

Reoffending by Children and Young People in Victoria

The Sentencing Advisory Council bridges the gap between the community, the courts, and the government by informing, educating, and advising on sentencing issues.

The Sentencing Advisory Council is an independent statutory body established in 2004 under amendments to the *Sentencing Act 1991*. The functions of the Council are to:

- provide statistical information on sentencing, including information on current sentencing practices
- conduct research and disseminate information on sentencing matters
- gauge public opinion on sentencing
- consult on sentencing matters
- advise the Attorney-General on sentencing issues
- provide the Court of Appeal with the Council's written views on the giving, or review, of a guideline judgment.

Council members come from a broad spectrum of professional and community backgrounds. Under the *Sentencing Act 1991*, Council members must be appointed under eight profile areas:

- two people with broad experience in community issues affecting the courts
- one senior academic
- one highly experienced defence lawyer
- one highly experienced prosecution lawyer
- one member of a victim of crime support or advocacy group
- one person involved in the management of a victim of crime support or advocacy group who is a victim of crime or a representative of victims of crime
- one member of the police force of the rank of senior sergeant or below who is actively engaged in criminal law enforcement duties
- the remainder must have experience in the operation of the criminal justice system.

For more information about the Council and sentencing generally, visit:

www.sentencingcouncil.vic.gov.au

Reoffending by Children and Young People in Victoria

Published by the Sentencing Advisory Council
Melbourne, Victoria, Australia

© State of Victoria, Sentencing Advisory Council, 2016

This publication is protected by the laws of copyright. No part may be reproduced by any process except in accordance with the provisions of the *Copyright Act 1968* (Cth).

ISBN 978-1-925071-25-2 (Online)

Authorised by the Sentencing Advisory Council,
Level 3, 333 Queen Street, Melbourne VIC 3000

Publications of the Sentencing Advisory Council follow the Melbourne University Law Review Association Inc *Australian Guide to Legal Citation* (3rd ed., 2010).

This report reflects the law as at 18 November 2016.

Contents

Contributors vii

Acknowledgments vii

Glossary viii

Executive summary xi

Key findings xi

1. Focus and aim of this report 1

Research questions 1

The Council's approach 1

What do we know about offending by children and young people? 2

 What proportion of children and young people offend? 2

 The number of children and young people sentenced in the Children's Court has decreased 3

 How does the proportion of children and young people who offend compare with adults who offend? 3

 How does the proportion of children and young people who *reoffend* compare with adults who reoffend? 4

 What types of offences do children and young people commit? 5

 What factors are associated with reoffending by children and young people? 6

 The principles that apply to sentencing children and young people in Victoria 8

2. Profile of the study group 9

Overview 9

Age at 'entry' into the criminal courts 10

Gender 11

Number of charges at the index sentence 12

Offence type at the index sentence 12

 Offence classification and counting rules 12

 Offence analysis 13

Sentence type at the index sentence 15

 Unsupervised orders 15

 Supervised community-based sentences 15

 Custodial orders 15

3. Prior convictions 17

Presence and number of prior convictions 17

Types of prior convictions 17

Number of sentenced charges 18

4. Reoffending 19

Reoffending rate 19

Characteristics of reoffenders 20

Has the standardised reoffending rate changed over time? 21

Number of reoffending events 22

Reoffence type 22

How many children and young people continued to the adult criminal jurisdiction? 24

5. Factors associated with reoffending 25

Age at first sentence 25

Differences in reoffending rate 25

Differences in reoffence type 27

The likelihood of continuing to the adult criminal jurisdiction 30

Gender 31

Gender differences in reoffending rate 31

Gender differences in reoffence type 32

Differences in reoffending associated with offence type 32

Prior convictions and reoffending 36

The presence of prior convictions and the likelihood of reoffending 36

The number of prior sentence events and reoffending 36

The number of prior sentenced charges and reoffending 37

Sentence type 37

Caution regarding reoffending and sentence type 37

Reoffending by sentence type 38

Sentence type and prior convictions 40

Return to supervised sentences and progression to adult imprisonment 41

6. Persistent offenders 43

Number of sentence events in the 11-year study period 43

Identifying persistent offenders 45

The Council's taxonomy 46

Characteristics of the offender groups 48

Age and gender 48

Volume of offending and likelihood of being sentenced in the adult courts 48

Offence type 49

Summary of offender group profiles 50

7. Concluding observations 51

Age at first sentence 52

Offence type 52

Sentencing orders 52

Final remarks 53

Appendix 1: The Council's approach and methodology 54

Study group 54

Reoffending events and prior sentence events 55

Age at entry 56

Consultation 56

Appendix 2: Regression analysis 57**Appendix 3: Sentencing orders** 59**References** 61

Bibliography 61

Legislation 63

Cases 63

Contributors

Authors

Felicity Stewart
Zsombor Bathy
Geoff Fisher

Sentencing Advisory Council

Chair

Arie Freiberg AM

Deputy-Chair

Lisa Ward

Council Members

Carmel Arthur
Hugh de Kretser
Fiona Dowsley
Helen Fatouros
David Grace QC
John Griffin PSM
Sherril Handley
Brendan Kissane QC
Shane Patton
Barbara Rozenes
Geoff Wilkinson OAM

Chief Executive Officer

Cynthia Marwood

Acknowledgments

The Council would like to thank a number of people and organisations for assistance with the preparation of this report, including Court Services Victoria, the Children's Court of Victoria, the Commission for Children and Young People, the Department of Health and Human Services, the Department of Justice and Regulation, Jesuit Social Services, the Victims Support Agency, Victoria Legal Aid, Victoria Police, the Victorian Auditor-General's Office, the Youth Affairs Council of Victoria, Youthlaw, Youth Support and Advocacy Service (YSAS), and the Victorian Government Library Service.

Glossary

Adult court	The Magistrates' Court, County Court, or Supreme Court.
Average	In this report, a reference to an average is a reference to a mean, unless otherwise specified. See also 'mean'.
Case	In this report, one or more charges against a person that are sentenced at the one hearing.
Charge	In this report, a single proven count of an offence.
Child	A person who is aged 10–17 at the time of an alleged offence and aged under 19 when proceedings for the offence commence (<i>Children, Youth and Families Act 2005</i> (Vic) s 3(1)).
Children and young people	In this report, a general term for people who are defined as a 'child' under the <i>Children, Youth and Families Act 2005</i> (Vic) but some of whom may be 18 or over at the time of sentencing.
Discharged with conviction	A sentence type that involves the conviction of an offender and discharge without conditions.
Dismissal	An order under which a child is found guilty of an offence and the court dismisses the charge without recording a conviction and without conditions (<i>Children, Youth and Families Act 2005</i> (Vic) s 360(1)(a)).
Entry (into the criminal courts)	In this report, the first sentence recorded for an offender in the study group on or after 1 July 2004.
Fine	A sentence that requires an offender to pay a sum of money to the state. For children and young people aged under 15, the maximum fine is one penalty unit ¹ for one offence and two penalty units for more than one offence. For children and young people aged 15 or over, the maximum fine is five penalty units for one offence and 10 penalty units for more than one offence (<i>Children, Youth and Families Act 2005</i> (Vic) s 373).
First sentence	The first sentence recorded for an offender in the study group on or after 1 July 2004. See also 'Entry'.
Good behaviour bond	An order under which the court postpones the sentencing of a child for up to one year (or up to 18 months if the child is aged 15 or over). During this period, the child must be of good behaviour and meet any special conditions imposed by the court. When making the order, the court specifies a bond amount. If the child complies with the order, the court dismisses the charge, does not record a conviction, and does not require the child to pay the bond amount. If the child fails to comply with the order, the court may require payment of the bond amount or may resentence the child for the original charges (<i>Children, Youth and Families Act 2005</i> (Vic) ss 367–372).
Imprisonment	In this report, a sentence of imprisonment that is served immediately, as distinct from a sentence of imprisonment that is partially or wholly suspended.
Index offender	In this report, a person sentenced for at least one charge in 2008–09 in the Children's Court of Victoria.

1. For the financial year 1 July 2015 to 30 June 2016, one penalty unit is valued at \$151.67. The amount of a penalty unit is adjusted each year in line with inflation.

Index sentence	In this report, an index offender's first sentence in the Children's Court in 2008–09. If an offender was sentenced once in 2008–09, that sentence is the index sentence. If an offender was sentenced more than once in 2008–09, the earliest sentence is the index sentence.
Index year	In this report, the 2008–09 financial year.
Median	A measure of central tendency. The median is the middle value in an ordered set or a distribution of values. For example, in the following set of values 1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7 4 is the median value, representing a midpoint where half of the values (1, 2, 2, 3, 3) are below the median and half of the values (5, 5, 6, 6, 7) are above the median.
Mean	A measure of central tendency also known as the 'average'. The mean is equal to the sum of a set of values divided by the number of values in the set. For example, in the following set of values 1, 2, 2, 3, 3, 4, 5, 5, 6, 6, 7 the 11 values add to 44 so the mean is 4.
Offending trajectory	Generally, changes in the frequency of a person's offending over their lifetime. In this report, offending trajectory is a combination of an offender's age at first sentence and the length of time between their first sentence and their latest sentence event within the study period.
Partially suspended sentence of imprisonment	A now abolished sentencing order that was a sentence of imprisonment, part of which was served immediately and part of which was held in suspense for a specified period (referred to as the operational period), on the condition that the offender did not commit any further offence punishable by imprisonment during that period.
Prior conviction	In this report, a term used to describe a sentenced charge or case that occurred in the four years before an offender's index sentence in 2008–09.
Prior sentence event	In this report, a term used to describe a date on which an offender appeared in court for sentencing in relation to a case or cases involving one or more proven charges. A prior sentence event involving multiple charges may involve multiple sentences in the one case.
Probation	An order requiring an offender to report to a youth justice unit, obey the instructions of a youth justice worker, and refrain from offending. The order must not last for more than one year – or more than 18 months for offences with a maximum penalty of more than 10 years – and cannot extend beyond the offender's 21st birthday. The order can include special conditions, such as counselling or treatment programs (<i>Children, Youth and Families Act 2005</i> (Vic) ss 380–386).
Reoffence	In this report, an offence committed and sentenced in the six years after an offender's index sentence in 2008–09.
Reoffender	In this report, an offender found guilty of at least one new criminal offence after the imposition of the index sentence.
Reoffending	In this report, a new proven charge of an offence that was both committed and sentenced in the six years after an offender's index sentence in 2008–09. The sentence for the reoffending may have been imposed in any criminal court in Victoria.
Reoffending event	In this report, a new sentence event in the six years after the index sentence. See also 'sentence event'.

Sentence event	In this report, a case or cases encompassing one or more proven charges in which a sentence is – or sentences are – imposed on an offender at the same time.
Statistical significance	The likelihood that the difference between two or more numbers has not occurred by chance. The most widely used threshold of statistical significance, and the threshold used in this report, is 0.05, which means that there is a 5% probability that the observed difference occurred by chance alone. Statistical significance is often expressed as a 'p-value'. A statistically significant result does not necessarily mean that the magnitude of the difference between groups is large, as relatively small differences may be statistically significant.
Study group	In this report, the group of 5,385 offenders who were sentenced for at least one charge in the Children's Court of Victoria in 2008–09.
Study period	In this report, the period from 1 July 2004 to 30 June 2015 inclusive.
Undertaking	A sentencing order for up to one year requiring agreement from the child to abide by certain conditions. At the end of the order, the court dismisses the charge of which the child has been found guilty. An accountable undertaking means the child may have to return to court if the order is breached. An unaccountable undertaking means the child does not have to return to court if the order is breached (<i>Children, Youth and Families Act 2005</i> (Vic) ss 363–366).
Young person	See 'children and young people'.
Young offender	An offender who is under the age of 21 at the time of sentencing (<i>Sentencing Act 1991</i> (Vic) s 3).
Youth attendance order	An alternative order to detention for offenders aged 15–20. The order requires an offender to attend a youth justice unit and comply with intensive reporting and attendance requirements. The order may last for up to one year but cannot extend past the offender's 21st birthday. The court may attach special conditions, such as education, counselling, or treatment, or may direct that the offender engage in community service. The offender must not reoffend during the order. If the order is breached, the offender may be sent into detention (<i>Children, Youth and Families Act 2005</i> (Vic) ss 397–409).
Youth justice centre order	An order for offenders aged 15–20 for detention in a youth justice centre for a maximum of two years for a single offence or three years for more than one offence. While detained, offenders participate in education and programs that address their offending behaviour. Temporary leave may be granted for specific purposes, such as work (<i>Children, Youth and Families Act 2005</i> (Vic) ss 412–413).
Youth residential centre order	An order for offenders aged under 15 for detention in a youth residential centre for a maximum of one year for a single offence or two years for more than one offence. While detained, offenders participate in education and programs that address their offending behaviour (<i>Children, Youth and Families Act 2005</i> (Vic) ss 410–411).
Youth supervision order	An order requiring an offender to be under a higher level of supervision than under a probation order. Conditions include attending a youth justice unit, participating in programs, reporting to a youth justice unit, obeying the instructions of a youth justice worker, and refraining from offending. The order must not last for more than one year – or more than 18 months for offences with a maximum penalty of more than 10 years – and cannot extend beyond the offender's 21st birthday (<i>Children, Youth and Families Act 2005</i> (Vic) ss 387–395).

Executive summary

This report examines offending patterns over an 11-year period for 5,385 children and young people sentenced in the Children's Court of Victoria in 2008–09. Using information captured in court sentencing records, the aim is to understand the level, nature, and quantity of reoffending among children and young people in Victoria. The report identifies risk factors associated with reoffending and movement from the children's to the adult criminal jurisdiction, and analyses groups of offenders that offend persistently.

The report addresses five research questions relating to reoffending by children and young people over the 11-year study period:

1. What proportion of children and young people sentenced in the Children's Court in 2008–09 reoffended in the next six years?
2. Was there any change in the two-year reoffending rates for children and young people sentenced each year between 2008–09 and 2012–13?
3. What proportion of children and young people sentenced in the Children's Court in 2008–09 continued offending into their adulthood?
4. What factors are associated with reoffending by children and young people?
5. How do offending patterns differ between children and young people whose offending persists over a long period of time and those whose offending is limited to a short period of time?

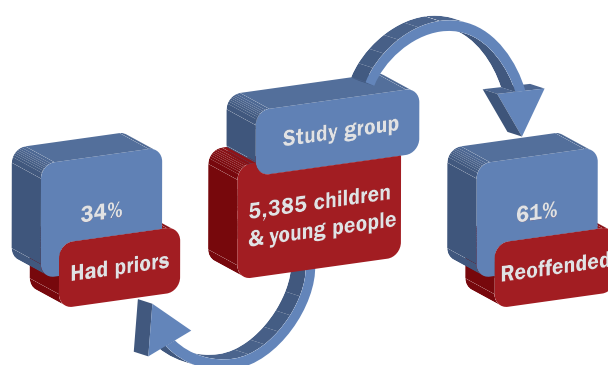
Key findings

Question 1: What proportion of children and young people sentenced in the Children's Court in 2008–09 reoffended in the next six years?

Of the 5,385 children and young people sentenced in the Children's Court in 2008–09 (the 'study group'), 61% reoffended within six years of their 2008–09 sentence. Many offenders reoffended more than once (44%), with 15% sentenced on five or more occasions within the six-year follow-up period.

The most common type of reoffending was a road safety offence (36% of offenders in the study group reoffended at least once with a road safety offence), followed by an offence against the person (34%) and a theft/deception offence (33%).

Looking backwards, 34% of the study group had at least one prior conviction in the four years before their 2008–09 sentence, with theft/deception being the most common prior offence type (21% of all offenders had at least one prior conviction for theft/deception).



Question 2: Was there any change in the two-year reoffending rates for children and young people sentenced each year between 2008–09 and 2012–13?

There has been a dramatic reduction in recent years in the number of children and young people sentenced each year in the Victorian Children's Court, with the number almost halving between 2008–09 and 2014–15 (from 5,385 in 2008–09 to 2,859 in 2014–15). However, the reoffending rates of sentenced children and young people have remained virtually unchanged. In 2012–13, 3,442 children and young people were sentenced in the Children's Court (a drop of 36% from 2008–09), but there was very little change in the two-year reoffending rate for those sentenced between 2008–09 and 2012–13, ranging from 39% in 2009–10 to 42% in 2011–12 and 2012–13.

Question 3: What proportion of children and young people sentenced in the Children's Court in 2008–09 continued offending into their adulthood?

Overall, 52% of the study group (2,789 offenders) had progressed to the adult criminal jurisdiction by the end of the study period (30 June 2015).

The 2,789 offenders who continued offending into the adult criminal jurisdiction represented the majority of the 3,261 people in the study group who reoffended (86% of reoffenders). This is not surprising, given that the majority of the study group were 17 or 18 years old at their index sentence (56%), and therefore their reoffending would have fallen within the jurisdiction of the adult courts.

The likelihood of a child or young person progressing from the Children's Court to the adult criminal jurisdiction was found to be associated with age at 'entry' into the criminal courts – those who were first sentenced at an earlier age were more likely to reach the adult court system than those who were first sentenced at a later age.

Question 4: What factors are associated with reoffending by children and young people?

Factors found to be associated with the likelihood of reoffending in the six years after the index sentence include:

- the age of the offender at the time of their first sentence;
- the gender of the offender;
- the number of prior sentence events before the offender's index sentence in 2008–09;
- the total number of charges for which an offender had been sentenced before and including their 2008–09 sentence;
- the presence of particular offence types and the absence of others; and
- the sentence imposed on the offender in 2008–09 (however, the temptation to *compare* the reoffending rates associated with different sentencing orders should be avoided, as it is not a comparison of like cases).

Age at first sentence

Offenders who were first sentenced at an earlier age tended to have higher reoffending rates in the six years after their index sentence than those who were first sentenced at a later age. The younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to an adult sentence of imprisonment before their 22nd birthday.

After accounting for the effect of other factors, each additional year in age at entry into the criminal courts was associated with an 18% decline in the likelihood of reoffending.

Gender

Male offenders were more likely to reoffend than female offenders. After accounting for the effect of other factors, male offenders were 148% more likely to reoffend than their female counterparts.

Prior convictions

The presence and number of prior convictions were associated with reoffending. For example, offenders with two or more prior sentence events were 234% more likely to reoffend than offenders with no prior sentence events. Likewise, offenders with five or more sentenced charges – prior to and including their index sentence – were 37% more likely to reoffend than those with only one sentenced charge.

Offence type

The presence of offence types such as an offence against the person, a property damage offence, or a theft/deception offence was associated with a higher reoffending rate than their absence. For example, offenders who had at least one proven charge of theft/deception were 36% more likely to reoffend than those who did not have a theft/deception offence.

Only the presence of transit offences was associated with lower rates of reoffending. There was a 50% reduction in the likelihood of reoffending for offenders who had at least one proven charge of a transit offence than for offenders who had no proven charges of a transit offence (that is, offenders who had at least one charge of some other offence).

Sentence type

Differences in reoffending were observed in relation to different sentencing orders. Generally speaking, higher reoffending rates were found for more severe sentence types. Such sentences were most likely imposed for relatively serious offending and/or on offenders whom the court deemed to have a relatively high risk of reoffending due to their personal circumstances or prior criminal history.

While it is instructive to examine the reoffending rate following individual sentencing orders, the temptation to compare the reoffending rates associated with different sentencing orders should be avoided. A danger of comparing reoffending by sentence type is that it is not a comparison of like cases. It does not necessarily follow that sentencing orders with lower reoffending rates are 'more effective' than those associated with higher reoffending rates. Rather, the same factors that contribute to the court's choice of sentence (such as the seriousness of the offence, the offender's prior convictions, and prospects of rehabilitation) tend to affect the likelihood of that offender reoffending.

For example, custodial orders are a sanction of last resort in sentencing children. Youth attendance orders are designed as an alternative to immediate detention and are the most severe non-custodial sentencing disposition for children and young people aged 15–20. Custodial orders and youth attendance orders would be reserved for children with prior convictions and/or serious offending who were viewed as a high risk to the community. It is therefore unsurprising that of the 115 offenders who were sentenced to a youth attendance order or a youth justice centre order in 2008–09, 83% reoffended within six years. In the same period, 75% reoffended with an offence against the person, 79% moved into the adult criminal jurisdiction, and 53% were sentenced to a term of immediate adult imprisonment.

Offenders sentenced to fines and unaccountable undertakings had the lowest reoffending rates (45% and 48% respectively). Approximately two-thirds of offenders sentenced to accountable undertakings and good behaviour bonds reoffended.

Question 5: How do the offending patterns differ between children and young people whose offending persists over a long period of time and those whose offending is limited to a short period of time?

Over the 11-year study period, the 5,385 offenders in the study group were sentenced for 97,482 charges. Offenders with only one sentence event comprised 32% of the study group but were responsible for just 5% of sentenced charges (4,778 charges). In contrast, offenders who had five or more sentence events also comprised 32% of the study group but were responsible for 75% of proven charges. Those with 10 or more sentence events in the 11-year study period comprised 7% of the study group but were responsible for 32% of proven charges (31,261).

The Council identified different groups of offenders as a way of analysing children and young people who engage in a high volume of offending over an extended period of time. One group, the 'under 17 persisters', comprised offenders whose first sentence occurred before the age of 17 and whose latest sentence event occurred when they were aged 17 or over. This group made up 39% of the study group, but over the 11-year study period, their offending accounted for 72% of sentenced charges (70,548) and 64% of sentence events (13,271). The median period between the first sentence and the latest sentence event for this group was five years and four months while the longest period was 10 years.

1. Focus and aim of this report

The aim of this report is to provide up-to-date information about the level, nature, and quantity of reoffending among children and young people in Victoria. The report identifies risk factors associated with reoffending and movement from the children's to the adult jurisdiction of the criminal justice system, and analyses groups of offenders that offend over a long period of time. The broader objective of the report is to provide an evidence base for both policy and judicial decision-makers as a first step to identifying children who present a higher risk of prevalent and/or serious offending.

Research questions

This report addresses five research questions relating to reoffending by children and young people during the 11-year study period:

1. What proportion of children and young people sentenced in the Children's Court in 2008–09 reoffended in the next six years?
2. Was there any change in the two-year reoffending rates for children and young people sentenced each year between 2008–09 and 2012–13?
3. What proportion of children and young people sentenced in the Children's Court in 2008–09 continued offending into their adulthood?
4. What factors are associated with reoffending by children and young people?
5. How do offending patterns differ between children and young people whose offending persists over a long period of time and those whose offending is limited to a short period of time?

The Council's approach

The Council addressed the research questions by analysing data in its reoffending database. Created from court sentencing records, the database links together each sentenced case of an individual offender within and across all Victorian criminal courts, going back to July 2004 and forward to the end of June 2015. This 11-year span defines the 'study period' used in this report. All Victorian criminal courts are included in the reoffending database. The methodology for the report is set out in Appendix I.

The analysis of reoffending in this study is limited to new charges that were proven and sentenced in any Victorian court after the index sentence in 2008–09. Although this is an appropriate measure of reoffending (and the presumption of innocence applies to those who have not been convicted of an offence), it is likely that the actual rate of reoffending is higher than the rate revealed by data that is limited to subsequent sentences. Therefore, the reoffending rate disclosed by the data should be viewed as the base level of reoffending for this offender group.

What do we know about offending by children and young people?

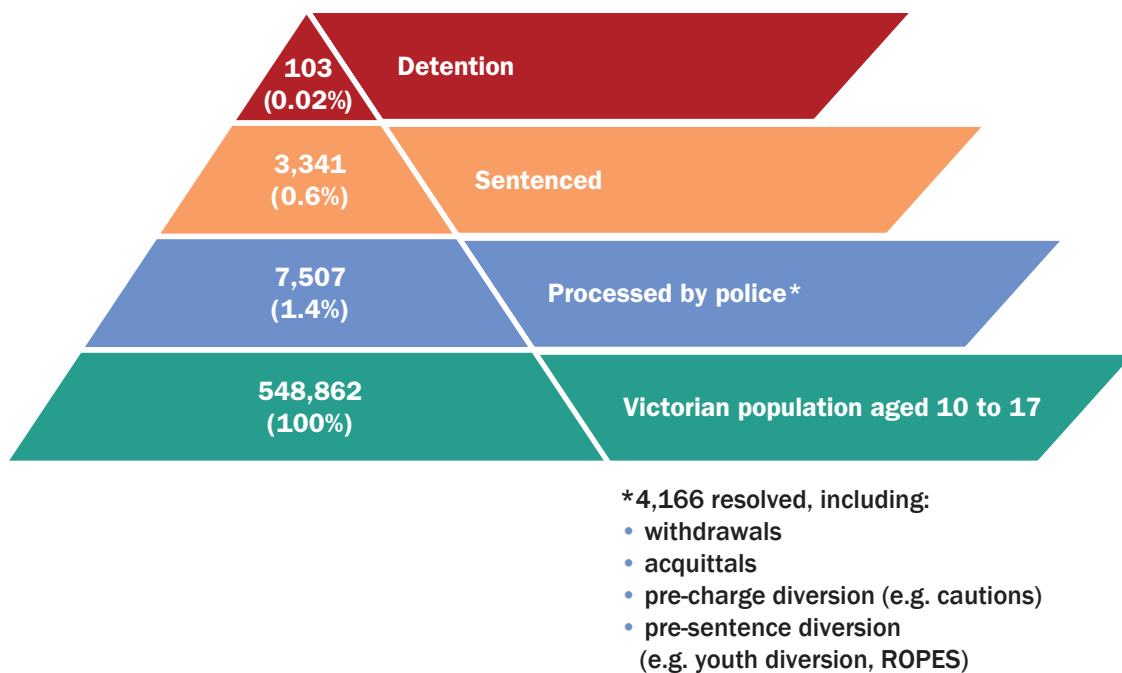
What proportion of children and young people offend?

In Victoria, the youngest age at which a person can be held criminally responsible for a crime is 10 years. Children under 10 years of age have no 'criminal responsibility' and are not prosecuted for their behaviour.²

The vast majority of children and young people do not commit crime. In fact, as Figure 1 shows, only 1.4% of people in Victoria aged between 10 and 17 were alleged by police to have committed a crime in 2015. This means that over 98% of young persons did not offend or were not detected by police.

Once pre-court resolutions (for instance, acquittals, pre-charge diversion such as cautions, and pre-sentence diversion) are filtered out,³ the percentage of 10 to 17 year olds who had an offence proven by a court in 2015 drops to just 0.6%. In contrast, the percentage of people aged over 17 in Victoria who were sentenced in 2015 is over three times this rate, at 2.1%.

Figure 1: Children's involvement in the Victorian criminal justice system in 2015



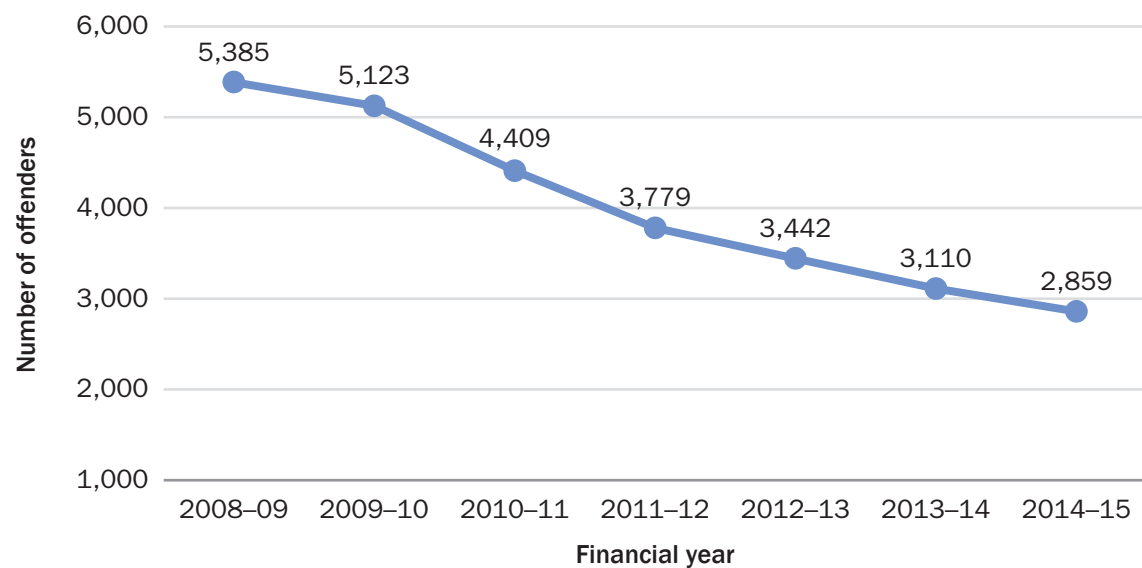
2. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of 'child'), 344 ('It is conclusively presumed that a child under the age of 10 years cannot commit an offence').

