

# Sentencing Snapshot

Sentencing trends  
in the higher courts  
of Victoria  
2005–06 to 2009–10

November 2011  
No. 116

**Maintaining a sexual relationship with a child under 16**

## Introduction

This Sentencing Snapshot describes sentencing outcomes<sup>1</sup> for the offence of maintaining a sexual relationship with a child under 16 and details the age and gender<sup>2</sup> of people sentenced for this offence in the County Court of Victoria<sup>3</sup> between 2005–06 and 2009–10.<sup>4</sup>

A person who is involved in at least three relevant sexual offences<sup>5</sup> with a child under the age of 16 over a specific period is guilty of the offence of maintaining a sexual relationship with a child under 16.<sup>6</sup> 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 were charged as a separate offence.<sup>7</sup> Maintaining a sexual relationship with a child under 16 is an indictable offence that carries a maximum penalty of 25 years' imprisonment<sup>8</sup> and/or a fine of 3,000 penalty units.<sup>9</sup> Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

Maintaining a sexual relationship with a child under 16 was the principal offence in 0.5% of cases sentenced in the higher courts between 2005–06 and 2009–10.

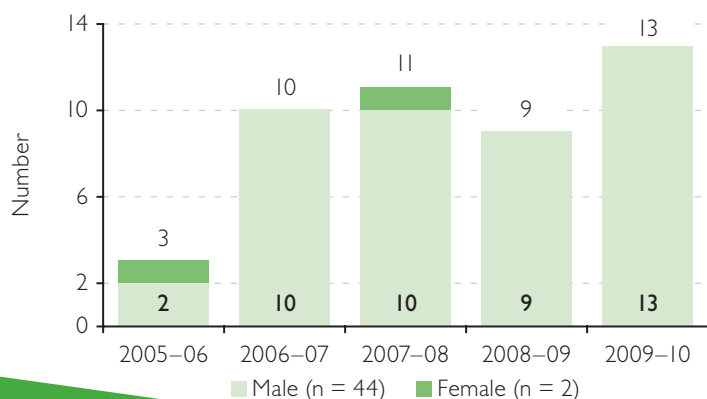
As with previous publications in this series, this report presents a snapshot of first instance sentences in the higher courts of Victoria. The Council is now collecting data on all sentence appeals. A section on appeals has been included immediately before the Summary section of this report. Information on sentences that have changed on appeal is also noted in other sections of this report. Unless otherwise noted, the data represent sentences imposed at first instance.

## People sentenced

Figure 1 shows the number of people sentenced for the principal offence of maintaining a sexual relationship with a child under 16 for the period 2005–06 to 2009–10. As shown, 46 people were sentenced for maintaining a sexual relationship with a child under 16 over the five-year period. There were 13 people sentenced for this offence in 2009–10, up by 4 people from the previous year.

Over the five years depicted, the majority of those sentenced were men (95.7%, or 44 of 46 people), including all of the 13 people sentenced in 2009–10.

**Figure 1:** The number of people sentenced for maintaining a sexual relationship with a child under 16 by gender, 2005–06 to 2009–10



## Sentence types and trends

Figure 2 shows the total number of people sentenced for maintaining a sexual relationship with a child under 16 and the number who received an immediate custodial sentence. An immediate custodial sentence is one that involves at least some element of immediate (as opposed to wholly suspended) imprisonment or detention.<sup>10</sup> Over the five-year period, 96% of people were given an immediate custodial sentence. Custodial sentences made up 100% of the sentences during each year, with the exception of 2007–08.

**Figure 2:** The number of people sentenced for maintaining a sexual relationship with a child under 16 and the number who received an immediate custodial sentence, 2005–06 to 2009–10

