

Sentencing snapshot: Child sexual assault, 2009-2010

Jessie Holmes

Aim: To describe the penalties imposed on adult offenders convicted of child sexual assault.

Summary: Over the two year period 2009 and 2010, 495 offenders were convicted of child sexual assault. Ninety-seven per cent of those convicted were male and 64 per cent of offenders had no prior convictions in the preceding five years. The most common penalty imposed on an offender convicted of child sexual assault was a prison sentence. Prison penalties were imposed on 75 per cent of offenders convicted of aggravated child sexual assault, with an average aggregate sentence of 68 months, and an average minimum term of 39 months.

Keywords: child sexual assault, penalty, prison, sentence length

Introduction

This Bureau Brief describes sentencing outcomes for adult offenders convicted of child sexual assault¹ between 2009 and 2010 in the NSW Local and Higher Criminal Courts. Offences committed by children are not included in this brief.

Child sexual assault is an offence that takes many forms. Under the *Crimes Act 1900*, the maximum penalty for sexual assault against a child varies from between two years for an act of indecency to life imprisonment for an aggravated sexual assault of a child aged under 10 years. There are specific offences relating to offences against children aged under 10 years and children aged 10 to 16 years. Offenders may also be charged under the general sexual offence provisions which are not restricted by age where an absence of consent can be established.

For the purpose of this brief, we distinguish between three groups of offences. Associated law codes and descriptions are included in the Appendix. The first group (referred to as 'Aggravated child sexual assault' throughout the remainder of this brief) includes offences that might commonly be referred to as rape of a child. The biggest subcategories in this group are 'sexual intercourse with person under the age of 10 years' and 'having sexual intercourse with person aged between 14 years and less than 16 years'. Each of these offence subcategories accounted for approximately 20 per cent of offenders in this group. Also included in this group are significant numbers of offenders convicted of 'aggravated sexual assault against a

person aged under 16 years' (17% of offenders in this group) or offenders convicted of 'sexual intercourse with a person aged between 10 years and less than 14 years' (10% of offenders in this group). The maximum penalty for the most serious offences in this group is life imprisonment. If the offence involves sexual assault of a child aged between 10 and 16 years, but no circumstances of aggravation, the maximum penalties range from 10 to 16 years. In circumstances of aggravation, the penalty range increases to 12 to 20 years. If the offender is charged under the general offences, the maximum penalty is 14 years in the absence of circumstances of aggravation. If aggravation can be established, the maximum penalty is life.

The second group (referred to as 'Indecent child assault' throughout the remainder of this brief) consists primarily of what might be referred to as indecent assault offences against children, some with circumstances of aggravation such as where the offender was in a position of authority over the victim. The vast majority (38%) of offenders in this group were convicted of aggravated indecent assault of victims aged under 16 years, which carries a maximum of 10 years imprisonment. For all offences included in this group, the maximum penalty ranges from two to 10 years imprisonment.

The third group (referred to as 'Other child sexual assault') consists of offences of grooming or procuring a child for unlawful sexual activity. Maximum penalties for these offences range from 12 to 15 years.

Age, gender and prior record of offenders

Over the years 2009 and 2010, 495 adult offenders, 482 males and 13 females, were convicted of child sexual assault.² Almost all (98.2%) of these convictions were for aggravated child sexual assault or indecent child assault. Table 1 shows the distribution of adult offenders convicted of child sexual assault by age and gender of the offender.

It can be seen that over 65 per cent of offenders convicted of child sexual assault were aged 35 years or over. The average age of offenders convicted of child sexual assault was 42 years. The average age of offenders convicted of aggravated child sexual assault was 40 years.

Table 1 shows there were nine offenders convicted of other child sexual assault offences. Because of the small number in this category, this category has been excluded from the analyses below. However these offenders are still included in the totals when calculating percentages.

Table 2 shows the number of prior convictions over the preceding five years for offenders convicted child sexual assault.

The majority of offenders convicted of child sexual assault had no prior convictions in the preceding five years (63.8%). The average number of prior convictions in the last five years was less than one (average .82). Those convicted of indecent child assault had slightly more prior convictions (average .83) than those convicted of aggravated child sexual assault (average .82).