3. For an overview of diversion programs, see Smart Justice for Young People, *Youth Diversion Makes Sense* (2013); Arie Freiberg, Fox and Freiberg's *Sentencing: State and Federal Law in Victoria* (3rd ed., 2014) 938–939; Jennifer Bowles, *Sentencing in the Children's Court of Victoria* (Children's Court of Victoria, 2013) <<http://www.childrenscourt.vic.gov.au/sentencing-childrens-court-victoria>> at 4 November 2016.

The number of children and young people sentenced in the Children's Court has decreased

Between 2008–09 and 2014–15, there was a marked reduction, of 47%, in the number of children and young people sentenced in the Children's Court of Victoria. Over this period, the number of children and young people who were sentenced steadily declined from 5,385 in 2008–09 to 2,859 in 2014–15.

Figure 2: Number of children and young people sentenced, by financial year, 2008–09 to 2014–15

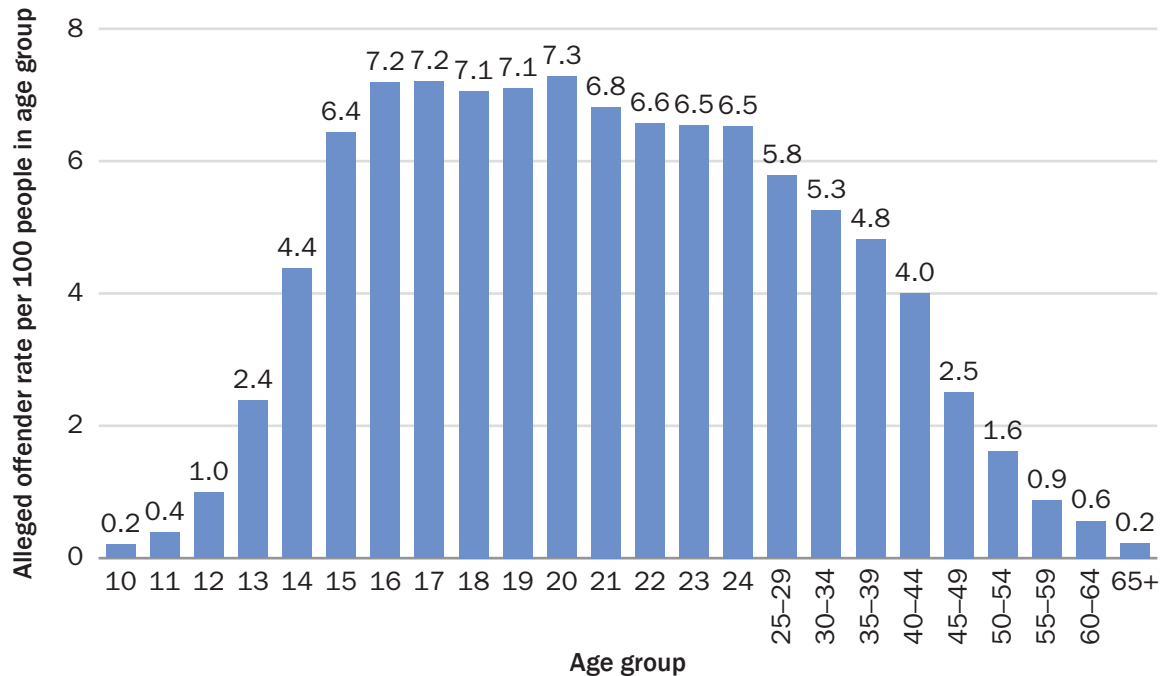


How does the proportion of children and young people who offend compare with adults who offend?

As an indicator of how the offending rate varies by age, Figure 3 (page 4) shows the number of alleged offender incidents per 100 people in Victoria for various age groups. Figure 3 uses a different counting rule from that in Figures 1 and 2 above. Whereas Figures 1 and 2 count distinct offenders, Figure 3 counts alleged incidents (therefore, one offender may be counted multiple times).

The proportion of alleged offender incidents increases rapidly for each successive age category between 10 and 16, remains steady until age 24, and declines for older age groups (Figure 3). Approximately 0.2% of the 10 year old group were alleged to offend, with the rate rising to 1.0% by the age of 12. The rate then increases by approximately 2 percentage points each year, reaching 6.4% by age 16. It rises further by age 17 to just over 7% where it remains until age 21.

Figure 3: Alleged offender incident rate by age group, April 2015 to March 2016



Source: Crime Statistics Agency, Victoria, *Alleged Offender Incidents Data Tables* (year ending 31 March 2016) Tables 6 and 12.

How does the proportion of children and young people who reoffend compare with adults who reoffend?

In many jurisdictions, offenders who are children and young people are more likely to reoffend than their adult counterparts.⁴ The Council's previous research on reoffending has found that the likelihood of reoffending is higher for children and young people compared with older offenders.⁵ In its survey of reoffending sentenced in the Magistrates' Court from 2004 to 2011, the Council found that offenders aged under 25 were 29% more likely to reoffend than offenders aged 25 or over, after controlling for factors such as the type and quantity of prior offending, the type and quantity of current offending, the sentence imposed, and the gender of the offender.⁶ Also, in a report examining the nine-year reoffending rates of all people sentenced in 2004–05, the Council found the highest reoffending rates were among 10–14 year olds (81%) followed by 15–17 year olds (62%), while the reoffending rate for all people was only 45%.⁷ Coupled with the findings in Figure 3, this research suggests that 10–14 year olds may be less likely than older offenders to offend in the first place, but those 10–14 year olds who do offend have higher reoffending rates than older offenders.

4. See for example, Jessie Holmes, *Reoffending in NSW*, Bureau Brief no. 56 (2012) 1; Winifred Agnew-Pauley and Jessie Holmes, *Re-offending in NSW*, Bureau Brief no. 108 (2015) 1; Ministry of Justice, *Proven Reoffending Statistics Quarterly Bulletin: October 2013 to September 2015, England and Wales* (2016); Ministry of Justice, *Youth Justice Statistics 2014/15: England and Wales* (2016).

5. Sentencing Advisory Council, *Reoffending Following Sentencing in the Magistrates' Court of Victoria* (2013).

6. *Ibid* 22, Figure 1.

7. Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (2015) 8, 18.

Similarly, the Council's 2016 examination of the reoffending rates of a group of adult family violence offenders found that young adult male and female offenders (aged 18–24) had higher reoffending rates than their older counterparts. Young male offenders had the highest reoffending rate (67%) and older female offenders (aged 25+) had the lowest (41%).⁸

In England and Wales, the recently reported one-year proven reoffending rate for juveniles was just under 37% compared with 25% of adult offenders.⁹ In New South Wales, the 10-year proven reoffending rate for children and young people was 79% compared with 56% of adult offenders. The one-year reoffending rate was 41% compared with 23% for adults.¹⁰

What types of offences do children and young people commit?

The criminal profile of children and young people who offend differs from that of adults. Cunneen, White, and Richards suggest that, unlike adult crime, crime by children and young people tends to be committed in groups in public areas, and their offending is close to where they live. Further, their offences tend to be attention-seeking, public and gregarious, episodic, unplanned, and opportunistic.¹¹

According to data from the Crime Statistics Agency, Victoria, offenders aged 10–14 are more likely than their older counterparts to engage in property offences, are similarly likely to engage in offences against the person, and are less likely to engage in drug offences, public order and security offences, and justice procedures offences (Table 1).

In a previous study, the Council found that the highest reoffending rates were among offenders who had committed property crime.¹² Therefore, the predominance of property crimes in the offence profile of child offenders may help explain the higher rates of reoffending among children and young people than among adult offenders.

Table 1: Percentage of alleged offender incidents by offence type and age group, April 2015 to March 2016

(Age group)	Property and deception offences	Crimes against the person	Drug offences	Public order and security offences	Justice procedures offences	Other offences
10–14	59.2	26.7	1.5	5.2	6.8	0.7
15–19	49.3	25.1	7.1	9.5	8.5	0.4
20–39	35.3	24.4	10.4	13.9	15.7	0.3
40+	27.1	33.2	7.0	13.7	18.6	0.4
All	36.2	26.7	8.8	12.9	15.0	0.3

Source: Crime Statistics Agency, Victoria, *Alleged Offender Incidents Data Tables* (April 2015 to March 2016) Table 13.

8. Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (2016) 45.

9. Ministry of Justice (2016), above n 4.

10. Agnew-Pauley and Holmes (2015), above n 4, 1–2.

11. Chris Cunneen et al., *Juvenile Justice in Australia* (5th ed., 2015) 55.

12. Sentencing Advisory Council (2013), above n 5, xi.

What factors are associated with reoffending by children and young people?

Previous research has found a wide range of factors to be associated with youth offending and reoffending, as well as progression from youth to adult offending.¹³ In their review of the literature, Loeber, Farrington, and Petechuck identified a large number of factors and grouped them into five domains: individual, family, school, peer group, and community:

- **individual factors** include being male, having low intelligence, having hyperactivity, having difficulty concentrating, persistently lying, engaging in risk-taking, displaying a lack of guilt, showing withdrawn behaviour, and being exposed to violence;
- **family factors** include maternal smoking or alcohol consumption during pregnancy, having a teenage mother or poorly educated parents, a high turnover of caregivers, poor parent–child communication, maltreatment or neglect, and poor parental supervision;
- **school factors** include truancy, poor academic performance, and a negative attitude towards school;
- **peer-group factors** include associating with antisocial peers or siblings, peer rejection, and gang membership; and
- **community factors** include living in a disadvantaged neighbourhood or in a neighbourhood characterised by a substantial amount of crime, available weapons, and drug use.¹⁴

Previous research also suggests that children who first appear in court when they are younger (aged 10–12) are more likely to reoffend and more likely to transition to the adult criminal jurisdiction.¹⁵

In Victoria, children who have suffered abuse, have experienced neglect, and/or have been involved in the child protection system have been found to be overrepresented among children and young people in custody (on sentence and on remand). A Victorian study by Jesuit Social Services published in 2015 found that vulnerable and disadvantaged children and young people were highly overrepresented among those who were on remand. The study found that all 27 children who were first remanded at age 10 to 12 years were known to child protection, with 14 of the 27 children known to child protection before their third birthday.¹⁶ Jesuit Social Services concluded that:

The justice system appears impotent in halting these children's trajectories, with most going on to experience substantial youth justice involvement. They belong in the welfare system not the justice system.¹⁷

13. See for example, Rolf Loeber et al., *Child Delinquency: Early Intervention and Prevention*, Bulletin Series (2003); Michael Shader, *Risk Factors for Delinquency: An Overview* (2004); J. David Hawkins et al., *Predictors of Youth Violence*, *Juvenile Justice Bulletin* (2000); Chi Meng Chu and James R.P. Ogloff, 'Sentencing of Adolescent Offenders in Victoria: A Review of Empirical Evidence and Practice' (2012) 19(3) *Psychiatry, Psychology and Law* 325; Agnew-Pauley and Holmes (2015), above n 4; Walter Forrest and Ben Edwards, 'Early Onset of Crime and Delinquency among Australian Children', in Australian Institute of Family Studies (ed.), *The Longitudinal Study of Australian Children Annual Statistical Report 2014* (2014) 131–150; Shuling Chen et al., *The Transition from Juvenile to Adult Criminal Careers*, New South Wales Crime and Justice Bulletin no. 86 (2005); Parliament of Victoria, Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People, Final Report*, no. 218 (2009); Anna Stewart et al., 'Transitions and Turning Points: Examining the Links between Child Maltreatment and Juvenile Offending' (2008) 32 *Child Abuse & Neglect* 51.

14. Loeber et al. (2003), above n 13.

15. See for example, David P. Farrington et al., *Criminal Careers and Life Success: New Findings from the Cambridge Study in Delinquent Development*, Research Findings no. 281 (2006) 2; Rolf Loeber and David P. Farrington, 'Young Children Who Commit Crime: Epidemiology, Developmental Origins, Risk Factors, Early Interventions and Policy Implications' (2000) 12(4) *Development and Psychopathology* 737; Forrest and Edwards (2014), above n 13, 131; Chen et al. (2005), above n 13; Parliament of Victoria, Drugs and Crime Prevention Committee (2009), above n 13, 63; Don Weatherburn et al., *Screening Juvenile Offenders for Further Assessment and Intervention*, *Crime and Justice Bulletin* no. 109 (2007).

16. Jesuit Social Services, *Thinking Outside: Alternatives to Remand for Children, Summary Report* (2015) 20. For more information about the Victorian Child Protection System and Child Protection Orders, see Department of Health and Human Services, *Child Protection* (Human Services, 2016) <<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection>> at 20 September 2016.

17. Jesuit Social Services (2015), above n 16, 20.

Similarly, in its 2014–15 Annual Report, the Victorian Youth Parole Board referred to a Department of Health and Human Services 'snapshot survey' of 165 young people in custody (157 males and eight females detained on sentence and remand) on 3 September 2014. The survey showed that:

- 62% were victims of abuse, trauma, or neglect;
- 43% were the subject of a previous child protection order and 19% were the subject of a current child protection order;
- 58% had previously been suspended or expelled from school;
- 33% presented with mental health issues, 23% had a history of self-harm or suicidal ideation, 22% presented with issues concerning their intellectual functioning, and 9% were registered with Disability Services;
- 8% had a history of alcohol misuse, 19% had a history of drug misuse, and 60% had a history of both alcohol and drug misuse;
- 10% had offended while under the influence of alcohol but not drugs, 19% had offended while under the influence of drugs but not alcohol, and 53% had offended while under the influence of alcohol and drugs; and
- 10% were parents.¹⁸

The Youth Parole Board commented that:

it [is] imperative that the child protection and youth justice services work collaboratively to implement supports that will assist young people to overcome, as much as possible, the effects of traumatic experiences early in life.¹⁹

In a 2011 paper, the then President of the Children's Court, Judge Paul Grant, discussed Youth Justice's 2008–09 study of Victorian children and young people on supervisory orders or in detention (that study is likely to include many of the same offenders in the current report). The study found that, of the children and young people on supervisory orders or in detention, 33% had child protection involvement (compared with approximately 0.5% of young people in Victoria) and 60% had a history of abuse or trauma.²⁰ Grant identified two types of offender that typically receive custodial orders:

Some, with limited criminal history, receive sentences of detention because they commit very serious offences. Other offenders, often described in the youth justice literature as chronic offenders, are young people who, having been given opportunities within the community, continue to offend. These young people often come from disadvantaged backgrounds, are not attending school, are using drugs and alcohol, have difficult peer networks and start offending before the age of 14. They require comprehensive and coordinated responses that address their individual needs.²¹

In relation to youth detention, Grant observed that:

- some young people have complex and difficult problems. There is no simple connection between 'locking them up' and stopping offending behaviour. We need to address in a coordinated and comprehensive way the problems in that person's life;
- whilst detention may protect the community during the time a young person is in custody, there is evidence that shows detention does not act as a deterrent to further offending. Indeed ... 'it is widely

18. Youth Parole Board, *Annual Report 2014–15* (2015) 13. 'Child protection order' is a collective term for one of a number of orders that can be made by the Children's Court for the protection and permanent care of children. See also Department of Health and Human Services, *Child Protection Orders* (Human Services, 2016) <<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection/child-protection-orders>> at 12 September 2016.

19. Youth Parole Board (2015), above n 18, 13.

20. Paul Grant, 'Young People and State Intervention' (Paper presented at ANZAPPL Symposium, Australian and New Zealand Association of Psychiatry, Psychology and Law, [Wellington], 20 August 2011) 6.

21. *Ibid* 5.

recognised that some criminal justice responses to offending, such as incarceration, are criminogenic: that is, they foster further crime'.²²

Similarly, a recent study by the Australian Institute of Health and Welfare found further evidence of a connection between the child protection system and the youth justice system. Combining data from a number of Australian states and territories, including Victoria, the study found that:

- 32.1% of young people under community-based supervision in 2014–15 also had contact with the child protection system within the same year (15 times the rate for the equivalent general population); and
- 40.8% of young people subject to youth detention in 2014–15 were also involved in the child protection system in the same year (19 times the rate for the equivalent general population).²³

The study reported that 5.5% of young people subject to child protection in 2014–15 were also subject to either youth detention or youth justice supervision in the same year. This was 14 times the rate for the equivalent general population.²⁴

The principles that apply to sentencing children and young people in Victoria

Section 362 of the *Children, Youth and Families Act 2005* (Vic) sets out the principles that the Children's Court must take into account in sentencing a child. Although not specifically mentioned, the principle of rehabilitation underpins the first four principles set out in section 362(1), which include the preservation of family and home, the continuation of the child's education and employment, and the need to minimise stigma to the child.²⁵ The focus on rehabilitation reflects the benefit to both the child and the community in directing the young person away from a potentially life-long pathway of antisocial conduct and criminal offending,²⁶ recognising that:

First, the young offender's immaturity is seen as markedly reducing his/her moral culpability; secondly, custody can be particularly criminogenic for a young person, whose brain is still developing; and, thirdly, the very process of development and maturation which is under way is seen as providing a unique opportunity for rehabilitation and — hence — for minimising the risk of re-offending.²⁷

The last two principles in section 362 of the *Children, Youth and Families Act 2005* (Vic) are more focused on justice. Applying only 'if appropriate', they require the court to have regard to the need to ensure that the child is aware that they must bear a responsibility for any action by them against the law, and the need to protect the community from the violent or wrongful acts of the child.²⁸

The principles that apply to sentencing children and young people are further discussed in Chapter 7 of this report.

22. Ibid 9 (referring to Kelly Richards, *What Makes Juvenile Offenders Different from Adult Offenders?* Trends and Issues in Crime and Criminal Justice no.409 (2011) 6–7).

23. Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision 2014–15*, Data Linkage Series no. 22 (2016) 12–13, 15.

24. Ibid 8.

25. *Children, Youth and Families Act 2005* (Vic) ss 362(a)–(d). For further discussion of the Children's Court jurisdiction and the principles that govern the sentencing of children and young people, see Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report* (2016).

26. *R v Dwayne Andrew Evans* [2003] VSCA 223 (19 December 2003) [44] (Vincent JA).

27. *Bradley Webster (A Pseudonym) v The Queen* [2016] VSCA 66 (11 April 2016) [8].

28. *Children, Youth and Families Act 2005* (Vic) ss 362(f)–(g).

2. Profile of the study group

Overview

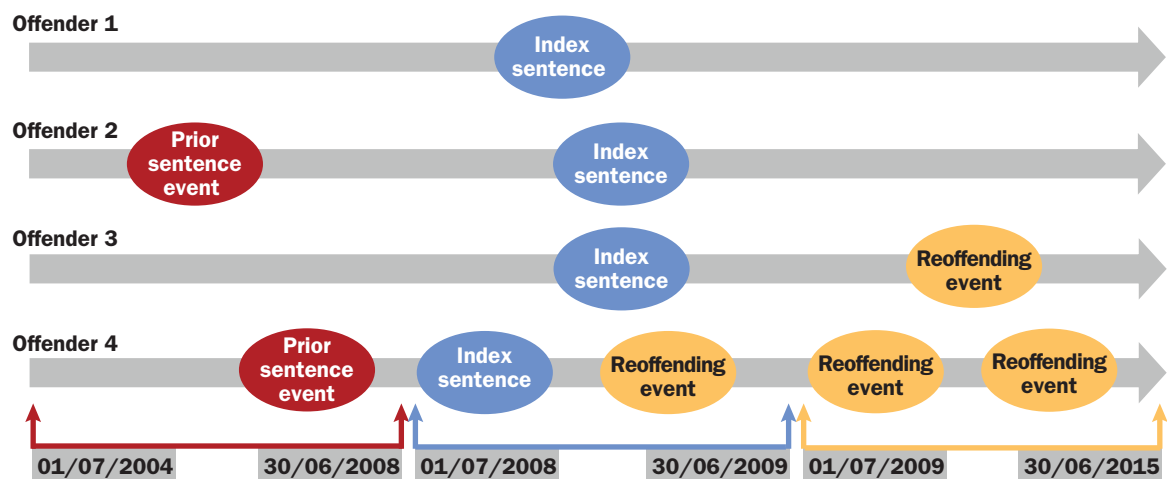
The group of offenders studied in this report (the 'study group') consists of all people sentenced in the Children's Court of Victoria from 1 July 2008 to 30 June 2009 inclusive (the 'index year'). The study group comprises **5,385 people**.²⁹

The offending patterns of the study group have been examined for the period from 1 July 2004 to 30 June 2015 inclusive (the 'study period'). Figure 4 illustrates the process for nominating the index sentence in 2008–09, prior convictions in the previous four years, and reoffending in the subsequent six years, giving some typical scenarios. For example, some index offenders:

- were sentenced only once in the 11-year study period (at the index sentence, such as 'Offender 1');
- had been previously sentenced but did not reoffend (such as 'Offender 2');
- had no prior sentence events in the four years before the index sentence but reoffended in the six years after the index sentence (such as 'Offender 3'); and
- were sentenced more than once in 2008–09 (such as 'Offender 4').

If offenders had multiple sentence events in 2008–09, the earliest sentence has been selected as the 'index sentence' and reoffending has been examined for the six years from the date of that first sentence.

Figure 4: Process for identifying the index sentence, prior sentence events, and reoffending events



29. This 'person' count is different from the number of cases sentenced in the Children's Court over the index year because one person may have been sentenced for multiple cases within a single year. The case used for each person in the sample is the first case they were sentenced for in the Children's Court in 2008–09 (the 'index sentence'). If an offender had multiple cases heard together in the Children's Court on the same date, these cases are all treated as part of the index sentence. See further the discussion on page 13.

Age at ‘entry’ into the criminal courts

The criminal division of the Children’s Court has jurisdiction to hear and determine charges against children and young people if the alleged offence was committed on or after the person’s 10th birthday but before their 18th birthday.³⁰ Children under 10 years of age are, at law, not ‘criminally responsible’ and cannot be prosecuted for their behaviour.³¹

Children who are aged 10–13 (inclusive) are considered to be *doli incapax*, which means that they are presumed to be ‘incapable of crime’ unless the prosecution successfully rebuts the presumption and proves that the child is able to adequately distinguish between right and wrong.³²

If a young person has turned 19 by the time the case commences in the Children’s Court, the case is transferred to the Magistrates’ Court.³³

This report examines behaviour by individuals over an extended period of time, so there are a number of points at which an offender’s age can be measured. However, the report focuses on the age of offenders at their *first* sentence, as previous research suggests there is an association between the age at which children and young people ‘enter’ the juvenile justice system and their future criminality.³⁴

As Figure 5 (page 11) shows, the most common age at entry into the criminal courts was 17 (25%), while 19% of offenders entered the system before the age of 15. The median age at first sentence for the study group was 16.³⁵ Of the offenders shown in Figure 5, those who were aged 18–20 at the time of sentencing were almost always aged under 18 at the time of the offence (where age and offence date are known). Of the 1,127 offenders who were aged 18–20 at their first sentence:

- 1,028 were aged under 18 at the time of the offence; and
- 80 were recorded as being 18 years old at the time of the offence.³⁶

The ‘10–12’ category includes three offenders (all male) who were 10 years old at their first recorded sentence, 39 who were 11 years old, and 103 who were 12 years old. At their first recorded sentence, the three 10 year old boys were sentenced as follows:

- **Offender 1** was sentenced to a good behaviour bond for three charges: possess liquor, theft, and theft of a bicycle. Over the 11-year study period, this offender had 16 sentence events.
- **Offender 2** was sentenced to probation for one charge of theft. Over the 11-year study period, this offender had eight sentence events.
- **Offender 3** was sentenced to probation for 24 charges: one charge of recklessly causing injury, two charges of unlawful assault, one charge of criminal damage by fire (arson), 12 charges of theft, six charges of burglary, and two charges of dishonestly receiving stolen goods. Over the 11-year study period, this offender had 10 sentence events. By the time he was 15 years old, he had been sentenced for offences including trafficking a drug of dependence and using a drug of dependence.

30. *Children, Youth and Families Act 2005* (Vic) s 3(1) (definition of ‘child’). Prior to 1 July 2005, the Children’s Court did not have criminal jurisdiction in relation to a young person who had turned 17 at the time of their alleged offence. See also Peter Power, ‘Chapter 7 – Criminal Division – General’, *Children’s Court Research Materials* (Children’s Court of Victoria, 2016) [7.2.1].

31. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of ‘child’), 344 (‘It is conclusively presumed that a child under the age of 10 years cannot commit an offence’).

32. *R (A Child) v Whitty* (1993) 66 A Crim R 462. See further Peter Power, ‘Chapter 10 – Criminal Division – Procedure’, *Children’s Court Research Materials* (Children’s Court of Victoria, 2016) [10.4].

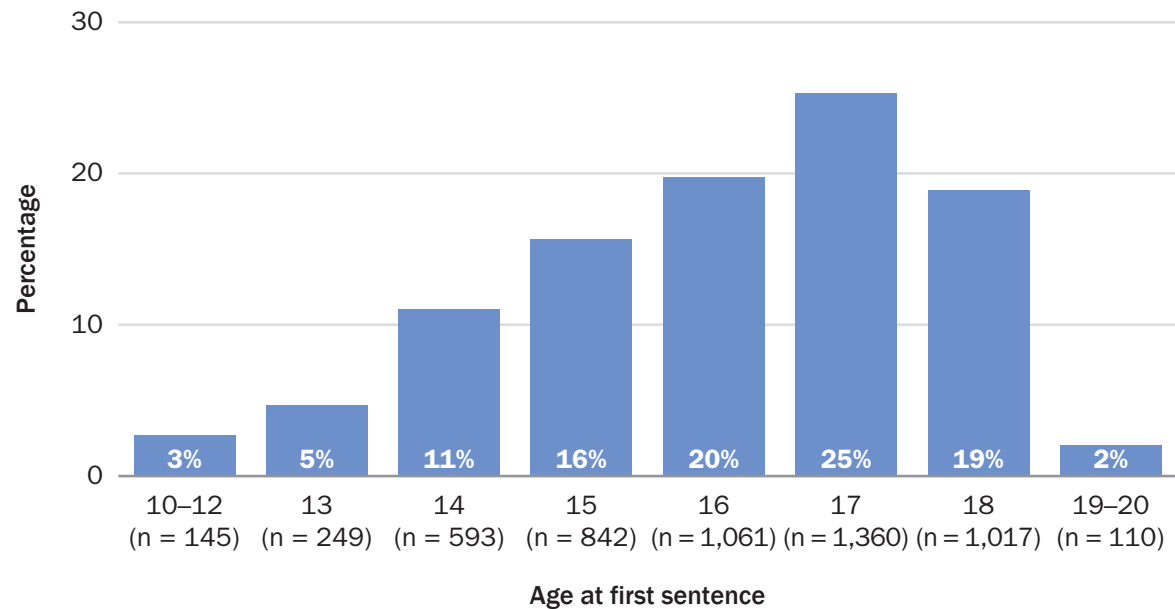
33. *Children, Youth and Families Act 2005* (Vic) ss 3(1) (definition of ‘child’), 516(4)–(5).