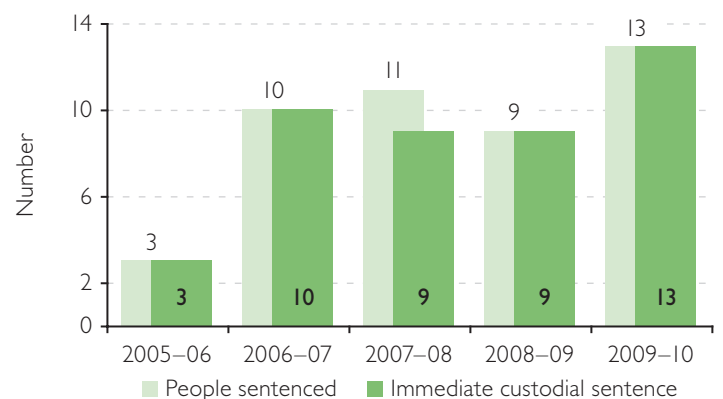


Table 1 shows the number of people sentenced for maintaining a sexual relationship with a child under 16 from 2005–06 to 2009–10 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for maintaining a sexual relationship with a child under 16 received a period of imprisonment (93%, or 43 of 46 people). Imprisonment was used to sentence 100% of the cases each year between 2005–06 and 2009–10. The exception occurred in 2007–08, when 3 cases received sentences other than imprisonment.

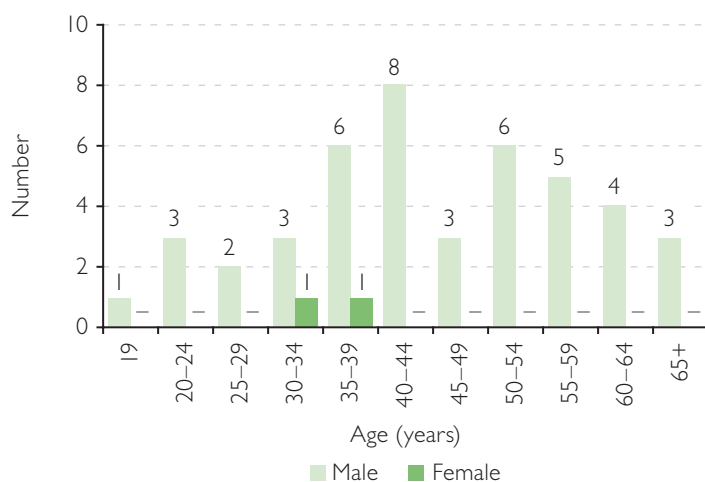
**Table 1:** The number and percentage of people sentenced for maintaining a sexual relationship with a child under 16 by sentence type, 2005–06 to 2009–10

Sentence type	2005–06	2006–07	2007–08	2008–09	2009–10
Imprisonment	3 (100%)	10 (100%)	8 (73%)	9 (100%)	13 (100%)
Wholly suspended sentence	0 (–)	0 (–)	1 (9%)	0 (–)	0 (–)
Partially suspended sentence	0 (–)	0 (–)	1 (9%)	0 (–)	0 (–)
Community-based order	0 (–)	0 (–)	1 (9%)	0 (–)	0 (–)
<b>People sentenced</b>	<b>3</b>	<b>10</b>	<b>11</b>	<b>9</b>	<b>13</b>

### Age and gender of people sentenced

Figure 3 shows the gender of people sentenced for maintaining a sexual relationship with a child under 16 grouped by their age<sup>11</sup> between 2005–06 and 2009–10. The average age of people sentenced for maintaining a sexual relationship with a child under 16 was 44 years. There were no juveniles sentenced over this period.<sup>12</sup>

**Figure 3:** The number of people sentenced for maintaining a sexual relationship with a child under 16 by gender and age, 2005–06 to 2009–10



### Sentence types by gender

Figure 4 and Table 2 show the types of sentences imposed for maintaining a sexual relationship with a child under 16 grouped by gender. As shown, a higher percentage of men received a period of imprisonment (95.5% compared with 50.0% of women). Conversely, a higher percentage of women received a wholly suspended sentence of imprisonment (50.0% compared with no men).

**Figure 4:** The percentage of people sentenced for maintaining a sexual relationship with a child under 16 by sentence type and gender, 2005–06 to 2009–10



**Table 2:** The number and percentage of people sentenced for maintaining a sexual relationship with a child under 16 by sentence type and gender, 2005–06 to 2009–10

Sentence type	Male	Female	Total
Imprisonment	42 (95%)	1 (50%)	43 (93%)
Wholly suspended sentence	0 (–)	1 (50%)	1 (2%)
Partially suspended sentence	1 (2%)	0 (–)	1 (2%)
Community-based order	1 (2%)	0 (–)	1 (2%)
<b>People sentenced</b>	<b>44</b>	<b>2</b>	<b>46</b>