Figure 1 shows the proportion of offenders convicted of child sexual assault who have (a) no prior convictions, (b) prior convictions not of sexual assault or related offences against an adult or child, (c) prior convictions for sexual assault or related offences against an adult or child without imprisonment or (d) prior convictions for sexual assault or related offences against an adult or child with imprisonment.

Overall, eight per cent of offenders convicted of child sexual assault had prior convictions for sexual assault in the preceding five years. Six per cent of all offenders convicted of child sexual assault had received another sentence of imprisonment for sexual assault in the preceding five years. Just over a quarter of offenders had prior convictions, but not for sexual assault or related offences.

Sentence types

Table 3 shows the distribution of penalty types broken down by the type of child sexual assault.

Imprisonment was the most common penalty given to those convicted of aggravated child sexual assault and indecent child assault (75% and 52% respectively), followed by a suspended sentence (15% and 23% respectively), and then a bond (6% and 21% respectively).

Table 1. Age and gender of offenders convicted of child sexual assault

		Aggravated child sexual assault		Indecent child assault		Other child sexual assault		Total	
		n	%	n	%	n	%	n	%
Total		236	47.7	250	50.5	9	1.8	495	100.0
Gender	Male	225	95.3	248	99.2	9	100.0	482	97.4
	Female	11	4.7	2	0.8	0	0.0	13	2.6
Age group	18-24 years	51	21.6	27	10.8	1	11.1	79	16.0
	25-34 years	47	19.9	30	12.0	2	22.2	79	16.0
	35-44 years	51	21.6	72	28.8	2	22.2	125	25.3
	45-54 years	49	20.8	65	26.0	3	33.3	117	23.6
	55 years and over	38	16.1	56	22.4	1	11.1	95	19.2

Table 2. Number of prior convictions over the preceding five years for offenders convicted of child sexual assault

	Aggravated child sexual assault (n=236)		Indecent child assault (n=250)		Total ^a (n=495)	
	n	%	n	%	n	%
Prior convictions						
0	145	61.4	164	65.6	316	63.8
1	46	19.5	47	18.8	94	19.0
2	18	7.6	11	4.4	30	6.1
3	13	5.5	11	4.4	24	4.8
4+	14	5.9	17	6.8	31	6.3

^a Includes offenders convicted of 'Other child sexual assault' offences.

Figure 1. Nature of prior convictions in the preceding five years of offenders convicted of child sexual assault

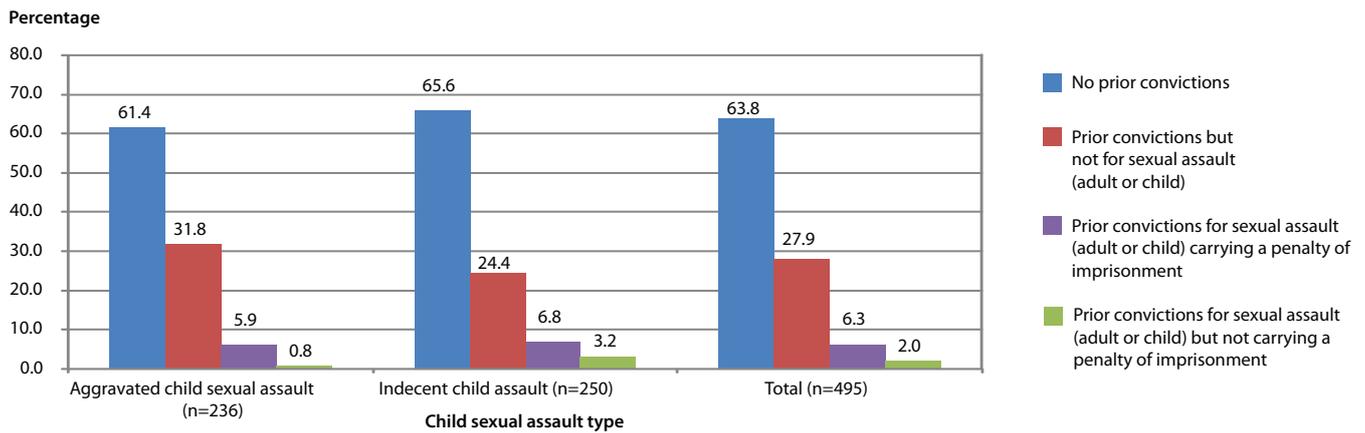


Table 3. Principal penalty imposed on offenders convicted of child sexual assault

