

Sentencing snapshot: Sexual assault, 2009-2010

Clare Ringland

Aim: To describe the penalties imposed on adult offenders convicted of sexual assault (not including child sexual assault).

Summary: The most common penalty imposed on an offender convicted of sexual assault was a prison sentence. Prison penalties were imposed on 86 per cent of offenders convicted of an offence of aggravated sexual assault, with an average aggregate sentence of 77 months, and an average minimum term of 48 months. As the number of prior convictions increased the proportion of offenders given a prison sentence increased. For example, of those convicted of aggravated sexual assault offences, 77 per cent of those with no prior convictions received a prison sentence, while those with three or more prior convictions were almost guaranteed to receive a prison sentence (97%).

Keywords: sexual assault, penalty, prison, sentence length

Introduction

This Bureau Brief describes sentencing outcomes for adult offenders convicted of sexual assault offences between 2009 and 2010 in the NSW Local and Higher Criminal Courts.¹ Offences involving children are not included in this brief.

Sexual assault is a heterogeneous offence category. Under the *Crimes Act 1900*, the maximum penalty for sexual assault, not involving a child, varies between 18 months for an act of indecency to life imprisonment for aggravated sexual assault in company. 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 sexual assault' throughout the remainder of this brief) includes offences that might commonly be referred to as rape. The biggest subcategory in this group (48 per cent of cases) is sexual assault without consent. Also included in this group are cases where the offender committed sexual assault in aggravated circumstances, including in company with others (12 per cent) and cases where the offender inflicted actual bodily harm on the victim (12 per cent). The maximum penalty for the most serious offences in the group is life imprisonment. If the offence involves sexual assault but no circumstances of aggravation, the maximum penalty is 20 years imprisonment.

The second group (referred to as 'Indecent assault' throughout the remainder of this brief) consists of indecent assault offences, some of which have circumstances of aggravation. The aggravating circumstances include cases where the offender acted in company, cases where the offender was in a position of authority over the victim and cases where the victim had a serious physical disability or cognitive impairment. The vast majority (81%) of cases in this group involve an assault with an act of indecency. Where there are circumstances of aggravation the maximum penalty in this group of offences is seven years imprisonment. The third group (referred to as 'Other sexual assault') consists of acts of indecency where there are no circumstances of aggravation. The most common offence in this group is an act of indecency with a person aged 16 years or over, which accounts for 84 per cent of all cases in this group. The maximum penalty for this offence is 18 months imprisonment.

Age, gender and prior record of offenders

Over the years 2009 and 2010, 523 adult offenders, 517 males and 6 females, were convicted of sexual assault (not including child sexual assault).² Approximately 85 per cent of these convictions were for aggravated sexual assault or indecent assault.

Table 1. Age and gender of offenders convicted of sexual assault (not including child sexual assault), 2009-2010

		Aggravated sexual assault		Indecent assault		Other sexual assault		Total	
		n	%	n	%	n	%	n	%
Total		179	34.2	267	51.1	77	14.7	523	100.0
Gender	Male	175	97.8	265	99.3	77	100	517	98.9
	Female	4	2.2	2	0.7	0	0.0	6	1.1
Age group	18-24 years	41	22.9	50	18.7	14	18.2	105	20.1
	25-34 years	47	26.3	59	22.1	16	20.8	122	23.3
	35-44 years	42	23.5	64	24.0	18	23.4	124	23.7
	45-54 years	29	16.2	51	19.1	14	18.2	94	18.0
	55 years and over	20	11.2	43	16.1	15	19.5	78	14.9

Table 2. Number of prior convictions of offenders convicted of sexual assault (not including child sexual assault), 2009-2010

	Aggravated sexual assault (n=179)		Indecent assault (n=267)		Other sexual assault (n=77)		Total (n=523)	
	n	%	n	%	n	%	n	%
Prior convictions								
0	87	48.6	169	63.3	46	59.7	302	57.7
1	38	21.2	36	13.5	11	14.3	85	16.3
2	18	10.1	26	9.7	11	14.3	55	10.5
3+	36	20.1	36	13.5	9	11.7	81	15.5

Table 1 shows the distribution of adult offenders convicted of sexual assault by age and gender.