## Sentence types by age

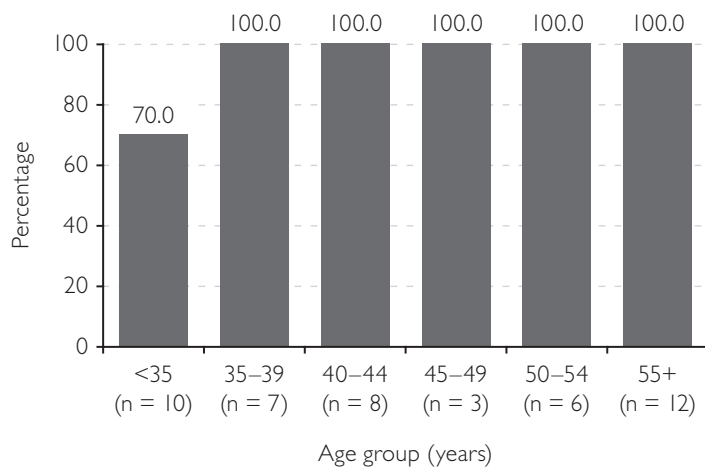
As shown in Table 2, the most common sentence type was imprisonment. The following analysis examines imprisonment by the offender's age group.

### Imprisonment

Sentences of imprisonment were given to everyone aged over 35 for this offence (100%).

Conversely, sentences of imprisonment were less common for those aged under 35 years (70%, or 7 of the 10 people in this age group).

**Figure 5:** The percentage of people who received a period of imprisonment for maintaining a sexual relationship with a child under 16 by age group, 2005–06 to 2009–10



## 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.

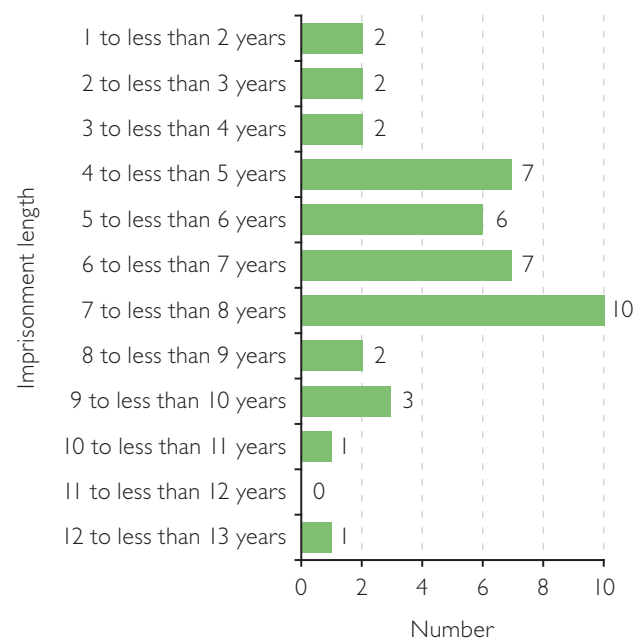
In many cases, the total effective sentence imposed on a person will be longer than individual principal sentences. Principal sentences for maintaining a sexual relationship with a child under 16 must be considered in this broader context. The following section analyses the use of imprisonment for the offence of maintaining a sexual relationship with a child under 16 between 2005–06 and 2009–10.

### Principal sentence of imprisonment

Figure 6 shows the number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 between 2005–06 and 2009–10 by the length of the imprisonment term. Imprisonment terms ranged from 1 year to 12 years, while the median length of imprisonment was 6 years (meaning that half of the imprisonment terms were shorter than 6 years and half were longer).

The majority of people receiving imprisonment were sentenced for a duration between 7 years and less than 8 years (10 people).

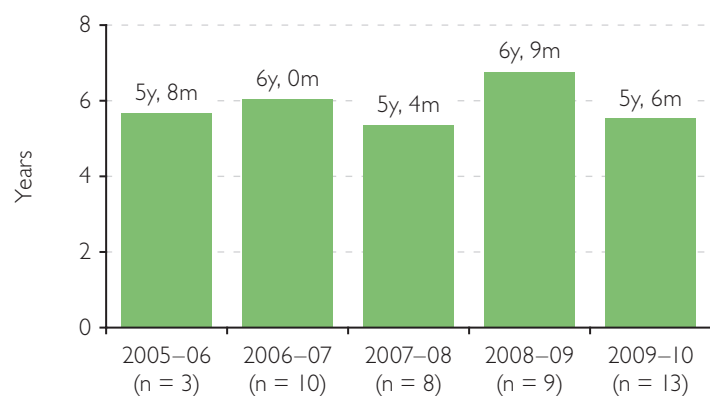
**Figure 6:** The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by length of imprisonment term, 2005–06 to 2009–10



As shown in Figure 7, the average length of imprisonment term imposed on people sentenced for maintaining a sexual relationship with a child under 16 ranged from 5 years and 4 months in 2007–08 to 6 years and 9 months in 2008–09.