Penalty	Aggravated child sexual assault		Indecent child assault		Total ^a	
	(n=236)		(n=250)		(n=495)	
	n	%	n	%	n	%
Imprisonment	176	74.6	129	51.6	313	63.2
Suspended sentence	36	15.3	57	22.8	94	19.0
Bond	15	6.4	52	20.8	67	13.5
Bond without conviction/no conviction recorded	2	0.8	5	2.0	7	1.4
Pre-trial Diversion Programme (Sexual Offences)	6	2.5	1	0.4	7	1.4
Other ^b	1	0.4	6	2.4	7	1.4

^a Includes offenders convicted of 'Other child sexual assault' offences.

^b Includes periodic detention, community service orders, probation without supervision, fines and no action taken.

Figure 2. Percentage of child sexual assault offenders imprisoned by prior convictions for any offence

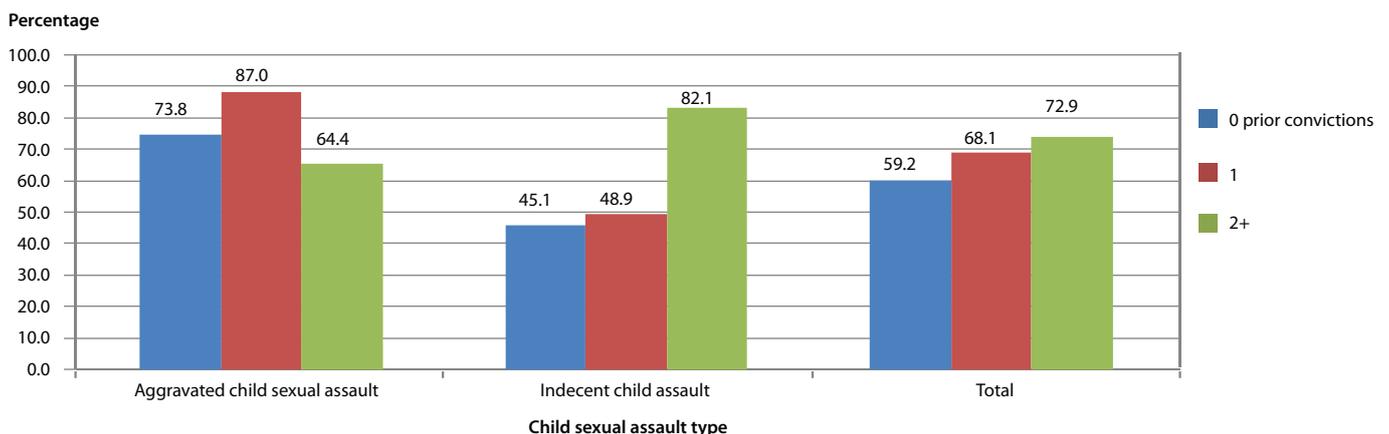


Figure 2 shows the percentage of offenders convicted of child sexual assault who were given a sentence of imprisonment broken down by the number of prior convictions for any offence in the preceding five years.

Almost three quarters (73%) of offenders convicted of child sexual assault offences who had two or more prior convictions for any offence in the preceding five years were sentenced to prison. Almost 60 per cent of those with no prior convictions received a prison sentence.

With no prior convictions, almost three quarters (74%) of offenders convicted of aggravated child sexual assault were sentenced to prison, compared with less than half (45%) of offenders convicted of indecent child assault. For offenders having one prior conviction, the majority (87%) of offenders convicted of aggravated child sexual assault were sentenced to prison, compared with approximately half (49%) of offenders convicted of indecent child assault. In contrast, for offenders having two or more prior convictions, 64 per cent of offenders convicted of aggravated child sexual assault were sentenced to prison, compared with 82 per cent of offenders convicted of indecent child assault.