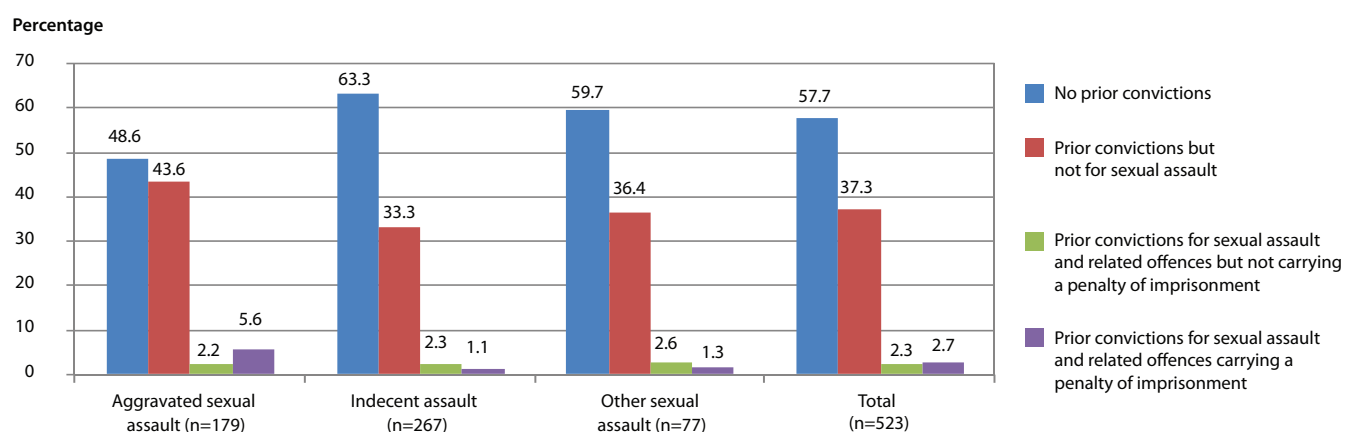
It can be seen that more than 50 per cent of offenders convicted of sexual assault were aged 35 years or over. The average age of offenders convicted of sexual assault was 39 years. The average age of offenders convicted of aggravated sexual assault was 37 years.

Table 2 shows the number of prior convictions (for any offence) of offenders convicted of sexual assault over the last five years.

The majority of offenders convicted of sexual assault had no prior convictions in the preceding five years. The average number of prior convictions in the last five years was 1.2. Those convicted of aggravated sexual assault tended to have more prior convictions (average 1.5) than those convicted of indecent assault (average 1.0) and other sexual assault offences (average 0.9).

Figure 1 shows the proportion of offenders convicted of sexual assault who have (a) no prior convictions, (b) prior convictions not of sexual assault, (c) prior convictions for sexual assault and

Figure 1. Nature of prior convictions in the preceding five years for offenders convicted of sexual assault (not including child sexual assault), 2009-2010



related offences without imprisonment or (d) prior convictions for sexual assault and related offences with imprisonment.

Overall, five per cent of offenders convicted of sexual assault had prior convictions for sexual assault in the preceding five years. Less than three per cent of all offenders convicted of sexual assault had been imprisoned for sexual assault in the preceding five years. An additional 37 per cent of offenders had a prior conviction for an offence other than sexual assault. A greater proportion of offenders convicted of aggravated sexual assault offences had convictions in the preceding five years for sexual assault that carried a prison sentence (5.6%).

Sentence types

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

A prison sentence was the most common penalty imposed on offenders convicted of sexual assault (41%), followed by a bond (31%). Of those convicted of aggravated sexual assault,

86 per cent received a sentence of imprisonment. A bond was the most common penalty given to those convicted of indecent assault and other sexual assault offences (45% and 48% respectively), followed by a suspended sentence (around 19% for both offence types).

Figure 2 shows the percentage of offenders convicted of sexual assault who were given a sentence of imprisonment, broken down by the number of prior convictions in the last five years. Due to small numbers, other sexual assault offences are not included separately in the figure, but are included in the total.

For both aggravated sexual assault and indecent assault the proportion of offenders imprisoned increased with increasing numbers of prior convictions in the preceding five years. Of those convicted of aggravated sexual assault offences, 77 per cent of those with no prior convictions received a prison sentence, while those with three or more prior convictions were almost guaranteed to receive a prison sentence (97%). With no prior convictions, 14 per cent of offenders convicted of indecent assault offences were sentenced to prison, compared with 44 per cent of offenders with three or more prior convictions.