From 2005–06 to 2009–10, the majority of those people who received a term of imprisonment for maintaining a sexual relationship with a child under 16 were men (42 people or 97.7%), with only one woman receiving imprisonment. Over the five-year period, men received an average term of 5 years and 11 months of imprisonment, compared with 5 years for the only woman to receive this sentence.

**Figure 7:** The average length of imprisonment term imposed on people sentenced for maintaining a sexual relationship with a child under 16, 2005–06 to 2009–10

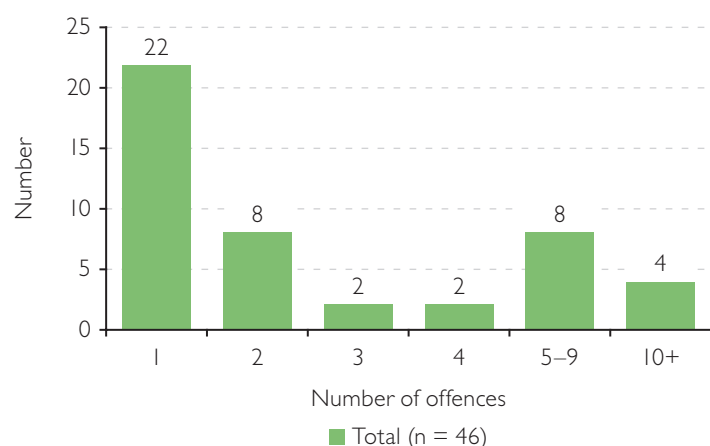


### Other offences finalised at the same hearing

Often people prosecuted for maintaining a sexual relationship with a child under 16 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 maintaining a sexual relationship with a child under 16.

Figure 8 shows the number of people sentenced for the principal offence of maintaining a sexual relationship with a child under 16 by the total number of offences for which sentences were set.

**Figure 8:** The number of people sentenced for the principal offence of maintaining a sexual relationship with a child under 16 by the number of sentenced offences per person, 2005–06 to 2009–10



The number of sentenced offences per person ranged from 1 to 14, while the median was 2 offences. There were 22 people (47.8%) sentenced for the single offence of maintaining a sexual relationship with a child under 16 alone. The average number of offences per person sentenced for maintaining a sexual relationship with a child under 16 was 3.43.

While Figure 8 presents the number of sentenced offences for those sentenced for maintaining a sexual relationship with a child under 16, Table 3 shows what the accompanying offences were. It shows the number and percentage of people sentenced for the 10 most common offences.

The last column sets out the average number of offences sentenced per person. For example, 11 of the total 46 people (23.9%) also received sentences for committing an indecent act with a child under 16. On average, they were sentenced for 4.09 counts of indecent act with a child under 16.

**Table 3:** The number and percentage of people sentenced for the principal offence of maintaining a sexual relationship with a child under 16 by the most common offences that were sentenced and the average number of those offences that were sentenced, 2005–06 to 2009–10

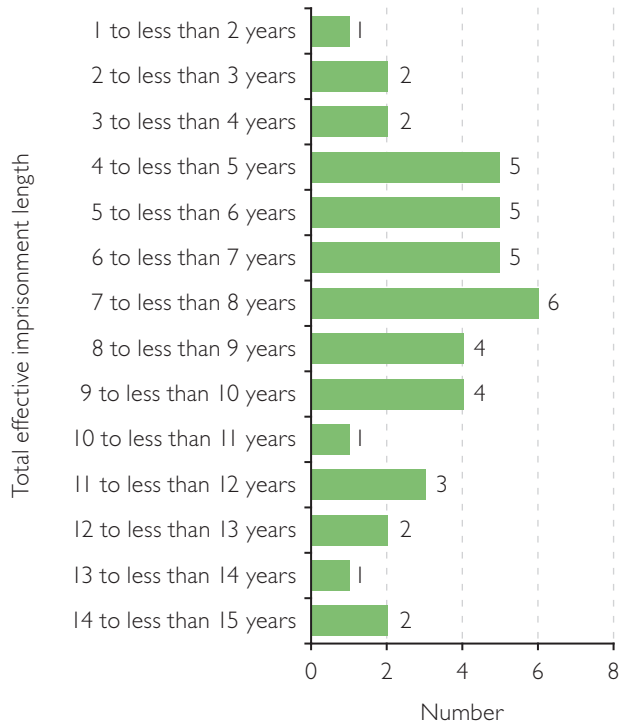
Offence	No.	%	Avg.
1 Maintain a sexual relationship with a child under 16	46	100.0	1.37
2 Indecent act with a child under 16	11	23.9	4.09
3 Produce child pornography	6	13.0	1.33
4 Possess child pornography	6	13.0	1.17
5 Sexual penetration of a child under 16	5	10.9	3.20
6 Indecent assault	2	4.3	1.00
7 Incest on child by de facto parent	1	2.2	5.00
8 Traffick drug of dependence to child	1	2.2	3.00
9 Incest on child by biological parent	1	2.2	2.00
10 Possess a drug of dependence	1	2.2	1.00
<b>People sentenced</b>	<b>46</b>	<b>100.0</b>	<b>3.43</b>

