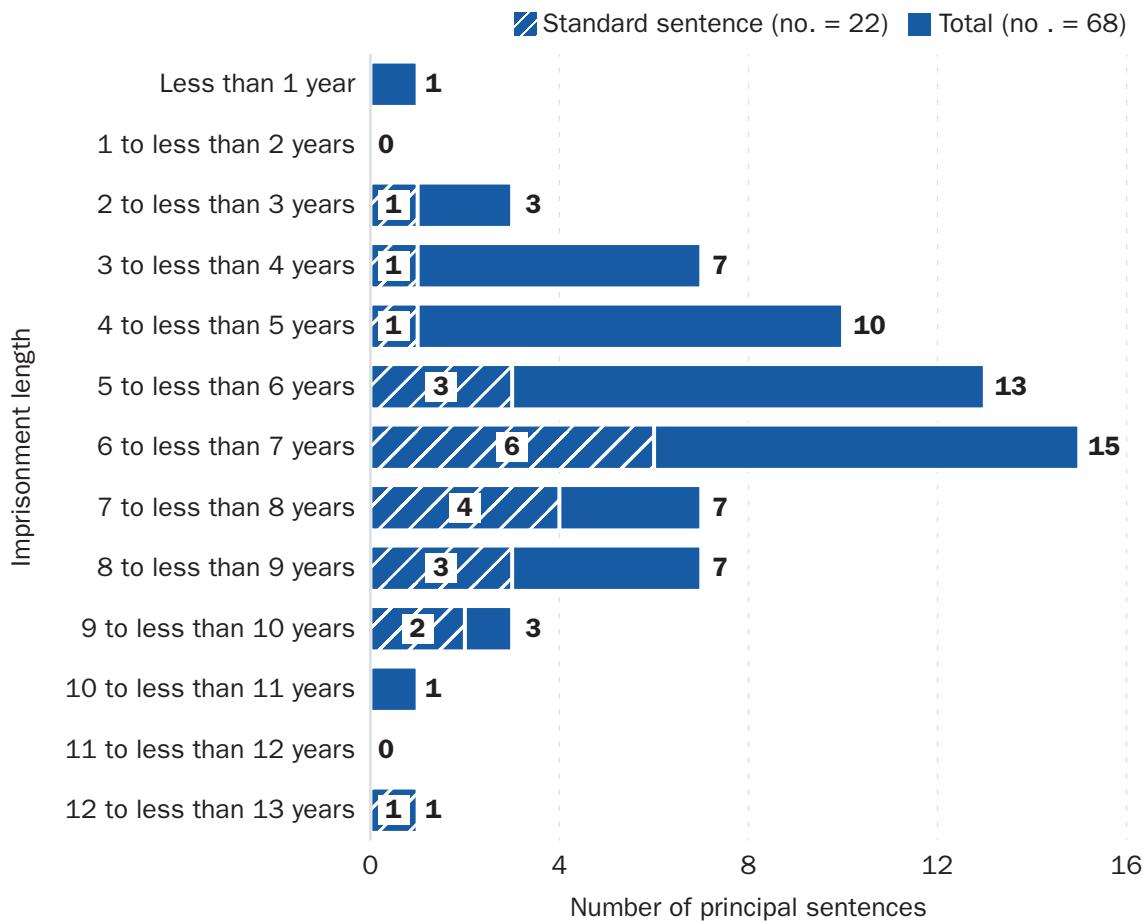
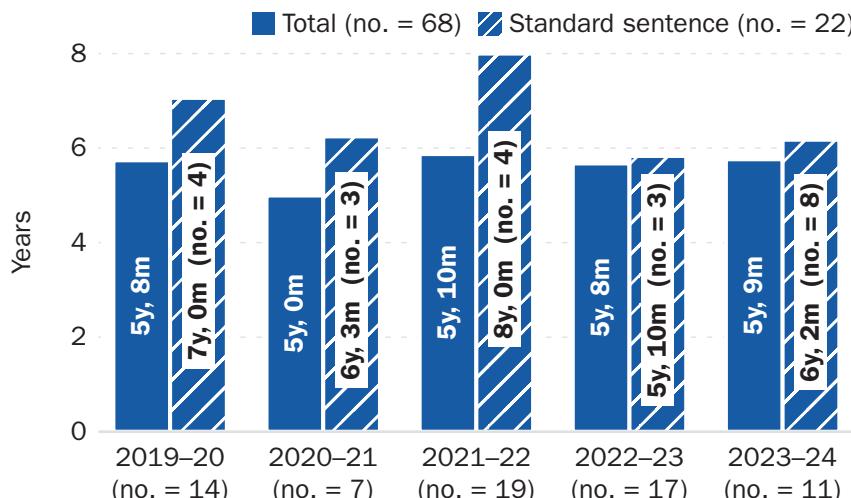


