

Sentencing trends in
the higher courts of
Victoria
2009–10 to 2013–14

June 2015
No. 180

Sexual penetration with a child aged under 12

Introduction

This Sentencing Snapshot describes sentencing outcomes¹ for the offence of sexual penetration with a child aged under 12 in the County Court of Victoria between 2009–10 and 2013–14.² Adjustments made by the Court of Appeal to sentence or conviction as at June 2014 have been incorporated into the data in this Snapshot.

Detailed data on [sexual penetration with a child aged under 12](#) and other offences are available on [SACStat – Higher Courts](#).

A person who takes part in an act of sexual penetration with a child under the age of 12 is guilty of an offence. Sexual penetration with a child aged under 12 is an indictable offence that carries a maximum penalty of 25 years' imprisonment³ and/or a fine of 3,000 penalty units.⁴ Indictable offences are more serious offences triable before a judge and jury in the County or Supreme Court.

Sexual penetration with a child aged under 12 was the principal offence⁵ in 0.7% of cases sentenced in the higher courts between 2009–10 and 2013–14.

People sentenced

From 2009–10 to 2013–14, 72 people were sentenced in the higher courts for a principal offence of sexual penetration with a child aged under 12.

Figure 1 shows the number of people sentenced for the principal offence of sexual penetration with a child aged under 12 by financial year. There were 12 people sentenced for this offence in 2013–14, down by 7 people from the previous year. The number of people sentenced was highest in 2012–13 (19 people).

Sentence types and trends

Figure 2 shows the total number of people sentenced for sexual penetration with a child aged under 12 and the number that 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.⁶ Over the five-year period, 81% of people were given an immediate custodial sentence. This peaked at 95% (18 of 19) in 2012–13 before decreasing to 67% (8 of 12) in 2013–14.

Figure 1: The number of people sentenced for sexual penetration with a child aged under 12 by financial year, 2009–10 to 2013–14

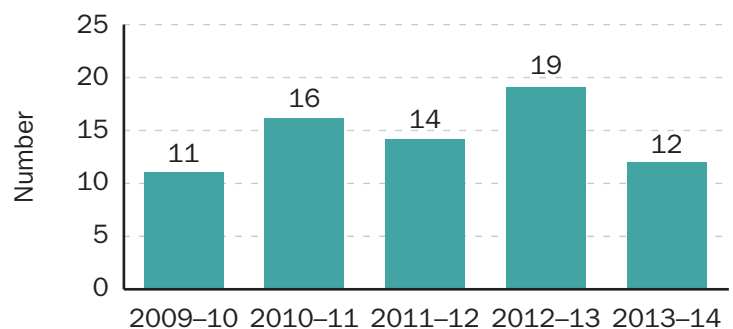


Figure 2: The number of people sentenced for sexual penetration with a child aged under 12 and the number that received an immediate custodial sentence, 2009–10 to 2013–14

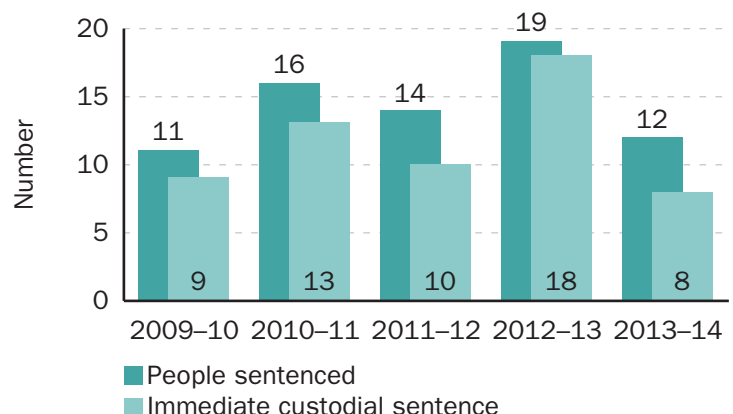


Table 1 shows the number of people sentenced for sexual penetration with a child aged under 12 from 2009–10 to 2013–14 by the types of sentences imposed.

Over the five-year period, the majority of the people sentenced for sexual penetration with a child aged under 12 received a period of imprisonment (74% or 53 of 72 people), while 13% received a wholly suspended sentence of imprisonment.

The number of people receiving imprisonment for sexual penetration with a child aged under 12 was lowest during 2009–10 and 2013–14 (8 people) and highest during 2012–13 (16 people). The percentage of people receiving imprisonment was lowest during 2013–14 (67%) and highest during 2012–13 (84%).