### Total effective sentence of imprisonment

There were 43 people given a total effective sentence of imprisonment.<sup>13</sup> Figure 9 shows the number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 between 2005–06 and 2009–10 by the length of their total effective sentence. The length of total effective sentences ranged from 1 year and 6 months to 14 years and 7 months, while the median total effective length of imprisonment was 7 years (meaning that half of the total effective sentence lengths were below 7 years and half were above).

The majority of people receiving a total effective sentence of imprisonment were sentenced to a duration between 7 years and less than 8 years (6 people).

**Figure 9:** The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by total effective length of imprisonment term, 2005–06 to 2009–10



### Non-parole period

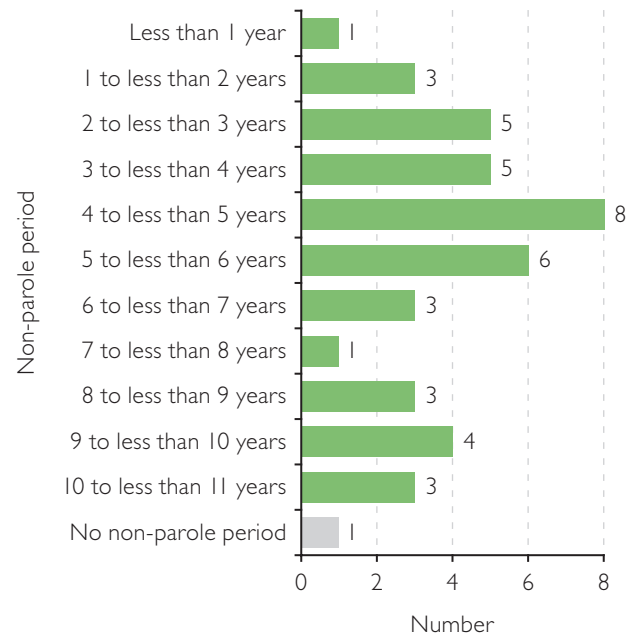
When a person is sentenced to a term of immediate imprisonment of one year or more, the court has the discretion to fix a non-parole period. Where a non-parole period is fixed, the person must serve that period before becoming eligible for parole. Where no non-parole period is set by the court, the person must serve the entirety of the imprisonment term.

Under section 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 longer than the individual principal sentence for maintaining a sexual relationship with a child under 16. Sentences and non-parole periods must be considered in this broader context.

Of the 43 people who were sentenced to imprisonment for maintaining a sexual relationship with a child under 16, all were eligible to have a non-parole period fixed. Of these people, 42 were given a non-parole period (98%). Figure 10 shows the number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 between 2005–06 and 2009–10 by length of non-parole period. Non-parole periods ranged from 6 months to 10 years, while the median length of the non-parole period was 4 years and 6 months (meaning that half of the non-parole periods were below 4 years and 6 months and half were above).

The majority of people who received a non-parole period were given a minimum sentence of between 4 years and less than 5 years, which they were required to serve before becoming eligible for parole (8 people).