34. See for example, Farrington et al. (2006), above n 15, 2; Loeber and Farrington (2000), above n 15; Forrest and Edwards (2014), above n 13, 131; Chen et al. (2005), above n 13; Parliament of Victoria, Drugs and Crime Prevention Committee (2009), above n 13, 63; Weatherburn et al. (2007), above n 15. For discussion of the limitations associated with this counting rule, see further Appendix 1.

35. Of the 5,385 unique offenders in the study group, eight were excluded due to issues in relation to their recorded date of birth. Forty-eight offenders had their first sentence heard in an adult court due to the seriousness of their offences. For example, a 17 year old male was sentenced in the County Court to a youth justice centre order for offences including culpable driving causing death.

36. A further 19 offenders had unknown or unreliable offence dates in relation to their first sentence.

Figure 5: Percentage of offenders in the study group by age at first sentence³⁷



Gender

As Figure 6 shows, the majority of the study group was male (4,166 offenders or 77%), while just under one-quarter was female (1,219).

Overall, the age distribution of males and females was similar, with both genders having a median age at first sentence of 16 years. However, as Figure 7 shows, there was a slight tendency for female offenders to be older than males at their first sentence. A higher proportion of female offenders than male offenders were aged 18 or over (25% compared with 20%).

Figure 6: Percentage of offenders in the study group by gender, 2008–09 (n = 5,385)

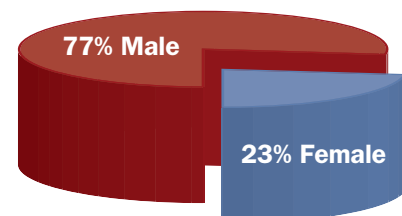
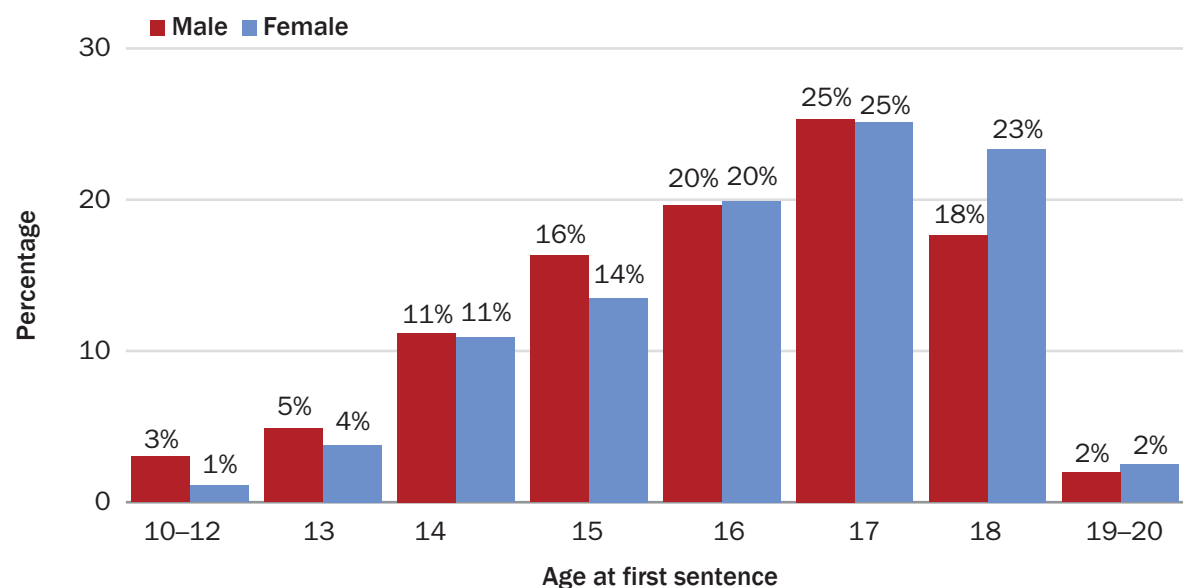


Figure 7: Percentage of offenders in the study group by age at first sentence and gender



37. In this report, all percentage values are rounded to zero decimal places. As a result of rounding, not all figures and tables of percentages add to 100%. If a percentage is rounded to zero, it is displayed as '<1%'. If a count is zero, it is displayed as a dash ('-').

Number of charges at the index sentence

At their index sentence in 2008–09, the 5,385 offenders in the study group were sentenced for a total of 21,827 charges. This represents an average of 4.1 charges per offender. The smallest number of charges at the index sentence was one (40% of the study group), while the largest number was 11 (one person).³⁸

Offence type at the index sentence

The Children's Court must hear and determine:

- all summary (less serious) offences alleged to have been committed by children and young people; and
- indictable (more serious) offences alleged to have been committed by children and young people, unless:
 - the offence is one of several fatal offences;³⁹
 - the child objects to the matter being heard summarily;⁴⁰ or
 - the court considers at any stage that the charge is unsuitable to be heard and determined summarily due to exceptional circumstances (although this provision is to be used 'reluctantly').⁴¹

Offence classification and counting rules

This report classifies offences into 11 types (each type includes attempted offences). The offence types (including examples) are as follows:

- **breach intervention order** (contravene family violence intervention order; breach intervention order);
- **breach of bail** (fail to answer bail, commit indictable offence whilst on bail);
- **drug offences** (possess cannabis, use cannabis);
- **justice procedures offences** (resist police, state false name or address);
- **offences against the person** (unlawful assault, recklessly cause injury);
- **'other' offences** (possess controlled weapon without excuse, enter private place without permission);
- **property damage offences** (intentionally damage or destroy property, arson);
- **road safety offences** (unlicensed driving, use unregistered motor vehicle);
- **sexual offences** (sexual penetration with a child under 16, indecent act with a child under 16);
- **theft/deception offences** (theft, burglary); and
- **transit offences** (offences involving public transport such as failure to produce a valid ticket or concession card, placing feet on furniture).

38. A small proportion of offenders in the study group (66 offenders or 1%) had a case heard in the Magistrates' Court on the same day as their index sentence in the Children's Court. As this report focuses on children and young people in the Victorian Children's Court jurisdiction, charges sentenced in the Magistrates' Court on the same date as the index sentence have been excluded from the analysis of charge and offence counts and sentence type at the index sentence. However, offending sentenced in all Victorian criminal courts has been included in the analysis of prior convictions and reoffending.

39. The offences of murder, attempted murder, manslaughter, child homicide, arson causing death, and culpable driving causing death must be dealt with in the Supreme Court or the County Court, although the Children's Court may conduct committal proceedings for these offences: *Children, Youth and Families Act 2005* (Vic) ss 516(1)(b)–(c).

40. *Children, Youth and Families Act 2005* (Vic) s 356(3)(a).

41. *Children, Youth and Families Act 2005* (Vic) s 356(3)(b); *D (A Child) v White* [1988] VR 87, 93; *A Child v A Magistrate of the Children's Court & Others* (Unreported, Supreme Court of Victoria, Cummins J, 24 February 1992); *C v Children's Court of Victoria & Anor* [2015] VSC 40 (19 February 2015). See further Power (2016), above n 32, [10.1]. A combination of factors may amount to exceptional circumstances: *Victoria Police v CB* [2010] VChC 3 (24 June 2010) [11], [14].

The offence types of 'breach of bail' and 'breach intervention order' are often included in the broader offence type of 'justice procedures offences'. In this report, however, they have been examined separately.

'Offences against the person' do not include sexual offences (these are examined separately).

Transit offences are usually dealt with through an 'infringement notice' (an on-the-spot fine). Unpaid infringement notices involving children and young people are enforced through the Children and Young Person's Infringement Notice System (CAYPINS).⁴² Transit offences may be sentenced in court in some cases, for example, if the offender elects to have the charge heard in court and is found guilty, or if the transit offence is accompanied by more serious offences (such as assaulting an authorised officer). Only transit offences sentenced in court are included in the count of sentenced charges in this report.

A number of road safety offences can also be dealt with through the infringements system. However, in practice this usually applies only to adult offenders. In contrast, road safety offences involving children and young people are usually dealt with in the court system rather than the infringement system, due principally to the gravity of a child or young person being unlicensed. Once young people turn 18 and get their driver licence, road safety offences tend to be dealt with by an on-the-spot fine, rather than through the court system.⁴³

What is an infringement notice?

Also described as 'on-the-spot fines', infringement notices allow relatively low-level offending to be dealt with by an administrative penalty, without the need for a court hearing or a finding of guilt. Infringement notices can be issued by Victoria Police, the Department of Transport, Planning and Local Infrastructure (most often for transit ticketing offences) and other agencies. If the person pays the amount on the infringement notice, the matter is finalised without the need for the person to attend court.

What is CAYPINS?

The Children and Young Person's Infringement Notice System (CAYPINS) is part of the Children's Court's criminal jurisdiction. This system deals with children and young people who fail to pay infringement notices. CAYPINS allows for the enforcement of infringement penalty notices against children and young people by a registrar, without the need for proceedings before a magistrate in open court.

Offence analysis

Offences for which the study group were sentenced at their index sentence in 2008–09

Figure 8 (page 14) shows the proportion of offenders whose index sentence included at least one charge of a particular offence type.⁴⁴ The most common offence type within the study group's index sentences was theft/deception offences (35% of offenders in the study group had at least one charge of a theft/deception offence sentenced at their index sentence), followed by offences against the person (26%) and transit offences (23%).

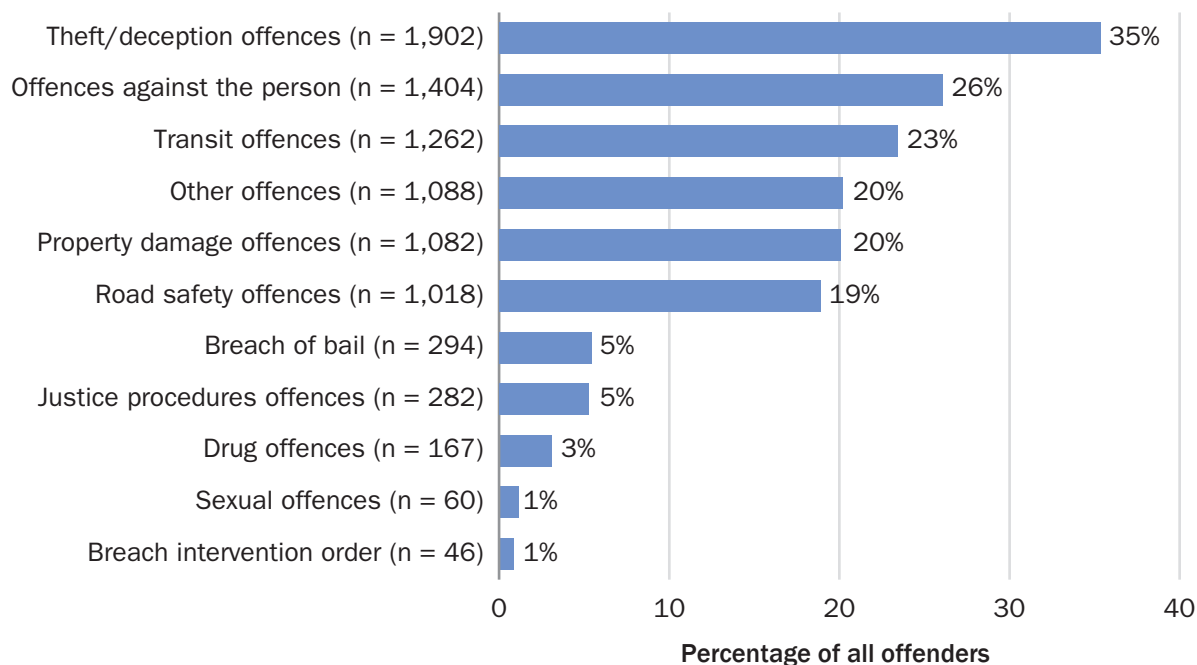
Assault was the most common specific **offence against the person**, accounting for 30% of the 3,241 charges of an offence against the person. Causing injury (recklessly or intentionally) represented 23% of charges of an offence against the person, and robbery (including assault with intent to rob) represented 12% of charges.

42. For further information about the infringements system, see Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (2014).

43. Youth Reoffending Roundtable (27 September 2016).

44. As sentence events often include more than one sentenced charge and multiple offence types, the counting rule used for this analysis includes each offence type present at a sentence event. For example, if an offender had one sentenced charge involving a theft/deception offence and one sentenced charge involving an offence against the person, the offender would be counted in both offence types. Therefore, the percentages shown in Figure 8 add up to more than 100%.

Figure 8: Percentage of offenders in the study group with at least one sentenced charge of an offence type at their index sentence, 2008–09



The most common **theft/deception offence** was theft (including 'shopsteal') (45% of theft/deception charges), followed by burglary (17% of charges) and theft of a motor vehicle (13% of charges). **Transit offences** typically included failure to produce a valid ticket or concession card (representing approximately 70% of transit offence charges), while place feet on furniture represented nearly 10% of charges. Even smaller percentages involved charges of offensive behaviour and state false name or address.

The Council conducted further analysis of the relationship between road safety offences and theft of a motor vehicle. A total of 455 offenders were sentenced at their index sentence for theft of a motor vehicle. Of these offenders, 277 (61%) were also sentenced at their index sentence for a road safety offence, most commonly unlicensed driving. This indicates that children and young people who steal a motor vehicle are also likely to commit road safety offences.

Which offence types had the highest volume of charges?

As well as being the most common offence type sentenced at the index sentence, theft/deception was the offence type with the highest number of charges per person (Table 2, page 15). The 1,902 offenders sentenced for a theft/deception offence at their index sentence had an average of 4.02 charges of theft/deception each. In comparison, offenders sentenced for offences against the person had an average of 2.31 charges of that offence type each, and offenders sentenced for transit offences had an average of 1.35 charges of that offence type each.

Table 2: Number of offenders and charges in the study group at the index sentence, 2008–09, by offence type

Offence type	Number of offenders	Percentage of offenders	Number of charges	Percentage of all charges	Average number of charges per offender
Theft/deception offences	1,902	35	7,647	35	4.02
Offences against the person	1,404	26	3,241	15	2.31
Transit offences	1,262	23	1,699	8	1.35
Other offences	1,088	20	1,686	8	1.55
Property damage offences	1,082	20	2,919	13	2.70
Road safety offences	1,018	19	3,323	15	3.26
Breach of bail	294	5	428	2	1.46
Justice procedures offences	282	5	415	2	1.47
Drug offences	167	3	275	1	1.65
Sexual offences	60	1	125	1	2.08
Breach intervention order	46	1	69	<1	1.50
Total	5,385	100	21,827	100	4.05

Sentence type at the index sentence

Figure 9 (page 16) shows the distribution of sentences imposed in the Children’s Court on offenders at their index sentence in 2008–09. In this figure, each offender is counted only once, using the most severe sentence type at their index sentence (according to the sentencing hierarchy in section 360 of the *Children, Youth and Families Act 2005* (Vic)).

To aid interpretation, sentence types have been grouped into the following categories (see Appendix 3):

- unsupervised orders (dismissal, discharges, undertakings, good behaviour bonds, and fines);
- supervised community-based sentences (probation, youth supervision orders, and youth attendance orders); and
- custodial orders (youth residential centre orders and youth justice centre orders).

Unsupervised orders

Unsupervised orders were imposed on 4,301 offenders (80% of the study group). Approximately two-thirds of the study group were sentenced to either fines (35%) or good behaviour bonds (32%).

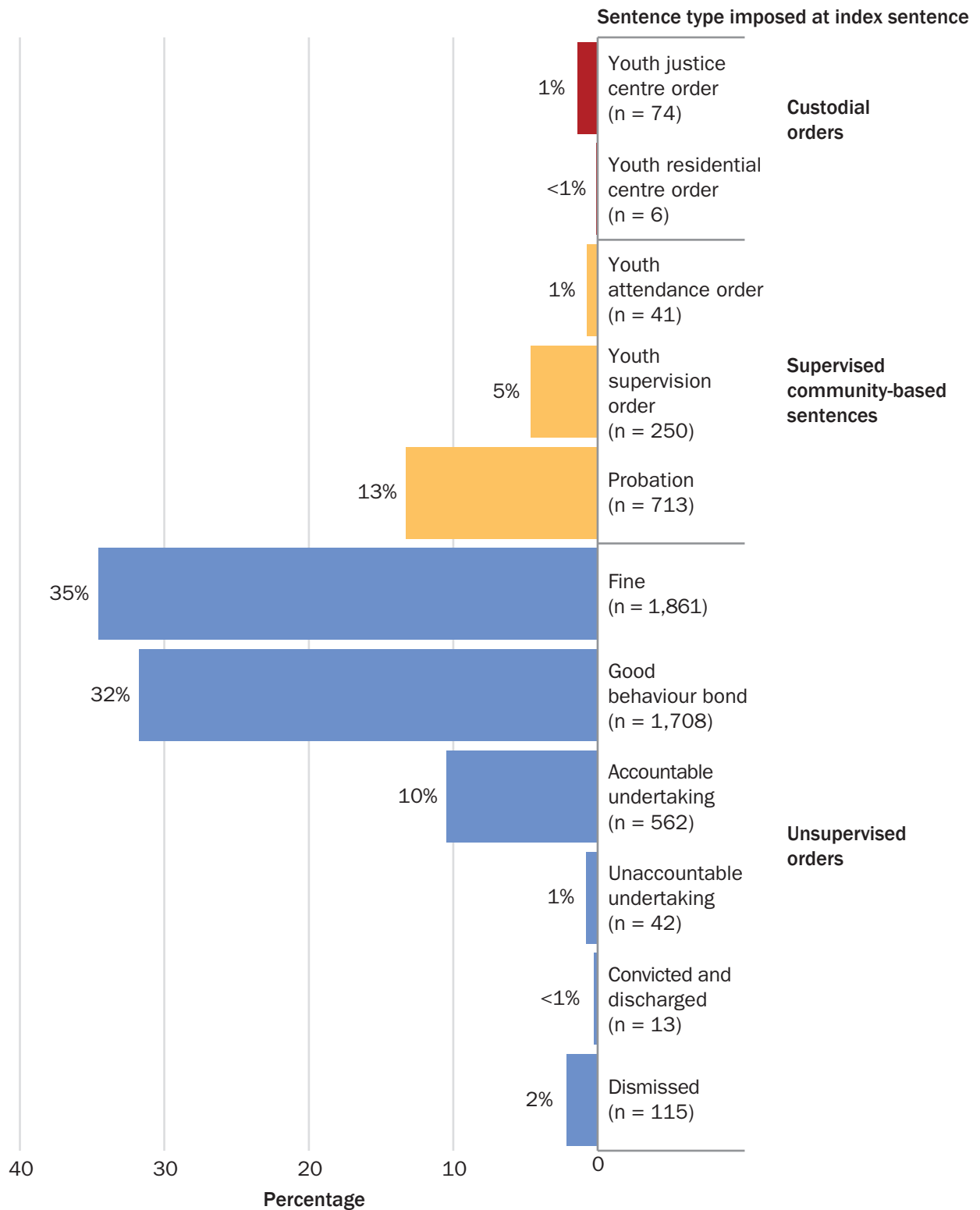
Supervised community-based sentences

Sentencing orders that involve supervision in the community were the most severe sentence imposed on 19% of the study group: 713 offenders (13%) received probation, 250 offenders (5%) received a youth supervision order, and 41 offenders (1%) received a youth attendance order (an alternative order to detention for offenders aged 15–20).

Custodial orders

Custodial orders were imposed on 80 offenders (just over 1% of the study group): 74 offenders (1%) received a youth justice centre order (a custodial order for offenders aged 15–20) and six offenders (<1%) received a youth residential centre order (a custodial order for offenders aged 10–14).

Figure 9: Percentage of offenders in the study group by most serious sentence type imposed at the index sentence, 2008–09⁴⁵



45. Sixty-six offenders were sentenced in the Magistrates' Court on the same day as their index sentence in the Children's Court. For these offenders, the most severe sentence imposed at their index sentence in the Children's Court was counted, even if the sentence imposed in the Magistrates' Court on the same day was more severe. For example, one offender was sentenced to imprisonment in the Magistrates' Court on the same day that he was sentenced to a good behaviour bond in the Children's Court (the index sentence). This offender was included in the count of offenders who were sentenced to a good behaviour bond.

3. Prior convictions

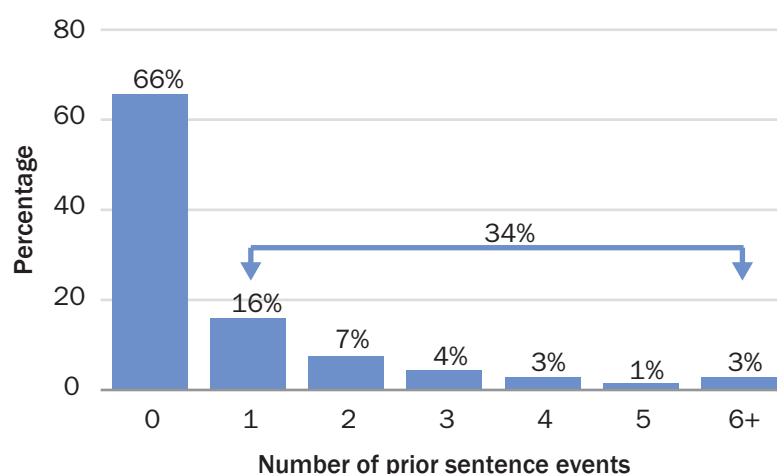
In numerous studies from Australia and elsewhere, prior offending has been found to significantly influence the likelihood of further reoffending following an intervention such as a criminal sentence.⁴⁶ The presence, volume, and nature of prior convictions are therefore considered in this report.

In this report, the term 'prior conviction' is used to refer to the presence of at least one proven charge in the four years before an offender's index sentence in 2008–09. Each date on which an offender appeared in court to be sentenced for a charge or charges (in the four years before their 2008–09 sentence) is referred to as a 'prior sentence event'. A prior sentence event could involve a single sentenced charge or multiple cases and charges, providing they were all sentenced on the one date.

Presence and number of prior convictions

Of the 5,385 people in the study group, 1,855 (34%) had at least one prior sentence event in the four years before their index sentence in 2008–09. As Figure 10 shows, 18% of offenders had two or more prior sentence events, and 3% had six or more. One offender had 17 prior sentence events, the highest number of prior sentence events for the study group.⁴⁷

Figure 10: Percentage of offenders in the study group by the number of prior sentence events in the four years before their index sentence, 2004–05 to 2008–09



Types of prior convictions

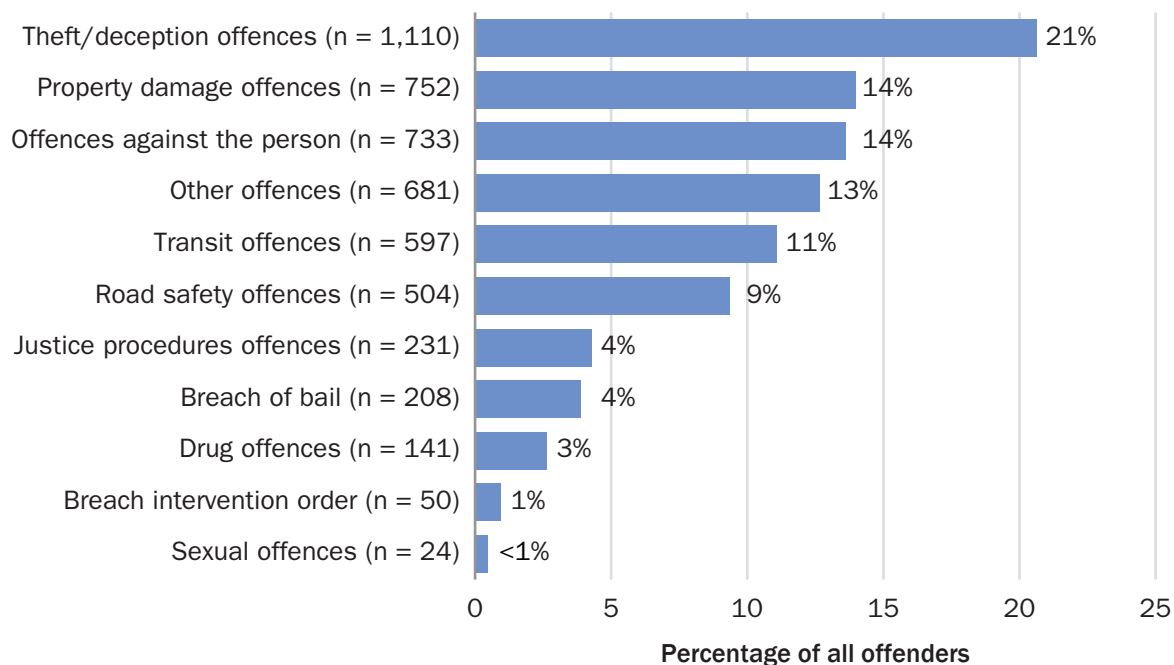
Figure 11 (page 18) shows the percentage of the study group with at least one prior sentence event of a particular offence type.⁴⁸ As with offence types at the index sentence, the most common prior offence type was theft/deception (21% of offenders in the study group had at least one prior sentenced charge of a theft/deception offence). This was followed by property damage offences (14%) and offences against the person (14%).

46. See for example, Sentencing Advisory Council (2016), above n 8, 49; Hayley Boxall et al., *Prior Offending among Family Violence Perpetrators: A Tasmanian Sample*, Trends and Issues in Crime and Criminal Justice no. 493 (2015) 1; Jason Payne, *Recidivism in Australia: Findings and Future Research*, Research and Public Policy Series no. 80 (2007) xiii.

47. Cases that were sentenced after the index sentence but included offences that were committed prior to the index sentence have been excluded from the count of prior sentence events and reoffending events. If the analysis of 'prior sentence events' in this report were to include offences that were committed before but sentenced after the index sentence in 2008–09, the proportion of index offenders with 'prior convictions' would increase from 34% of index offenders to 47% of index offenders (2,527 out of 5,385 index offenders). For further information about these cases, see Appendix 1.

48. For examples of common offences for each offence type see page 12.

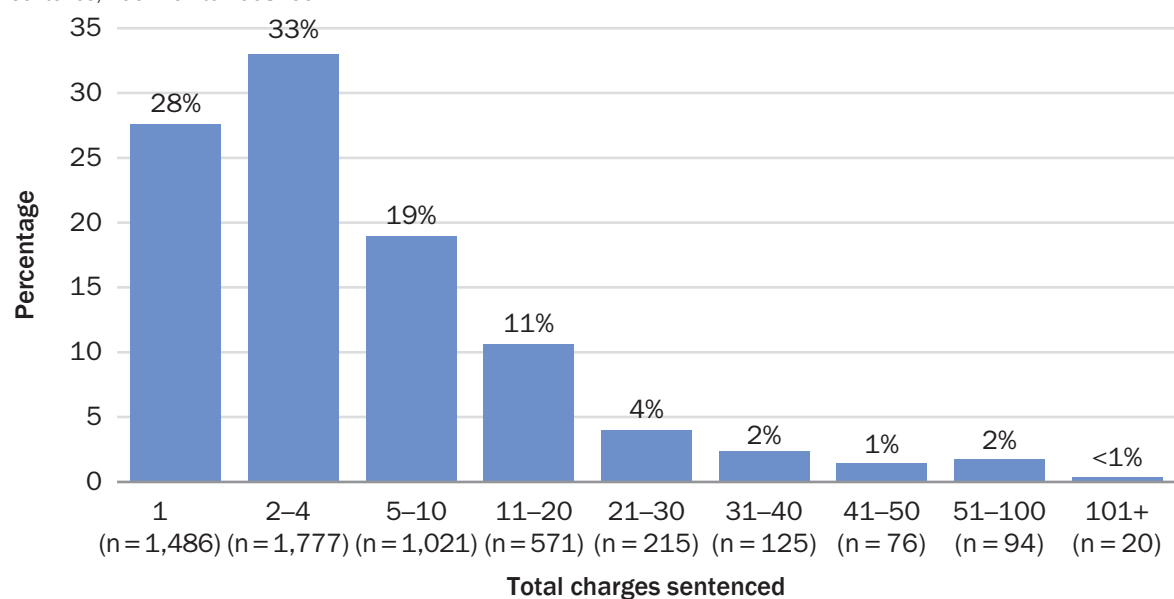
Figure 11: Percentage of offenders in the study group with at least one charge sentenced in the four years before their index sentence, by prior offence type, 2004–05 to 2008–09



Number of sentenced charges

Offenders in the study group were sentenced for a total of 43,871 charges in the four years prior to and including their index sentence (an average of 8.1 charges per person).⁴⁹ As Figure 12 shows, over one-quarter of offenders were sentenced for a single charge (28%), while 20% were sentenced for more than 10 charges. As the count of charges includes all charges sentenced at the index sentence, offenders with one sentenced charge would not have any prior convictions. The highest number of charges for a single offender (for sentence events prior to and including their index sentence) was 193.