Table 1: The number and percentage of people sentenced for sexual penetration with a child aged under 12 by sentence type, 2009–10 to 2013–14

Sentence type	2009–10	2010–11	2011–12	2012–13	2013–14	Total
Imprisonment	8 (73%)	11 (69%)	10 (71%)	16 (84%)	8 (67%)	53 (74%)
Wholly suspended sentence	0 (–)	3 (19%)	4 (29%)	0 (–)	2 (17%)	9 (13%)
Community correction order	0 (–)	0 (–)	0 (–)	1 (5%)	1 (8%)	2 (3%)
Partially suspended sentence	0 (–)	1 (6%)	0 (–)	1 (5%)	0 (–)	2 (3%)
Community-based order	2 (18%)	0 (–)	0 (–)	0 (–)	0 (–)	2 (3%)
Youth justice centre order	0 (–)	0 (–)	0 (–)	1 (5%)	0 (–)	1 (1%)
Mix (imprisonment and community-based order)	0 (–)	1 (6%)	0 (–)	0 (–)	0 (–)	1 (1%)
Residential treatment order	1 (9%)	0 (–)	0 (–)	0 (–)	0 (–)	1 (1%)
Adjourned undertaking with conviction	0 (–)	0 (–)	0 (–)	0 (–)	1 (8%)	1 (1%)
People sentenced	11	16	14	19	12	72

Age and gender of people sentenced

Data on the age and gender of people sentenced for sexual penetration with a child aged under 12 are available on [SACStat – Higher Courts](#).

Principal and total effective sentences

Two methods for describing sentence types and lengths are examined in this section. One relates to the principal sentence and examines sentences for the offence at a charge level. The other relates to the total effective sentence and examines sentences for the offence at a case level.

The principal sentence is the individual sentence imposed for the charge that is the principal offence.⁷

The total effective sentence in a case with a single charge is the principal sentence. The total effective sentence in a case with multiple charges is the sentence that results from the court ordering the individual sentences for each charge to be served concurrently (at the same time) or wholly or partially cumulatively (one after the other).

In many cases, the total effective sentence imposed on a person will be longer than the principal sentence. Principal sentences for sexual penetration with a child aged under 12 must be considered in this broader context. The following sections analyse the use of imprisonment for the offence of sexual penetration with a child aged under 12 from 2009–10 to 2013–14.

Principal sentence of imprisonment

A total of 54 people received a principal sentence of imprisonment for sexual penetration with a child aged under 12 between 2009–10 and 2013–14.

Figure 3 shows these people by the length of their imprisonment term. Imprisonment terms ranged from 3 months to 6 years, while the median length of imprisonment was 4 years (meaning that half of the imprisonment terms were shorter than 4 years and half were longer).

The most common range of imprisonment length imposed was 4 to less than 5 years (21 people).

As shown in Figure 4, the average length of imprisonment term imposed on people sentenced for sexual penetration with a child aged under 12 ranged from 3 years and 4 months in 2011–12 to 4 years and 7 months in 2013–14.

Other offences finalised at the same hearing

Often people prosecuted for sexual penetration with a child aged under 12 face multiple charges, which are finalised at the same hearing. This section looks at the range of offences for which offenders have been sentenced at the same time as being sentenced for the principal offence of sexual penetration with a child aged under 12.

Figure 5 shows the number of people sentenced for the principal offence of sexual penetration with a child aged under 12 by the total number of offences for which sentences were set. The number of sentenced offences per person ranged from 1 to 39, while the median was 5 offences. There were 10 people (13.9%) sentenced for the single offence of sexual penetration with a child aged under 12. The average number of offences per person sentenced for sexual penetration with a child aged under 12 was 6.49.

While Figure 5 (page 4) presents the number of sentenced offences for people sentenced for sexual penetration with a child aged under 12, Table 2 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, 44 of the total 72 people (61.1%) also received sentences for indecent act with or in the presence of a child under 16. On average, they were sentenced for 3.82 counts of indecent act with or in the presence of a child under 16.