Figure 4 shows the average length of the imprisonment terms for the offence of sexual penetration of a child aged under 12 each financial year. The average imprisonment length was relatively consistent, ranging from 5 years in 2020–21 to 5 years and 10 months in 2021–22.

Over the five-year period, the average imprisonment length was 5 years and 8 months for all principal offences of sexual penetration of a child aged under 12, and 6 years and 7 months when the standard sentence applied.

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



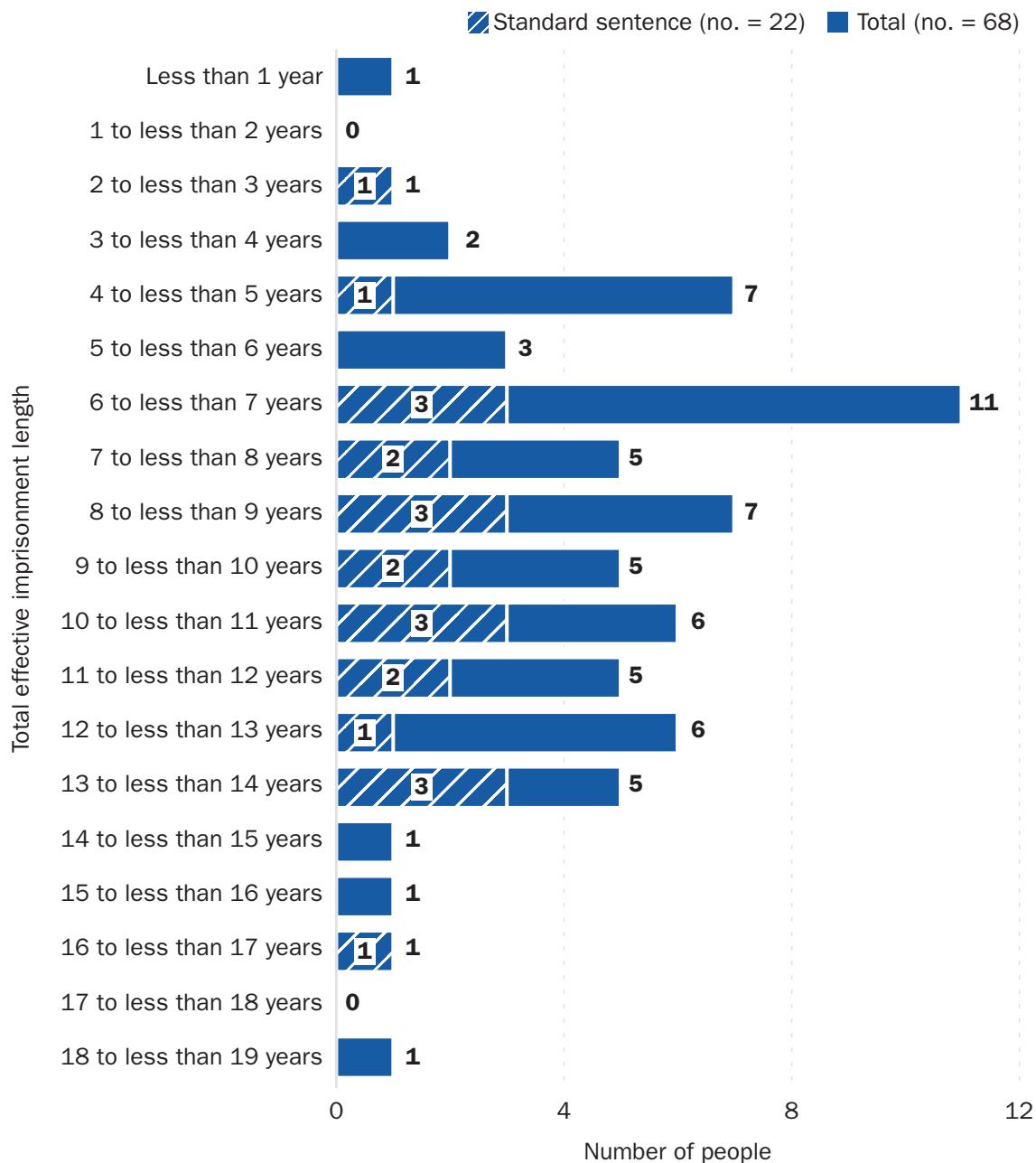
Total effective sentences of imprisonment