Figure 12: Percentage of offenders by the total charges sentenced in the four years prior to and including their index sentence, 2004–05 to 2008–09



49. For this total, the Council added the number of charges for which the study group was sentenced in the four years *before* their index sentence to the number of charges sentenced *at* their index sentence.

4. Reoffending

This chapter addresses the following three questions:

1. What proportion of children and young people sentenced in the Children's Court in 2008–09 reoffended in the next six years?
2. Was there any change in the two-year reoffending rates for children and young people sentenced each year between 2008–09 and 2012–13?
3. What proportion of children and young people sentenced in the Children's Court in 2008–09 continued offending into their adulthood?

In this report, 'reoffending' is defined as a new proven charge (or charges) that was both committed and sentenced within six years of the offender's index sentence in 2008–09.

A 'reoffending event' is a new sentence event in the six years after the index sentence. A reoffending event represents a date on which the offender appeared in a Victorian court in order to be sentenced for a new case or cases involving one or more proven charges. To be included, all charged offences had to have been committed after the offender's index sentence.

As this analysis is limited to new *sentence* events, it captures all *proven* reoffending by the study group. This is an appropriate measure of reoffending (and the presumption of innocence applies to those who have not been convicted of an offence). However, it is likely that the actual rate of reoffending is higher than the rate revealed by data that is limited to subsequent sentences. Therefore, the reoffending rate disclosed by the data should be viewed as the base level of reoffending for the study group.

Reoffending rate

Of the 5,385 children and young people in the study group, 3,261 (61%) reoffended at least once in the six years following their index sentence in 2008–09 (referred to as 'reoffenders' in this report). In contrast, the six-year reoffending rate for the general criminal population (children, young people, and adults) identified in a Council study from 2015 was 40%.⁵⁰

The remaining 2,124 offenders were not sentenced for another offence in the six years following their index sentence (referred to as 'non-reoffenders').

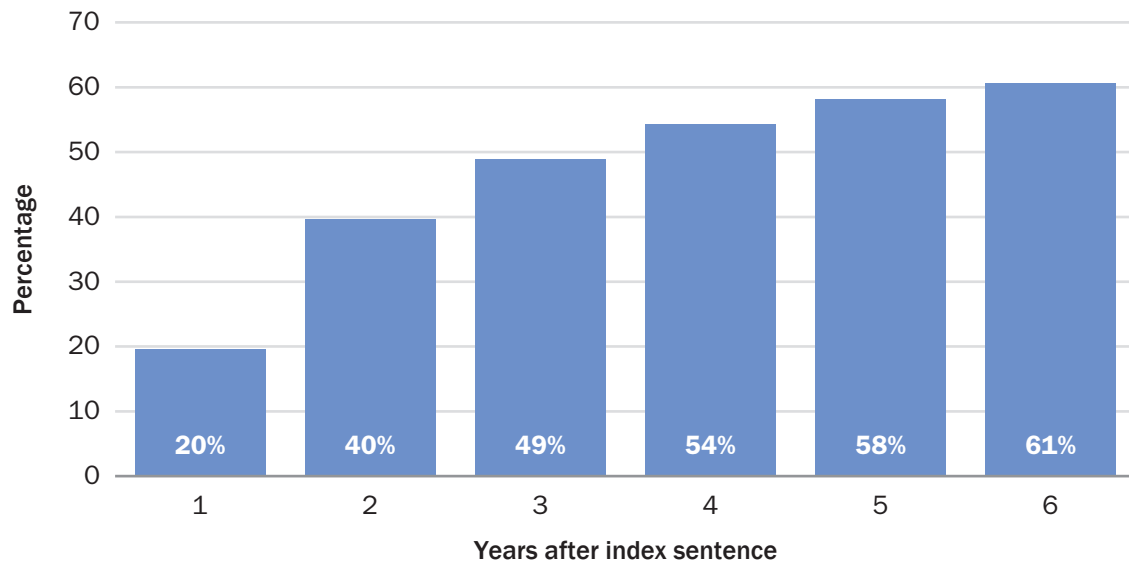
A total of 1,465 offenders had prior convictions and reoffended (27%), around one-third of the study group (1,796 offenders or 33%) reoffended but had no prior convictions, and 7% had prior convictions but did not reoffend. The remaining 32% (1,734 offenders) were only sentenced at their index sentence; that is, they had no prior convictions and did not reoffend.

For children and young people who did reoffend, the time between their index sentence and their first reoffending event varied considerably. Figure 13 (page 20) shows the cumulative percentage of offenders in the study group who reoffended each year following their index sentence. The reoffending rate doubled between the first and second year after the index sentence (from 20% to 40%), then increased by roughly half over the next four years (from 40% to 61%). The rate passed

50. Sentencing Advisory Council (2015), above n 7, 8.

50% in year four and passed 60% in year six. This pattern is very similar to the pattern that the Council found for all offenders (children, young people, and adults) in its 2015 study: the cumulative reoffending rate doubled from 10% to 21% in the first two years following the index sentence before increasing at a slower rate in subsequent years.⁵¹

Figure 13: Cumulative reoffending rate for offenders in the study group, 2008–09 to 2014–15



Characteristics of reoffenders

Reoffenders were more likely to be male (86% compared with 65% of non-reoffenders) and tended to be younger at their index sentence and at their first sentence:

- The average age of both reoffenders and non-reoffenders at their **index sentence** was 17.0. The average age of offenders on the day they committed the offence itself was 15.7 for reoffenders and 16.0 for non-reoffenders.
- The average age at **first sentence** was 15.7 for reoffenders and 16.7 for non-reoffenders. Offenders' average age when they committed the offence that attracted their first sentence was 15.1 for reoffenders and 15.8 for non-reoffenders.⁵²

Almost half of the reoffenders (45%) had at least one prior conviction, compared with 18% of non-reoffenders.

Factors associated with reoffending are explored further in Chapter 5.

51. Ibid 8.

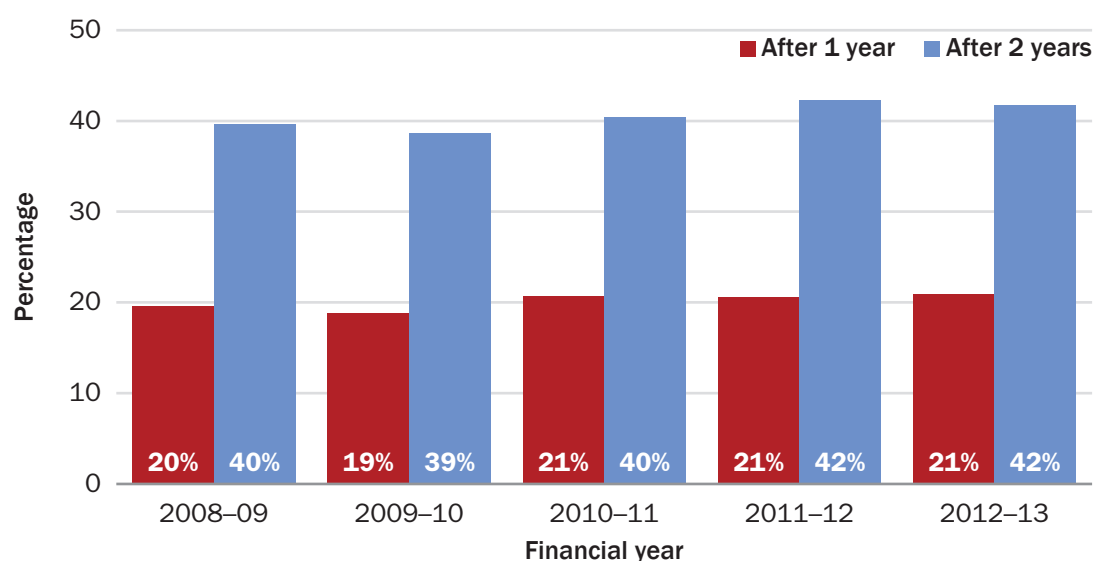
52. Of the 5,385 offenders in the study group, only 129 did not have a reliable age at offence associated with their index sentence and 180 offenders did not have a reliable age at offence associated with their first sentence.

Has the standardised reoffending rate changed over time?

To assess any changes in short-term reoffending rates for more recently sentenced offenders, the Council examined the one- and two-year reoffending rate for offenders sentenced in the Children's Court in each year from 2008–09 to 2012–13.

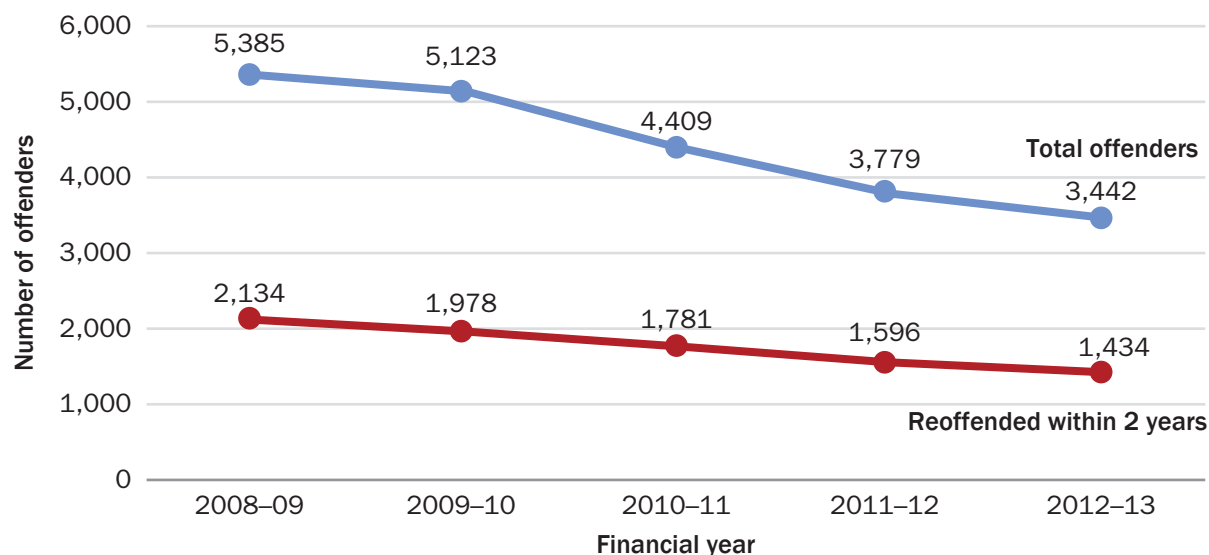
Figure 14 shows stability in the reoffending rate. The one-year reoffending rate ranged from 19% to 21%, while the two-year reoffending rate ranged from 39% to 42%.

Figure 14: One- and two-year reoffending rates for offenders sentenced in the Children's Court, by financial year, 2008–09 to 2012–13



The stability in reoffending rates coincided with a decline in the number of children and young people sentenced in the Children's Court (see Figure 15). Between 2008–09 and 2012–13, the number of children and young people sentenced in the child jurisdiction dropped by 36% (from 5,385 to 3,442). Likewise, the number of children and young people who reoffended within two years of their index sentence declined by 33% across the five years (from 2,134 to 1,434). Therefore, while the number of children and young people sentenced each year is decreasing (and there is a corresponding decrease in the number of reoffenders), the *proportion* of those sentenced who reoffend has remained roughly the same.

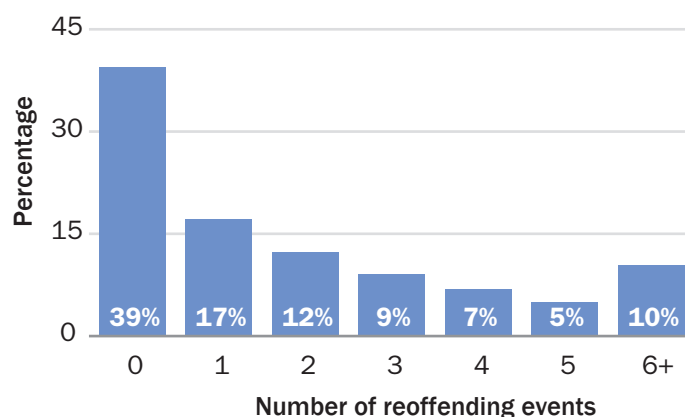
Figure 15: Number of offenders sentenced in the Children's Court and the number who reoffended within two years, by financial year, 2008–09 to 2012–13



Number of reoffending events

Many offenders reoffended more than once in the six years after their index sentence (Figure 16). In the six-year follow-up period, 61% of offenders had at least one reoffending event, with 44% having two or more. One in 10 offenders had six or more reoffending events (10%). Well over one-third (39%) of the study group did not reoffend within six years of their index sentence.

Figure 16: Percentage of offenders in the study group by number of reoffending events within six years of their index sentence, 2008–09 to 2014–15

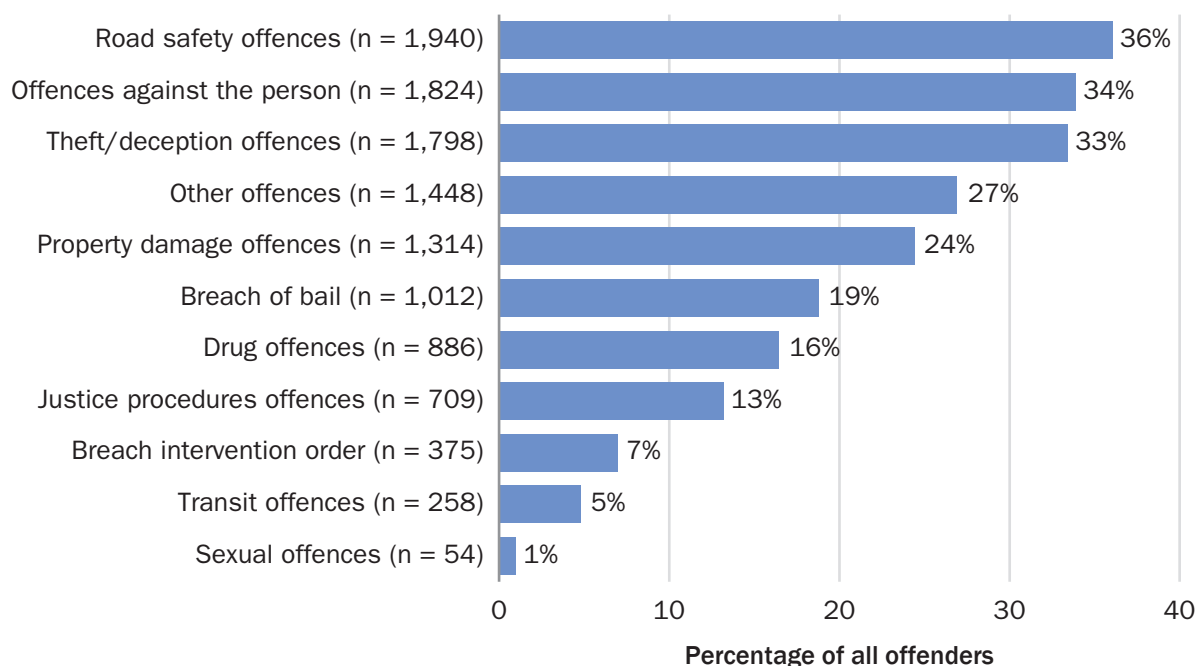


Reoffence type

The type of reoffending ('reoffence type') in which the study group engaged includes all sentenced charges in the six years following their index sentence in 2008–09. The timing and specific sequence of the study group's reoffending are not considered. The percentages shown represent the proportion of the entire study group with a particular reoffence type, not the proportion of those who reoffended.

Figure 17 shows the percentage of offenders in the study group who reoffended at least once with a charge of a particular reoffence type in the six years after their index sentence.

Figure 17: Percentage of offenders in the study group with at least one charge in a reoffence category sentenced in the six years following their index sentence, 2008–09 to 2014–15



The three most common reoffence types were road safety offences (e.g., careless driving), offences against the person (e.g., assault), and theft/deception offences (e.g., shop theft).⁵³ Around one-third of the study group reoffended with these reoffence types (Figure 17).

The prevalence of road safety offences in reoffending and, to a lesser extent, at the index sentence, is most likely due to the increased chance of detection for these offences compared with many other offence types. Such prevalence also reflects the practice of dealing with road safety offences by children and young people in the court system, rather than issuing them with an on-the-spot fine (see page 13).

As well as differences in the rate of reoffending with different reoffence types, the volume of charges differed across offences.

Table 3 shows the volume of charges sentenced in each reoffence type. Although theft/deception was the third most common reoffence type overall, it had the highest rate of charges per reoffender (an average of 9.1 sentenced theft/deception charges per reoffender). Road safety offences were the most common reoffence type, and those who reoffended with a road safety offence had an average of 7.5 sentenced road safety offence charges in the six-year follow-up period. Offences against the person were the second most common reoffence type, but the average number of charges per reoffender was third highest (an average of 3.9 sentenced charges per reoffender for in the six-year period).

Table 3: Average number of reoffending charges per reoffender in the six years following their index sentence, by reoffence type, 2008–09 to 2014–15

Reoffence type	Number of reoffending charges	Number of reoffenders ^a	Average number of reoffending charges per reoffender
Theft/deception offences	16,340	1,798	9.1
Road safety offences	14,454	1,940	7.5
Offences against the person	7,114	1,824	3.9
Property damage offences	4,121	1,314	3.1
Transit offences	720	258	2.8
Drug offences	2,374	886	2.7
Other offences	3,697	1,448	2.6
Breach intervention order	945	375	2.5
Breach of bail	2,342	1,012	2.3
Sexual offences	115	54	2.1
Justice procedures offences	1,389	709	2.0
All reoffenders	53,611	3,261	16.4

a. In this table, the sum of the number of reoffenders is greater than the total number of reoffenders ('All reoffenders') because each reoffender is counted once in each of the reoffence types present in their reoffending events.

53. For examples of common offences for each offence type see page 12.

What is the dual track system?

The 'dual track' system is intended to prevent immature and vulnerable offenders who are under the age of 21 from entering the adult prison system, by allowing the court to sentence them to detention in a youth justice centre, rather than an adult prison, providing they satisfy the eligibility criteria. The maximum period of detention that a court may order a young offender to serve in a youth justice centre is two years in the Magistrates' Court and three years in the County Court or the Supreme Court. These maxima apply regardless of how many charges the young offender is sentenced for in the same proceeding. To make this order, the court must receive a pre-sentence report and be satisfied that there are 'reasonable prospects for the rehabilitation of the young offender' or that the 'young offender is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison'. In determining whether to make a youth justice centre order, the court must have regard to the nature of the offence and the 'age, character and past history of the young offender' (*Sentencing Act 1991 (Vic)*, ss 3 (definition of 'young offender'), 32(2)(b)).

How many children and young people continued to the adult criminal jurisdiction?

Overall, 52% of the study group (2,789 offenders) progressed to the adult criminal jurisdiction by the end of the study period (30 June 2015).

The 2,789 offenders who continued offending into the adult criminal jurisdiction represent the majority of the 3,261 people in the study group who reoffended (86%). This is not surprising, given that the majority of the study group were 17 or 18 years old at their index sentence (56%), and therefore their reoffending would have fallen within the jurisdiction of the adult courts.

Within six years of their index sentence:

- 12% of the study group were sentenced to a term of imprisonment or a partially suspended sentence; and
- 5% of the study group (275 offenders) were sentenced in the adult criminal jurisdiction to a youth justice centre order under the dual-track system, which is a separate scheme provided for young adult offenders (offenders who have turned 18 but are under 21).

Table 4 shows the courts in which the study group's reoffending events were sentenced. In total there were 10,836 reoffending events, of which 70% were sentenced in the adult criminal jurisdiction (Magistrates' Court and higher courts) and 30% were sentenced in the Children's Court.

The continuation of children and young people into the adult criminal jurisdiction is discussed further in Chapter 5 with reference to age at first sentence (see page 30) and the sentence type imposed (see page 40).

Table 4: Number and percentage of reoffending events by court in which reoffending event was sentenced, 2008–09 to 2014–15

Court in which reoffending event was sentenced	Number of reoffending events	Percentage of reoffending events
Higher courts (Supreme Court and County Court)	358	3%
Magistrates' Court	7,232	67%
Children's Court	3,246	30%
Total	10,836	100%

5. Factors associated with reoffending

This chapter addresses the Council's fourth research question:

4. What factors are associated with reoffending by children and young people?

In addressing this question, the Council examined reoffending rates across a number of factors that have been found in previous research to predict reoffending. These factors include:

- the age of the offender at 'entry' into the criminal courts (defined in this report as the offender's first sentence on or after 1 July 2004);
- the gender of the offender;
- the offence types for which the offender has previously been sentenced (at their index sentence and in their prior convictions);
- the presence and number of prior convictions for the offender;
- the total number of charges proven against the offender; and
- the sentence type imposed on the offender at the index sentence.

Other factors that may be associated with differences in reoffending, but were not available in the data, include substance abuse, mental illness, homelessness, a history of neglect and/or abuse, exposure to family violence, or child protection intervention (see further pages 6–8).

In addition to examining general, or overall, reoffending (that is, a new proven charge of *any* offence), the Council examined reoffending that involved the following offence types:

- offences against the person;
- theft/deception offences;
- property damage offences; and
- road safety offences.

Age at first sentence

Differences in reoffending rate

There was a clear relationship between an offender's age at their first sentence and their likelihood of reoffending within six years of their index sentence.

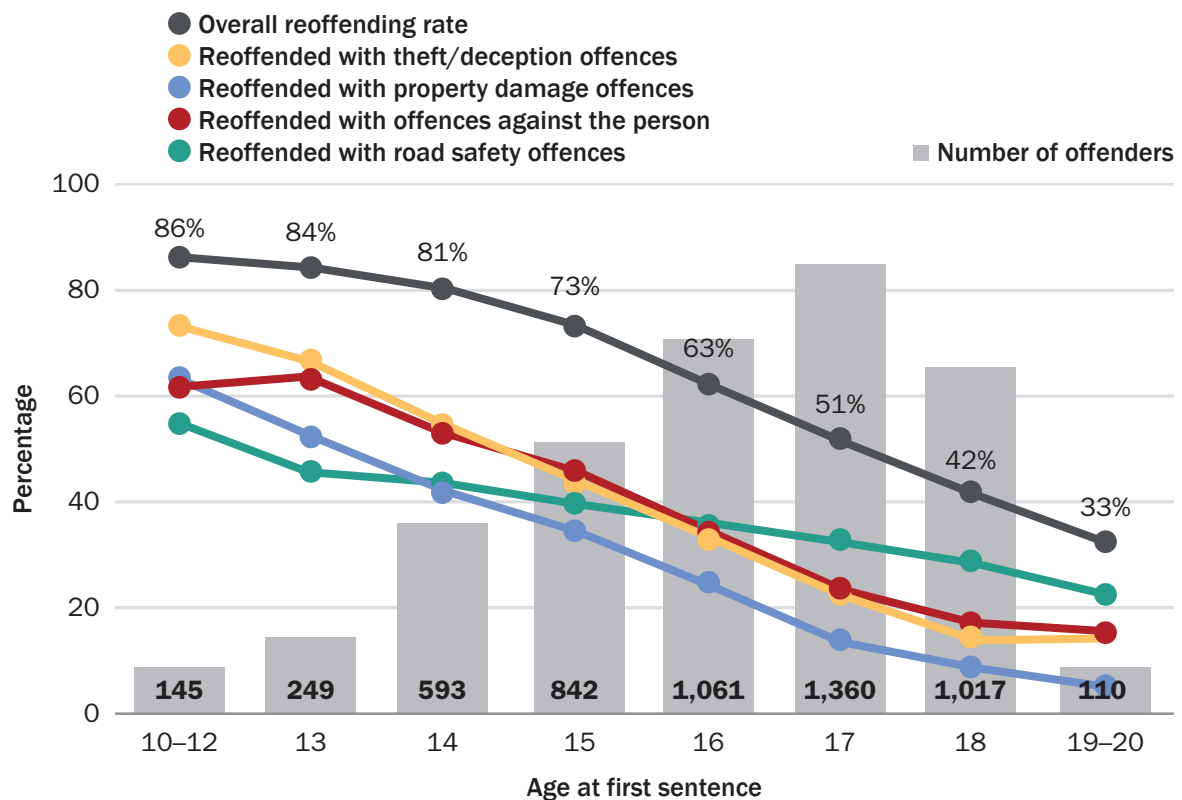
Figure 18 (page 26) divides offenders in the study group into mutually exclusive categories according to their age on the date of their first sentence for an offence. For example, 145 offenders were aged 10–12 on the date of their first sentence. As the figure shows, youth was associated with a higher reoffending rate, with the overall reoffending rate declining as the age of the offender at their first sentence increased. The reoffending rate of offenders who were first sentenced aged 10–12 (86%) was more than double that of those who were first sentenced aged 19–20 (33%).

Offenders who had turned 18 by the time of their first sentence were almost always below the age of 18 at the offence date, consistent with the jurisdiction of the Children's Court (see further page 10).

The relationship between age at first sentence and the likelihood of reoffending evident in Figure 18 was confirmed using a correlation analysis and a logistic regression analysis, both of which assessed the relationship as statistically significant.⁵⁴ After other factors such as gender, prior offending, and the number of charges were taken into account, the regression model found that with each one-year increase in the age at first sentence there was an associated 18% reduction in the likelihood of reoffending (see Appendix 2).⁵⁵

In addition to the overall reoffending rate, Figure 18 also shows the rate at which children and young people reoffended after their index sentence with the four most common reoffence types, according to their age at first sentence. The rate at which children and young people reoffended with an offence against the person or a theft/deception offence tracked consistently with the general reoffending rate; however, reoffending with a theft/deception offence was comparatively higher for the younger age groups (aged 10–13). While younger reoffenders had higher rates of road safety offences than older reoffenders, this was the most prevalent reoffence type for older reoffenders aged 17–20.

Figure 18: Percentage of offenders in the study group by reoffence type and age at first sentence, 2008–09 to 2014–15



54. Pearson's $r = -0.293$, $n = 5,377$, $p < 0.01$.

55. Standardised beta = 0.820, $p < 0.001$.

Differences in reoffence type

The rate at which offenders in the study group reoffended with particular reoffence types is explored further in Table 5, which shows the percentage of offenders in each age group who had at least one new sentenced charge (after their index sentence) within a particular reoffence type. As with other analyses of offence type in this report, each offender is counted once within each reoffence type that was present within their relevant sentence events (in this case, reoffending events). For example, an offender who reoffended with at least one charge of a theft/deception offence and at least one charge of a transit offence is counted once within each of these reoffence types.

Overall, the most prevalent reoffence type sentenced at reoffending events was road safety offences, for which 36% of index offenders (1,940 of 5,377 where ages were known) were sentenced at least once after their index sentence.