Thus, Table 3 shows the proportion of offenders imprisoned for aggravated child sexual is higher than the proportion convicted for indecent assault, but Figure 2 reveals the relationship with number of prior convictions is less clear. For those convicted of indecent child assault, the proportion of offenders sentenced to imprisonment increased with increasing numbers of prior convictions. This, however, was not apparent for offenders convicted of aggravated child sexual assault. It is important to bear in mind that these prior convictions are for any offence, not necessarily sexual offences.

Sentence length

Table 4 shows the minimum, maximum, median and average prison sentences for offenders convicted of child sexual assault offences. The upper panel shows descriptive statistics for aggregate or total prison terms (i.e. the longest period an offender can spend in custody). The lower panel shows the minimum prison terms or non-parole period (i.e. the shortest period an offender can spend in custody).

As expected, the lengths of prison sentences were longer for aggravated child sexual assault than for indecent child assault. The average aggregate sentence was 68 months for aggravated child sexual assault and 25 months for indecent child assault. Aggregate sentences ranged from 3 months to 18.5 years. The average minimum term was 39 months for aggravated child sexual assault and 14 months for indecent child assault. Average minimum terms ranged from .1 months to 14 years. Note that although some minimum terms recorded are very short (.1 months), this is unlikely to reflect the actual minimum time spent in custody, as offenders are often incarcerated whilst awaiting trial and this time is taken into account when the sentence is set.

Table 4. Descriptive statistics on length of prison sentences

		n	Mean	Median	Min	Max
Aggregate sentence (months)	Aggravated child sexual assault	176	67.5	59.0	9.0	222.0
	Indecent child assault	129	24.8	20.0	3.0	78.0
	Total ^a	313	48.8	36.0	3.0	222.0
Minimum term (months)	Aggravated child sexual assault	176	39.2	30.0	0.1	168.0
	Indecent child assault	129	14.0	12.0	2.0	54.0
	Total ^a	313	28.2	18.0	0.1	168.0

^a Includes eight offenders convicted of 'Other child sexual assault offences' who were sentenced to prison.

Conclusion

Over the two year period 2009 and 2010, 495 adult offenders were convicted of child sexual assault in NSW Local and Higher Criminal Courts. The average age of those convicted was 42 years and almost all were male. Almost two thirds of offenders had no prior convictions in the preceding five years. The most common penalty imposed on an offender convicted of child sexual assault was a prison sentence. Prison penalties were imposed on 75 per cent of offenders convicted of aggravated child sexual assault, with an average aggregate sentence of 68 months, and an average minimum term of 39 months. While the proportion of offenders imprisoned for aggravated child sexual was higher than the proportion convicted for indecent assault, the relationship with number of prior convictions is less clear. For those convicted of indecent child assault the proportion of offenders sentenced to imprisonment increased with increasing numbers of prior convictions. This, however, was not apparent for offenders convicted of aggravated child sexual assault. It may be the case that the probability of imprisonment increases as the number of sexual offences increases.

Notes

1. Under the NSW *Crimes Act 1900*. Excluded from the analysis were two people convicted under the Commonwealth *Crimes Act 1914* of committing an act of indecency on a person aged less than 16 years outside Australia.
2. Data presented throughout this brief relate to finalised court appearances with a principal offence of sexual assault. The principal offence of an appearance is defined as the offence which received the most serious penalty.

Acknowledgments

Thanks to Her Honour Justice Megan Latham of the Supreme Court and staff of the Criminal Law Review Division of the NSW Department of Attorney General and Justice for their assistance in summarizing the law in relation to offences dealt with in this sentencing snapshot. Generous thanks are also extended to Mark Ramsay for extracting the data used in the current analysis, Clare Ringland, Don Weatherburn and Craig Jones for feedback on earlier versions of this report, and Florence Sin for desktop publishing this report.