Figure 5 shows the lengths of total effective sentences of imprisonment in cases where sexual penetration of a child aged under 12 was the principal offence and an imprisonment term was imposed. Total effective sentences ranged from

8 months to 18 years,¹⁶ while the median total effective sentence was 8 years and 4 months.

The most common range of total effective sentences was 6 to less than 7 years (11 people).

Figure 5: The number of people sentenced to imprisonment for sexual penetration of a child aged under 12, 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.

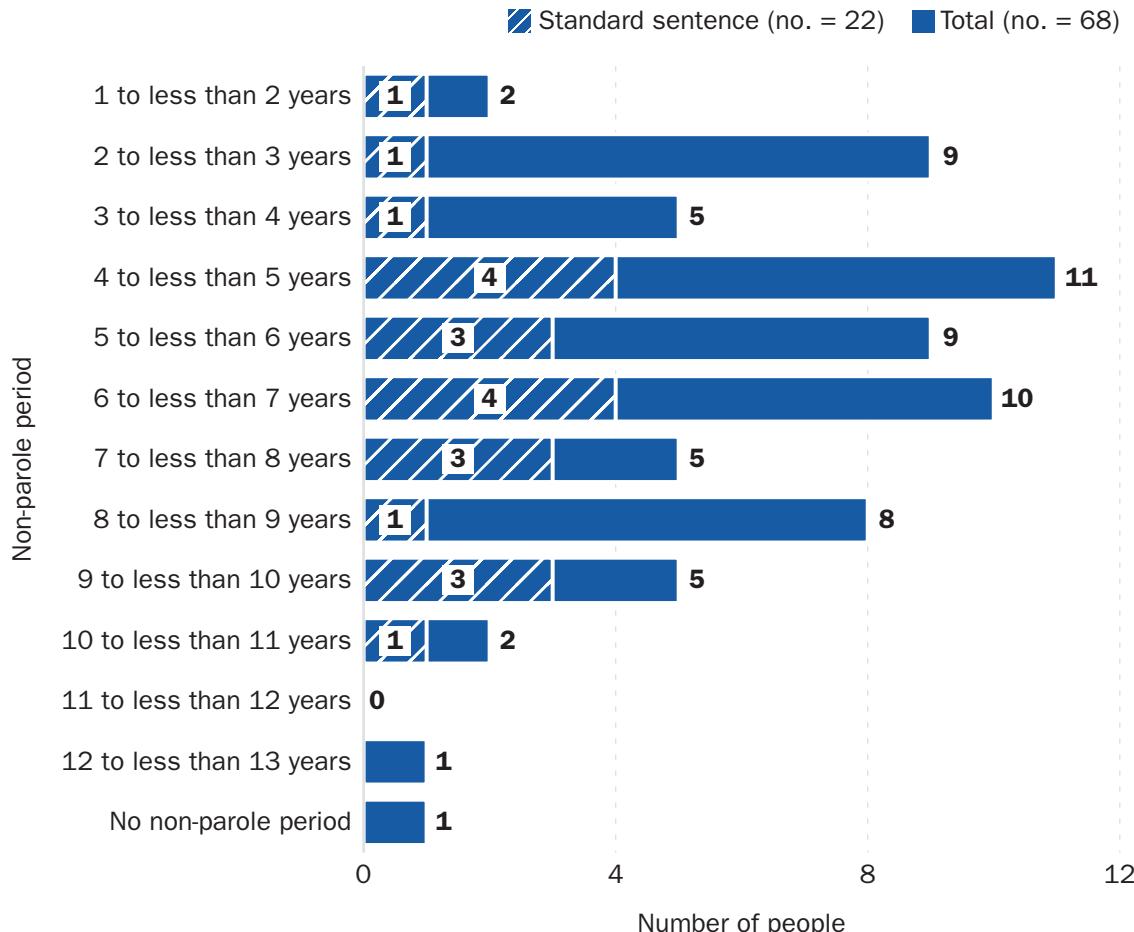
Of the 68 people who were sentenced to imprisonment for the principal offence of sexual