Table 5: Percentage of offenders in the study group by reoffence type and age at first sentence, 2008–09 to 2014–15

Reoffence type	Age at first sentence								Percentage of study group
	10–12	13	14	15	16	17	18	19–20	
Road safety offences	55%	46%	44%	40%	36%	33%	29%	23%	36%
Offences against the person	62%	64%	54%	45%	35%	23%	17%	15%	34%
Theft/deception offences	73%	67%	55%	44%	34%	23%	14%	15%	33%
Other offences	56%	51%	43%	38%	26%	18%	13%	7%	27%
Property damage offences	63%	53%	42%	35%	24%	14%	9%	5%	24%
Breach of bail	36%	26%	30%	26%	21%	13%	9%	10%	19%
Drug offences	32%	27%	26%	20%	18%	11%	9%	8%	16%
Justice procedures offences	26%	32%	25%	16%	13%	7%	6%	5%	13%
Breach intervention order	16%	12%	13%	9%	7%	4%	3%	4%	7%
Transit offences	8%	8%	10%	6%	6%	3%	1%	–	5%
Sexual offences	5%	2%	2%	1%	1%	<1%	<1%	–	1%
Percentage of study group that reoffended	86%	84%	81%	73%	63%	51%	42%	33%	61%
Total offenders in age group	145	249	593	842	1,061	1,360	1,017	110	5,377

This table is colour-coded to show the prevalence of different offence types for each age at first sentence (based on the proportion of the age group sentenced at least once for that offence). The darkest shade shows the most prevalent offence type in that age group. Each successively lighter shade indicates less prevalent offences in the age group. Dashes indicate that no person in the age group was sentenced for a charge of the offence type.

Table 5 shows that there is a clear relationship between age and reoffence type. As well as having the highest overall reoffending rate in the six years after their index sentence (86%), offenders who entered the Children's Court system between the ages of 10 and 12 were more likely than those in other age groups to be subsequently sentenced for almost all reoffence types. For example, of the 145 offenders who were first sentenced when they were aged 10–12, within six years of their index sentence:

- 73% reoffended with theft/deception offences (106 offenders);
- 62% reoffended with offences against the person (90 offenders); and
- 55% reoffended with road safety offences (the two most common road safety offences were using an unregistered motor vehicle and unlicensed driving) (80 offenders).

The concentration of relatively high reoffending rates across various reoffence types for offenders who entered the criminal court system when they were particularly young may be a function of these offenders engaging in a greater *quantity* of offending after their index sentence than their older counterparts. Not only did the group aged 10–12 have the highest general reoffending rate (86%), but they also tended to have a high number of reoffending events (with a median number of four reoffending events after their index sentence).

Table 5 and Figure 18 also show that those who entered the system aged 10–15 were most likely to reoffend with theft/deception offences and offences against the person, and those who entered at 16–20 were most likely to reoffend with road safety offences.

Offences against the person

Offences against the person generally involve violence directed by the offender at another person, which can vary greatly in severity. Therefore, the Council examined this offence type more closely by analysing the proportion of offenders in each age group who reoffended at least once with specific offences within the offence type of 'offences against the person' (Table 6, page 29).

With reference to the age at which offenders were first sentenced, Table 6 presents the percentage of offenders that reoffended after their index sentence with particular offences against the person. As with the general reoffending rate, the younger offenders were at their first sentence, the more likely they were to reoffend with most kinds of offences against the person within six years of their index sentence. For example, 48% of offenders who were first sentenced aged 10–12 and 41% of those who were first sentenced at age 13 reoffended at least once with an assault, compared with less than 10% of those who were first sentenced aged 18–20.

In total, of the 394 children who were first sentenced before their 14th birthday, 249 reoffended with at least one offence against the person in the six years after their index sentence. More specifically:

- two in five reoffended with an assault (172 offenders);
- one in three reoffended with an offence involving intentionally, recklessly, or negligently causing injury (134 offenders);
- one in five reoffended with an offence of threat to kill/injure (79 offenders);
- one in eight reoffended by an offence of assault police/emergency worker (51 offenders);
- one in seven reoffended with a robbery offence (53 offenders); and
- one in seven reoffended with an aggravated burglary offence (53 offenders).

Table 6: Percentage of offenders in the study group by kind of offence against the person sentenced following their index sentence and age at first sentence, 2008–09 to 2014–15

Offence against the person – subgroup	Age at first sentence								Percentage of study group
	10–12	13	14	15	16	17	18	19–20	
Assault	48%	41%	32%	24%	17%	11%	8%	7%	18%
Causing injury	37%	33%	27%	21%	17%	9%	6%	9%	16%
Threat to kill/injure	26%	17%	13%	9%	7%	4%	3%	2%	7%
Endangerment	18%	11%	10%	7%	5%	2%	2%	1%	5%
Assault police/emergency worker	17%	10%	9%	6%	5%	3%	2%	1%	5%
Affray/riot	8%	10%	9%	8%	5%	3%	2%	3%	5%
Robbery	16%	12%	9%	7%	4%	2%	1%	2%	5%
Causing serious injury	8%	8%	9%	7%	4%	3%	2%	2%	5%
Armed robbery	11%	10%	8%	6%	4%	2%	<1%	3%	4%
Aggravated burglary	16%	12%	8%	4%	3%	2%	1%	–	4%
Stalk/harass	1%	4%	3%	2%	1%	1%	1%	–	1%
Kidnap/imprison	3%	2%	2%	1%	1%	<1%	<1%	1%	1%
Other	3%	1%	2%	1%	1%	<1%	<1%	–	1%
Homicide	–	<1%	<1%	<1%	<1%	<1%	<1%	–	<1%
Number of offenders in age group with an offence against the person	90	159	319	383	368	314	174	17	1,824
Percentage of offenders in age group with an offence against the person	62%	64%	54%	45%	35%	23%	17%	15%	34%
Total offenders in age group	145	249	593	842	1,061	1,360	1,017	110	5,377

This table is colour-coded to show the prevalence of different offence types for each age at first sentence (based on the proportion of the age group sentenced at least once for that offence). The darkest shade shows the most prevalent offence type in that age group. Each successively lighter shade indicates less prevalent offences in the age group. Dashes indicate that no person in the age group was sentenced for a charge of the offence type.

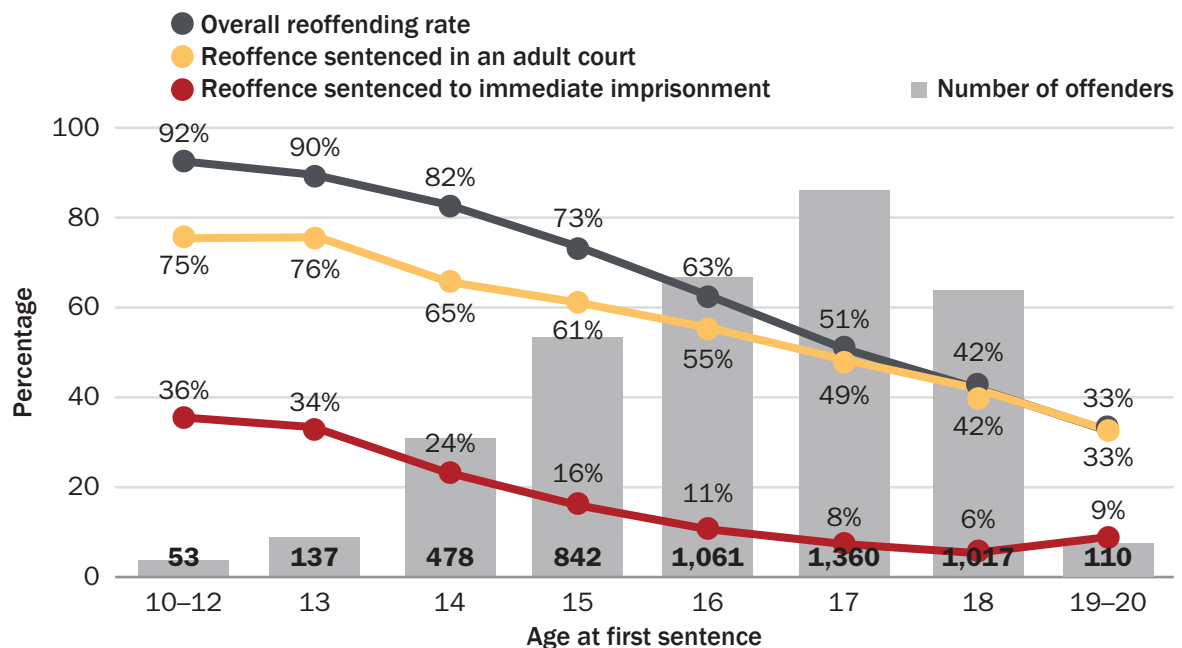
The likelihood of continuing to the adult criminal jurisdiction

As well as confirming the relationship between age at first sentence and the likelihood of reoffending, the Council found an association between the age at which offenders were first sentenced and the likelihood that their offending would continue into the adult criminal jurisdiction.

Figure 19 categorises offenders in the study group by their age at first sentence. The following was undertaken to ensure a consistent follow-up period of three years in the adult criminal jurisdiction for all offenders:

- Any offenders who had not turned 21 by the final year of the study period (2014–15) were excluded from this analysis as their follow-up period was less than three years (327 offenders were excluded or 6%).⁵⁶ The remaining 5,058 offenders were categorised by their age at first sentence and the proportion of each group that continued into the adult criminal jurisdiction after their index sentence.
- The time each offender was observed for reoffending as an adult was restricted to three years (up to and including the age of 21) to ensure a consistent follow-up period for all offenders.⁵⁷

Figure 19: Percentage of offenders in the study group who were at least 21 years old by 2014–15 according to whether they (1) reoffended generally, (2) reoffended and were sentenced in the adult criminal jurisdiction, and (3) reoffended and were sentenced to immediate imprisonment (a term of imprisonment or a partially suspended sentence) before they turned 22, by age at first sentence, 2008–09 to 2014–15



56. The Council excluded 92 offenders aged 10–12, 112 offenders aged 13, and 115 offenders aged 14 from the analysis because they had not turned 21 by June 2015. Their exclusion caused the reoffending rate of these age groups (shown in Figure 19) to be higher than that shown in Figure 18. Eight offenders whose age was unknown at first sentence were also excluded.

57. For all but five offenders, their first adult sentence after the index sentence was at the age of 18 or over. Five offenders were sentenced in adult courts after their index sentence when they were 17 years old, due to the gravity of their offence. Two of these five offenders had no further sentences in an adult court before the age of 22.

Figure 19 shows the proportion of each age group according to whether the following occurred after the offender's index sentence:

1. The offender reoffended generally before they turned 22.
2. The offender was sentenced in the adult criminal jurisdiction before they turned 22.
3. The offender was sentenced to imprisonment or to a partially suspended sentence in the adult criminal jurisdiction before they turned 22.

There was a clear relationship between age at first sentence and the likelihood of being sentenced in an adult court before the age of 22. Offenders who were older at their first sentence were less likely to be sentenced in an adult court before they turned 22, compared with offenders who were younger at their first sentence. Three-quarters of the children who were first sentenced aged 10–12 (inclusive) continued offending into the adult criminal jurisdiction, and 36% were sentenced to an immediate term of adult imprisonment before they were 22 years old.

The proportion of *reoffenders* who were sentenced to immediate imprisonment by the time they were 22 years old ranged from 39% of the reoffenders who were first sentenced aged 10–12 to 15% of the reoffenders who were first sentenced aged 18 or older. Therefore, progressing to immediate imprisonment by the age of 22 was almost three times more likely for reoffenders aged 10–12 at entry into the criminal courts, than for those aged 18 or older at entry.

Gender

Gender differences in reoffending rate

There were clear differences in the general reoffending rate according to the gender of the offender. Males had a higher reoffending rate than females (67% compared with 39%), and this difference was found to be statistically significant.⁵⁸ The relationship between gender and the likelihood of reoffending was also supported in a regression analysis, which found that, after taking other factors into account, the likelihood of reoffending was nearly 150% higher for males than for females (see Appendix 2).⁵⁹

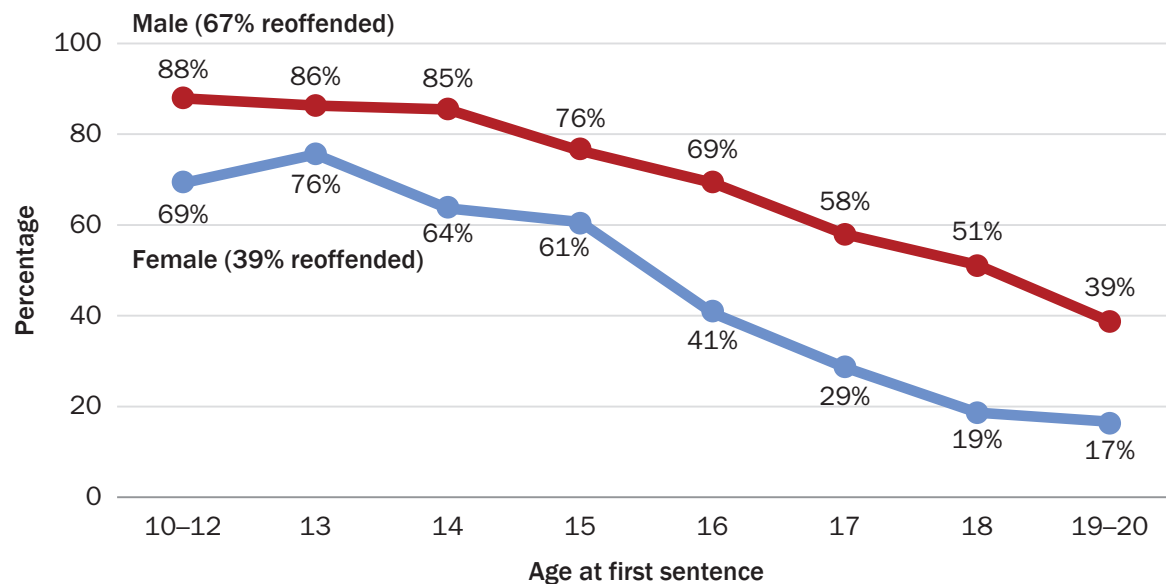
Figure 20 (page 32) shows that the association between age at first sentence and reoffending was apparent for both males and females, but it was more dramatic for female offenders. The reoffending rate of females aged 10–12 was approximately four times that of females aged 19–20.

These rates highlight the very different offending patterns that are apparent for children and young people depending on their age and gender. While the reoffending rate was 86% for males who were aged 10–14 at their first sentence, fewer than 20% of females aged 18–20 at their first sentence reoffended.

58. Chi-square = 314.569, degrees of freedom = 1, $p < 0.001$.

59. Standardised beta = 2.481, $p < 0.001$.

Figure 20: Percentage of offenders in the study group who reoffended within six years of their index sentence, by age and gender at first sentence, 2008–09 to 2014–15



Gender differences in reoffence type

The type of offences offenders committed after their index sentence differed for males and females.

Among the 2,789 males and 472 females who reoffended, males were substantially more likely than females to be sentenced for road safety offences (63% of male reoffenders compared with 42% of female reoffenders) and property damage offences (43% of male reoffenders compared with 25% of female reoffenders). Male reoffenders were slightly more likely than female offenders to be sentenced for offences against the person (57% of male reoffenders compared with 51% of female reoffenders). In contrast, approximately equal proportions of male and female reoffenders were sentenced for a theft/deception offence (55% of male reoffenders and 57% of female reoffenders).

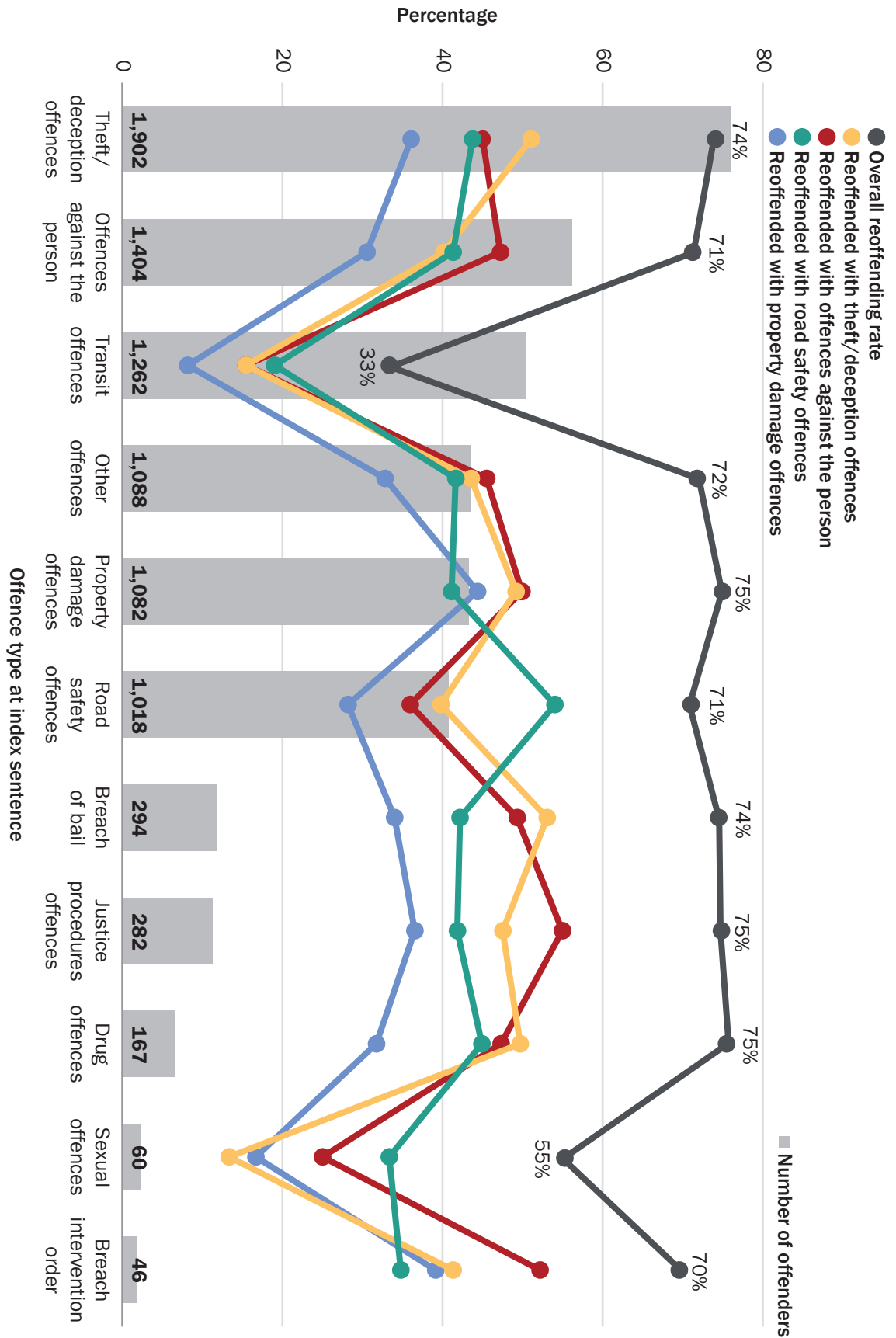
Road safety offences were the most common reoffence type for males, while theft/deception offences were the most common reoffence type for females. The second most common reoffence type for both males and females was offences against the person. Females had a smaller range of reoffence types, with less overlap across types.

Differences in reoffending associated with offence type

Much of the preceding analysis on age and gender has focused on the type of reoffending. The analysis now shifts to considering reoffending rates according to the type of offence at the *index sentence*. When interpreting these results, it should be noted that offenders are counted for each offence type for which they were sentenced at their index sentence and that therefore each offence type is not mutually exclusive.

Figure 21 (page 33) divides the study group into overlapping categories according to their offence types at the index sentence. For example 1,902 offenders in the study group had at least one sentenced theft/deception charge at their index sentence. Some of these offenders were also counted in relation to other offences – for example, 518 of the 1,902 offenders with a sentenced charge for a theft/deception offence were also included among the 1,404 offenders with a sentenced charge for an offence against the person.

Figure 21: Percentage of offenders in the study group who reoffended generally and who reoffended with selected offence types, by offence type at the index sentence, 2008–09 to 2014–15



For each offence type, Figure 21 shows the proportion of offenders in the offence group who reoffended generally and the proportion that reoffended with an offence against the person, a property damage offence, a theft/deception offence, and a road safety offence.

Reoffending rates differed according to the type of offence at the index sentence. As Figure 21 shows, general reoffending rates ranged from 75% of offenders sentenced for property damage offences, drug offences, or justice procedures offences to 33% of offenders sentenced for transit offences.

While the rate at which offenders reoffended with the four offence types generally mirrored the general reoffending rate, there were some differences. For example, while offenders sentenced for road safety offences had the highest rate of reoffending with a road safety offence, offenders sentenced for justice procedures offences (such as resist police or state false name or address) had the highest rate of reoffending with an offence against the person. Similarly, there appeared to be an association between a property damage offence or a breach intervention order at the index sentence and reoffending with an offence against the person.⁶⁰

Of the 1,404 offenders sentenced for an offence against the person at their index sentence:

- 71% reoffended with any offence type;
- 47% reoffended with an offence against the person;
- 41% reoffended with a road safety offence;
- 40% reoffended with a theft/deception offence; and
- 31% reoffended with a property damage offence.

The Council further explored the relationship between offence type and general reoffending by comparing general reoffending rates for offenders whose index sentence included or did not include a particular offence type (Figure 22, page 35). For each offence type, offenders were divided into two mutually exclusive groups:

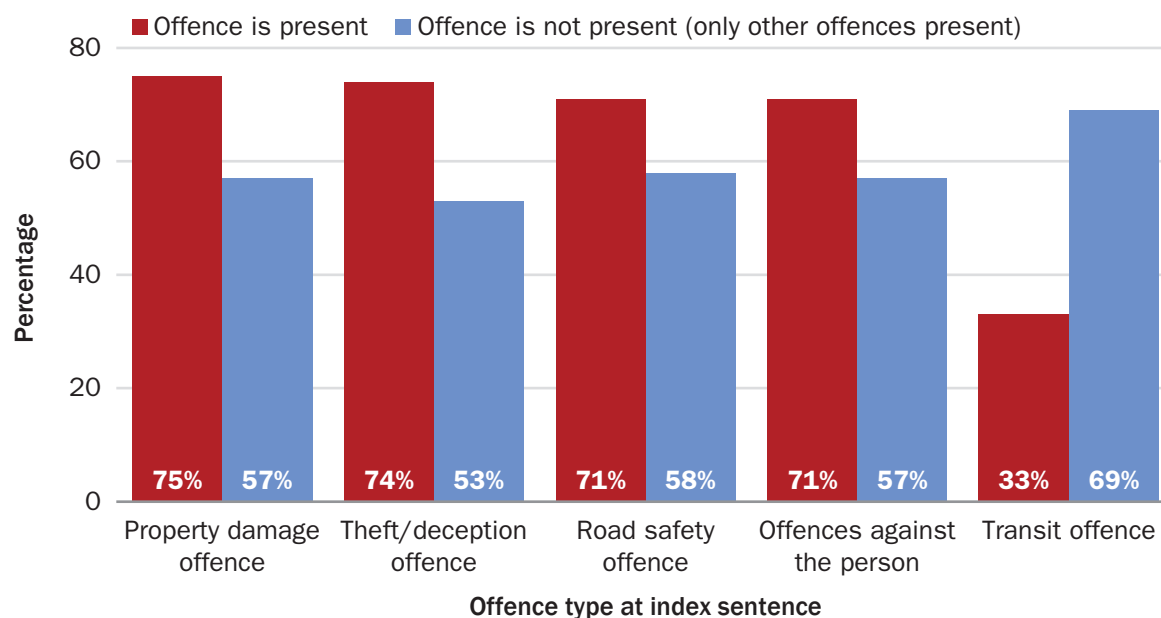
1. the selected offence was present; and
2. the selected offence was not present (only other offences were present).

Statistically significant relationships were found between most offence types at the index sentence and the likelihood of reoffending (some of these are presented in Figure 22). The presence of theft/deception offences, property damage offences, offences against the person, road safety offences, justice procedures offences, breach of bail, and drug offences was associated with higher reoffending rates than their absence. The strongest relationships were found for theft/deception offences (74% compared with 53%), property damage offences (75% compared with 57%) and offences against the person (71% compared with 57%).

The only offence type associated with lower rates of reoffending was transit offences (33% compared with 69%). This suggests that if an offender has a proven charge of an offence or offences other than a transit offence, they are far more likely to reoffend than if the offender has only proven charges of a transit offence.

60. The relationship between breach intervention order and property damage offences and offences against the person is consistent with the findings in the Council's 2016 study: Sentencing Advisory Council (2016), above n 7, 40 (Figure 17). Caution should be exercised in examining the reoffending rates associated with breach intervention order offences and sexual offences due to the relatively small number of offenders.

Figure 22: Percentage of offenders in the study group with and without selected offence types at their index sentence who reoffended, 2008–09 to 2014–15



The relationship between the commission of different offence types and the likelihood of reoffending was confirmed in a logistic regression analysis. This analysis considered offence types in all prior sentence events and the index sentence. The model, detailed in Appendix 2, found the presence of each of the following offence types increased the likelihood of reoffending compared with their absence:

- an offence against the person (by 29%);
- a theft/deception offence (by 36%); and
- a road safety offence (by 36%).

The presence of a transit offence decreased the likelihood of reoffending by 50%.⁶¹

Offenders who were sentenced for transit offences typically did not commit other offences, and the transit offences for which they were sentenced were generally of comparatively low severity. Over two-thirds of specific offences that fell within the 'transit offences' offence type related to ticketing offences, such as failure to produce a valid ticket or concession card. Furthermore, of the 1,262 offenders sentenced for a transit offence at their index sentence, 1,168 offenders (93%) were sentenced for no other offence types at their index sentence. It is perhaps not surprising, therefore, that the reoffending rate for 'transit-only' offenders was relatively low, at 30%.

61. Transit offences are usually dealt with through the infringements system, through an 'infringement notice' (an on-the-spot fine), with unpaid infringement notices involving children and young people enforced through the CAYPINS system (see discussion at page 13). Transit offences may be sentenced in court in some cases, for example, if the offender has been found guilty after contesting the offence or if the transit offence is accompanied by more serious offences (such as assaulting an authorised officer).

Prior convictions and reoffending

The presence of prior convictions and the likelihood of reoffending

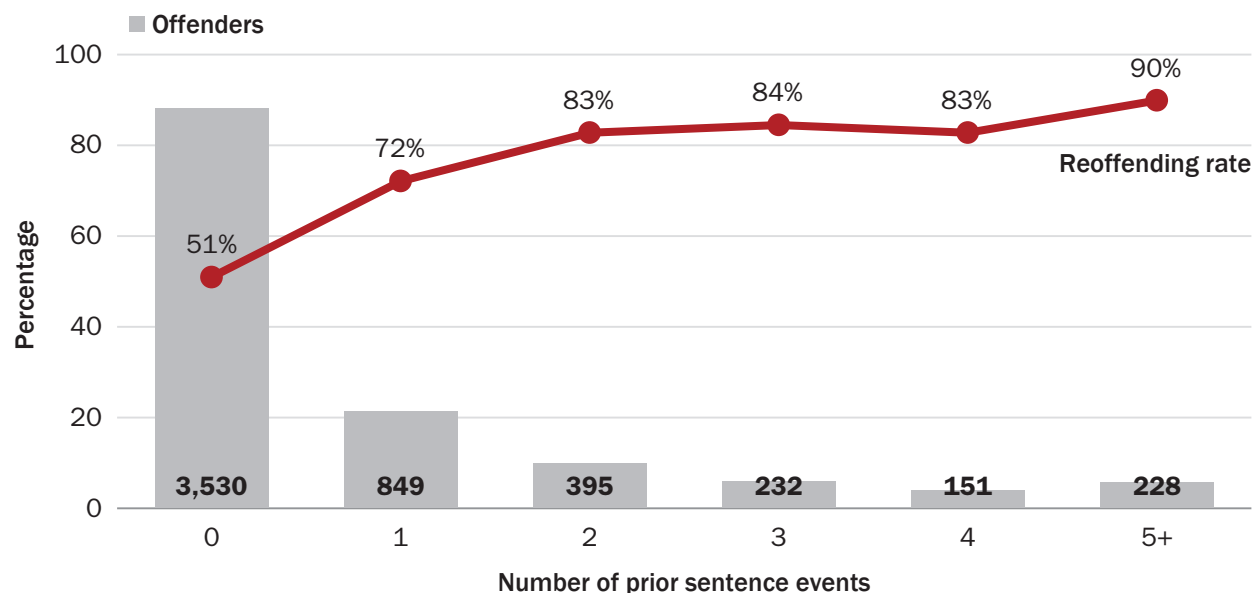
There was a clear relationship between the presence of at least one prior conviction in the four years before the index sentence and the likelihood of reoffending after the index sentence. For offenders with at least one prior sentence event, the reoffending rate was 79%, compared with 51% of offenders with no prior convictions. This difference was statistically significant.⁶²

The number of prior sentence events and reoffending

Looking at the *number* of prior sentence events, 72% of offenders with one prior sentence event reoffended. The reoffending rate progressively increased to 90% of those offenders with five or more prior sentence events (Figure 23).