**Figure 10:** The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by length of non-parole period, 2005–06 to 2009–10

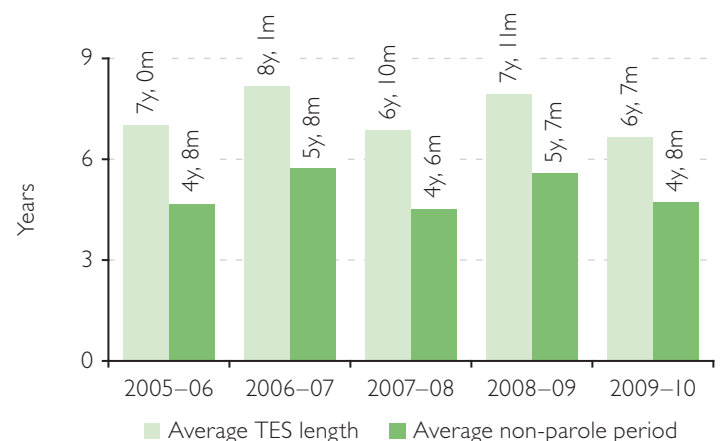


### Total effective sentences of imprisonment and non-parole periods

Figure 11 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods for all people from 2005–06 to 2009–10.

From 2005–06 to 2009–10, the average length of total effective sentences for all people ranged from 6 years and 7 months in 2009–10 to 8 years and 1 month in 2006–07. Over the same period, the average length of non-parole periods ranged from 4 years and 8 months in 2007–08 to 5 years and 8 months in 2006–07.

**Figure 11:** The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for maintaining a sexual relationship with a child under 16, 2005–06 to 2009–10



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

While Figures 9 and 10 present the lengths of the total effective sentences and non-parole periods separately, Figure 12 combines the two methods of describing sentence lengths in the one diagram. It shows the total effective sentence and non-parole period for maintaining a sexual relationship with a child under 16 for each individual person.

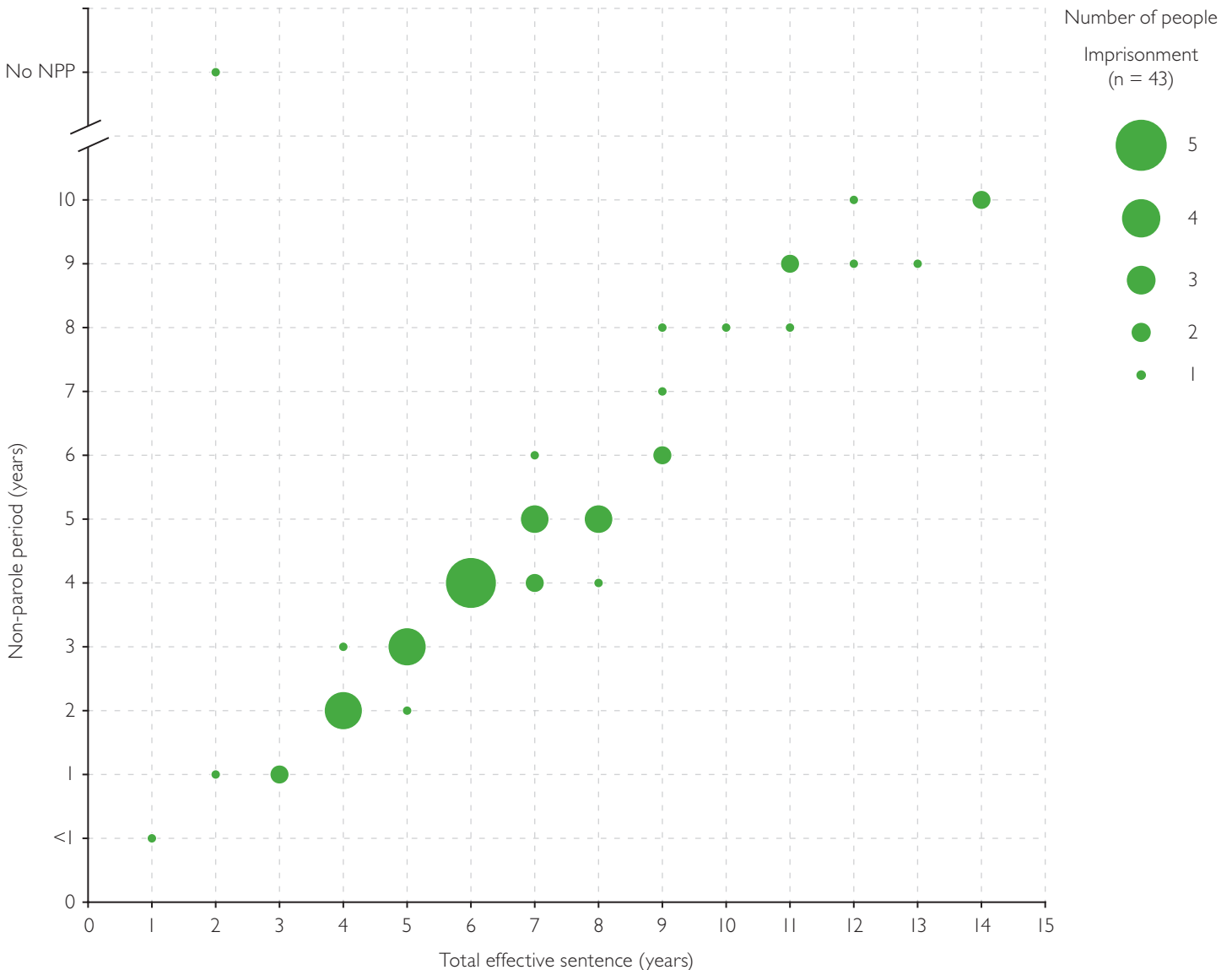
The centre of each 'bubble' on the chart represents a combination of imprisonment length and non-parole period, while the size of the 'bubble' reflects the number of people who received that particular combination. Sentence lengths and non-parole periods that are longer than one year are rounded down to the nearest year of imprisonment, while sentence lengths and non-parole periods of less than one year are grouped into the '<1 year' category. For example, a sentence length of 2 years and 6 months would be included as a sentence length of 2 years for the purposes of Figure 12.