penetration of a child aged under 12, 67 were eligible to have a non-parole period fixed and all 67 received one.¹⁷

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 under 12. Non-parole periods ranged from 1 year and 4 months to 12 years, while the median non-parole period was 5 years and 6 months.

The most common range of non-parole periods was 4 to less than 5 years (11 people).

Figure 6: The number of people sentenced to imprisonment for sexual penetration of a child aged under 12, 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 67 people who were sentenced to imprisonment for the principal offence of sexual penetration of a child aged under 12 and who received a non-parole period.

The average total effective sentence ranged from 7 years and 9 months in 2023–24 to 9 years and 9 months in 2021–22. Over the same period, the average non-parole period ranged from 5 years in 2023–24 to 6 years and 6 months in 2020–21.

Similarly, Figure 8 presents the average total effective sentence and average non-parole period for the 22 people who were sentenced to imprisonment and received a non-parole period for sexual penetration of a child aged under 12 as a standard sentence offence. The average total effective sentence ranged from 7 years and 8 months in 2023–24 to 11 years and 8 months in 2021–22. The average non-parole period ranged from 5 years in 2023–24 to 7 years and 4 months in 2022–23. Given the low number of cases each year, caution is required in interpreting these averages.

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 under 12, by financial year

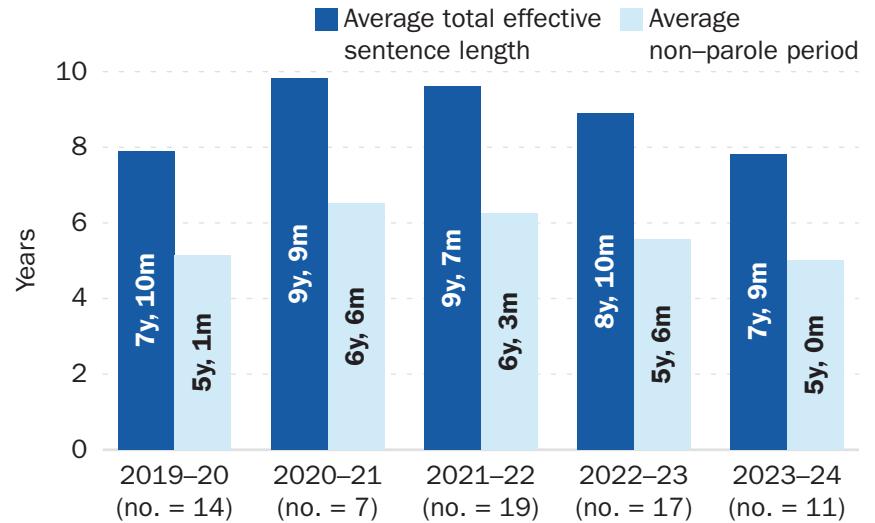
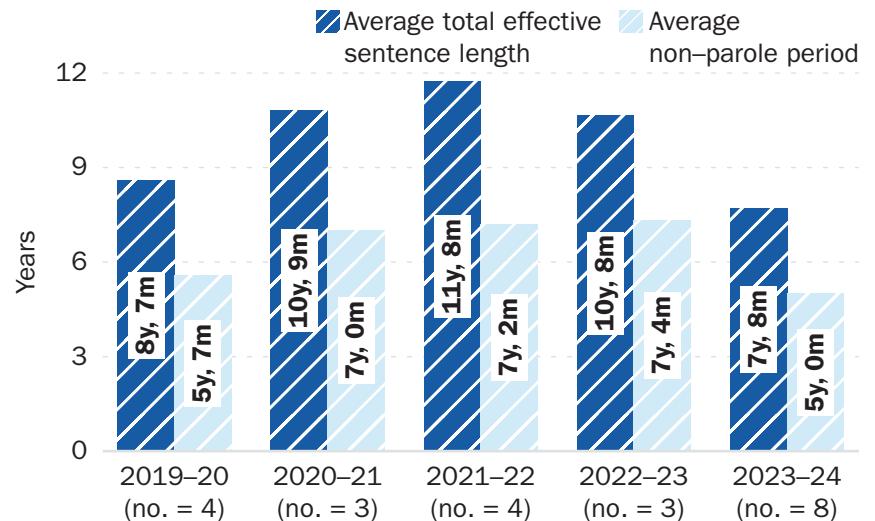