Table 3. Principal penalty imposed on offenders convicted of sexual assault (not including child sexual assault), 2009-2010

Penalty	Aggravated sexual assault (n=179)		Indecent assault (n=267)		Other sexual assault (n=77)		Total (n=523)	
	n	%	n	%	n	%	n	%
Imprisonment	154	86.0	52	19.5	10	13.0	216	41.3
Periodic detention	0	0.0	11	4.1	0	0.0	11	2.1
Suspended sentence	17	9.5	51	19.1	15	19.5	83	15.9
Community service order	0	0.0	7	2.6	2	2.6	9	1.7
Bond	6	3.4	121	45.3	37	48.1	164	31.4
Other	1	0.6	14	5.2	9	11.7	24	4.6
Bond without conviction, no conviction recorded, no penalty	1	0.6	11	4.1	4	5.2	16	3.1

Figure 2. Imprisonment of offenders convicted of sexual assault (not including child sexual assault), by prior convictions, 2009-2010

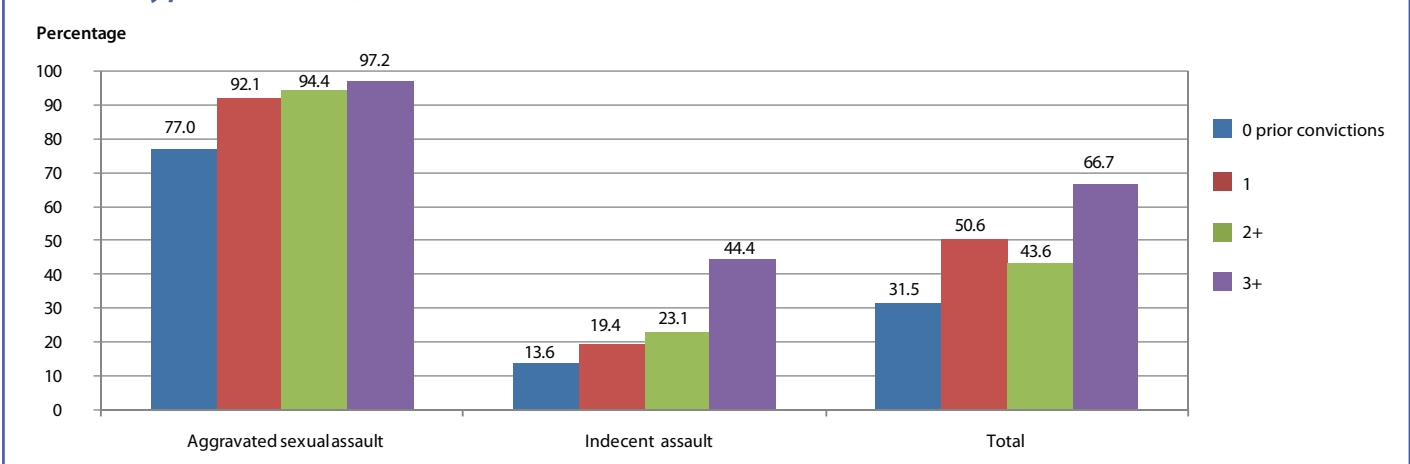


Table 4. Descriptive statistics on length of prison sentences for those convicted of sexual assault (not including child sexual assault), 2009-2010

		n	Mean	Median	Min	Max
Aggregate sentence (months)	Aggravated sexual assault	154	77.4	72.0	18.0	180.0
	Indecent assault	52	19.5	14.0	1.6	90.0
	Other sexual assault	10	12.1	7.5	2.0	44.0
	Total	216	50.4	60.0	1.6	180.0
Minimum term (months)	Aggravated sexual assault	154	47.5	42.0	6.0	120.0
	Indecent assault	52	11.6	9.0	0.2	60.0
	Other sexual assault	10	5.4	6.0	2.0	9.0
	Total	216	36.9	30.0	0.2	120.0

Sentence length

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

As expected, the lengths of prison sentences were longer for aggravated sexual assault than for indecent assault and other sexual assault offences. The average aggregate sentence was 77 months for aggravated sexual assault, 19 months for indecent assault, and 12 months for other sexual assault offences. Aggregate sentences ranged from 1.6 months to 15 years. The average minimum term was 48 months for aggravated sexual assault, 12 months for indecent assault, and 5 months for other sexual assault offences. Average minimum terms ranged from 0.2 months to 10 years. The short minimum terms should be treated with caution as some offenders may have already spend a considerable period of time in custody waiting for their case to be heard.