As shown, the most common combination of imprisonment length and non-parole period imposed was 6 years with a non-parole period of 4 years (5 people – as represented by the largest 'bubble' on the chart). The length of imprisonment ranged from 1 year and 6 months with a non-parole period of 6 months to 14 years and 7 months with a non-parole period of 10 years.

### Suspended sentences of imprisonment

There were 2 people given a suspended sentence of imprisonment as their total effective sentence. Of these, 1 person received a sentence of imprisonment for 2 years and 6 months, which was wholly suspended, while another person received a partially suspended sentence comprising 1 year's imprisonment, with 9 months suspended.

**Figure 12:** The number of people sentenced to imprisonment for maintaining a sexual relationship with a child under 16 by the total effective sentence and the non-parole period imposed, 2005–06 to 2009–10



Note: No NPP refers to no non-parole period.

## Appeals

A sentence imposed on a person may be appealed<sup>14</sup> by that person or by the Crown. A person sentenced may also appeal against their conviction. All appeals made in relation to people sentenced in the higher courts are determined by the Court of Appeal.

To June 2010, 2 people sentenced for a principal offence of maintaining a sexual relationship with a child under 16 in the period 2005–06 to 2009–10 successfully appealed their convictions. One person was acquitted of maintaining a sexual relationship, but was still guilty on other charges, while the second person was granted a retrial. Thus, the number of people sentenced from 2005–06 to 2009–10 for a principal offence of maintaining a sexual relationship with a child under 16 is reduced to 44 people once appeals are considered.

As a result of successful appeals against sentence, the total effective sentence and/or the non-parole period changed for 3 people. Two of these appeals were made by the person sentenced and resulted in a sentence reduction. The longest total effective imprisonment term to be reduced was a sentence of 11 years with a non-parole period of 8 years and 6 months, which decreased to a total effective sentence of 10 years and 6 months with a non-parole period of 7 years and 6 months. One successful appeal was made by the Crown and resulted in the person's sentence changing from a total effective sentence of imprisonment of 5 years and 8 months with a non-parole period of 3 years to a total effective imprisonment term of 8 years with a non-parole period of 5 years and 6 months.

The principal sentence changed for 3 people as a result of a successful appeal. The longest principal sentence of imprisonment reduced was 7 years, which decreased to 5 years and 6 months on appeal.<sup>15</sup> The only principal sentence to increase was an imprisonment sentence of 5 years, which changed to 7 years on appeal.

With the original sentencing data revised to incorporate appeal outcomes, the adjusted longest total effective imprisonment term was unchanged at 14 years and 7 months, and the adjusted median length remained 7 years. The adjusted longest non-parole period was also unchanged at 10 years, and the median remained 4 years and 6 months.

The adjusted longest principal sentence of imprisonment was unchanged at 12 years, and the adjusted median imprisonment term remained 6 years.