Figure 8: The average total effective sentences and non-parole periods for people sentenced to imprisonment with a non-parole period for sexual penetration of a child aged under 12 as a standard sentence offence, by financial year



Other offences finalised at the same hearing

Sometimes people prosecuted for sexual penetration of a child aged under 12 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 under 12.

Figure 9 shows the number of people sentenced for the principal offence of sexual penetration of a child aged under 12 by the total number of sentenced offences per person. The number of sentenced offences per person ranged from 1 to 40, and the median was 6 offences. There were 9 people

(11.1%) sentenced for the single offence of sexual penetration of a child aged under 12. The average number of offences per person was 6.9.

Table 2 shows the 10 most common offences co-sentenced alongside sexual penetration of a child aged under 12. The last column sets out the average number of offences sentenced per case. For example, 11 of the total 82 people (13.4%) also received sentences for sexual penetration of a child aged 12 to under 16. On average, those 11 people were sentenced for 2.1 charges of sexual penetration of a child aged 12 to under 16 per case.

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

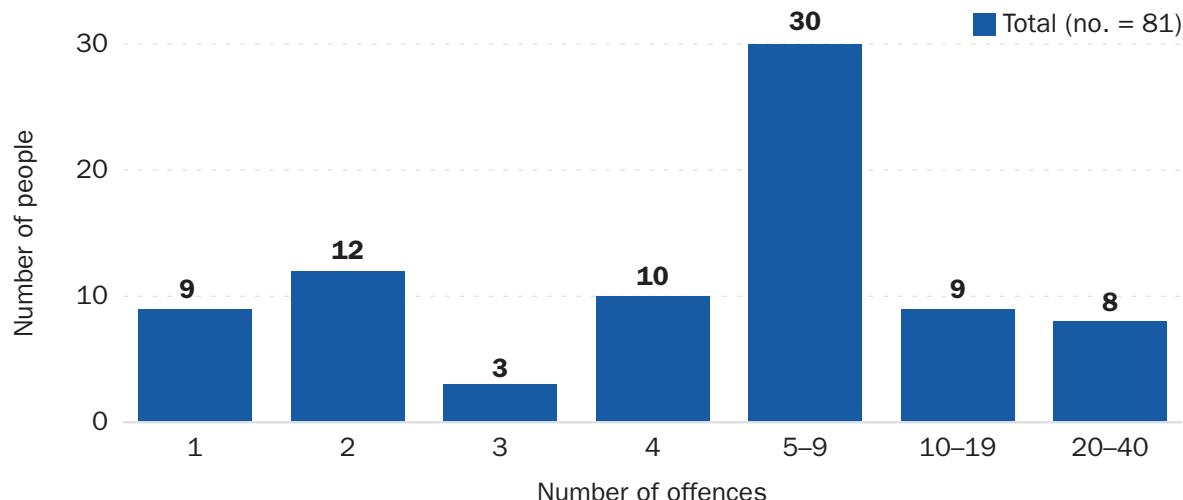


Table 2: The number and percentage of people sentenced for the principal offence of sexual penetration of a child aged under 12, by the most common offences that were sentenced alongside sexual penetration of a child aged under 12, 2019–20 to 2023–24