Figure 3: The number of people sentenced to imprisonment for sexual penetration with a child aged under 12 by length of imprisonment term, 2009–10 to 2013–14

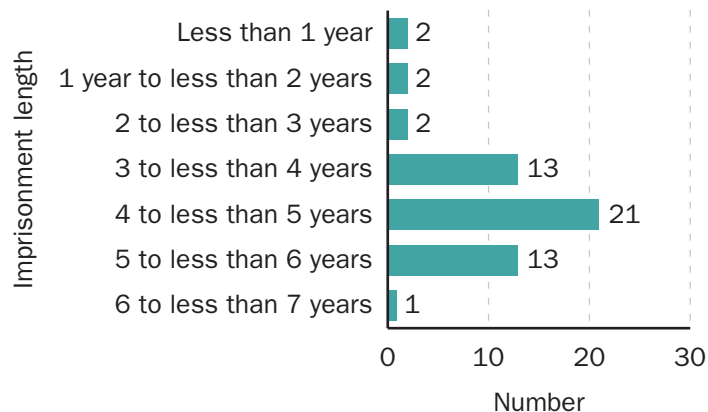


Figure 4: The average length of imprisonment term imposed on people sentenced for sexual penetration with a child aged under 12, 2009–10 to 2013–14

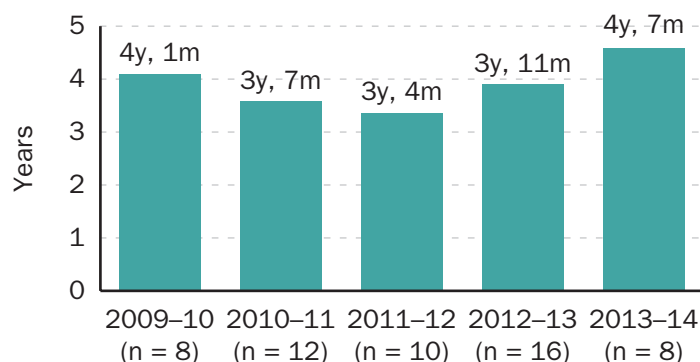


Figure 5: The number of people sentenced for the principal offence of sexual penetration with a child aged under 12 by the number of sentenced offences per person, 2009–10 to 2013–14

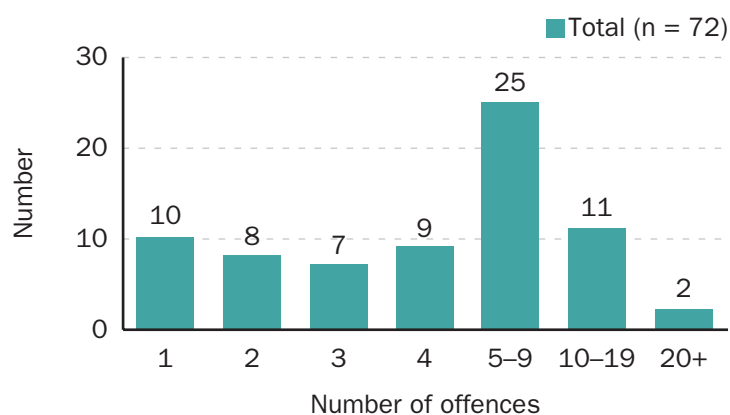


Table 2: The number and percentage of people sentenced for the principal offence of sexual penetration with a child aged under 12 by the most common offences sentenced and the average number of those offences sentenced, 2009–10 to 2013–14

Offence	No. of cases	% of cases	Average no. of proven offences per case
1. Sexual penetration with a child aged under 12	72	100.0	1.99
2. Indecent act with or in the presence of a child under 16	44	61.1	3.82
3. Indecent assault	15	20.8	3.47
4. Knowingly possess child pornography	8	11.1	1.13
5. Sexual penetration with a child aged 10/12 to 16	6	8.3	3.50
6. Gross indecency with or in the presence of a person aged under 16	6	8.3	2.17
7. Make or produce child pornography	5	6.9	1.20
8. Sexual penetration with a child aged 10/12 to 16 and under care/supervision/authority	4	5.6	3.75
9. Unlawfully/indecently assault a woman/girl	3	4.2	2.33
10. Procure a minor for making/producing child pornography	2	2.8	1.00
People sentenced	72	100.0	6.49

Total effective sentence of imprisonment

There were 54 people given a total effective sentence of imprisonment. Figure 6 shows the number of people sentenced to imprisonment for sexual penetration with a child aged under 12 between 2009–10 and 2013–14 by length of total effective sentence. The length of total effective sentences ranged from 3 months to 15 years and 8 months, while the median total effective length of imprisonment was 6 years and 5 months (meaning that half of the total effective sentence lengths were below 6 years and 5 months and half were above).

The most common range of total effective imprisonment length was 6 to less than 7 years (12 people).