The association shown in Figure 23 was confirmed using a logistic regression model. Controlling for other factors, the number of prior sentence events was associated with substantially higher risks of reoffending (see Appendix 2). For example, in a model that predicted the likelihood of general reoffending, the likelihood of reoffending was 234% higher for offenders who had two or more prior sentence events than for offenders who had no prior sentence events.⁶³

Figure 23: Percentage of offenders in the study group who reoffended following their index sentence, by number of prior sentence events



62. Chi-square = 401.9, degrees of freedom = 1, $p < 0.001$.

63. Standardised beta = 3.337, $p < 0.001$.

The number of prior sentenced charges and reoffending

The number of prior *sentence events* is one indicator of the level of prior offending that an offender brought to the index sentence. Another important measure is the number of sentenced *charges* prior to and including the index sentence.

Figure 24 groups the number of sentenced charges prior to and including the index sentence into categories of 'one', 'two to four', and 'five or more', and compares the general reoffending rate of offenders for each offence type. Not surprisingly, there is a clear relationship between the number of sentenced charges and the likelihood of reoffending, with 38% of offenders with only one charge reoffending, 58% of offenders with two to four charges reoffending, and 78% of offenders with five or more charges reoffending.

The regression model confirmed that the number of charges for which an offender had been sentenced was also related to the likelihood of reoffending. Offenders with five or more sentenced charges prior to and including their index sentence were 37% more likely to reoffend following their index sentence than offenders with only one charge.⁶⁴

Sentence type

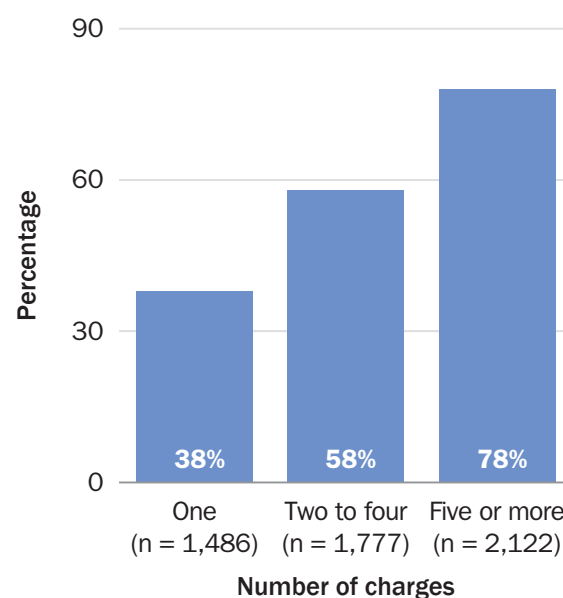
Differences in reoffending rates according to the sentence type imposed at the index sentence were also observed. Generally speaking, higher reoffending rates were found for more severe sentence types. Such sentences were most likely imposed for relatively serious offending and/or on offenders whom the court deemed to have a relatively high risk of reoffending due to their personal circumstances or prior criminal history.

Caution regarding reoffending and sentence type

While it is instructive to examine the reoffending rate following individual sentencing orders, the temptation to compare the reoffending rates associated with different sentencing orders should be avoided. A danger of comparing reoffending by sentence type is that it is not a comparison of like cases. It does not necessarily follow that sentencing orders with lower reoffending rates are 'more effective' than those associated with higher reoffending rates. Rather, the same factors that contribute to the court's choice of sentence (such as the seriousness of the offence, the offender's prior convictions, and prospects of rehabilitation) are likely to affect the prospect of that offender reoffending.

For example, custodial orders generally would be reserved for children and young people with prior convictions and/or serious offending who were viewed as a high risk to the community, given that custodial orders are a sanction of last resort in sentencing children. It is therefore unsurprising that youth justice centre orders (the custodial order available for offenders aged 15–20) were associated with the second highest reoffending rate (82%).

Figure 24: Percentage of offenders in the study group who reoffended following their index sentence, by number of sentenced charges prior to and including the index sentence



64. Standardised beta = 1.365, $p < 0.001$.

Similarly, the highest reoffending rate (85%) was associated with youth attendance orders, which are the most severe non-custodial sentencing disposition for children and young people aged 15–20. These orders are designed as an alternative to immediate detention. Therefore, such orders are likely to be reserved for high-risk children and young people who have committed serious offences.

Conversely, the lower reoffending rate for fines (45%) is likely to reflect factors relating to the offender and the offence that influence the prospect of reoffending. For example, fines were a common disposition for transit offences (83% of all charges of a transit offence sentenced at the index sentence received a fine), and transit offences were associated with lower reoffending rates. Fines were also more common for older offenders than for younger offenders,⁶⁵ and older offenders had lower reoffending rates. Therefore, the lower reoffending rate associated with fines is likely to reflect factors relating to the offence and the offender, rather than the effectiveness of fines as a sentencing disposition.

The reoffending rates associated with more severe sentencing orders undoubtedly reflect the complex factors surrounding the offenders who are sentenced to them. Nevertheless, the reoffending rates also suggest that there may be scope to improve current sentencing interventions and supports for this group of children and young people.

Reoffending by sentence type

Figure 25 (page 39) divides offenders in the study group into mutually exclusive groups based on the most severe sentence that they received at their index sentence. Figure 25 shows the proportion of each sentence-type group that reoffended at all and the proportion that reoffended with an offence against the person, a theft/deception offence, a road safety offence, or a property damage offence.

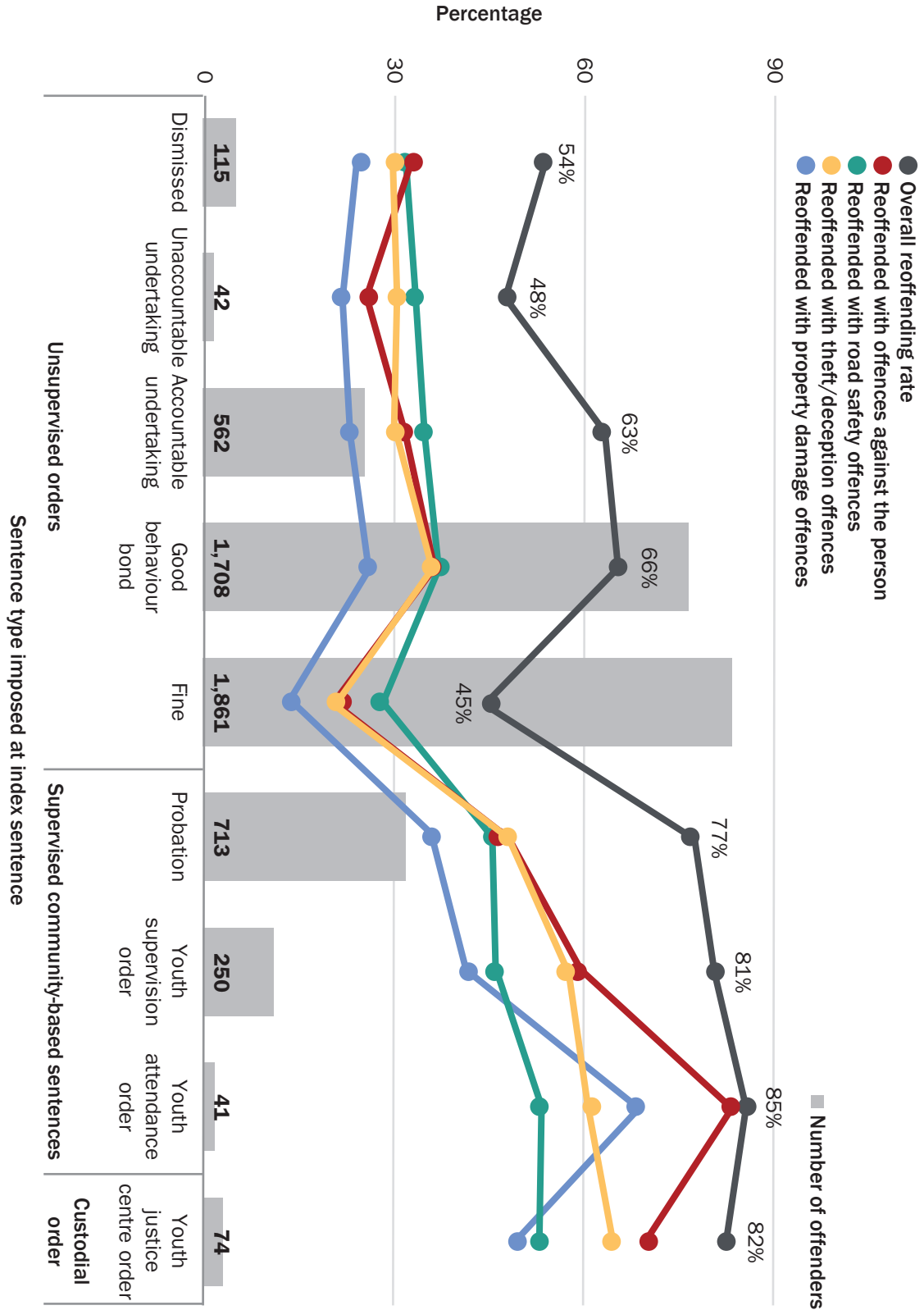
Offenders who were sentenced to youth attendance orders, youth justice centre orders, or youth supervision orders had the highest reoffending rates (with over 80% of offenders on these orders reoffending). Sentencing orders with fewer than 20 offenders sentenced at the index sentence were not included in the figure; however, of the six children sentenced to a youth residential centre order (a custodial order for children aged 10–14), all reoffended. These findings are perhaps unsurprising given research evidence regarding the levels of disadvantage and past trauma that characterise this cohort (see discussion at page 6).

Figure 25 also shows that almost all of the young people who reoffended after a youth attendance order reoffended at least once with an offence against the person. Their rate of reoffending involving property damage offences was also higher than that associated with other sentence types. The rates of reoffending with specific offence types otherwise generally followed a similar pattern to the overall reoffending rate.

Offenders sentenced to fines and unaccountable undertakings had the lowest reoffending rates (45% and 48% respectively). Approximately two-thirds of those sentenced to accountable undertakings and good behaviour bonds reoffended.

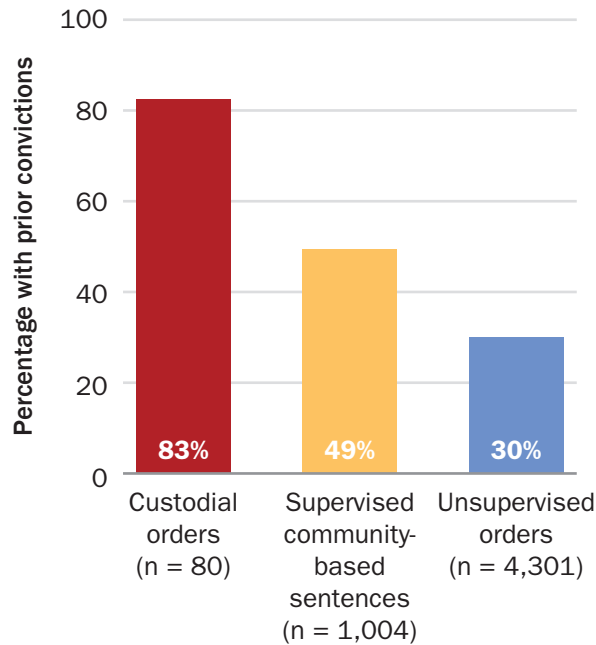
65. For example, 2% of offenders aged 10–13 received a fine at their index sentence, compared with 37% of offenders aged 14–20.

Figure 25: Percentage of offenders in the study group who reoffended generally and those who reoffended with selected offence types, by the sentence type imposed at the index sentence, 2008–09 to 2014–15⁶⁶



66. Due to their low number, 13 offenders convicted and discharged at the index sentence and six offenders sentenced to a youth residential centre order were excluded from this figure. Their reoffending rates were 85% and 100%, respectively.

Figure 26: Percentage of offenders in the study group with at least one prior sentence event, by the sentence type imposed at the index sentence, 2008–09

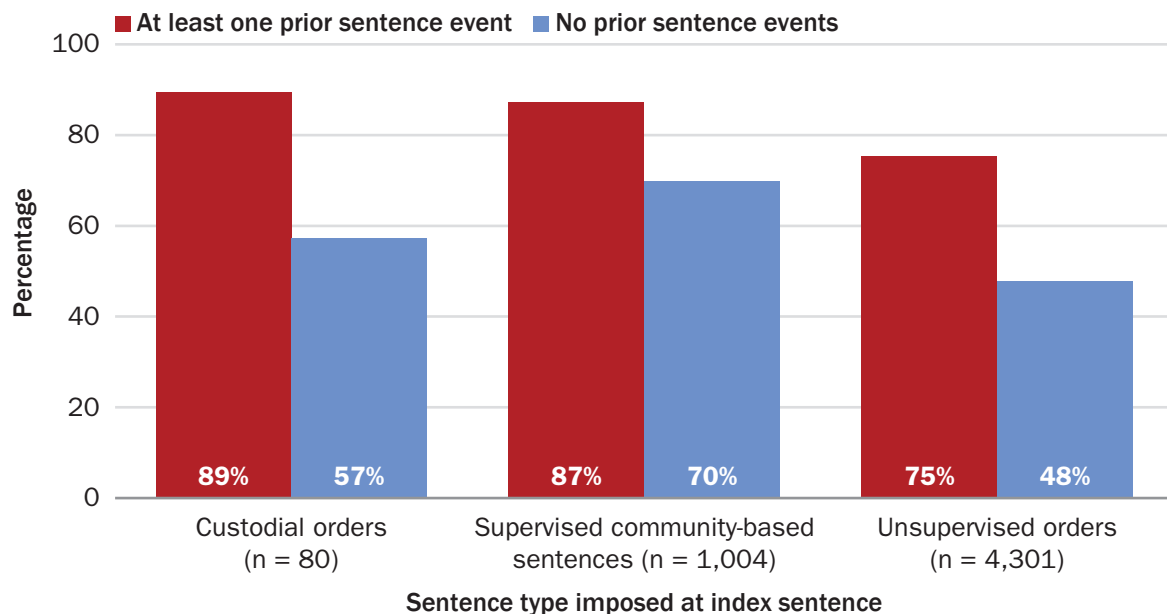


Sentence type imposed at index sentence

Of the 80 offenders sentenced to custodial orders, only 14 had no prior convictions, eight of whom reoffended. Of the 66 offenders sentenced to custodial orders who had prior convictions, 89% reoffended.

Out of all of the offenders in the study group, only those offenders who had no prior convictions and were sentenced to an unsupervised order were less likely to reoffend in the six years following their index sentence (48% reoffended).

Figure 27: Percentage of offenders in the study group who reoffended, by presence of prior sentence events and sentence type imposed at the index sentence, 2008–09 to 2014–15



Sentence type and prior convictions

It appears that the presence of prior convictions is part of the explanation for the higher reoffending rates for more severe sentence types presented in Figure 25. Figure 26 shows that offenders given custodial sentences at the index sentence were far more likely than not to have prior convictions (83% of offenders sentenced to custodial orders had prior convictions) and were more likely to have prior convictions than those sentenced to other orders. Around half of those on supervised community-based sentences had prior convictions while only 30% of those sentenced to unsupervised orders had prior convictions.

Figure 27 shows the influence of prior convictions on the six-year reoffending rates of offenders sentenced to the three categories of sentencing orders (custodial orders, community-based sentences, and unsupervised orders). It suggests that the likelihood of reoffending after a particular category of sentence was also associated with the presence or absence of prior convictions. Of the 80 offenders sentenced to

Return to supervised sentences and progression to adult imprisonment

Previous research by the Australian Institute of Health and Welfare (AIHW) found that a high proportion of children and young people released from 'supervised' sentences (community-based supervision or a custodial order) returned to a supervised sentencing order.⁶⁷

The reoffending rate following a particular order may raise questions about that order's operation. Likewise, the rate of children and young people returning to sentences involving supervision has been identified as 'an indicator of the effectiveness of the services provided to young people serving supervised sentences', although factors beyond the control of youth justice departments 'will also have an impact on levels of re-offending and return to sentenced supervision'.⁶⁸

Based on the type of sentence imposed at the index sentence, the Council examined the likelihood that offenders in the study group would be sentenced within six years of the index sentence:

- to a 'supervised sentence' (a custodial or supervised community-based sentence); and
- in the adult criminal jurisdiction:
 - at all; and
 - to a term of imprisonment or a partially suspended sentence.

Return to supervision

Approximately three-quarters of young people who were sentenced to a youth attendance order (76%) or a youth justice centre order (74%) at their index sentence returned to custody or supervision within six years of their index sentence, as did just under two-thirds of offenders on youth supervision orders (62%) and just under half of offenders on probation (45%).

Continuation to adult imprisonment

There was an association between sentence severity and the likelihood that a child or young person would progress to the adult criminal jurisdiction and be sentenced to immediate imprisonment (a term of imprisonment or a partially suspended sentence) within six years of their index sentence (Figure 28, page 42).

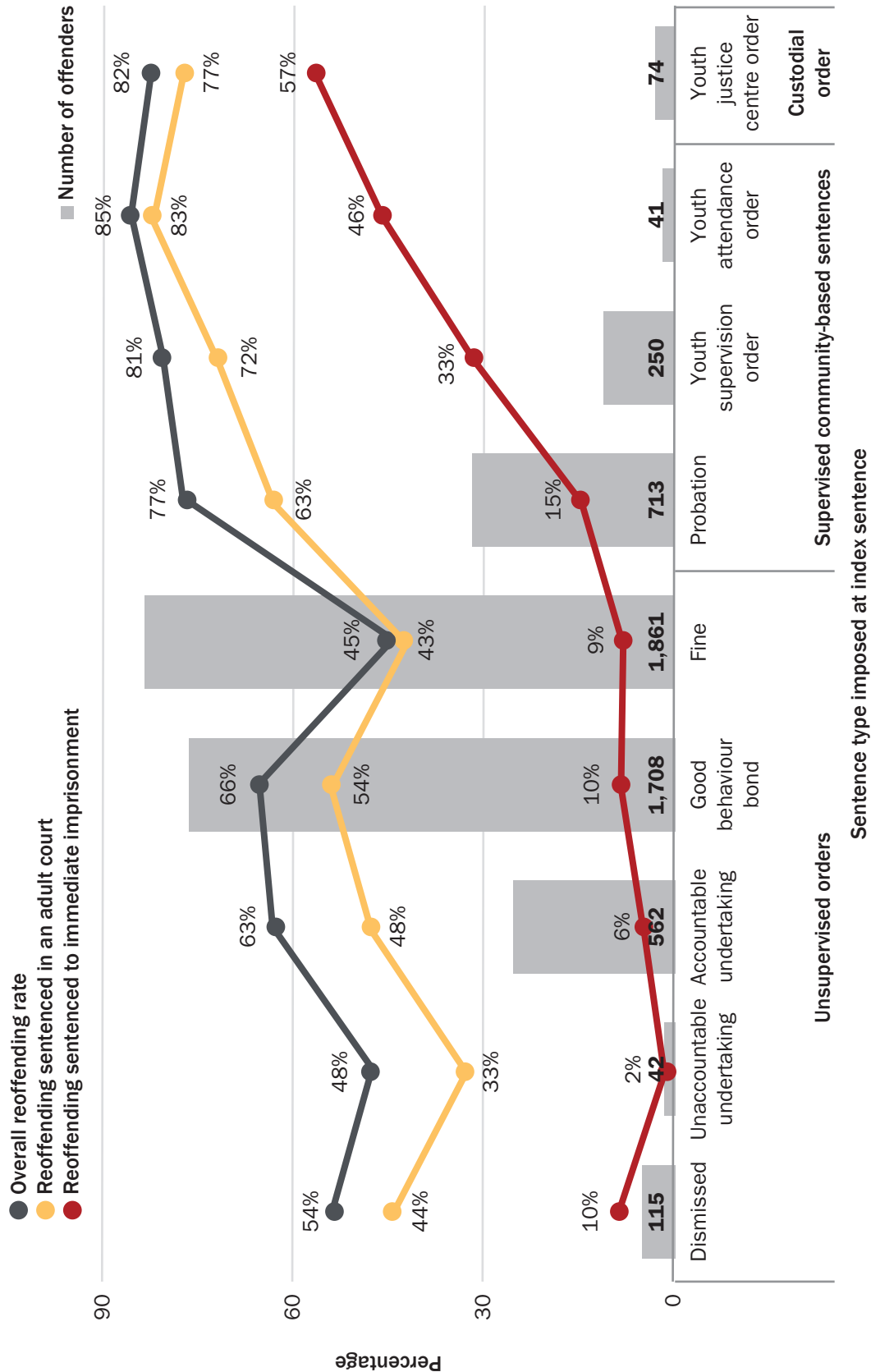
Progression to a sentence of immediate imprisonment was a far more likely outcome for children and young people sentenced to youth attendance orders and youth justice centre orders, with approximately one in two ending up serving a sentence of immediate imprisonment in an adult prison.⁶⁹

67. The Australian Institute of Health and Welfare study found that, of offenders aged 10–16 who were released from sentenced detention, 50% returned to sentenced supervision within six months and 76% returned within 12 months. Of offenders who were released from a supervised community-based sentence, 20% returned to sentenced supervision within six months and 44% returned within 12 months: Australian Institute of Health and Welfare, *Young People Returning to Sentenced Youth Justice Supervision 2015*, Juvenile Justice Series no. 18 (2015) vi.

68. *Ibid* vi, 32.

69. Of the 115 offenders who received youth attendance orders or youth justice centre orders at the index sentence, 61 had a sentence of imprisonment or a partially suspended sentence imposed in the six years following the index sentence.

Figure 28: Percentage of offenders in the study group according to whether they (1) reoffended generally, (2) reoffended and were sentenced in the adult criminal jurisdiction, and (3) reoffended and were sentenced to immediate imprisonment (a term of imprisonment or a partially suspended sentence), by the sentence type imposed at the index sentence, 2008–09 to 2014–15



6. Persistent offenders

This chapter addresses the final question of this report:

5. How do the offending patterns differ between children and young people whose offending persists over a long period of time and those whose offending is limited to a short period of time?

In addressing this question, the Council identified different groups of offenders and focused on those who are of particular concern to the community and policy-makers: children and young people who continue offending over a long period of time. The chapter examines the number of sentence events over the 11-year study period for all offenders in the study group and identifies groups of offenders based on their age at their earliest date of sentence and at their latest date of sentence.

Number of sentence events in the 11-year study period

Chapter 3 examined the rate and number of prior convictions of offenders in the study group in the four years before their index sentence in 2008–09, finding that 34% of the study group had at least one prior conviction. Chapter 4 explored their reoffending rate and the number of reoffending events in the six years after their index sentence in 2008–09, finding that 61% of the study group reoffended at least once in the six years following their index sentence. This chapter combines all of the study group's sentenced charges over the entire 11-year study period (from 1 July 2004 to 30 June 2015), including charges sentenced before, at, and after the index sentence in 2008–09.

While 32% of the study group had only one sentence event in the study period (the index sentence), 68% had at least one other sentence event in the four years before – or the six years after – their index sentence (3,561 of the 5,385 offenders in the study group) (Figure 29). Further, 16% had a total of two sentence events, 11% had three sentence events, and 7% had 10 or more sentence events. Across the 11 years, the highest number of sentence events per offender was 29, while the highest number of charges per offender was 291.

Figure 29: Percentage of offenders in the study group, by number of sentence events, 2004–05 to 2014–15

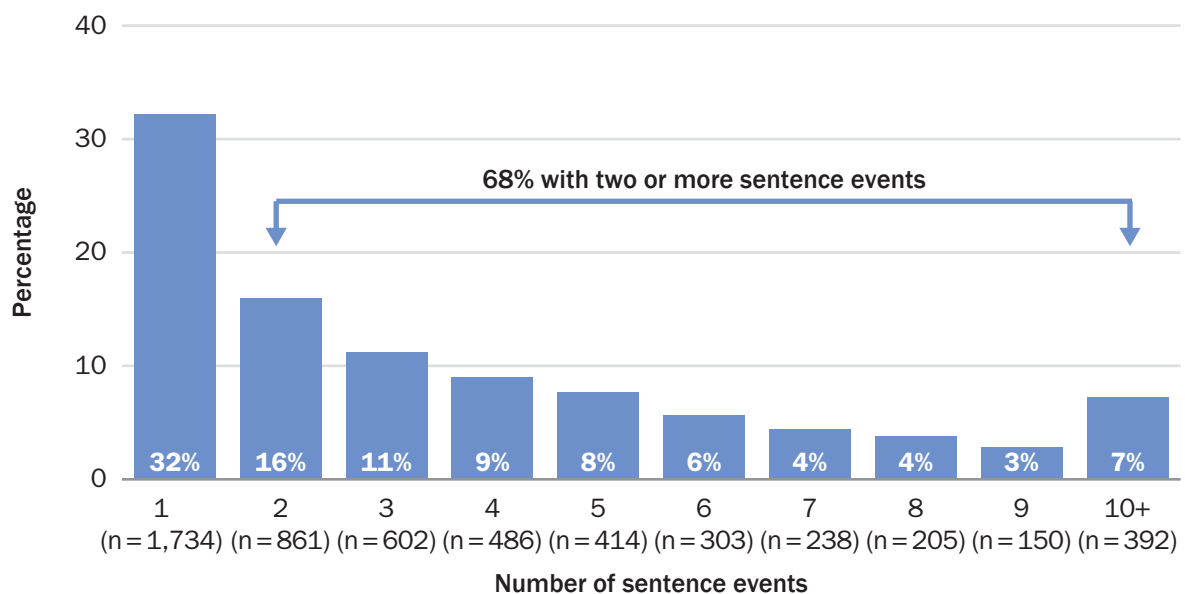
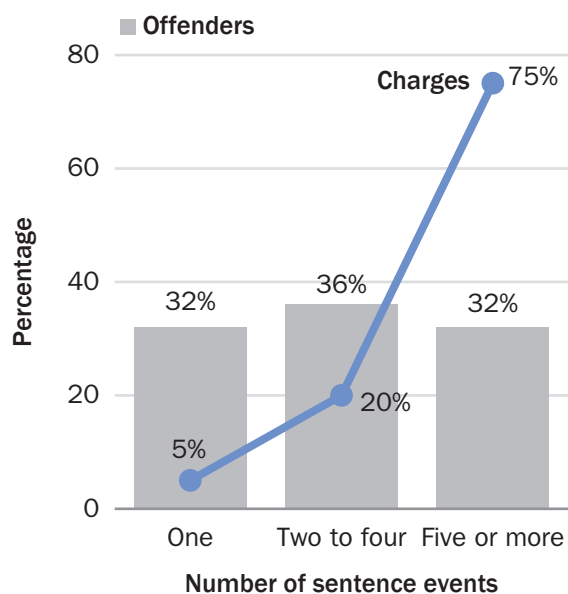


Figure 30: Percentage of offenders and charges sentenced, by number of sentence events for the offender, 2004–05 to 2014–15



Offenders with multiple sentence events were responsible for a disproportionate amount of offending by the study group. Over the 11-year study period, the 5,385 offenders in the study group were sentenced for 97,482 charges. Offenders with only one sentence event, comprising 32% of the study group, were responsible for just 5% of sentenced charges (4,778 charges) (Figure 30). In contrast, offenders who had five or more sentence events comprised 32% of the study group but were responsible for 75% of proven charges. Those with 10 or more (not shown separately in Figure 30) were responsible for 32% of proven charges (31,261).