Offence	Number of cases	Percentage of cases	Average number of proven offences per person
Sexual penetration of a child aged under 12	81	100.0%	2.1
Indecent act with or in the presence of a child aged under 16	37	45.7%	3.1
Sexual assault of a child aged under 16	25	30.9%	2.8
Knowingly possess child abuse material	12	14.8%	1.3
Sexual penetration of a child aged 12 to under 16	11	13.6%	2.1
Produce child abuse material	9	11.1%	2.4
Indecent assault	8	9.9%	5.9
Sexual activity in the presence of a child aged under 16	6	7.4%	1.7
Make or produce child pornography	4	4.9%	1.8
Attempted sexual penetration of a child aged under 16	4	4.9%	1.0
Total	81	100.0%	6.9

Summary

From 2019–20 to 2023–24, 81 people were sentenced in the higher courts for the principal offence of sexual penetration of a child aged under 12. Of those 81 people, 68 (84.0%) received a principal sentence of imprisonment. The remaining people received a community correction order (4 people), a wholly suspended sentence (5 people) or a partially suspended sentence (4 people).

Total effective sentences of imprisonment ranged from 8 months to 18 years, and non-parole periods ranged from 1 year and 4 months to 12 years. The median total effective sentence was 8 years and 4 months, while the median non-parole period was 5 years and 6 months. On average,

people sentenced for the principal offence of sexual penetration of a child aged under 12 were sentenced for 6.9 offences each, with a maximum of 40 offences.

Of the 22 principal offences of sexual penetration of a child aged under 12 subject to the standard sentence of 10 years, all 22 received an imprisonment term. The average imprisonment term for those 22 principal offences that received imprisonment was 6 years and 7 months, which is higher than the overall average of 5 years and 8 months for the total 68 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. 283](#), which describes sentencing trends for sexual penetration of a child aged under 12 between 2017–18 and 2021–22.
- 2 The offence of sexual penetration of a child aged under 12 has changed over time. Prior to 17 March 2010, this offence was known as 'sexual penetration of a child under the age of 10' (*Crimes Act 1958* (Vic) s 45(2)(a)) and had a maximum penalty of 25 years' imprisonment. On 17 March 2010, the offence was renamed to 'sexual penetration of a child under the age of 12'. On 1 July 2017, this offence was transferred to section 49A of the *Crimes Act 1958* (Vic), retaining the maximum penalty of 25 years' imprisonment. This Snapshot includes all three versions of this offence, provided they were 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. 300](#), which describes sentencing trends for sexual penetration of a child aged 12 to under 16 for the same period.
- 4 *Crimes Act 1958* (Vic) s 49A(2).
- 5 *Sentencing Act 1991* (Vic) ss 3(f) (definition of category 1 offence), 5(2G).
- 6 *Crimes Act 1958* (Vic) s 49A(3); *Sentencing Act 1991* (Vic) ss 5(2)(ab), 5A–5B.
- 7 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.
- 8 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.
- 9 Immediate custodial sentences for sexual penetration of a child aged under 12 included imprisonment and partially suspended sentences.
- 10 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.
- 11 Sentencing remarks are publicly available in two of the cases resulting in a community correction order: *DPP v Meehan (a pseudonym)* [2019] VCC 1300; *DPP v Hunt (a pseudonym)* [2023] VCC 1033.
- 12 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.
- 13 Sentencing remarks are not publicly available for the case with a prison sentence of 6 months for the offence of sexual penetration of a child aged under 12. The next shortest prison sentence was 2 years: *DPP v White* [2021] VCC 977.
- 14 The longest prison sentence for the principal offence of sexual penetration of a child aged under 12 was 12 years: *DPP v Case (a pseudonym)* [2021] VCC 1488.
- 15 *Sentencing Act 1991* (Vic) s 5B(2)(b).
- 16 The longest total effective sentence was 18 years: *DPP v Tomlinson (a pseudonym)* [2022] VCC 1812.
- 17 There was 1 person who was not eligible to have a non-parole period fixed because they were given a total effective sentence of less than 1 year.

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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.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 2011-12 and 2015-16 for sexual penetration of a child under 12 ... [defence counsel] submitted that ... [f]or offenders who were sentenced to terms of imprisonment for multiple offences ... only four offenders had received total effective terms of 10 years or more'

***Nelson (a pseudonym) v The Queen
[2020] VSCA 36***

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**.