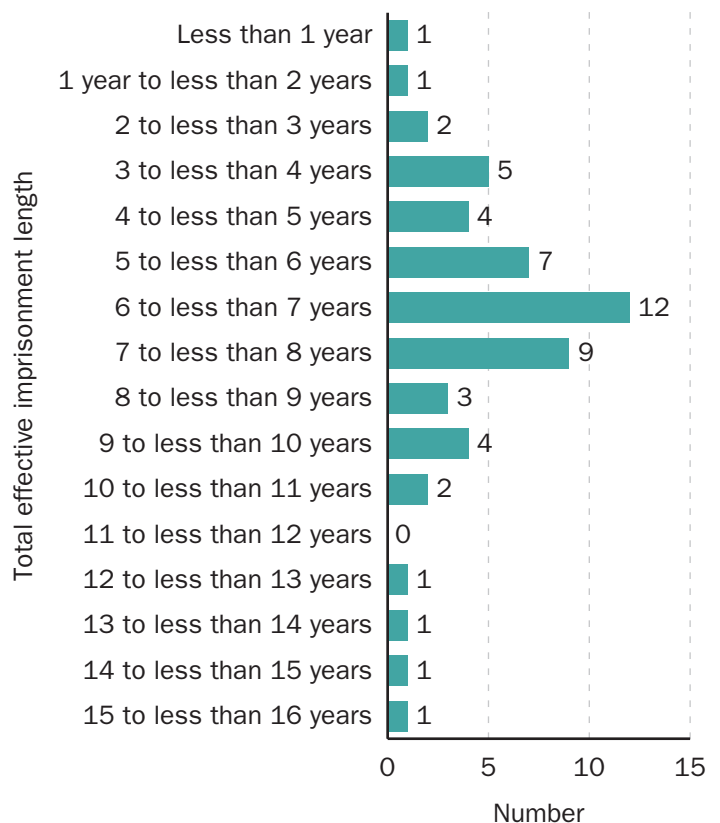
Non-parole period

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 sexual penetration with a child aged under 12. Sentences and non-parole periods must be considered in this broader context.

Figure 6: The number of people sentenced to imprisonment for sexual penetration with a child aged under 12 by length of total effective imprisonment term, 2009–10 to 2013–14



Of the 54 people who were sentenced to imprisonment for sexual penetration with a child aged under 12, 53 were eligible to have a non-parole period fixed.⁸ Of these people, 48 were given a non-parole period (91%).⁹ Figure 7 shows the number of people sentenced to imprisonment for sexual penetration with a child aged under 12 between 2009–10 and 2013–14 by length of non-parole period. Non-parole periods ranged from 8 months to 12 years and 2 months, while the median length of the non-parole period was 4 years (meaning that half of the non-parole periods were below 4 years and half were above).

The most common range of non-parole period imposed was 4 to less than 5 years (12 people).

Total effective sentences of imprisonment and non-parole periods

Figure 8 presents the average length of total effective sentences of imprisonment compared with the average length of non-parole periods from 2009–10 to 2013–14.

From 2009–10 to 2013–14, the average length of total effective sentences for all people ranged from 5 years and 6 months in 2009–10 to 7 years and 7 months in 2012–13. Over the same period, the average length of non-parole periods ranged from 3 years and 3 months in 2009–10 to 5 years and 3 months in 2012–13.

Total effective sentence of imprisonment by non-parole period

Data on the total effective sentence of imprisonment by non-parole period for sexual penetration with a child aged under 12 are available on SACStat – Higher Courts.

Non-imprisonment sentences

Data on the length of non-imprisonment sentence types, such as community correction orders, suspended sentences, and fines, for sexual penetration with a child aged under 12 are available on SACStat – Higher Courts.

Summary

Between 2009–10 and 2013–14, 72 people were sentenced for sexual penetration with a child aged under 12 in the higher courts. Of these people, 54 (75%) were given a principal sentence of imprisonment.

The number and range of offences for which people with a principal offence of sexual penetration with a child aged under 12 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 6 years and 5 months while the median principal imprisonment length was 4 years.

Total effective imprisonment lengths ranged from 3 months to 15 years and 8 months, and non-parole periods (where imposed) ranged from 8 months to 12 years and 2 months.

Figure 7: The number of people sentenced to imprisonment for sexual penetration with a child aged under 12 by length of non-parole period, 2009–10 to 2013–14