The more sentence events that an offender had, the younger they were likely to have been at their first sentence. As Figure 31 shows, the median age at first sentence of offenders who had only one sentence event was 17 years. This declined to 16 years for offenders who had a total of three to five sentence events, 15 years for offenders with a total of six to nine sentence events, and 14 years for offenders with 10 or more sentence events.

Figure 31: Median age of offenders at first sentence, by the number of sentence events, 2004–05 to 2014–15

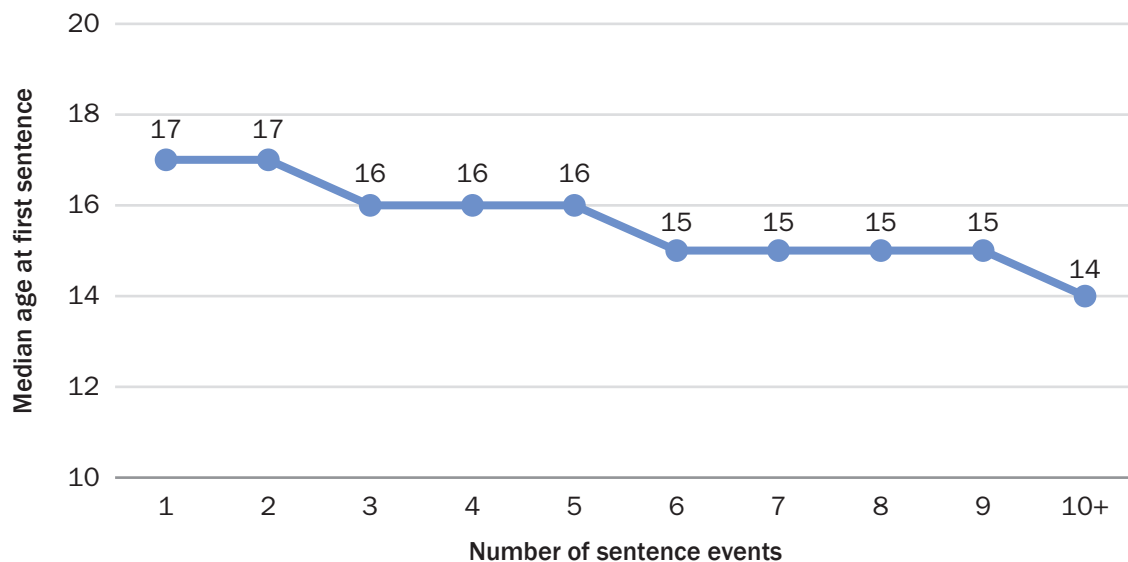
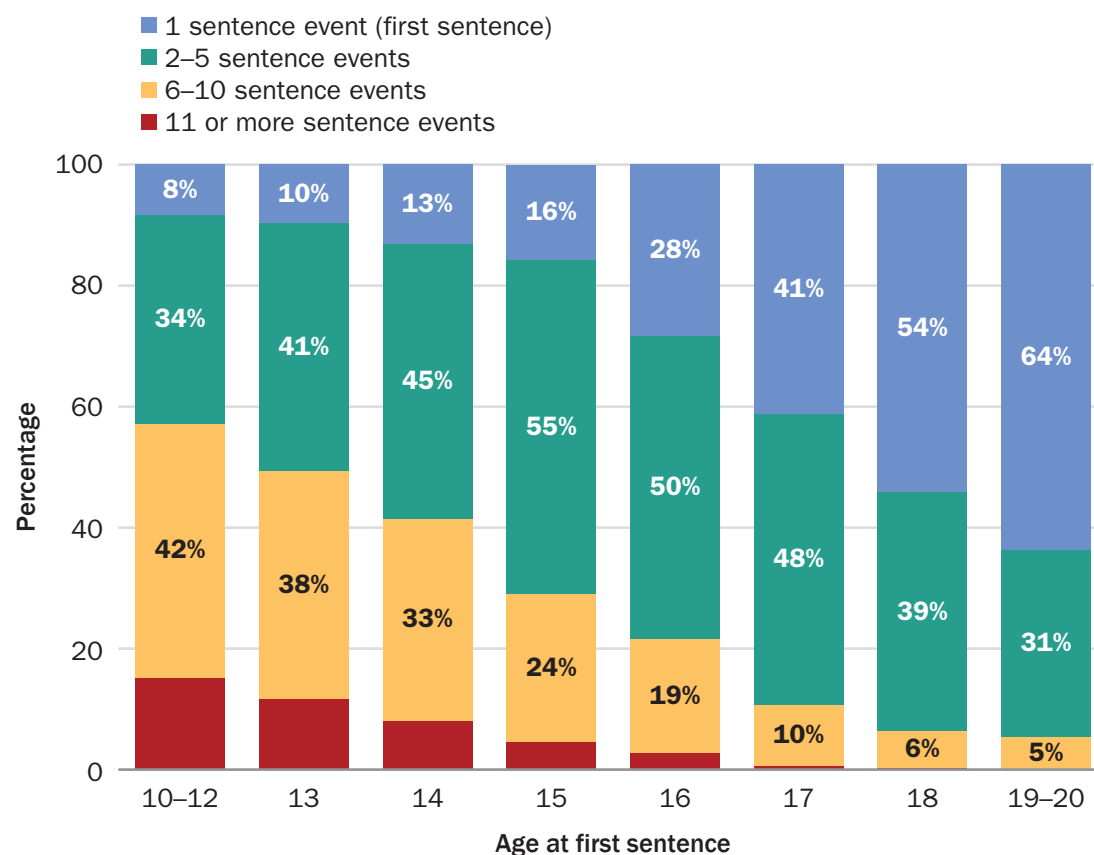


Figure 32 (page 45) further explores the relationship between prevalence of offending and an offender’s age at first sentence. The number of sentence events is considered over a six-year period from each offender’s first sentence. There were 3,648 offenders with more than one sentence event in the 11-year study period, representing 68% of the study group.

Figure 32 suggests that earlier entry into the criminal courts leads to an increased likelihood of prolific offending. While 8% of index offenders aged 10–12 at their first sentence had no reoffending sentence events in the six years after their first sentence, 57% had five or more sentence events. The proportion of those with a single sentence event increased for each older age group, with 64% of 19–20 year olds having no reoffending events in the six years after their first sentence. Conversely, the proportion of offenders who were sentenced for five or more sentence events decreased as the age at first sentence increased: 57% of 10–12 year olds were sentenced on at least five occasions compared with 5% of 19–20 year olds.

Figure 32: Percentage of offenders in the study group by number of sentence events within six years of their first sentence and age at first sentence, 2004–05 to 2014–15



Identifying persistent offenders

A large body of research has attempted to identify different groups of children and young people based on their offending 'trajectories'. A trajectory depends on a number of factors including the age at which a person commences offending, the age at which a person stops offending, and the frequency with which a person offends during their offending 'career'.

Perhaps the most influential taxonomy of offending trajectories was developed by Moffitt. She distinguished 'life-course persistent' offenders from 'adolescent-limited' offenders:

- Life-course persistent offenders comprise a small group of people whose neuropsychological problems interact with a dysfunctional home life. These children start their antisocial behaviour very young, and the behaviour continues through adolescence into adulthood. Their crimes involve more victim-oriented offences, such as violence and fraud, as well as other offences. Their offending persists into adulthood.
- In contrast, adolescent-limited offenders comprise a larger group of people whose offending is thought to result from a maturity gap that encourages them to mimic antisocial behaviour during adolescence. Their crimes symbolise adult privilege or demonstrate autonomy from parental control, such as vandalism, public order offences, substance abuse offences, and theft. Their offending generally ceases in adolescence.⁷⁰

70. Terrie E. Moffitt, 'Adolescence-Limited and Life-Course-Persistent Antisocial Behaviour: A Developmental Taxonomy' (1993) 100 *Psychological Review* 674.

Piquero's review of research on offending trajectories found that studies typically identified two broad groups of offenders that conformed with Moffitt's taxonomy: people whose offending is restricted to the teenage years and people whose offending continues into adulthood.⁷¹ Unlike in Moffitt's taxonomy, however, the second group has two subgroups: those whose offending commences in early adolescence and those whose offending commences in late adolescence.

A study by Livingston, Stewart, Allard, and Ogilvie (2008) examined court appearances and formal police cautions over a six-year period for 4,470 young people (aged 10–16) who had at least one finalised appearance in the Queensland juvenile court.⁷² The study identified three groups of offenders based on offending trajectories: 'early peaking-moderate offending', 'late onset-moderate offending', and 'chronic offending'.⁷³ Chronic offenders, comprising 11% of the sample, were responsible for one-third of all offending by the sample, averaging 11 offending incidents each.⁷⁴

A recent study by the Crime Statistics Agency, Victoria, examined Victoria Police data on the patterns of alleged offending over an eight-year period of 11,547 young people between the ages of 10 and 17. The study identified four groups according to their criminal trajectories:

- a 'low' offending group, who had a very low level of offending across all their teenage years;
- a 'high' offending group whose offending increased at a rapid rate between ages 12 and 15;
- an 'adolescent-limited' group whose offending increased at only a moderate rate between ages 12 and 15; and
- a 'late developing' group whose offending increased rapidly from approximately 15 years of age.⁷⁵

While the high group comprised just 1.6% of the sample, it was responsible for a disproportionately high proportion of offences: 23.6% of all alleged offences recorded across the eight-year period. Conversely, the low group comprised 89% of the sample, but it was responsible for a disproportionately low proportion of offences: 37.5% of all offences.⁷⁶

The Council's taxonomy

A key theme of the current report, and indeed trajectory models of offending, is the importance of age at first sentence in relation to the likelihood of reoffending. The younger a child or young person is when they are first sentenced by the Children's Court, the greater the likelihood of further offending. With this in mind, age at first sentence has been used in this report as a determinant of membership within one of four offender groups. The Council first divided offenders into two groups based on whether their age at first sentence was under 17 or 17 or over (late onset). The age of 17 has been chosen to distinguish offender groups because:

- it is the highest age at which people are classified as 'children' – any offending following the age of 17 will be heard in an adult court; and
- it is the age at which offending declined substantially for child offenders classified by a recent offending trajectory model as 'adolescent limited' or 'high'.⁷⁷

71. Alex R. Piquero, 'Taking Stock of Developmental Trajectories of Criminal Activity over the Life Course', in Akiva M. Liverman (ed.), *The Long View of Crime: A Synthesis of Longitudinal Research* (2008) 49.

72. Michael Livingston et al., 'Understanding Juvenile Offending Trajectories' (2008) 41(3) *The Australian and New Zealand Journal of Criminology* 345, 351.

73. *Ibid* 357.

74. *Ibid* 355.

75. Paul Sutherland and Melanie Millsteed, *Patterns of Recorded Offending Behaviour amongst Young Victorian Offenders*, In Brief no. 6 (2016) 7.

76. *Ibid* 7.

77. *Ibid* 5.

A further determinant of membership within an offender group is the longevity of offending. This is defined as a combination of the age of the offender at their latest sentence event and the length of time between the offender's first and latest sentence event.

For offenders aged under 17, if the age at their latest sentence event was under 17, the offender has been classed as an 'under 17 desister', because their offending was unlikely to have continued beyond the age of 17. If the age at their latest sentence event was 17 or over, the offender has been classed as an 'under 17 persister'.

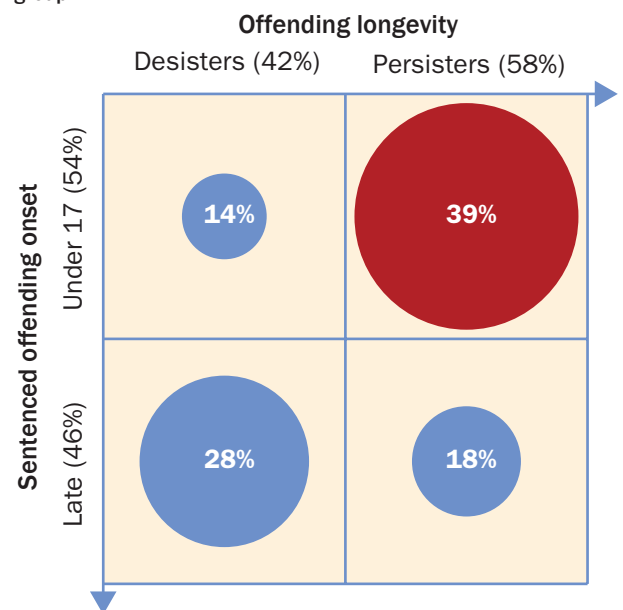
For offenders whose first sentence occurred on or after the age of 17 ('late offenders'), persistence and desistance have been determined using the time difference between the first sentence and the latest sentence event. If the offender's age at their latest sentence event was within two years of their age at first sentence, they have been classed as a 'late desister'. Conversely, if the offender's age at their latest sentence event was at least two years greater than their age at first sentence, they have been classed as a 'late persister'.

In establishing these four groups, the period of time for which sentence events have been captured for each offender is the 11-year study period from July 2004 to June 2015.

Using the dimensions of age at first sentence and offending longevity, the four offender groups are as follows (see Figure 33):

1. **Under 17 persisters:** offenders whose first sentence occurred before their 17th birthday and whose latest sentence event occurred after they turned 17 (39% of the study group or 2,119 offenders). The median time between first sentence and latest sentence event was five years and four months.
2. **Late persisters:** offenders whose first sentence occurred when they were aged 17 or older and whose latest sentence event occurred *at least two years after their first sentence* (18% or 985 offenders). The median time between first sentence and latest sentence event was four years and eight months.
3. **Under 17 desisters:** offenders whose first sentence and latest sentence event occurred before their 17th birthday (14% or 771 offenders).
4. **Late desisters:** offenders whose first sentence occurred when they were aged 17 or older and whose latest sentence event occurred *within two years of their first sentence* (28% or 1,510 offenders).

Figure 33: Percentage of offenders in the study group, by offender group⁷⁸



78. The percentages in Figure 33 do not add up to 100% due to rounding.

Characteristics of the offender groups

Age and gender

The age characteristics of the four groups of young offenders reflect the criteria used for grouping offenders. For the two 'under 17' groups, the age at first sentence ranged from 10 to 16 years, while the median age was 15 years. The two late-onset groups both had an age range at first sentence of 17 to 20 years and a median age of 17 years.

The gender characteristics of each group varied – particularly between the persister and desister groups. The two persister groups had a higher proportion of males (83% for under 17 persisters and 88% for late persisters) than for desisters (68% for under 17 desisters and 67% for late desisters).

This is consistent with research findings, including in the current report, that male offenders are more likely to reoffend than female offenders.

Volume of offending and likelihood of being sentenced in the adult courts

The volume of offending engaged in by the persister groups was typically greater than that engaged in by the desister groups. The two persister groups accounted for the vast majority of offending by the study group across the 11-year study period. Of the 97,482 charges that the study group was sentenced for across the 11 years:

- 72% were committed by under 17 persisters (70,548 charges);
- 18% were committed by late persisters (16,733 charges);
- 5% were committed by under 17 desisters (5,086 charges); and
- 5% were committed by late desisters (5,115 charges).

As with the volume of offending, the volume of sentence events was greater for the persister groups than for the desister groups. Of the 20,747 sentence events for the study group across the 11 years:

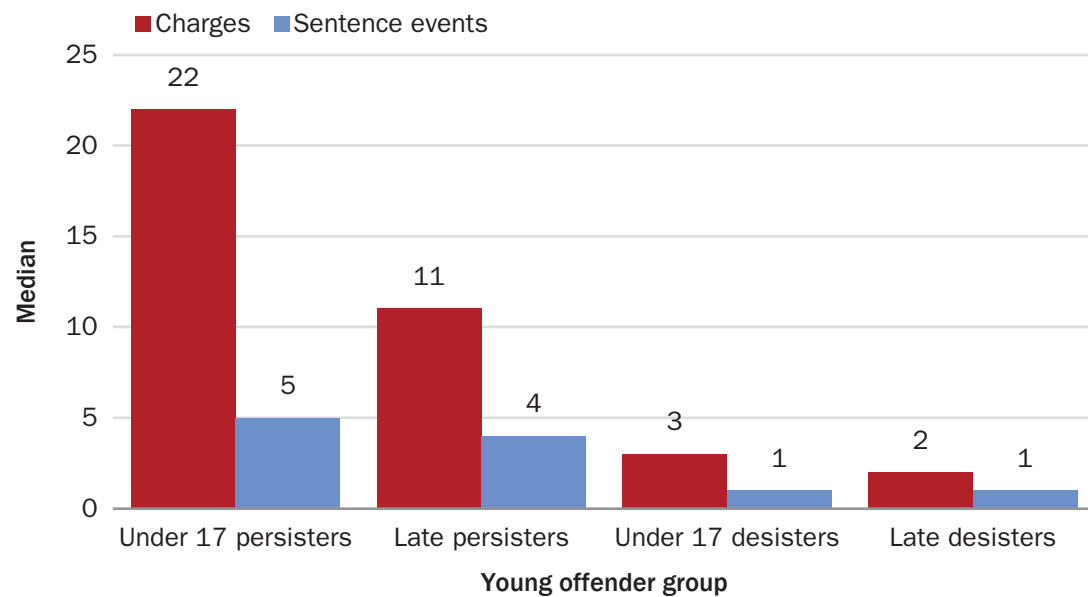
- 64% were for under 17 persisters (13,271 sentence events);
- 21% were for late persisters (4,269 sentence events);
- 6% were for under 17 desisters (1,206 sentence events); and
- 10% were for late desisters (2,001 sentence events).

Figure 34 (page 49) shows how the volume of offending varied over the 11-year study period across the four offender groups. Both the total number of proven charges and the total number of sentence events were higher for the persisters than for the desisters. The median number of proven charges and the median number of sentence events were highest for the under 17 persisters (22 and 5 respectively) and lowest for the late desisters (2 and 1 respectively).

The likelihood of being sentenced in the adult criminal jurisdiction was of course higher for the persister groups than the desister groups. The highest percentage of offenders that reached the adult criminal jurisdiction, not surprisingly, were late persisters (97%). These are offenders who were first sentenced on or after their 17th birthday and whose latest sentence event occurred at least two years later. Under 17 persisters had a somewhat lower percentage of offenders who were sentenced in the adult courts (78%), which is most likely due to the fact that these offenders tended to have a shorter follow-up period over the age of 17.

Reflecting the criteria used for their membership within an offender group, the two desister groups had very low percentages of offenders moving to the adult criminal jurisdiction: none of the under 17 desisters and just 7% of late desisters were sentenced in an adult court, most not reoffending within the follow-up period.

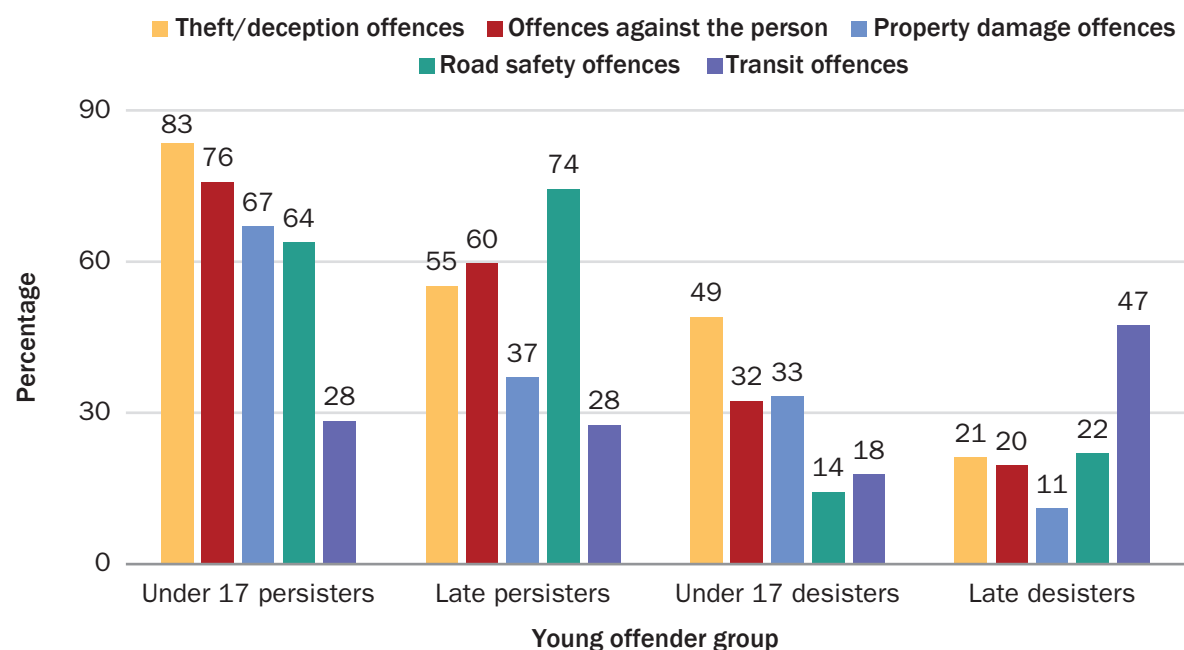
Figure 34: Median number of charges and median number of sentence events across the study period, by offender group, 2004–05 to 2014–15



Offence type

The offending profile of the four offender groups varied considerably. Figure 35 examines the offending patterns of each offender group by presenting the percentage of each group that had at least one proven charge of selected offence types over the entire study period. Under 17 persisters were most likely to have at least one proven charge of a theft/deception offence (83%), an offence against the person (76%), and a property damage offence (67%). Late persisters were most likely to have at least one proven charge of a road safety offence (74%), while late desisters were most likely to have at least one proven charge of a transit offence (48%).

Figure 35: Percentage of offenders in the study group, by offence types sentenced at any point across the 11-year study period and offender group, 2004–05 to 2014–15



Summary of offender group profiles

The two persister groups comprised 58% of offenders in the study group; however their offending accounted for 90% of all the offending by the study group over the 11-year study period. As the labels of these groups suggest, the offending by the two persister groups within the study period typically occurred over a long period of time – the median time between first sentence and latest sentence event was 5 years and 4 months for under 17 persisters and 4 years and 8 months for late persisters.

The type of offending engaged in by under 17 persisters was varied. Their offending was characterised by a combination of theft/deception offences (83%), offences against the person (76%), and/or property damage offences (67%). The offending of late persisters was also characterised by theft/deception offences and offences against the person. However, it differed from the offending of under 17 persisters in that a relatively low proportion of late persisters were sentenced for a property damage offence (37%) and a relatively high proportion were sentenced for a road safety offence (74%).

The two desister groups were characterised by a small number of sentence events (the median was one) and together their offending accounted for only 10% of all offending by the study group. The type of offending engaged in by the two desister groups differed. The offending sentenced for under 17 desisters was typically theft/deception offences, offences against the person, and/or property damage offences. In contrast, late desisters tended to be sentenced for transit offences (47%).

7. Concluding observations

It is a phenomenon common to many Western democracies, including Australia, that offenders who are children and young people have higher reoffending rates than their older counterparts.⁷⁹ All children and young people have a range of challenges as they grow and develop. When combined with family dysfunction, abuse, neglect, exposure to violence, low socio-economic conditions, or negative peer influences, these can result in antisocial behaviour and criminal offending. The majority of children and young people, however, do not offend, and many children and young people cease offending as they mature. In recent years, there has been a dramatic reduction in the number of children attending the Victorian Children's Court each year for sentencing, with the annual number almost halving between 2008–09 and 2014–15.

Recognition that children and young people share particular developmental characteristics that affect impulsivity and cognition underpins Victoria's specialist youth justice system. This system emphasises principles of rehabilitation over punishment and is informed by the different and distinct nature of youth and youth offending, compared with offending by adults. The moral culpability of children and young people is treated as markedly reduced because they are:

less mature – less able to form moral judgments, less capable of controlling impulses, less aware of the consequences of acts ... less responsible and therefore less blameworthy than adults.⁸⁰

Children and young people therefore do not generally 'deserve' the same degree of punishment as adults.⁸¹

Another justification for the emphasis on rehabilitation is the benefit to both the community and the child or young person in directing them away from a potentially life-long pathway of antisocial conduct and criminal offending.⁸² An emphasis on a child's rehabilitation 'equally serve[s] the community's need for protection from further crime at the hands of the offender'.⁸³ Related to this is the concern that 'custody can be particularly criminogenic for a young person, whose brain is still developing'.⁸⁴ This very process of brain development and maturation 'is seen as providing a unique opportunity for rehabilitation and [therefore] minimising the risk of reoffending'.⁸⁵

Crime prevention through rehabilitation is at the heart of the youth justice system. It is therefore crucial that the small group of children and young people who are likely to continue to offend over the long term can be identified early and that the issues contributing to their offending are addressed. The examination in this report of the factors associated with reoffending by children and young people provides an evidence base for both policy and judicial decision-makers as a first step to identifying which of the children who present at the Children's Court for sentencing pose a higher risk of prevalent and/or serious offending. It also provides an evidence base for how well the current suite of orders is operating to address the issues that contribute to offending by children and young people.

79. For research on New South Wales see Agnew-Pauley and Holmes (2015), above n 4. For research on New Zealand, see Arul Nadesu, *Reconviction Patterns of Released Prisoners: A 48-Months Follow-Up Analysis* (2008). For research on the United States, see Matthew R. Durose et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (2014). For research on England and Wales, see Ministry of Justice (2016), above n 4.

80. Lloyd Kingsley Newman, 'Juvenile Justice in South Australia', in Children's Court Advisory Committee, *Annual Report 1983* (1983) 6–7. See also Peter Power, 'Chapter 11 – Criminal Division – Sentencing', *Children's Court Research Materials* (Children's Court of Victoria, 2016) [11.1]; Freiberg (2014), above n 3, 925–933; Laurence Steinberg, 'Adolescent Development and Juvenile Justice' (2009) 5 *Annual Review of Clinical Psychology* 459; Chu and Ogloff (2012), above n 13; *CNK v The Queen* [2011] VSCA 228, [77].

81. Newman (1983), above n 80, 6–7. See also Power (2016), above n 80, [11.1]; *DPP (Vic) v TY (No 3)* (2007) 18 VR 241, 242 (Bell J).

82. *R v Dwayne Andrew Evans* [2003] VSCA 223 (19 December 2003) [44] (Vincent JA).

83. Freiberg (2014), above n 3, 932.

84. *Bradley Webster (A Pseudonym) v The Queen* [2016] VSCA 66 (11 April 2016) [8].

85. *Bradley Webster (A Pseudonym) v The Queen* [2016] VSCA 66 (11 April 2016) [8].

Age at first sentence

This report has identified different groups of offenders with very different offending patterns. Some offenders were first sentenced at 17 years old for a relatively minor offence, such as failure to produce a valid ticket or concession card on public transport, and they did not offend again. Other offenders started young with serious offences and continued offending throughout their adolescence and into adulthood.

Consistent with other research, this report has found that the younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to imprisonment in an adult court before their 22nd birthday. Each additional year in age at entry into the criminal courts was associated with an 18% decline in the likelihood of reoffending. These findings may not be surprising in light of studies showing that the youngest offenders are more likely to have been exposed to violence, abuse, neglect, and chaotic, dysfunctional lifestyles. Nevertheless, this does not make the findings any less concerning.

Offence type

The study group naturally fell into two distinct groups according to offence type – those who had only public transport-related ('transit') offences at their index sentence in 2008–09 (1,168 offenders) and those who had other offence types and no transit offences (4,123 offenders). Only 94 offenders had both transit and non-transit offences. There was a clear distinction between the reoffending rates of offenders sentenced for only transit offences (30%) and those sentenced for other, potentially more serious offences (69%).