Appendix

Table A1. Classification of child sexual offences by lawpart for Australian and New Zealand Standard Offence Classification (ANZSOC) code 311 (Aggravated sexual assault)

Group	Law part code	Law part description	Frequency
Aggravated child sexual assault	51430	Have sexual intercourse with person >=14 & <16 years-T1	50
	325	Sexual intercourse with person under the age of 10 years-SI	45
	274	Aggravated sex assault- victim under the age of 16 years-SI	39
	51428	Have sexual intercourse with person >=10 & <14 years-SI	24
	51429	Aggravated sexual intercourse person >=10 & <14 years-SI	11
	51431	Aggravated sexual intercourse person >=14 & <16 years-SI	7
	255	Sexual assault (Cat 3) - person under 16 years of age	7
	30625	Persistent sexual abuse of a child-SI	6
	51432	Sexual intercourse with person under care >=16 & <17 yrs-SI	6
	329	Sexual intercourse-person 10 & under 16-under authority-SI	6
	64835	Have sexual intercourse with person >=14 & <16 years (DV)-T1	5
	15738	Sexual intercourse with person 10 or over & under 16 yrs-SI	5
	344	Carnal knowledge father etc of girl >=10 & <17years-SI	3
	362	Homosexual intercourse with male >= 10 & < 18 years-SI	2
	263	Sex Assault (Cat 4) Indecent ass person <16 under authority	2
	67838	Sexual intercourse person under 10-under authority (DV)-SI	2
	67814	Sexual intercourse with person under the age of 10 years-SI	2
	419	Act as client with child >=14 & < 18 in prostitution -SI	1
	64786	Aggravated sex assault- victim under the age of 16 years (DV)-SI	1
	64836	Aggravated sexual intercourse person >=14 & <16 yrs (DV)-SI	1
	327	Attempt sexual intercourse with person under 10 years-SI	1
	15745	Attempt sexual intercourse-child 14 to <16 & under authority-T1	1
	338	Carnal knowledge of girl 10 and under 16 years	1
	367	Homosexual intercourse-teacher of pupil >= 10 & < 18-SI	1
	64845	Persistent sexual abuse of a child (DV)-SI	1
	257	Sex Assault (Cat 3) person<16 & under authority & no consent	1
	67831	Sexual intercourse person under 10-deprive liberty (DV)-SI	1
	15739	Sexual intercourse with person 14 or over & under 16 yrs-T1	1
	64830	Sexual intercourse with person under age of 10 years (DV)-SI	1
	67813	Sexual intercourse with person under age of 10 years (DV)-SI	1
51433	Sexual intercourse with person under care >=17 & <18 yrs-SI	1	
Indecent child assault	287	Aggravated indecent assault- victim under the age of 16 years-T1	94
	67803	Indecent assault person under 16 years of age-T1	44
	291	Indecent assault where victim under the age of 10 years-T1	39
	294	Commit act of indecency with person under 16 years-T2	35
	350	Assault female & commit act of indecency age <16 yrs	7
	67804	Indecent assault person under 16 years of age (DV)-T1	5
	314	Commit act of indecency with victim under 10 years-T1	4
	64807	Indecent assault victim under the age of 10 years (DV)-T1	4
	300	Aggravated indecency-victim under 16 & under authority offender-T2	3
	295	Incite person under 16 years to commit act of indecency-T2	3
	262	Sexual Assault (Cat 4)-Assault & act of indecency person <16	3
	64802	Aggravated indecent assault- victim under the age of 16 yrs (DV)-T1	1
	352	Commit act of indecency on female, under 16 years	1
	292	Commit act of indecency with/towards person < 16	1

Table A1. Classification of child sexual offences by lawpart for Australian and New Zealand Standard Offence Classification (ANZSOC) code 311 (Aggravated sexual assault) - (continued)

Group	Law part code	Law part description	Frequency
	304	Incite aggravated indecency-victim <16 & under authority of offender-T2	1
	315	Incite victim under 10 years to commit indecent act-T1	1
	269	Sex assault (Cat 4) incite indecent act, <16 & under authority-T1	1
	31652	Sex assault (Cat 4) indecent act-under authority >= 14 & < 16-T1	1
	267	Sexual assault (Cat 4) incite indecent act person < 16	1
	31650	Sexual assault (Cat 4) incite indecent act person >=14&<16-T1	1
Other child sexual assault	63329	Procure child for unlawful sexual activity-T2	4
	67841	Groom child for unlawful sexual activity-T1	2
	63331	Groom child for unlawful sexual activity-T2	1
	67839	Procure child for unlawful sexual activity-T1	1
	67840	Procure child under 14 years for unlawful sexual activity-T1	1
TOTAL			495