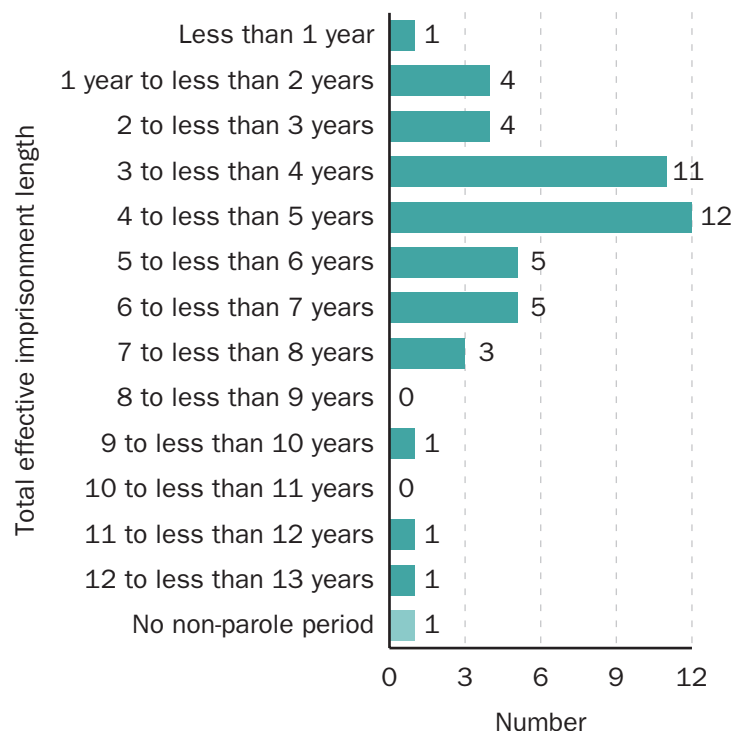
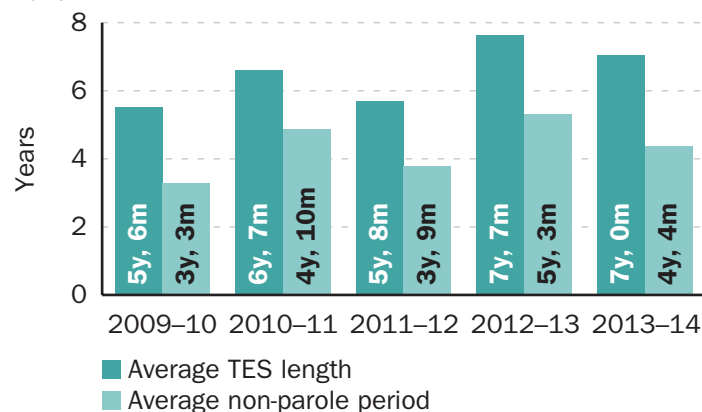


Figure 8: The average total effective sentence and the average non-parole period imposed on people sentenced to imprisonment for sexual penetration with a child aged under 12, 2009–10 to 2013–14



Endnotes

1. 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 found to be unfit to stand trial or 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. 149, which describes sentencing trends for sexual penetration of a child aged under 12 between 2007–08 and 2011–12.

2. Data on first instance sentence outcomes presented in this Snapshot were obtained from the Strategic Analysis and Review Team at Court Services Victoria. The Sentencing Advisory Council collected data on appeal outcomes from the [Australasian Legal Information Institute](#). 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.

The raw data used for sexual penetration with a child under 16 offences do not accurately distinguish between the three specific offences within this category (sexual penetration with a child aged 12 to 16, sexual penetration with a child aged under 12, and sexual penetration with a child under care, supervision, or authority). Rather, these offences are grouped under the broader category of sexual penetration with a child under 16. In order to determine the specific offence for such cases, the Council uses information in sentencing remarks. However, at the time of publication, sentencing remarks for some cases (98 or 21.6% of cases with a principal offence of sexual penetration with a child under 16) were unavailable. These cases have been excluded from the three relevant Sentencing Snapshots.

3. *Crimes Act 1958* (Vic) s 45(2)(a).
4. The value of a penalty unit changes each year and can be found in the Victorian Government Gazette and on the [Victorian Legislation and Parliamentary Documents website](#).
5. If a person is sentenced for a case with a single charge, the offence for that charge is the principal offence. If a person is sentenced for more than one charge in a single case, the principal offence is the offence for the charge that attracted the most serious sentence according to the sentencing hierarchy.
6. Immediate custodial sentences included imprisonment, partially suspended sentence, youth justice centre order, residential treatment order, and mix (imprisonment and community-based order).
7. Refer to endnote 5.
8. One person was not eligible for parole because the person was given a total effective sentence length of less than one year.
9. Five people were not given a non-parole period relating to that case alone, but a non-parole period that also related to other cases. It is not possible to determine the length of the non-parole period that relates to these cases. The non-parole periods for these people are excluded from the analysis.

SACStat – Higher Courts Sexual penetration with a child aged under 12

http://www.sentencingcouncil.vic.gov.au/sacstat/higher_courts/HC_6231_45_2A.html

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