Sentencing orders

Differences in reoffending were also observed in relation to sentencing orders. Care should be taken not to compare the reoffending rates of offenders on different orders (as the circumstances of the offence and offender will be different); however, the rate associated with a particular order is an important yardstick in measuring its effectiveness as a state intervention. The effectiveness of the Children's Court in sentencing children and young people is inextricably tied to the operation of the orders at the court's disposal.

Of the 5,385 children and young people in the study group, 115 were sentenced to a youth attendance order or youth justice centre order, which are the two most serious options available to the Children's Court for offenders aged 15–20. Of these 115 young people, over 80% reoffended, most reoffended violently, and over half were sentenced to imprisonment by an adult court in the six years after their index sentence. It is perhaps not surprising that their reoffending rates are high, given the likelihood that many of these children were themselves victims of crime, having experienced childhood trauma, neglect, or abuse or exposure to family violence, or having other indicators of disadvantage. These findings suggest that the youth justice system may be ill-equipped to address the issues contributing to the offending of these children. Equally concerning is the finding that, of the children and young people sentenced to good behaviour bonds and accountable undertakings, which are both low-end sentencing orders intended for less serious offenders, almost two-thirds reoffended.

Final remarks

While the proportion of children sentenced in the Children's Court is decreasing each year, the relatively high and unchanging reoffending rate among children and young people is a concern for the youth justice system and the community at large.

The principles of the youth justice system acknowledge that children and young people are still developing and that a range of factors – such as abuse, neglect, exposure to violence, poor parenting, family conflict, negative peer influences, and poor performance at school – are risk factors for young people. Sentencing the most problematic children and young people is highly complex, and the reoffending patterns found in this report suggest that sentencing alone cannot address the root causes of offending by children and young people. The findings suggest that enhanced early intervention and resources to rehabilitate young offenders are vital to prevent or interrupt the criminal trajectories of children who enter the criminal justice system at a young age and commit a disproportionately high volume of all youth crime.

Appendix 1: The Council's approach and methodology

The Council addressed five research questions using sentencing data sourced from Court Services Victoria. Data from the Children's Court, Magistrates' Court, and higher courts (County and Supreme Courts) are provided to the Council on a regular basis. The data exists in separate datasets.

The Council maintains a reoffending database, which has at its core a unique person identifier that links together sentencing cases belonging to the same person and information within and across courts (although the Council only publishes aggregate data). The database also includes information about each case such as the date of sentence, the type and length of sentence imposed, as well as the offence and offence date attached to each proven charge. There are a number of gaps and limitations to the reoffending database, which are outlined below.

Study group

At the time of publication, the Council's reoffending database contained all cases sentenced between 1 July 2004 and 30 June 2015. This means that the sentencing history of each offender in the database can be tracked for a period of up to 11 years. Within this period, the Council focused on all people sentenced in the Children's Court in the period from July 2008 to June 2009. For people sentenced more than once in that year, their first sentence in 2008–09 was selected. This sentence event is referred to as the 'index sentence', representing a date on which a person was initially sentenced for one or more offences.

The year 2008–09 was selected (rather than an earlier year) because it enabled a substantial follow-up period for each offender (up to six years) while also ensuring that the workload of the Children's Court had stabilised after two substantial changes to its jurisdiction. The first of these changes was the increase in the upper age limit of offenders who could be dealt with in the Children's Court, from 16 years old to 17 years old. This change occurred on 1 July 2005 and has been in place ever since.

The second change to the jurisdiction of the Children's Court was the introduction of CAYPINS, which had only a temporary effect on the court's caseload. Prior to CAYPINS coming into effect on 1 July 2005,⁸⁶ the Children's Court dealt with infringement matters through the issue of a summons and proceedings in open court. A delay in implementing CAYPINS in the Children's Court led to an influx of mainly transit matters heard in open court in 2007 and a corresponding spike in the number of cases determined that year and for some of the following year.⁸⁷ By mid 2008, the effect of CAYPINS on the number of matters heard in the Children's Court had largely concluded.

For the purposes of this report, a matter resolved by way of an infringement penalty notice or any subsequent resolution by enforcement through CAYPINS is not included in the analysis of offences heard at the index sentence. Nor are these matters included in the count of prior convictions or reoffending.

86. *Children, Youth and Families Act 2005* (Vic) sch 3 s 581.

87. See Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (2012) 92–93, 97–98, 152–154.

Reoffending events and prior sentence events

Critical to this investigation into offending patterns over time are prior and subsequent sentence events relative to the index sentence.

A reoffending event (i.e. a subsequent sentence event) is typically a sentence imposed on a date after the index sentence. The period over which reoffending events were examined concluded with the latest sentence event date in the Council's database: 30 June 2015. To be consistent for all index offenders, six years to the day after the index sentence was the reoffending event study period. In the count of reoffending, this report excludes sentences imposed after the index sentence for offences committed prior to the index sentence.

Where offence dates for sentences imposed after the index sentence were unavailable, the time between the index sentence and reoffending events was used to exclude sentences based on the average time required for a case to be heard in a court. If a sentence without an offence date was imposed in a higher court (County or Supreme Court) within seven months of the index sentence, it was excluded as a probable sentence for an offence committed prior to the index sentence. If a sentence without an offence date was imposed in the Magistrates' Court or Children's Court within one month of the index sentence, it was excluded as a probable sentence for an offence committed prior to the index sentence.

A prior sentence event is a sentence event that occurred before the index sentence. As the Council's reoffending database contains data as far back as 1 July 2004, the shortest period of time in which an index offender's prior sentence events were considered was four years for people sentenced at the start of the index year (1 July 2008). To be consistent for all index offenders, four years to the day before the index sentence was the prior sentence event study period.

Consistent with the approach set out in the *Sentencing Act 1991* (Vic), only offences that were proven and sentenced before the index sentence are included in the count of prior sentence events. Offences that occurred before the index sentence but were not sentenced until after the index sentence are not included in the count of prior sentence events. While not prior sentence events, they are offences that occurred before the index sentence and were ultimately proven; therefore, it is worth examining their effect on the rate of prior convictions.

The Council's analysis found that:

- 834 of the 1,855 index offenders with prior sentence events also had at least one prior conviction that was sentenced after their index sentence. As these index offenders already had prior convictions, the prior sentence events sentenced afterwards did not affect the rate of prior sentence events reported; and
- 672 index offenders had no prior sentence events but had a prior conviction that was sentenced after the index sentence. Although these index offenders committed an offence before the index sentence, they were not included in the count of index offenders with prior sentence events because the offence was only sentenced after the index sentence.

If the analysis of 'prior sentence events' in this report were to include prior convictions, regardless of whether offences were proven and sentenced before the index sentence, the proportion of index offenders with 'prior convictions' would increase from 34% of index offenders to 47% of index offenders (2,527 out of 5,385 index offenders).

Offences sentenced in other states or territories are not included in the count of prior convictions or reoffending.

Age at entry

This report examines behaviour by individuals over an extended period of time, so there are a number of points at which an offender's age can be measured. However, the report focuses on the age of offenders at their *first* sentence, as previous research suggests that there is an association between the age at which children and young people 'enter' the juvenile justice system and their future criminality.⁸⁸

When looking at reoffending, the report examines reoffending after the *index sentence* according to the age that offenders were *when they were first sentenced*. For example, if a child was aged 10 when they were first sentenced and aged 14 at their index sentence, the analysis in Chapter 5 categorises them in the 10–12 year old group and examines their reoffending after their index sentence at age 14. The older children are at their first sentence, the more likely their first sentence is to also be their index sentence.

A consequence of this methodology is that the reoffending rates for children who were first sentenced at a younger age might be slightly inflated as a consequence of their non-reoffending peers exiting the court system before they could become part of the index group. The Council tested for this by examining reoffending by age at the index sentence. While the reoffending rates of older offenders increased and the reoffending rates of younger offenders slightly decreased, the overall pattern (of reoffending decreasing as age increased) remained the same.

Consultation

In the course of preparing this report, the Council consulted with key stakeholders to gain further insight into the findings and the factors underlying offending by children and young people. The Council held specific consultation meetings with the Children's Court of Victoria and the Department of Justice and Regulation, and also convened a Youth Reoffending Roundtable on 27 September 2016 with representatives from a number of organisations and entities:

- Children's Court of Victoria;
- Commission for Children and Young People;
- Department of Health and Human Services;
- Department of Justice and Regulation;
- Jesuit Social Services;
- Victim Support Agency;
- Victoria Legal Aid;
- Victoria Police;
- Victorian Auditor-General's Office;
- Youth Affairs Council of Victoria;
- Youthlaw; and
- Youth Support and Advocacy Service.

A number of questions about the findings were put to those consulted, and their feedback has informed parts of this report.

88. See for example, Farrington et al. (2006), above n 15, 2; Loeber and Farrington (2000), above n 15; Forrest and Edwards (2014), above n 13, 131; Chen et al. (2005), above n 13; Parliament of Victoria, Drugs and Crime Prevention Committee (2009), above n 13, 63; Weatherburn et al. (2007), above n 15.

Appendix 2: Regression analysis

In order to determine the influence of each factor independently of other factors, a logistic regression analysis was performed predicting general reoffending.

The model predicted the likelihood of reoffending following the index sentence using these variables:

- age of offender at first sentence;
- gender of offender;
- number of sentence events prior to the index sentence (one, two, or more);
- number of charges in the index sentence and in prior sentence events (one, two to four, and five or more) and:
 - at least one offence against the person in the index sentence and in prior sentence events;
 - at least one theft/deception offence in the index sentence and in prior sentence events;
 - at least one property damage offence in the index sentence and in prior sentence events;
 - at least one transit offence in the index sentence and in prior sentence events; and
 - at least one road safety offence in the index sentence and in prior sentence events.

The results of the regression model are presented in Table A1 (page 58). In the table, the standardised beta coefficient indicates the change in the odds of the predicted outcome (e.g. general reoffending) for each variable. For example, the standardised beta for gender was 2.481, suggesting that, when all other variables in the model are held constant, the odds of a male reoffending were 2.5 times higher than the odds of a female reoffending. The significance level indicates whether or not the relationship is statistically significant. Only a significance value of below 0.05 is deemed statistically significant. In the case of gender and general reoffending, the significance value is < 0.05 , so the relationship is statistically significant.

The model predicting general reoffending shows that all but one of the variables had a statistically significant relationship with general reoffending. Only property damage was not a statistically significant predictor of general reoffending.

The gender of the offender was a strong predictor of general reoffending, with the odds of reoffending for males being 2.5 times higher than the odds for females.

The offender's age at their first sentence also had an association with the odds of reoffending, with each additional year in age at first sentence resulting in an 18% decline in the odds of reoffending.

The number of prior sentence events and the number of charges also were significant predictors of reoffending. For example, offenders with two or more prior sentence events were 3.3 times more likely to reoffend than offenders with no prior convictions.

Finally, the presence of various offence types was associated with an offender's chances of reoffending. A theft/deception offence, a road safety offence, or an offence against the person was associated with increased chances of reoffending, whereas the presence of a transit offence was associated with a decreased chance of reoffending (by a factor of 50%).

Table A1: Logistic regression results predicting general reoffending

Variable	Reference category	Indicator	Exp(B)	Sig	95% C.I. for Exp(B)	Lower	Upper
Gender	Female	Male	2.481	0.000	2.136	2.136	2.883
Age at first sentence	Nil		0.820	0.000	0.783	0.783	0.860
Number of prior sentence events	0	1	1.638	0.000	1.343	1.343	1.998
	0	2+	3.337	0.000	2.590	2.590	4.300
Number of charges	1	2-4	1.244	0.010	1.054	1.054	1.467
	1	5+	1.365	0.006	1.092	1.092	1.705
Offence against the person	No	Yes	1.293	0.001	1.115	1.115	1.501
Theft/deception offence	No	Yes	1.362	0.000	1.166	1.166	1.590
Property damage offence	No	Yes	1.167	0.068	0.989	0.989	1.379
Transit offence	No	Yes	0.495	0.000	0.417	0.417	0.588
Road safety offence	No	Yes	1.362	0.000	1.150	1.150	1.612

Appendix 3: Sentencing orders

Sections 360 and 361 of the *Children, Youth and Families Act 2005* (Vic) establish a hierarchy of sentencing orders from least severe (dismissal without conviction) to most severe (detention under a youth residential centre order or a youth justice centre order). As with the sentencing of adults, the principle of parsimony applies, which means that the court must not impose a sentencing order that is more severe than is necessary to achieve the purposes of the sentence.⁸⁹ The orders are set out in Table A2, in order of increasing severity. As the Children's Court cannot impose a sentence of imprisonment, the two detention orders are the most severe sentences that can be imposed on a child.

Table A2: Sentencing orders in the Children's Court (under the *Children, Youth and Families Act 2005* (Vic))

Order (and age limits)	Description
Unsupervised orders	
Dismissal (section 360(1)(a)) <i>All offenders</i>	The least severe sentencing sanction, under which the child is found guilty of an offence and the court dismisses the charge without recording a conviction and no other sentence is imposed.
Undertaking (sections 365–366) <i>All offenders</i>	An order for up to one year requiring agreement from the child to abide by certain conditions. At the end of the order, the court dismisses the charge for which the child has been found guilty. An accountable undertaking means the child may have to return to court if the order is breached. An unaccountable undertaking means the child does not have to return to court if the order is breached.
Good behaviour bond (sections 367–372) <i>All offenders</i>	An order by which the court postpones the sentencing of the child for up to one year (or up to 18 months if the child is aged 15 or over). During this period, the child must be of good behaviour and meet any special condition imposed by the court. When the order is made, the court specifies a bond amount that must be paid if the good behaviour bond is breached. If the child complies with the order, the court dismisses the charge, does not record a conviction, and does not require the child to pay the bond amount to the court. If the child fails to comply with the order, the court may require payment of the bond amount or resentence the child for the original charges.
Fine (section 373) <i>All offenders</i>	The Children's Court may impose a financial penalty in the form of a fine, described in penalty units. ^a For children and young people aged under 15, the maximum fine is one penalty unit for one offence and two penalty units for more than one offence. For children and young people aged 15 or over, the maximum fine is five penalty units for one offence and 10 penalty units for more than one offence.

89. *Children, Youth and Families Act 2005* (Vic) s 261. For detailed discussion of the available sentencing orders, see Freiberg (2014), above n 3, 940–958. See also Grant (2011), above n 20.

Order (and age limits)	Description
Supervised community-based sentences	
Probation order (sections 380–386) <i>All offenders</i>	An order requiring an offender to report to a youth justice unit, obey the instructions of a youth justice worker, and refrain from offending. The order must not last for more than one year, or more than 18 months for offences with a maximum penalty of more than 10 years, and cannot extend beyond the offender's 21st birthday. The order can include special conditions, such as undertaking counselling or treatment programs.
Youth supervision order (sections 387–395) <i>All offenders</i>	An order requiring an offender to be under a higher level of supervision than under a probation order. Conditions include attending a youth justice unit, participating in programs, reporting to a youth justice unit, obeying the instructions of a youth justice worker, and refraining from offending. The order must not last for more than one year, or more than 18 months for offences with a maximum penalty of more than 10 years, and cannot extend beyond the offender's 21st birthday.
Youth attendance order (sections 397–409) <i>Offenders aged 15–20</i>	For offenders aged 15–20, this is an alternative order to detention requiring an offender to attend a youth justice unit and comply with intensive reporting and attendance requirements. The order may last for up to one year but cannot extend past the offender's 21st birthday. The court may attach special conditions, such as education, counselling, or treatment, or direct that the offender engage in community service. The offender must not reoffend during the order, and if the order is breached, the offender may go into detention.
Custodial orders	
Youth residential centre order (sections 410–411) <i>Offenders aged 10–14</i>	For offenders aged under 15, this is an order for detention in a youth residential centre for a maximum of one year for a single offence or two years for more than one offence. While detained, offenders participate in education and programs that address their offending behaviour.
Youth justice centre order (sections 412–413) <i>Offenders aged 15–20</i>	For offenders aged 15–20, this is an order for detention in a youth justice centre for a maximum of two years for a single offence or three years for more than one offence. While detained, offenders participate in education and programs that address their offending behaviour. Temporary leave may also be granted for specific purposes, such as work.

- a. For the financial year 1 July 2015 to 30 June 2016, one penalty unit was valued at \$151.67. The amount of a penalty unit is adjusted each year in line with inflation.

References

Bibliography

- Agnew-Pauley, Winifred and Jessie Holmes, *Re-offending in NSW*, Bureau Brief no. 108 (NSW Bureau of Crime Statistics and Research, 2015) <http://www.bocsar.nsw.gov.au/Pages/bocsar_news/Re-offending-in-NSW.aspx>.
- Australian Institute of Health and Welfare, *Young People in Child Protection and under Youth Justice Supervision 2014–15*, Data Linkage Series no. 22 (Australian Institute of Health and Welfare, 2016) <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129557321>>.
- Australian Institute of Health and Welfare, *Young People Returning to Sentenced Youth Justice Supervision 2015*, Juvenile Justice Series no. 18 (Australian Institute of Health and Welfare, 2015) <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129551648>>.
- Bowles, Jennifer, *Sentencing in the Children's Court of Victoria* (Children's Court of Victoria, 2013) <<http://www.childrenscourt.vic.gov.au/sentencing-childrens-court-victoria>>.
- Boxall, Hayley, Jason Payne, and Lisa Rosevear, *Prior Offending among Family Violence Perpetrators: A Tasmanian Sample*, Trends and Issues in Crime and Criminal Justice no. 493 (Australian Institute of Criminology, 2015) <<http://www.aic.gov.au/publications/current%20series/tandi/481-500/tandi493.html>>.
- Chen, Shuling, Tania Matruglio, Don Weatherburn, and Jiuzhao Huar, *The Transition from Juvenile to Adult Criminal Careers*, New South Wales Crime and Justice Bulletin no. 86 (2005) <<http://www.bocsar.nsw.gov.au/Documents/CJB/cjb86.pdf>> (pdf link).
- Chu, Chi Meng and James R.P. Ogloff, 'Sentencing of Adolescent Offenders in Victoria: A Review of Empirical Evidence and Practice' (2012) 19(3) *Psychiatry, Psychology and Law* 325.
- Crime Statistics Agency, Victoria, *Alleged Offender Incidents Data Tables* (year ending 31 March 2016).
- Cunneen, Chris, Rob White and Kelly Richards, *Juvenile Justice in Australia* (5th ed., Oxford University Press, 2015).
- Department of Health and Human Services, *Child Protection Orders* (Human Services, 2016) <<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection/child-protection-orders>>.
- Department of Health and Human Services, *Child Protection* (Human Services, 2016) <<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/child-protection>>.
- Durose, Matthew R, Alexia D. Cooper, and Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (U.S. Department of Justice, Bureau of Justice Statistics, 2014) <<http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>>.
- Farrington, David P., Jeremy W. Coid, Louise Harnett, Darrick Jolliffe, Nadine Soteriou, Richard Turner, and Donald J. West, *Criminal Careers and Life Success: New Findings from the Cambridge Study in Delinquent Development*, Research Findings no. 281 (London: Home Office, 2006).
- Forrest, Walter and Ben Edwards, 'Early Onset of Crime and Delinquency among Australian Children', in Australian Institute of Family Studies (ed.), *The Longitudinal Study of Australian Children Annual Statistical Report 2014* (Australian Institute of Family Studies, 2014) 131–150 <<http://www.growingupinaustralia.gov.au/pubs/asr/2014/asr2014g.html>>.
- Freiberg, Arie, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (3rd ed., Thomson Reuters, 2014).
- Grant, Paul, 'Young People and State Intervention' (Paper presented at ANZAPPL Symposium, Australian and New Zealand Association of Psychiatry, Psychology and Law, [Wellington] 20 August 2011) <<http://www.childrenscourt.vic.gov.au/young-people-and-criminal-justice-system>>.

- Hawkins, J. David, Todd I. Herrnkohl, David P. Farrington, Devon Brewer, Richard F. Catelano, Tracy W. Harachi, and Lynn Cothorn, *Predictors of Youth Violence*, Juvenile Justice Bulletin (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2000) <<https://www.ojjdp.gov/publications/PubAbstract.asp?pubi=179065&ti=&si=&sei=&kw=&PreviousPage=PubResults&strSortby=date&p=&strPubSearch=>>>.
- Holmes, Jessie, *Reoffending in NSW, Bureau Brief no. 56* (NSW Bureau of Crime Statistics and Research, 2012) <<http://www.bocsar.nsw.gov.au/Documents/BB/bb56.pdf>> (pdf link).
- Jesuit Social Services, *Thinking Outside: Alternatives to Remand for Children, Summary Report* (Jesuit Social Services, 2015).
- Livingston, Michael, Anna Stewart, Troy Allard, and James Ogilvie, 'Understanding Juvenile Offending Trajectories' (2008) 41(3) *The Australian and New Zealand Journal of Criminology* 345.
- Loeber, Rolf and David P. Farrington, 'Young Children Who Commit Crime: Epidemiology, Developmental Origins, Risk Factors, Early Interventions and Policy Implications' (2000) 12(4) *Development and Psychopathology* 737.
- Loeber, Rolf, David P. Farrington, and David Petechuk, *Child Delinquency: Early Intervention and Prevention*, Bulletin Series (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2003) <<https://www.ojjdp.gov/publications/PubAbstract.asp?pubi=186162&ti=&si=&sei=&kw=&PreviousPage=PubResults&strSortby=date&p=&strPubSearch=>>>.
- Ministry of Justice, *Proven Reoffending Statistics Quarterly Bulletin: October 2013 to September 2015, England and Wales* (Ministry of Justice, 2016) <<https://www.gov.uk/government/statistics/proven-reoffending-statistics-october-2013-to-september-2014>>.
- Ministry of Justice, *Youth Justice Statistics 2014/15: England and Wales* (Ministry of Justice, 2016) <<https://www.gov.uk/government/statistics/youth-justice-annual-statistics-2014-to-2015>>.
- Moffitt, Terrie E., 'Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy' (1993) 100 *Psychological Review* 674.
- Nadesu, Arul, *Reconviction Patterns of Released Prisoners: A 48-Months Follow-Up Analysis* (New Zealand Department of Corrections, 2008) <http://www.corrections.govt.nz/resources/research_and_statistics/reconviction-patterns-of-released-prisoners-a-48-months-follow-up-analysis.html>.
- Newman, Lloyd Kingsley, 'Juvenile Justice in South Australia', in Children's Court Advisory Committee (South Australia), *Annual Report 1983* (South Australian Government Printer, 1983).
- Parliament of Victoria, Drugs and Crime Prevention Committee, *Inquiry into Strategies to Prevent High Volume Offending and Recidivism by Young People, Final Report*, no. 218 (Parliament of Victoria, 2009) <<http://www.parliament.vic.gov.au/vufind/Record/80631/Description#tabnav>>.
- Payne, Jason, *Recidivism in Australia: Findings and Future Research*, Research and Public Policy Series no. 80 (Australian Institute of Criminology, 2007) <<http://www.aic.gov.au/publications/current%20series/rpp/61-80/rpp80.html>>.
- Piquero, Alex R., 'Taking Stock of Developmental Trajectories of Criminal Activity over the Life Course', in Akiva M. Liverman (ed.), *The Long View of Crime: A Synthesis of Longitudinal Research* (Springer, 2008) 23–78.
- Power, Peter, *Children's Court Research Materials* (Children's Court of Victoria, 2016) <<http://www.childrenscourt.vic.gov.au/legal/research-materials>>.
- Richards, Kelly, *What Makes Juvenile Offenders Different from Adult Offenders?* Trends and Issues in Crime and Criminal Justice no. 409 (Australian Institute of Criminology, 2011) <<http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi409.html>>.
- Sentencing Advisory Council, *Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending* (Sentencing Advisory Council, 2016) <<https://www.sentencingcouncil.vic.gov.au/publications/contravention-family-violence-intervention-orders-and-safety-notices-prior-offences-and>>.

- Sentencing Advisory Council, *Reoffending Following Sentencing in the Magistrates' Court of Victoria* (Sentencing Advisory Council, 2013) <<https://www.sentencingcouncil.vic.gov.au/publications/reoffending-following-sentencing-magistrates-court>>.
- Sentencing Advisory Council, *Reoffending Following Sentence in Victoria: A Statistical Overview* (Sentencing Advisory Council, 2015) <<https://www.sentencingcouncil.vic.gov.au/publications/reoffending-following-sentence-victoria-statistical-overview>>.
- Sentencing Advisory Council, *Sentencing Children and Young People in Victoria* (Sentencing Advisory Council, 2012) <<https://www.sentencingcouncil.vic.gov.au/publications/sentencing-children-and-young-people-victoria>>.
- Sentencing Advisory Council, *Sentencing Children in Victoria: Data Update Report* (Sentencing Advisory Council, 2016) <<https://www.sentencingcouncil.vic.gov.au/publications/sentencing-children-victoria-data-update-report>>.
- Sentencing Advisory Council, *The Imposition and Enforcement of Court Fines and Infringement Penalties in Victoria* (Sentencing Advisory Council, 2014) <<https://www.sentencingcouncil.vic.gov.au/publications/imposition-and-enforcement-court-fines-and-infringement-penalties-victoria>>.
- Shader, Michael, *Risk Factors for Delinquency: An Overview* (U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 2004) <<https://www.ncjrs.gov/pdffiles1/ojjdp/frd030127.pdf>> (pdf link).
- Smart Justice for Young People, *Youth Diversion Makes Sense* (Smart Justice for Young People, 2013) <http://www.smartjustice.org.au/cb_pages/files/Diversion%20paper%283%29.pdf> (pdf link).
- Steinberg, Laurence, 'Adolescent Development and Juvenile Justice' (2009) *5 Annual Review of Clinical Psychology* 459.
- Stewart, Anna, Michael Livingstone, and Susan Dennison, 'Transitions and Turning Points: Examining the Links between Child Maltreatment and Juvenile Offending' (2008) *32 Child Abuse & Neglect* 51.
- Sutherland, Paul and Melanie Millsted, *Patterns of Recorded Offending Behaviour amongst Young Victorian Offenders*, In Brief no. 6 (Crime Statistics Agency, Victoria, 2016) <<https://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/patterns-of-recorded-offending-behaviour-amongst-young>>.
- Weatherburn, Don, Racheal Cush, and Paula Saunders, *Screening Juvenile Offenders for Further Assessment and Intervention*, Crime and Justice Bulletin no. 109 (NSW Bureau of Crime Statistics and Research, 2007) <<http://www.bocsar.nsw.gov.au/Documents/CJB/cjb109.pdf>> (pdf link).
- Youth Parole Board, *Annual Report 2014–15* (2015) <http://www.dhs.vic.gov.au/___data/assets/pdf_file/0005/924413/Youth-Parole-Annual-Report-2014-15.pdf> (pdf link).

Legislation

- Children, Youth and Families Act 2005* (Vic)
Sentencing Act 1991 (Vic)

Cases

- A Child v A Magistrate of the Children's Court & Others* (Unreported, Supreme Court of Victoria, Cummins J, 24 February 1992)
- Bradley Webster (A Pseudonym) v The Queen* [2016] VSCA 66 (11 April 2016)
- C v Children's Court of Victoria & Anor* [2015] VSC 40 (19 February 2015)
- CNK v The Queen* [2011] VSCA 228
- D (A Child) v White* [1988] VR 87
- DPP (Vic) v TY (No 3)* (2007) 18 VR 241
- R v Dwayne Andrew Evans* [2003] VSCA 223 (19 December 2003)
- R (A Child) v Whitty* (1993) 66 A Crim R 462
- Victoria Police v CB* [2010] VChC 3 (24 June 2010)

Sentencing Advisory Council

Level 3
333 Queen Street
Melbourne VIC 3000

Telephone 1300 363 196
Facsimile 03 9908 8777
contact@sentencingcouncil.vic.gov.au

www.sentencingcouncil.vic.gov.au

Follow us on Twitter @SACvic