## Summary

Between 2005–06 and 2009–10, 46 people were sentenced for maintaining a sexual relationship with a child under 16 in the higher courts. Over this period, the majority of those sentenced were men (96%), while 52% were between the ages of 35 and 54.

The majority of the people sentenced for maintaining a sexual relationship with a child under 16 received a period of imprisonment (93%). Imprisonment was given to all offenders aged 35 and older.

Each of the 46 people was sentenced for an average of 3.43 offences, including 1.37 offences of maintaining a sexual relationship with a child under 16. The most common offence finalised in conjunction with maintaining a sexual relationship with a child under 16 was committing an indecent act with a child under 16 (23.9% of all cases). The number and range of offences for which people with a principal offence of maintaining a sexual relationship with a child under 16 were sentenced help explain why imprisonment sentence lengths were longer for the total effective sentence than for the principal sentence. The median total effective imprisonment length was 7 years, while the median principal imprisonment length was 6 years.

Total effective imprisonment lengths ranged from 1 year and 6 months with a non-parole period of 6 months to 14 years and 7 months with a non-parole period of 10 years. The most common sentence of imprisonment was 6 years with a 4 year non-parole period.

A small number of people were able to successfully appeal against their sentences. When the results of the appeal outcomes were incorporated into the original sentencing data, the range and median of total effective and principal sentences of imprisonment did not change.

## Endnotes

1. This report presents sentencing outcomes for people sentenced for the principal offence of maintaining a sexual relationship with a child under 16 in the County Court 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 maintaining a sexual relationship with a child under 16 who received a more serious sentence for another offence forming part of the same presentment or indictment. There were 50 people sentenced from 2005–06 to 2009–10 for 68 offences of maintaining a sexual relationship with a child under 16. Maintaining a sexual relationship with a child under 16 was the principal proven offence for 46 of these people.

This series of reports includes custodial and non-custodial supervision orders imposed under part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) as sentencing orders and in the count of people sentenced. These orders are not sentencing orders, as they are imposed in cases where the defendant is not guilty because of mental impairment. However, they are included in this report as they are an important form of disposition of criminal charges.

This Sentencing Snapshot is an update of Sentencing Snapshot no. 82, which described sentencing trends for maintaining a sexual relationship with a child under 16 between 2003–04 and 2007–08.

2. The information source for sentencing outcomes for maintaining a sexual relationship with a child under 16 only contains information on age and gender characteristics. No other demographic analysis is possible using this data source.
3. There were no sentencing outcomes for the principal proven offence of maintaining a sexual relationship with a child under 16 in the Supreme Court of Victoria during the period between 2005–06 and 2009–10.
4. The source data for the statistical information presented in this Snapshot were provided by the Business Intelligence area of the Courts and Tribunals unit within the Department of Justice (Vic). 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 report are accurate, the data are subject to revision.
5. The relevant sexual offences for the purposes of this provision are any offences under subdivisions (8A), (8B) and (8C) of the *Crimes Act 1958* (Vic). These include offences such as rape, indecent assault, incest and sexual offences against children.
6. *Crimes Act 1958* (Vic) s 47A. The title of this offence was amended by section 11 of the *Crimes (Sexual Offences) Act 2006* (Vic). After the commencement of that act on 1 December 2006, the offence title was 'Persistent sexual abuse of a child under the age of 16'.
7. *Crimes Act 1958* (Vic) s 47A(3).
8. *Crimes Act 1958* (Vic) s 47A(4).
9. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the Office of the Chief Parliamentary Counsel website <[www.ocpc.vic.gov.au](http://www.ocpc.vic.gov.au)>.
10. Immediate custodial sentence includes imprisonment and partially suspended sentence.
11. Age is at the time of sentencing.
12. Some defendants who were under the age of 18 at the time of committing the alleged offence and who were not 19 years or older at the time proceedings commenced may have been dealt with in the Children's Court of Victoria.
13. All of the 43 people who were sentenced to imprisonment as the principal sentence were also given imprisonment as the total effective sentence.
14. Appeals data were collected by the Sentencing Advisory Council from transcripts of sentencing remarks of criminal appeals on the Australasian Legal Information Institute's website <[www.austlii.gov.au](http://www.austlii.gov.au)>.
15. After the appeal hearing, this charge was no longer the principal proven offence, because another charge was given 6 years' imprisonment.

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