Conclusion

The average age of an adult offender convicted of sexual assault (not including child sexual assault) in NSW in 2009-2010 was 39 years. Ninety-nine per cent of those convicted were male and 95 per cent of offenders had no prior convictions for sexual assault or related offences in the preceding five years. The most common penalty imposed on an offender convicted of sexual assault was a prison sentence. As the number of prior convictions increased the proportion of offenders given a prison sentence increased. For example, of those convicted of

aggravated sexual assault offences, 77 per cent of those with no prior convictions received a prison sentence, while those with three or more prior convictions were almost guaranteed to receive a prison sentence (97%). Among those who received a prison sentence, the average minimum term was 37 months and the average aggregate sentence was 50 months. Of those who committed an offence of aggravated sexual assault, 86 per cent received a sentence of imprisonment, with an average minimum term of 48 months and an average aggregate sentence of 77 months.

Acknowledgements

The author would like to extend thanks to Her Honour Justice Megan Latham of the Supreme Court and the staff of the Criminal Law Review Division of the NSW Department of Attorney General and Justice for their assistance in summarising the law in relation to sexual assault offences. Generous thanks are also extended to Mark Ramsay for extracting the data used in the current analysis, Deborah Bradford and Don Weatherburn for feedback on earlier versions of this report, and Florence Sin for desktop publishing this report.

Notes

1. This data comprises conviction episodes and therefore may include multiple records for individuals convicted of sexual assault offences on more than one occasion in the study timeframe.
2. Data presented throughout this brief relate to 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.

Appendix

Table A1. Classification of offences by law part and Australian Standard Offence Classification (ASOC) codes

Group	ASOC group and code	Law part description and code	Frequency
Aggravated sexual assault	Aggravated sexual assault (311)	Sexual intercourse without consent, SI (271)	86
		Aggravated sexual assault - offender in company with other person/s, SI (277)	22
		Aggravated sexual assault - inflict ABH on victim, SI (272)	21
		Aggravated sexual assault - threat to inflict ABH victim with weapon, SI (278)	8
		Aggravated sexual assault - victim under authority of offender, SI (280)	8
		Sexual assault (Cat 4) - assault & commit act of indecency (261)	4
		Aggravated sexual assault- inflict ABH on victim (DV), SI (64784)	4
		Inflict ABH w/i to have sexual intercourse with victim, SI (281)	3
		Sexual intercourse procured by non-violent threat, SI (321)	2
		Buggery, SI (374)	2
		Aggravated sexual assault in company and inflict ABH, SI (43395)	2
		Incest with person aged >=16 years, SI (51434)	2
		Sexual assault (Cat 2) - threaten actual bodily harm w/l (248)	1
		Sexual assault (Cat 3) knowing no consent given (256)	1
		Aggravated sexual assault - victim w serious intellectual disability, SI (275)	1
		Inflict ABH w/i to have sexual intercourse with other, SI (282)	1
		Threat inflict ABH on victim w/i to have sex intercourse, SI (283)	1
		Rape, SI (317)	1
		Sexual intercourse - victim with intellectual disability & under authority, SI (332)	1
		Sexual intercourse - victim with intellectual disability w/i to exploit, SI (333)	1
		Incest through consent by female aged 16 years or over, SI (354)	1
		Incest by male of female aged 16 years or over, SI (355)	1
		Assault male and commit act of indecency (380)	1
		Aggravated sexual assault in company threaten ABH by weapon, SI (43396)	1
		Sexual intercourse without consent (DV), SI (64783)	1
		Aggravated sexual assault-threat to inflict ABH victim weapon (DV), SI (64790)	1
		Aggravated sexual assault-victim with cognitive impairment, SI (70718)	1
		Indecent assault	Aggravated sexual assault (311)
Aggravated indecent assault - victim under authority of offender, T1 (290)	13		
Assault with act of indecency (DV), T2 (64800)	13		
Aggravated indecent assault, T1 (39105)	9		
Aggravated indecent assault- offender in company, T1 (286)	5		
Aggravated indecent assault- victim has intellectual disability, T1 (288)	3		
Aggravated indecent assault (DV), T1 (64806)	3		
Aggravated indecent assault- victim has cognitive impairment, T1 (70720)	2		
Aggravated indecency- victim 16 or over & under authority of offender, T2 (307)	1		
Aggravated indecent assault - victim under authority (DV), T1 (64805)	1		
Other sexual assault	Non-aggravated sexual assault (312)	Commit act of indecency with person 16 years or over, T2 (296)	65
		Indecent assault on male (381)	7
		Commit act of indecency with person 16 years or over (DV), T2 (64810)	5